44.19.1

START

FIRST

SIDE

GGG-88

PTE DURANT A

Correspondence to be PINNED here.

ENTERED IN RECORDS OF C.M.

GGG 88

£ 17

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty Third day of February, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of Mish-Kara Scots Regt, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

*Omit if not applicable.

*[I am unable to appoint :—

*[1. ~~Three Officers to form the Court.~~]

*[2. ~~A Field Officer as President.~~]

for the following reasons, namely :—] Because in my opinion a field officer is not available.

PROCEEDINGS REVIEWED
R. Dearholt
25 Gp. Lt. Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

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

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

President.

Rank.	Name.	Regiment.
Capt	A M Mc Millan	Mish N.S.R.

Members.

Rank.	Name.	Regiment.
Lieut	D R Bain	Mish N.S.R.
Lieut	D G Kirk	Mish N.S.R.

*Signed Katerman Lt Col
Commanding Mish N.S.R.
Convening Officer.

618

1

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
32262 Pte Allison Sherard	1st charge. Sec 9.2 A.W.	NOT GUILTY	GUILTY TWO YEARS IMPRISONMENT WITH HARD LABOR	Confirmed [illegible] Brig

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

3

I certify that the above Court assembled on the 23rd day of February, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—

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

were duly sworn.

*Omit if not applicable.

Signed this 23rd day of February 1944

[signature]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (f) on page 742 M.M.C.L. 1929.

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

Signed this day of 19

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 24 day of Feb 1944.

[signature]
Confirming Officer.

Promulgated and extracts taken in the case of 32262 Pte Allison Sherard Inf

(a) (Dated) 25 Feb 44 (Signed) [signature] Lieut Col Adjt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

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

(Signed) [signature] (Signed) [signature]

Commanding Officer (e) President.

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

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

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

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

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

G22621 Pte Durant, A.
W. N. S. A.

Field
23 Feb 44.

Geo. W. Wood
Maj

Charge Sheet

1st Charge
Sec. 9(2) A.A.

The accused 622621 private Allison Durant a soldier of the 16th Army Overseas, C.M.F. when on active service is charged with.

When on active service disobeying a lawful command given by a superior officer.

in that he

at approx. 2100 hrs on 22 Feb 44 did not go on guard when ordered to do so by 66275 Sgt Northern saying 'I am not going on guard'

In the Field

[signature] Maj.
Sgt. C.C.

23 Feb 44

[signature] Lieut.
Commanding the 4 & R

Accused G22621 Pte Allison Durant West N.S.R.
(No.) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in Sicily on 23 Feb 44
(Country) (Date)

	Rank	Name	Unit
PRESIDENT:	Capt	A.M. MacMillan	West N.S.R.
MEMBERS:	Lieut	G.R. Bewes	West N.S.R.
	Lieut	D.E. Kirk	West N.S.R.

JUDGE ADVOCATE (if any): ~~N/A~~

OFFICERS UNDER INSTRUCTION: ~~N/A~~

PROSECUTING OFFICER: Capt A.J.W. Dyer Lawyer? Ans No

DEFENDING OFFICER: Lieut W.C. Ingraham Lawyer? Ans No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (RsP 17(E), 22(A)).

The President, in closed court (RP 22, fn 1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (AA 49; RP 105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (RP 106).

The accused is (are) brought before the Court, and at 1435 hrs, the trial commences.

The Prosecuting Officer produces a Medical Certificate under KR (Can) 557 (See CMHR Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused:
Do you object to ~~N/A~~ as interpreter? Ans ~~N/A~~

The interpreter is duly sworn.

Do you object to ~~N/A~~ as Shorthand Writer? Ans ~~N/A~~

~~The Shorthand Writer is duly sworn. (Forms of Oath on Page 'D')~~

The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (RP 10)

President to accused
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (RP 26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (AA 46(8)).

(If special plea/s is/are made for separate trial on one or more charges (RsP 62(E), 108); or as to the jurisdiction of the Court (RP 34); or in bar of trial (RP 36); or as to accused's mental fitness to stand trial (AA 130, RP 57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each Charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (RP 112). He pleads as follows:

First Charge Not Guilty

Second Charge

Third Charge

Fourth Charge

Fifth Charge

Sixth Charge

Seventh Charge

Eighth Charge

(For procedure on alternative charges, see RP 37, fn 2)

Further proceedings are recorded on pages hereto attached.

PAGE 'B'

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President).

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (RP 39(A)). Ans NO

2. The Prosecutor's open ing address (if any) (RP 39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page 'D').

3. The Prosecution is closed. (If submission that there is no prima facie case established, see RP 40 fn 1; RP 70 fn 1).

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (RP 40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (RP 40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans. YES
Q. Do you intend to call any other witnesses in your defence? Ans NO
Q. Is he a witness as to character only? (RP 40(B)) Ans

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see RsP 40, 41 and 42).

8. The Court is now closed to consider the finding (RsP 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. (RP 117(B)).

10. Statement of Character and Service (AFB.296) and Field Conduct Sheet (AFM.6) signed in the manner required by AA 163 (1) (h) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "A", and "B", initialled by the President and attached to the proceedings (RP 46; Overseas RO 3131).

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (RP 46(D)).
Ans YES No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto).

12. The Court is now closed to consider the sentence (Record on Page 2 of AFA.3)
(Punishments, AA 44, MR (Can) 563 - 566; one sentence only awarded, (RP 48); sentence should be dated.

The sentence is not announced to the accused by the Court.

(Signature of President)

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. RP 35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (RP 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (RP 37(B)) Ans _____

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (RP 37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (RP 37(C)). Ans _____

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination).

5. President to Accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (RP 37(C)). Ans _____

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

6. "Statement of Character and Service (AFB.296) and Field Conduct Sheet (AFM.6) signed in the manner required by AA 163 (i) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (RP 46; C/Orseas RO 3131).

7. President to Accused:
Q. Do you wish to address the Court on your Statement of Character, Service and Conduct in further mitigation of punishment? (RP 46(D)). Ans _____ (No cross-examination). (Record address, if any, on separate sheet, initialled by the President and attached hereto).

8. The Court is now closed to consider sentence. (Record on Page 2 of AFA.3).

(Punishments, AA 44, MR (Can) 563 - 566; one sentence only awarded, RP 48). Sentence should be dated).

The sentence is not announced to the accused by the Court.

(Signature of President)

Proceedings in case of G 22621 Pte. Durant, Allison. 1

Accused pleads not guilty to the charge.

First witness for Prosecution - I am Lieut. K.N. WEBBER, Dental Offr. WHER. At approx. 8 p.m. on 22 Feb. 19 I was sent for by accused & Pte. Allison also a female civilian. I found accused & Pte. C Coy WHER. At this time the latter was on his knees & accused was standing over him. I saw accused deliver several blows with his fist on the head & face of Pte. Allison. I then ordered accused to stop & he did so. I then ordered accused to leave the room & he did so. I then ordered Pte. Allison to leave the room & he did so. I then ordered the civilian to leave the room & she did so. I then ordered accused to return to the room & he did so. I then ordered accused to leave the room & he did so. I then ordered Pte. Allison to return to the room & he did so. I then ordered accused to return to the room & he did so. I then ordered accused to leave the room & he did so. I then ordered Pte. Allison to leave the room & he did so. I then ordered the civilian to return to

2nd copy

RR 83(a) complete unit

Second edition for Brewster - D and F 61-270, Ridgefield Park, N.J. On 22 Oct 49 I was the recommended grant of a personal CP, of which Pte Brewster was a member. It appears also that I was to make the presentation for me to get him to sign it. I did not see Pte Brewster and it took several days to get him to sign it. I take it that there was a delay in the grant and he was then transferred out of the unit before this also was sent back to the Unit. It would appear that he moved to Ridgefield Park, N.J. and was employed there. I am enclosing the CP, duly signed by him, and I trust that you will be able to forward it to him. I am sorry that this has been delayed so long, but it was not my fault. I am sending a copy of this letter to Brewster at his address in Ridgefield Park, N.J.

Yours very truly,

Quarterly by hand. Did receive from you a request for [illegible] - brother said that he put it in mail and should have been on the first ship. It was pointed out to him that he should have written to the first ship if he was anxious to get it. He has now had an opportunity of doing so.

Letter mailed this morning to you for [illegible]

A - He said, "I am not going on guard." 3 Aug

R.P 83(B) complied with

Third Witness for Prosecution - 3 Sgt F 31052 Pte Sanford, C E On the morning of 22 Jul 44, I was on guard duty at the O P with Pte Dickinson. At 2100 hrs during completion of the time slip we were expecting relief Kelly should arrive on time. One of the members of the Tentage Pl. relieving us which I must not do to see what was delaying the relief when I went inside this Pte got under my feet. Because after 2 minutes, before he had even finished by 4 Sgt Foster to hurry up for he was on guard that he was not going on guard tonight. He then took off his belt and put back to bed 4 Sgt Foster then went out & he told me come back with him. When I was about to leave the room I heard the accused saying to go on guard and what would happen if he did not go. I heard one he must cannot happen.

Q. by Court - Did you hear 4 Sgt Foster warn accused of the consequences of his offence?

A - Yes. He told him of the consequences of refusing to go on guard after having been ordered to do so, but told him that he might be fined by court martial or a result.

Cross examination of Witness by Defence — 4. Ang

Q - Would you say the accused was fit for duty at the time stated?

A - Yes

Q - Had he been drinking during the day?

A - To the best of my knowledge

Q - Had he been drinking during the day, was he under the influence of liquor?

A - I did not see accused take a drink during the day and I could not swear he was under the influence of liquor whatsoever for I saw

RD 8½(B) complied with

Ang

5 Apr

Examination of Witness

Witness under the following statement, Intoxicated.

"I am 6822621 Pte Barrett, Allison. The reason I did not go on guard last night was that I was half sick. I was sick all day. I had two cups of tea, two slices of bread, two days, but did not report sick.

RI 53(6) complied with.

4 Ans

WITNESSES

In case of 622621 Pte DURANT, A.

Lieut K. A. Webber

F 66275 Sgt Mother, P.J.

F 31059 Pte Sanford, C.C.

Army Form A.40.

FORM OF DECLARATION FOR SUSPENSION OF RULES UNDER RULE OF PROCEDURE, 104.

In my opinion, Military Exigencies/~~Necessities of Discipline~~, namely: ① In front line or in actual contact with the enemy.

render it impossible/~~inexpedient~~ to observe the provisions of rules: R. P. 4, 9, 10, ~~X~~, ~~X~~, 8), 5, 14, 15A, 87B.

on the trial of: 622621 Pte Allison Sidney

by Field General Court-Martial assembled pursuant to the order of the Commanding Officer of Black Watch Battle Sqt.

Signed in the Field this 23 day of February. 1944

Waterman
Lt Col.

Deputy Adjt Nova Scotia Highlanders

Instruction - This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.

CERTIFIED TRUE COPY

CAPT

(R. GORDEAU.)

GGG-88

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-third day of February, 1974.

Whereas it appears to me, the undersigned, an officer in Command of West Nova Scotia Regt, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

*Omit if not applicable.

* [I am unable to appoint :—

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

*(2. A Field Officer as President.)

for the following reasons, namely :—] because in my opinion a Field Officer is not available

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

President.

Rank.	Name.	Regiment.
Capt.	A. M. MacMillan	West N. S. R.

Members.

Rank.	Name.	Regiment.
Lieut	D. L. Rees	West N.S.R.
Lieut	D. J. Kirk	West N.S.R.

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

*Signed "R. Waterman" Lt-Col

Commanding West N.S.R.

Convening Officer.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-22621 Pte Allison Durant	1st Charge Sec 9(2) A.A.	not Guilty	Guilty, two years imprisonment with hard labour	Confirmed "J. Z. Gibson" Brig

"a. m. MacMillan" Capt

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

(Signed) "R. Waterman" Lt-Col (Signed) "a. m. MacMillan" Capt
Commanding West NSR
Convening Officer (d) President.

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

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

B.

I certify that the above Court assembled on the 23rd day of February, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses

*~~3. The Interpreter~~ "am"
*~~4. The officers under instruction~~ "am"

were duly sworn.

*Omit if not applicable.

Signed this 23rd day of February 1944.

"a. m. MacMillan" Capt
President of the Court Martial.

C.

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

Certificate as to date of death sentences.

*See footnote (b) on page 502 M.S.L. 1929.

Signed this day of 19 .

President of the Court Martial.

D.

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

Confirmation.

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

"J. Z. G."

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

Signed this 24 day of Feb 1944

"J. Z. Gibson" Brig
Confirming Officer.

Promulgated and extracts taken in the case of C-22621 Pte Allison Durant West Nova Scotia Regt

(a) (Dated) 25 Feb 44 (Signed) "A. J. W. Dyer", Capt + Adjt West Nova Scotia Regt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

No C22621 Name DURANT A | Sqn, Battery or Company | Corps CIC | Date of enlistment 9/6/40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (9438)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Appearing with Prisoner)	By whom awarded	Remarks
England									
Field	31Mar43	Pte		AA Sec 15(1) Absent 10 hrs 30min.					1 dys' pay 149 1
Italy									
Field				AA Sec 15(1)					forf. 9 dys' pay
Field	13Dec43			AA Sec 15(1)Absent 2 dys 2 hrs.		12 XXXXXXXXXX 28 dys F.P.			3 dys'pay aut. 12 dys'pay FRAI149 1(a) (ii)43dysT.F.
Field	7Feb44			AA Sec 15(1) Absent 2 dys 6 hrs.		10 dys' forf. pay (149)(2)			3 dys'pay aut.

CERTIFIED COPY OF THIS EXTRACT FROM MF M4

(D.M. Owen) Lieut.

26 Jul 44. for Officer i/C Cdn Sec GHQ 2 Echelon AAI

(PTO)

Army Form A.49.

FORM OF DECLARATION FOR SUSPENSION OF RULES UNDER RULE OF PROCEDURE, 104.

In my opinion, Military Exigencies/~~Necessities of Discipline~~, namely: 1. In front line and in actual contact with the enemy.

render it impossible/~~inexpedient~~ to observe the provisions of rules: R.P. 4 (C)(D)(E)(F)(G), 5, 14, 15A, 87B.

on the trial of: G22621 Pte Allison Durant

by Field General Court-Martial assembled pursuant to the order of the Commanding Officer of West Nova Scotia Regt.

Signed in the Field this 23 day of February 1944

"R. Waterman."
Lt-col.
Comd. West Nova Scotia Regiment.

Instruction - This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.

"AM"

CHARGE SHEET

1st Charge
Sec 9(2)AA

The accused G22621 Private Allison Durant a soldier of the Cdn Army Overseas C.E.F. When on Active Service is charged with.

When on Active Service, disobeying a lawful command given by a superior officer.

in that he

at approx. 2100 hrs on 22 Feb 44 did not go on guard when ordered to do so by F66275 L/Cpl Northern saying I am not going on guard.

In the Field
23 Feb 44

"A.M. Russell Maj."
C.C. "C" Coy.

"R. Waterman"
Lt-Col.
Commanding West N.S.R.

"AM"

MEDICAL OFFICERS CERTIFICATE

KR (CAN) PARA 552

I certify that I have this morning examined No G22621 Pte Durant of WW.S.R. and in my opinion he is fit/~~unfit~~ to undergo Trial by Court Martial.

Station: Field

Date 23 Feb 44

"Geo. W. Wood" Maj.
Medical Officer.

Accused G/22621 (Number) Rfn (Rank) Allison (Christian Names) Durant (Surname) West NSR. (Unit)

Held in the Field in Italy (Country) on 23 Feb 44 (Date)

	Rank	Name	Unit
PRESIDENT:	Capt.	A. M. MacMillan	West NSR
MEMBERS:	Lieut.	D. R. Bevo	West NSR
	Lieut.	D. A. Kirk	West NSR
JUDGE ADVOCATE (If any):			
OFFICERS UNDER INSTRUCTION:		"am"	

PROSECUTING OFFICER: Capt. A. J. W. Dyer Lawyer? Ans No

DEFENDING OFFICER: Lieut. W. E. Ingraham Lawyer? Ans No

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(A)).

The President, in closed court (R.P.28, Fn1), reads the Convening Order and the Charge Sheet(s) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (are) brought before the Court, and at 1425 hours, the trial commences.

The prosecuting Officer produces a Medical Certificate under R.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: Do you object to "am" as interpreter? Ans "am"

The interpreter is duly sworn.

Do you object to "am" as shorthand writer? "am"

~~The shorthand writer is duly sworn. (Forms of Oath on Page 'D').~~ "am"

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page 'D'))

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused ~~has~~ (has not) elected trial by Court Martial (A.A.46(8))

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge Not Guilty RP 37(B) "Am"
Second Charge "Am"
Third Charge "Am"
Fourth Charge "Am"
Fifth Charge "Am"
Sixth Charge "Am"
Seventh Charge "Am"
Eighth Charge "Am"

(For procedure on alternative charges, see R.P. 37, fn2)

Further proceedings are recorded on Pages hereto attached.

"Am"

PAGE 'B'

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not applicable to be struck out, and all alterations, erasures, and additions to be initialled by the President) "am"

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P.39(A). Ans No "am"

2. The Prosecutor's opening address(if any) (R.P.39(B) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Pages 'D')

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn 1; R.P.70 fn1) "am"

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P.40 fn 2) or that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P.40(D)(ii)(a)).

5. President to accused:
Q. Do you apply to give evidence yourself as a witness? Ans Yes
Q. Do you intend to call any other witness in your defence? Ans No
Q. Is he a witness as to character only? (R.P.40(B) ans "am"

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see R.P.40, 41 and 48) "am"

8. The Court is now closed to consider the finding (Rg P 43 and 117)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are pronounced and (if findings of 'Not Guilty' on all charges) the accused is released. R.P. 117(B)

10. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F.B.6) signed in the manner required by s.A.163(1)(h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked "A", and "A", initialled by the President and attached to the proceedings. (R.P.46: Overseas K.O.3131) "am"

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character Service and Conduct and in mitigation of punishment? (R.P.46(D).
Ans Yes No cross-examination.
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page 2 A.F.A.3)
(Punishments, s.a.44, K.R.(Can)563-566; one sentence only awarded, (R.P.48); sentence should be dated.

The sentence is not announced to the accused by the Court.

"am Maj Can Regt"
(Signature of President)

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. Q. President to accused:
Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(B) and "A.M."

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P. 37(B)).

4. Q. President to accused:
Do you wish to make any statement in mitigation of punishment? (RP.37(C). Ans "A.M."

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. Q. President to accused:
Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans "A.M."

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F.B.6), signed in the manner required by A...163(i) (h) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. Q. President to accused;
Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). And "A.M." (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of .F.B.3)
(Punishments, A.A.44, M.R.(Can)563-566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

A.M.

"A.M. MacMillan Flt"
(Signature of President)

Evidence in the case of G22621 Pte Durant, Allison.

Accused pleads not guilty to the charge.

First Witness for Prosecution

"Iam Lieut K.N. Webber, Mortar Offr, W.N.S.R. At approx 21 00 hrs 22 Feb 44 I was working in my forward O P which was also a Forward listening post and used by 14 Pl., C. Coy. W.N.S.R. At this time there was one NCO and four men posted from 14 Pl. to give local protection for the post. At approx 2105 hrs. L/Cpl Northern, P.J. who was this NCO in charge of the guard, came to my room, which was the one opposite to that in which his men were sleeping and informed me that one of his men refused to obey his order to go on guard duty in a trench approx. 25 feet outside the building. I then proceeded to the place where the the accused was quartered. On inspecting the room I found accused in bed. I woke him up and asked him if he had been ordered by L/Cpl Northern to go on guard duty. He said that he had been and also stated that he would not go on guard. I explained to accused that if he did not obey the NCO's order he would be charged with disobeying an order and liable to be tried by Court Martial. Accused then stated that he did not care "how much he got" and that he still would not go on guard for anybody. I then ordered L/Cpl Northern to place accused under close arrest and proceeded to inform his Coy Comd, who made arrangements to have accused taken away and another man put in his place.

Cross-examination of Witness by Defence:/

Q - Would you say that the accused was in fit condition to go on guard at the time stated?

A - He was.

Q - Did he appear nervous, sleepy, or under the influence of liquor?

A - No.

R.P. 83(B) complied with.

Second Witness for Prosecution

" I am F66275 L/Cpl Northern P.J. On 22 Feb 44 I was the NCO in charge of the guard at a forward O P, of which Pte Durant was a member. At approx 2100 hrs I went to waken the guard for duty. I woke Pte Durant and it took several minutes for me to get him to sit up in bed. When he was awake I told him that it was his turn to go on guard and he said that he would not go. I then ordered him on guard. He took off his shoes and went back to bed. I explained to him what would happen to him if he did not go on guard saying that he would be placed under arrest and would be charged with disobeying an order. He still refused to go on guard andwent back to sleep. I then went across the hallway to Lieut Webber Mortar Offr, and informed him of what had happened.

Question by Court

Q- Did the accused give any reason for not wanting to go on guard

A- Accused said that he felt he was not getting a fair deal in the allotment of guard duty and should have been on the first shift of the evening. I pointed out to him that he would have been on the first shift if he had come down stairs in time, as he had had an opportunaty of doing.

Q- In what manner did accused refuse to go on guard?

A- He said, "I am not going on guard".

R.P. 83(B) complied with.

Third Witness for Prosecution

"I am F31059 Pte Sanford, C.H. On the evening of 22 Feb 44 I was on guard duty at the O P with Pte McKinnon. At 2100 hrs having completed a three hour shift, we were expecting relief Relief did not arrive on time. One of the members of the Mortar Pl. relieved me while I went into the house to see what was delaying my relief. When I went into the house L/Cpl Northern the guard Comd. was trying to get Pte Durant out of bed. Accused, after 5-10 minutes, left his bed and was told by L/Cpl Northern to hurry out for his turn on guard. Pte Durant said that he was not going on guard tonight. He then took off his shoes and went back to bed. L/Cpl Northern then across the hall and came back with Lieut Webber, Lieut Webber explained to Pte Durant the seriousness of refusing to go on guard and what would happen to him if he did not go. Accused said he did not care what happened.

Q. by Court

Q- Did you hear L/Cpl Northern warn accused of the seriousness of his offence?

A- Yes. He told him of the seriousness of refusing to go on guard after having been ordered to do so, and told him that he might be tried by court martial as a result.

Cross-examination of Witness by Defence

Q- Would you say that accused was fit for duty at the time stated?

A- Yes.

Q- Had he been unwell during the day?

A- No not to my knowledge.

Q- Had he been drinking during the day, or was he under the influence of liquor?

A- I did not see ~~him~~ accused take a drink during the day and I could not swear to his being under the influence of liquor when warned for guard.

R.P. 83 (B) complied with.

WITNESSES

In the case of G22621 Pte DU

Lieut. K.W. Webber.

F66275 L/Cpl. Northern

F31059 Pte Sanford

Evidence of Defence

Accused makes the following statement, not on oath. "I am G22621 Pte Durant Allison. The reason I did go on guard last night was that I was half sick, tired and sleepy, I had been sick for about two days, but did not report sick.

R.P. 83 (B) complied with.

"AM"

Plea for mitigation in sentence by Defence

To the Court's knowledge, Pte Durant has had a good record of service and has proved himself to be a good soldier. In view of his record, I would ask that the court be lenient in passing sentence on accused.

"A.M. MacMillan. Capt."

"A.M."

5 "AM"

Evidence of Defence

Accused makes the following statement, not on oath. "I am G22621 Pte Durant Allison. The reason I did go on guard last night was that I was half sick, tired and sleepy. I had been sick for about two days, but did not report sick.

R.P. 83 (B) complied with.

"AM"

---

6 "AM"

Plea for mitigation in sentence by Defence

To the Court's knowledge, Pte Durant has had a good record of service and has proved himself to be a good soldier. In view of his record, I would ask that the court be lenient in passing sentence on accused.

"A.M. MacMillan. Capt."

"A.M."

"AM"

WITNESSES

In the case of G22621 Pte DURANT, A.

Lieut. K.N. Webber.

F66275 L/Cpl. Northern P.J.

F31059 Pte Sanford C.E.

PPC 95

PTE DURAND A

SCHEDULE.

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

Accused : E-101459 Pte Adrien DURAND, RCAMC, 13 CBR Bn

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

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 45 and MML p 753, and in lieu of kit see RP 44 fn 6.)

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

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

Time in confinement awaiting present trial—a total of 12 days, of which ..... days were spent in hospital.(1)

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

Sentence Awarded by the Court :

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

Date awarded. 4 Jul 44

(Sgd) D.S. St. Maclaud President. (RP 45, 50.) Major

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

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

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

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

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

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

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

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

(Sgd) .....

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

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 20 JUL 1944 JAG BRANCH C.M.H.Q.

FILED AT CMHQ IN AB 160 444-95

CF 196 (In lieu of AFA81) 40-P-A-8/1944 (4031)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 2 JUL 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-101459	Pte	Adrien	DURAND	RCAMC, 13 CBR Bn

PROCEEDINGS REVIEWED 11 July 44

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

PROCEEDINGS REVIEWED Date 9 Aug 44 J.A. Gen. Sec G.H.Q. 2 Echn. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 4 JUL 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 8/136

A1. The President, Members, waiting Member, ~~Judge-Advocate and Offrs under instrs, if any~~, assemble, and the Court is closed.

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

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

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

A3. The Court is opened. The accused is brought before the Court. At 1010 hours trial commences.

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

(1. KR Con 557. 2. AA 44(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~An Interpreter is present. Do you object to be interpreted to ..... by .....~~ ~~The Interpreter is sworn.~~ ~~Do you object to ..... as shorthand writer ? Ans .....~~

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

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

Ans NO (2)

(1. RP 102. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge-Advocate and Offrs under instrs, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc :

President	Major	D N MacLEOD	R.C. 5165	13 CBR Bn
Member	CAPT.	D.E. MCFEE	RCA	12 CBR BN
Member	LIEUT.	R.P. ST PIERRE	RC 5165	13 CBR BN
Judge-Advocate				
Prosecutor	LIEUT.	DUNCAN, R.A.	RCAMC	13 CBR BN
Defending Offr	LIEUT.	WRIGHT, A.N.	RCAMC	13 CBR BN

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

(1. RP 26, 27, 109, 111. List of offrs under instrs will be returned separately with proceedings for information of Cmte (2)(3). 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See A9.)

A8. The accused, E-101459 PTE DURAND, A. before arraignment makes(s) (no) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 36, 38(A), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For formal record see references in fns to RoP cited. Insert in AB case and name of the accused (if any).)

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record here.)

A10. The Court ~~adjourns to~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol I P 136.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 68(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

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

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

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

President to accused: Do you wish to make a statement? Ans. .....(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3; 3695, *p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

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

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

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 17(*B*). *If there is any evidence inconsistent with any plea standing at Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

D2. The Prosecutor makes ~~no~~ (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

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

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

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

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

~~The President announces the finding(s) of Guilty on the charge(s), and states to the accused that the finding(s) of the Court on the charge(s) ..... this part, being subject to confirmation, will be promulgated later.(1)~~

(*Or*, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA* 54(3) (*d*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D8. ~~The accused having been found Not Guilty on all of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

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

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 61, 64 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 66. *As to sentences see AA* 64, 138, 182, *RP* 46-50, *RP*, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2223, 3695, *p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), 98(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The Accused Elected To be Tried by Court Martial

CHARGE SHEET

The accused, E-101459 Pte ADRIEN DURAND, RCAMC, 13 Bn., 2 C.B.R.G., a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Sec 8 (2)
A.A.

WHEN ON ACTIVE SERVICE - STRIKING HIS SUPERIOR OFFICER

in that he

in the Field, at approx. 2320 hrs 22 Jun 44 did strike C-24046 Cpl. Crawford F.J., an N.C.O. on strength 13 Bn., 2 C.B.R.G.

(W.C. Stewart) Lt. Col.,
Commanding,
13 Bn., 2 C.B.R.G.

In the Field
26 Jun 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
2 JUL 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt. A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-101459	Pte		Adrien	DURAND	RCAMC, 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 JUL 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

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

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

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

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

PRESIDENT.

Major (Rank.)	D N MacLEOD (Must be named. RP 106.)	ROCS,	13 CBR Bn (Unit.)

MEMBERS.

Capt	to be detailed by OC 12 CBR Bn	12 CBR Bn
Lieut (Rank.)	to be detailed by OC 13 CBR Bn (Named or detailed. RP 106.)	13 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	to be detailed by OC 13 CBR Bn (Named or detailed, if any. RP 106.)	13 CBR Bn (Unit.)

~~JUDGE ADVOCATE~~

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

On Active Service in the Fd

in ENGLAND (Country.)

Date 2 JUL 44

G Francoeur Brigadier
(Signed personally. RP 105 fn 2.) (Rank.)
(G Francoeur)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/3BA (F.G.C.M. (to swear at A.F.A.) MC, V & G (1940) 4/45)

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

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

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

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

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

Re-exam: None.

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

RP 83(B) complied with.

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

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

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

(i) Opening address by Defending Offr. (*RP 90(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 89.*)

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

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 89(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

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

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

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

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

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

(iii) Medical Certificate(s). (*KR Can 587.*)

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

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy as facs of original see KR Can 566. As to certified copies of regimental books see AA 162 (1) (g) (h).*)

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 8 after minute of sentence awarded. (*AA 52(3), RP 118(C), MML p 759.*)

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

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined E.101459 (No.)

Pte (Rank) DURAND: H A (Name) and in my opinion he is

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

Station Field

Date. 14 July 44

R. Laing Capt. (Med)
Medical Officer
(unit) 13 Fd Amb RCAMC

1 st witness for the prosecution, R.A.M.C. 13 Bn. 2 CBRG.

Sgt. Crumby, W., L 26316, sworn states:

I was on duty as Orderly Sgt. of C4 Coy. on the night of 22nd June 1944. At approximately 2330 hrs. Cpl. Crawford turned his pass in at the Orderly Room. He came back about five minutes later, bruised and with blood coming from his mouth.

I went with Cpl. Crawford to the tent. I asked the accused why he had hit him. He replied "Can you prove it?"

I went to the C. S. M. to see what I should do. I escorted Cpl. Crawford to the Medical Officer. The Medical Officer examined him & said there were no fractures but two bad bruises; one bruise was behind his ear.

I placed the accused under arrest and put him in the Guard Room.

Cpl. Crawford moved allright the first time I saw him. There was no man in the tent besides the accused when I went to the tent with Cpl. Crawford.

R.P. 83 (b) complied with.

2nd Witness for the prosecution

Capt. H. Reid. R.C.A.M.C., 13 Bn. 5 BAG.

sworn states:

I was Duty Medical Officer on the 22nd June 1944. The next morning at about 0030 hrs. I was awakened in my tent and a soldier had a Corporal with him ~~for examination~~ ~~and asked me to examine him~~. He had no serious injuries but had a few bruises on the face, his body swollen, a bruise I had the ~~me~~. He had the appearance of having been in a fight, his clothes & hair being disorderly and having the a/m injuries.

I instructed him to report on Sick Parade the next morning.

He failed to report on Sick Parade the next morning.

Cross-examination by Defending Officer

Q. Do you think it possible in the darkness that a man under the influence of liquor could ~~not~~ have fallen and received the same injuries by a striking a hard object?

A. In my estimation the bruises were ~~to~~ generalized to have been caused by a fall and to have struck something.

He had no actual cuts. The bruises were much of the same form without any break or laceration of the skin and without any evidence of dirt that one would expect if falling on a hard surface.

The three houses I mentioned were the main ones. They could have been possibly caused by falls. The rest of the four showed slight gunsh puffiness.

R.P. 83(b) complied with.

3rd Witness for the prosecution,

Cpl. Crawford, F. J., G 34046, RCAMC, 13 Bn. 2 CBG

sworn states

On the night of the 22nd June 1944 I came in from Aldershot and handed in my pass at the Orderly Room. I went to the tent to make my bed. While doing this I accidently stepped on Pte. Durand's arm. I apologized. We had a conversation about the space between our beds. Pte Fribert went to the latrine. While he was away Pte. Durand made the remark that he would fix me now, and jumped on me while I was in my bunk in the centre of the tent and began hitting me with his fists. Pte Fribert came back after a minute or so and pulled Pte. Durand off.

I asked Pte. Fribert for my times and went to the Orderly Room and made the report. After that Sgt Crumby handled the case.

One man and Pte. Durand were in the tent when I came in. They were not asleep. I talked to Pte. Durand. I am sure he knew who I was since before he attacked me he said. "I'll get you Corporal".

I left camp at about 1645 hrs. and returned at approximately 2330 hrs. I drank 4 pints of bitter only while away. I was with

Pte. Livingstone and Hurley in Aldershot. I left them and came home by myself. I walked home with a stranger soldier and I directed to 12 Bn.

Cross Examination by Mr Spain

Q.- Could you tell us in detail what you did at Aldershot?

A. We went to an amusement hall and had supper. Then we went to a pub near Woolworths store and stayed there for awhile. From there we went to a pub near the Town Hall. That was the last pub we were in

Q.- You mentioned something about your word being better than Pte Hurrell's, didn't you?

A- I said in the discussion that my word was as good as his, if not better.

Q- Why did you make that statement?

A- Just on account of my rank, that is all.

Q. During the scuffle you didn't try to protect yourself.

A- No, sir.

Q. Why didn't you?

A. I didn't have much chance, being on my back.

Q- Would it have been possible for Pte. Hurrell to mistake you in the darkness?

A. I don't think so, as we slept side by side.

Q- In the darkness and Pte. Hurrell being asleep could he not have mistaken you for a stranger, possibly under the influence

Page 3.

of liquor coming into his tent.

A. I believe he knew it was me, as we ~~had~~ have sleeping in the same tent.

Q. Did you have much difficulty getting into the tent at the beginning?

A. It is hard to get in at anytime with the ropes and double flap.

Questions by the Court-

Q. How long have you been sharing a tent with Pte. Durand?

A. Since the 16th June.

Q. How many times did you step on Pte. Durand?

A. Only one, sir.

Q. Apart from stepping on Pte. Durand can you give any other reason for his attacking you.

A. No, sir

Questions by Prosecution:

Q. How long were you in the tent before Pte. Fralick went out?

A. About five minutes, sir.

Q. Were you talking to Pte ~~Fralick~~ during that time?

A. Yes, sir.

R.P. 83 (b) complied with.

Fourth witness for the prosecution B. 145 604 Pte Trileck, J.S., duly sworn states:

I was lying in bed in the same tent as Pte Durand. When Cpl Crawford came in, he accidentally stepped on Durand. The latter said there was enough room in the tent to make his bed without stepping on him. I said "Why not leave him alone. You can see he's had a few drinks." I then got up and went to the latrine for a couple of minutes. When I came back I found Cpl. Crawford on the ground moaning with Pte. Durand on top of him. I pulled Durand off and Cpl. Crawford then stood up. I shone my flashlight on him. There was blood on his face. I handed him his tunic. Crawford then told Durand that he couldn't get away with striking a superior officer. Sgt. Morrison came in in his shirt sleeves and ordered Durand to get dressed. He refused and Sgt Morrison went to get the orderly Sgt. ~~On being questioned by the prosecution witness states that~~ Crawford was in the tent 4 or 5 minutes and I knew who he was talking to by his voice.

On being cross-examined by the defence, witness states: ~~I did~~ I was not in the tent during the scuffle. I could tell that the Cpl. had been drinking by the fact that he talked louder than usual and he told me so himself.

The Cpl. stepped on the accused only once to my knowledge of the witness. The Cpl. did not fall while I was in the tent. I was out of the tent between 1½ - 2 minutes.

tripped but the Cpl could possibly have
(the Cpl.) was ~~not~~ I it doesn't seem likely.
witness states: ~~that~~ by the prosecution,
by his voice and it was light enough for me
to see him. Durand was awake before
~~the~~ went out.
On further cross-examination by the defence
witness denies having said "Leave the
Cpl. alone. I will put him to bed".

~~the witness~~ the cpl could possibly have tripped but there were no beds where he (the Cpl.) was and it doesn't seem likely.

On re-examination by the prosecution, witness states: ~~that he~~ recognized Cpl. Crawford by his voice and it was light enough for ~~him~~ me to see him. Durand was awake before ~~the witness~~ went out.

On further cross-examination by the defence witness denies having said "Leave the Cpl. alone. I will put him to bed".

Fifth witness. G-45516 Pte Livingstone, JR. being duly sworn, states:

I was with Cpl. Crawford on the night of 22 Jan 44. We had supper in Aldershot and went to two pubs and consumed three or four pints of beer. We just sauntered around until appx 2145 and I left Crawford at that time. He was on his way back to camp in the company of another chap to whom he was showing the way. He looked normal to me. I've known him since we were in school together and have never known him to be ill-humoured or violent after drinking.

On cross-examination by the defence, witness states: I left Crawford a short distance from the pub.

Statement by the Accused

E. 101459 Pte Adrien Durand, being duly sworn, states:

About 11 o'clock on the night of 22 Jan 44 I closed the flap of my tent and went to sleep. About 15 or 20 minutes later I heard a sound at the door but did not pay much attention to it. Somebody came in and started telling Pte. Pollock how he had spent the evening. He stepped on me and hurt me. I told him to be careful. He mumbled something unintelligible. He walked back and forth telling his story and stepped on me 2 or 3 more times. I told him there was room enough in the tent without stepping on me. While making his bed he further annoyed me.

Trileck went out at that time ~~& this~~ this other person took off his tunic and called me a "goddamned prick" and said he could walk on me any time he wanted. He came over to jump on me. I got up and as I did so I felt myself strike something with my head and he fell against the post. Then I jumped on him to keep him down. Perhaps I might have done something to him while he was on the floor as I was holding him to keep him quiet. Trileck then came back and told me to leave him alone and he would put him to bed. I started to help him take off his anklets and Trileck took me by the shoulders and said "Leave him alone. I'll look after him." Then the other man got up and said that I would pay for this and his word was better than mine. He got his tunic from Trileck and went to make a report of the incident. He came back shortly after with a Sgt. This sgt. came and asked me my name and number. He went away and another one came and told me I was on charge and put me under close arrest. One of the sgts asked me why I struck the Cpl I said "Can you prove that I hit the Cpl?"

I (Crown)

(Crown)

(Crown)

(Crown)

I do

SUMMARY OF EVIDENCE IN THE CASE OF E-101459 PTE ADRIEN DURAND, RCAMC, 13 BN., 2 C.B.R.G., A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

By direction of the Commanding Officer all evidence is taken on Oath.

1st Witness for Prosecution

L-26316 Sgt. Crumley W., RCAMC, 13 Bn., 2 C.B.R.G., having been duly sworn, states:

"On the night of 22 Jun 44 I was Orderly Sergeant and at approx. 2330 hrs Cpl. Crawford handed me his mid-night Pass and proceeded to his quarters. About five minutes later he came back into the Coy Orderly Room and blood was coming from his mouth and lips. His lips were swollen and there was a large lump behind his ear. He stated to me that he had been beaten by a Pte in his tent. I asked him if they had been quarreling and he said "No" but he said that in the dark he accidently stepped on a soldier's the soldier said some words to him. Cpl Crawford said that he apologised to him and said that he was sorry and the soldier said to him that he would get him for this. Cpl Crawford told me that he was on his knees making his bed and while in that position the soldier beat him. I proceeded to the Tent accompanied by Cpl Crawford and when I entered the Tent I asked what the trouble was, and I asked the accused, whom I now recognize, why he hit the Cpl and he just answered me "Can you prove it?" I place him under close arrest and had him escorted to the Guard Room. After, I took Cpl Crawford to the M.O. and had him examined. The M.O. after examining him said there was no fractures but only a couple of bad bruises. There were about four or five soldiers sleeping in the Tent. It was quite dark in the Tent at that time of night. At that time there was only the accused and one other soldier in the tent who was asleep beside Cpl Crawford.

W Crumley

(L-25316 Sgt. Crumley W.)

The accused declined to cross examine this witness.

The above witness id on draft.

2nd Witness for Prosecution

G-24046 Cpl Crawford F.J., RCAMC, 13 Bn., 2 CBRG having been duly sworn states:-

"On the 22 Jun 44 I came back to the tent approx. 2330 hrs after just handing in my Pass and proceeded to make my bed. I accidently stepped on Pte Durand's arm (the accused whom I now recognize). Afterwards I said I was sorry and then proceeded to finish making my bed and while on my knees with my back turned I heard the remark: "I will fix you, Cpl." and before I knew it he had jumped on me and started pounding

"me with his fists. Just before this happened Pte Frilcok left the tent to go to the urinal and when he came back he dragged Pte Durand off of the top of me. I immediately reported to the Orderly Sergeant and with him came back to the tent, after which he took me to the M.O. There were a few words spoken netween us while I was making my bed. I did not strike Pte Durand at any time ever while I was struck. I sleep next to Pte Durand on his right. We have been sleeping in this Tent since 16 Jun. At that time I had my tunic on carrying my Cpls stripes. There was enough light so that one could recognize one another if they were facing each other. I can recognize Pte Durand's voice. I am positively sure that Pte Durand recognized me when I came into the Tent. There was just Pte Durand and Pte Frileck in the Tent when I came in. Pte Frileck sleeps just about opposite to where we do."

Cross examined by the accused.

Q.1. Did you go out that evening?
A.1. Yes.
Q.2. Did you come back alone?
A.2. Yes.
Q.3. Why did you have so much trouble in opening the tent flap?
A.3. Because it was fastened or tied on the inside.
Q.4. Did you not tell Pte Frileck that you did enjoy the drinks you had with those who were with you?
A.4. Yes.
Q.5. Have you any trouble with your eyes?
A.5. No.
Q.6. Do you remember telling me that they would take my word against yours?
A.6. I said that my word would be as good as yours if not better.
Q.7. When we came to see the C.O. do you remember that you told the C.O. that our bed was about six inches apart?
A.7 Yes.
Q.8. Is it not so that we have our large pack and haversack standing side by side at the head of our beds.
A.8. Yes.
Q.9. Do you think it possible that a man who has been drinking can fall if he trips over something?
A.9. Yes, anything is possible.
Q.10 When you drink intoxicating beverages, how does it affect you?
A.10 I dont drink enough so that any of my senses are impared.

F.J. Crawford
(G-24046 Cpl. Crawford F.J.)

3rd Witness for Prosecution

B-145604 Pte Frileck J.S., RCAMC, 13 Bn., 2 C.B.R.G., having been duly sworn, states:-

"On the night of 22 Jun 44 at approx. 2330 hrs I was lying in bed in my tent when Cpl. Crawford returned; he started making up his bed which was alongside that of Pte Durand. While he was making his bed he stepped on Pte Durand who was at this time in his own bed. Pte Durand told him that he

had enough roomand didn't need to step on him. Cpl. Crawford apologised for stepping on him. At this time I got up to go to the urinal outside the tent and on my return I heard a scuffling inside and found Cpl. Crawford on the floor of the Tent and Pte Durand over him. I pulled Pte Durand away, struck a light and saw that Cpl. Crawford was bleeding from the mouth. Cpl. Crawford then put on his tunic and reported to the Orderly Room. I have been sleeping there since the 17 Jun 44. Knowing the chaps it would be possible to distinguish one from another in the light there was. It was easier to know the chaps by their voices. When I took Pte Durand off of Cpl Crawford he was not wearing his tunic. We, all the members in this tent seemed to be chummy and there was never any strife between us. I dont know if Pte Durand was awake or asleep at the time Cpl Crawford came in."

Cross examined by the accused.

Q.11 Do you remember if Cpl Crawford had any trouble in openeing the tent flap?
A.11 I dont, but there is a difficulty in unhooking the flap at all times.
Q.12 Have you ever been drinking with Cpl. Crawford?
A.12 No.
Q.13 Would you state that Cpl Crawford was frinking that night?
A.13 I would surmise that he had been by the tone of his voice.

(B-145604 Pte Prileck J.S.)

This man is going on draft.

The accused was cautioned in accordance with Rules of Procedure 4 (e) of the Army Act.
The accused wished to make a statement on Oath.

E-101459 Pte Adrien Durand, RCAMC, 13 Bn., 2 C.B.R.G., having been duly sworn, states:-

"On the 22 Jun 44 at 2300 and 2330 hrs I threw the flap of the tent over the opening and I went to lie in my bed. I was about half asleep when I heard someone making a noise at the entrance to the tent and the man that was there seemed to have trouble in opening the tent flap. Finally he opened it and walked in. I heard him telling Pte Prileck how he spent his evening and he seemed to be drinking. While he was walking in the tent talking to Pte Prileck he walked on my legs. At first he apologised and then turned back and walked on me again. He did so twice, stating that he did not have enough room in the tent to make his bed and walk about. I told him that he had enough place to walk and that he dod not need to walk on me. He answered me by saying: "I dont give a dam for you and if you have something to do, just get up and do it." As I figured that he was looking for

trouble I stopped the argument and laid back in bed. In the meantime Pte Frileck went out and Cpl Crawford took off his tunic and started to walk in my direction and told me that he could walk on me and that he would do it and he walked on me again and it hurt my legs, so I made a jump to get up and he started backward and fell down against the centre tent post and probably on my boots that were laying there becuase they were crushed when I picked them up. I went over to him and knlet down and in the meantime Pte Frileck came in the tent and Pte Frileck told me to leave the Cpl alone, that he would put him to bed. O offered to take off his boots and anklets and Pte Frileck told me to leave him alone. Then Cpl Crawford got up and told me he was going to place me under arrest and that his word would be taken rather than mine. He said: "You wont be sleeping here tomorrow night" After that he went out to get the Orderly Sergeant. He came and put me under close arrest."

A. Durand, A.
E-101459 Pte Durand A.)

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c)(d)(e) & (f) were complied with.

J.E. Miller Lt.
(J.E. Miller)Lieut.,
Officer taking Summary of Evidence.

In the Field
26 Jun 44

M M M 52

PSE DURAND FR.

SCHEDULE.

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

Accused: B132572 Pte Francis Raymond DURAND, C.B. Highes.

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

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~No~~ ~~previous~~ ~~summary~~ ~~conviction~~ ~~for~~ ~~same~~ ~~offence~~ ~~since~~ ~~beginning~~ ~~of~~ ~~time~~ ~~(date)~~ (1)

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

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

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

Sentence Awarded by the Court: To suffer Field Punishment for 14 days and to forfeit 14 days pay.

(Sgd) W.M.C. Shaw Capt — Judge Advocate, if any. 5 Apr 44 — Date awarded. (Sgd) D.M. Minshull Maj — President. (RP 45, 50.)

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

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

Date (Sgd) Commanding

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

I confirm the Finding and Sentence of the Court

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

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

Date 5 Apr 44 (Sgd) E Graham Brig Commanding 11 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.

B132572 Pte DURAND, F.R. 23 Apr 44 C.B. Hughes Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 MAY 1944 JAG BRANCH EMJ

RECORDED AT CMHQ IN AB 160 MAY 44 50

FIELD GENERAL COURT-MARTIAL

CFAAB (In lieu of AFAB) 40. P.B. N° 160B (2564)

Convened by Order of Brig E Snow Comd 11 Cdn Inf Bde dated 3 Apr 44

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B132572	Pte	Francis Raymond	DURAND	C.B. Highes

CANADIAN ARMY PROVOST CORPS 5 MAY 1944 CHELSEA

PROCEEDINGS OF TRIAL

Held in the Field (Location) Italy H.Q. on (dates) 5 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Final RQs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereto. See back of Convening Order, CF A93, for seats and inmts so how to record addresses, evidence, etc, which inmts are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is (are) brought before the Court. At 1045 hours trial commences.

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

(1. KR Con 557. 2. AA 46(B), RP 80 fn i. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~No objection~~ ~~no interpreter I see~~ ~~No objection~~ ~~no shorthand writer is present~~ (1)

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

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

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Major	M.A. Minshull	11 CIB Sig Sq (RAF)
Member	Capt	S.E. Cameron	Irish R
Member	Capt	D.A. Standing	C.B. Hughes
Judge-Advocate	Capt	D.M.W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Lt	R.G. Forbes	C.B. Hughes
Defending Offr	Capt	G. McL. Leger	C.B. Hughes

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

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

A8. The accused ~~stands~~ before arraignment makes(s) (no) ~~(no)~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 128), or as to the jurisdiction of the Court, (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 77), such plea, the submissions made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in NB rank and name of the accused making the plea.)

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

(1. RP 31, 112. See para 1 of inmts p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A89 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans. No, Sir (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3. *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF No 3. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 253 *or AFB* 296. 2. *M M L p* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 120. *One sentence only, comprised of the punishment or punishments last dealt with in AA 47, 48 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA 44, 138, 182, RP* 46-50, 69, 118, (120(*A*)), *KR Can* 308, 330, 563-566, *Overseas NO* 109, 2323, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B

CHARGE SHEET

Field Trial by Court Martial

The accused no.E132572 Pte. Durand, F.R. "D" Coy, C.B.Highlanders,C.M.F. is charged with:

A.R.Sec.25(1) WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE.

In that he,

in the Field, absented himself without leave from 2200 hrs 28 Mar 44 and remained absent until 0815 hrs 29 Mar 44.

(Absent 10 hrs.15 mins)

Field,
30 Mar 44

.....(J.E.Weir)Lt/Col.
Officer Commanding,
Cape Breton Highlanders

TO BE TRIED BY F.G.C.M

3 APR 44

(T.E.SNOW) BRIG
COMD II CDN INF BDE

5th April 1944

I certify that I have this day examined B132572 Pte Durand F.R. of the Cape Breton Highlanders, and find him fit to undergo trial by Court Martial.

WMacS

..... Capt
Medical Officer/CHQ.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFAS) 40/FGCM/1697 (2nd)

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

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

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
FB2572	Pte		Francis Raymond	DURAND	CB Hghrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 APR 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

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

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

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

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

PRESIDENT.

Major (Rank.)	N H Mansbull (Must be named. RP 106.)	HCIB (Unit.)

MEMBERS.

Capt	S E Cameron	Irish R
Capt (Rank.)	W A Harding (Named or detailed. RP 106.)	CB Hghrs (Unit.)

WAITING MEMBER.

Capt (Rank.)	L H Wettlaufer (Named or detailed, if any. RP 106.)	Perth R (Unit.)

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 3 Apr 44

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

WMWS WMW

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

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

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

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

Re-exam: None.

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

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

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

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

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

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 86.)*

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

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

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 40 fns 1-12, 87(C), 92(C) (Dfr).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

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

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

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

(i) Charge Sheet. (On top.)

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

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

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

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

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Statement on p 4 after minute of sentence awarded. *(AA 53(8), RP 114(C), MML p 739.)*

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

SUMMARY OF EVIDENCE

Summary of evidence in the case of B132572 Pte. Durand, F.R., D Coy Cape Breton Highlanders, C.M.P. charged with one offence under Sec.15(1) of the Army Act.

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

First Witness: F.78585 Cpl.MacLennan, H.D., C.B.Highrs. duly sworn states:

I am F.78585 Cpl.MacLennan, H.D. C.B.Highlanders. On 29 29 March 44 I called the roll at 2200 hrs. and the accused was absent. At Reveille 29 March 44 the accused was still absent.

H.D. MacLennan
F.78585 Cpl.MacLennan, H.D.

The accused declines to cross examine the witness.

Second Witness: F.55694 CSM Kerr, J.F., C.B.Highlanders, duly sworn states:

I am F.55694 CSM Kerr, J.F., C.B.Highlanders. On 29 Mar 44 I was acting CSM of D Coy, at 0815 hrs. the accused reported in to me. I reported him to Maj. Arnold, Coy Commander and was told to place the accused under close arrest, which I did.

J.F. Kerr
F.55694 CSM Kerr, J.F.

The accused declines to cross examine the witness.

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

The Accused states: On the night of the 28th Mar 44 I was writing letters when a certain party came along and wanted to start a fight. After that was settled I went to my billets to go to bed and the party was still there. Then I went to Hq Coy and slept there until I returned to my Coy at 0815 hrs. 29 Mar 44.

F.R. Durand
B132572 Pte. Durand, F.R.

I certify that R.P. 4 has been complied with.

Taken by me in the Field in the presence and hearing of the accused this 30th. day of March 44.

R.C. Forbes (R.C. Forbes) Lt.
Officer taking summary.

Ex A
Witness

I desire the convening officer to detail an officer to represent me at my forthcoming trial by court martial.

I desire the services of Capt. G. MacLean Logan if he is available.

P.R. Durand

B.132572 Pte. Durand, P.R.

Witness

Def off in mitigation :-

Accused in army 1½ yrs – had 2 minor crimes only. – not a bad record + as a whole quite good. Durand has held various jobs in Bn.

In summary has stated reason for going absent - another man wanting to fight. Durand did not want to fight – made mistake in not reporting + left - Not malicious, attempt to keep out of trouble, returned next morning. Thought it was the best thing. No dis absence, not at time when services likely to be required.

Ask leniency

W McClaw
Capt

Old Sheet destroyed 20 May 43

No F 112572 Name PTE DURAND, F.R. Sqn, Battery, or Company D Corps Infantry Date of enlistment 2 Sep 42 GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) 40/PRS/138 (3438)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Canada	24 May 43	Pte		AWL from 2359 hrs 24 May 43 to 1045 hrs 1 Jun 43 (110 hrs 6 mins)	Cpl Baker, H.W. Cpl Stowe, A.C.	5 days C.B.	3 Jun 43		Forf 4 days pay
Field	5 Dec 43	"		(1) CA sec 15(4) WOAS, drunk in that he, at 1505 hrs was drunk & when apprehended by Capt Mackadder, in Uniform. (2) CA sec 10(4) WOAS, Breaking Arrest in that he, broke barracks. (3) CA sec 11, WOAS Neglecting to obey Camp Orders, in that he was in Petawawa, a town out of bounds	Capt H.A. Mackadder	14 days C.B. 10 days pay. AR 104.149 (2)	6 Dec 43	J.P. Edwin, Lt Col	

Certified true Copy

C.P. Canada Maj.

(PTO)

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. B132572 Rank Pte Name DURAND F R Unit C.B.Highrs

Age 21 Married or Single Single No of Dependents Nil

Date of Attestation 2 Sep 42

No of Days in Close Arrest awaiting trial

Civil Military 6 days Hospital Total 6 days

Dates of Appointments, promotions etc (if any)

Decorations Canadian Volunteer Service Medal & Clasp

In the Field

5 APR 44
Date

F. N. Dawson Capt
Officer i/c Regtl Books
Cape Breton Highlanders

Note: Certified true copy of MFM 6 must accompany this form.

'B'
WITNESS

SBH
Pte Durand ML

28

22

SCHEDULE.

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

Accused: C-20691 Pte Marcel Leo DURAND 9 CBR Bn

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

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

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

Time in confinement awaiting present trial—a total of 34 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo one years detention

(Sgd) ..... Judge-Advocate, if any. 14/Feb/45 Date awarded. (Sgd) [illegible] President (RP 43, 38)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 125(F), MML p 760.)

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

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 63. Quashing after promulgation: KR Can 573. Duties and powers of ~~Reviewing Authority~~ AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is ~~[illegible]~~ I confirm the finding but I mitigate the sentence to 9 months detention.

Front 7/8 to be put forward for remission after period of 28 days detention has been undergone, the remainder of the sentence to be promulgated at the same time.

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

(Sgd) Alf N Gostling
(G S N Gostling) Brig
2 CDN BASE RPT GP
Confirming Officer.

Date 16 FEB 45 Commanding

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
C30691 Pte Marcel Leo DURAND, 9 CBR Bn	FEB 20 1945	Promulgated on Brigade Part II Orders [illegible] CAPT. ADJT. 9 BN, 2 CDN INF. BDE.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160 63-4

FIELD GENERAL COURT-MARTIAL

(Page 1 in lieu of AF B.168 (Cont.))

Convened by Order of Lt-Col. J. Runcie, MC A/Comd 2 CBRG dated 11 Feb 45

RECEIVED 17 MAR 1945 JAG BRANCH NDHQ

ACCUSED.

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

(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
Pte	[illegible]	Marcel Leo	DURAND	9 CBR Bn

PROCEEDINGS REVIEWED 21 Mar 45 [illegible] Capt. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 13 March 45 21 ARMY GP. Sup. Sec. 2 CDN INF. BDE. D.J.A. (CANADA)

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 14 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 23/125

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Counsel do NOT include all relevant Fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 84, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] amenable to military jsdn, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [illegible] fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans [illegible]
The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans [illegible]
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans Nao (2)
(1. RP 110. 2. If no objection, waiting member returns. RP 98(E). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

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

President	Major	G.G. McCARTHY, MBE, ED	PGH R-9 List att 2 CDN INTD
Member	~~CAPT~~ [illegible]	~~D. LAGALLE~~ [illegible]	~~Engr C/S~~ [illegible] ~~10 CBR~~ [illegible]
Member	Lieut	D.H. PEAT	1 Cdn Para Bn 11 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	A.T. WINN	CDC 11 CBR Bn
Defending Offr	LIEUT	AE McINTOSH	CAC 4 CBR

Questions by President: Is the Prosecutor a lawyer? Ans Nao Is the Defending Offr a lawyer? Ans Nao (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment where RP 99 (B) and fn 2 were not followed. See DJ p 3.)

A8. The accused C-20691 Pte Marcel Leo DURAND before arraignment make(s) [illegible] plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is [illegible] arraigned (separately) on all charges in the charge sheet.(1) The accused does [illegible] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

J W CBRG Initd Pres.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 95(C).*)

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

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First & Second charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the First & Second charge(s), and allowed on the ~~First & Second~~ charge(s), ~~and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

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

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans No Do you intend to call witnesses on your behalf? Ans No Are they witnesses as to character only? Ans No
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment.(1) Ans No (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or say anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 1.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part 1 of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments (and down in AA 41, 44 and its genesis, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AC 3079, 2323, MML p 65, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C-80891 Pte. Marcel Leo DURAND on strength 47 Coy., 9 Canadian Base Reinforcement Battalion, a soldier of the Canadian Army Overseas is charged with,

FIRST CHARGE
SECTION 9(2)
A A

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

in that he

in the Field, in Belgium at approx 2100 hrs 4 Jan 45 when personally ordered by H-2299 Sgt Horne, G.A. to mount guard duty at Lavernock Petrol Dump did not carry out this order necessitating a replacement being made for his duty.

SECOND CHARGE
SECTION 9(2)
A A

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

in that he

in the Field, in Belgium, at approx 0400 hrs 5 Jan 45 when personally ordered by H-2299 Sgt. Horne, G.A. to mount guard duty at Lavernock Petrol Dump did not carry out this order necessitating a replacement being made for his duty.

THIRD CHARGE
SECTION 13(1)
A A

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave when in custody from 1810 hrs 24 Jan 45 until apprehended at 1700 hrs 31 Jan 45.

(Absent 6 days, 22 hrs, 10 mins)

(H.W. Rick) Lt.-Col.,
Commanding,
9 Bn, 2 C.B.R.Bn.

In the Field
5 Feb 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(J. Handley), Lt-Col
A/Commander
2 Canadian Base Reinforcement Group

In the Field
11 Feb 45

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-30691	Pte		Marcel Leo	DURAND	9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 11 Feb 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

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

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

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

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

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

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

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

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.G. MacKENZIE, MBE	FOR X-9 List att 3 Cdn INTD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	G LAGASSE	OIC, 10 CBR Bn
Lieut	D.H. FEAT	1 Cdn Para Bn 11 CBR Bn

~~WAITING MEMBER.~~

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

~~JUDGE ADVOCATE.~~

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

On Active Service in the Fd

in BELGIUM
(*Country.*)

(*Signed personally. RP 105 fn 2.*)

Lt-Col
(*Rank.*)

Dat 12 Feb 45

(J. Bertele)
A/Commanding 2 Cdn Base Rft Gp
Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFA 96 (In lieu of AFA 3) 40-7 & 8-1945 (81449))

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

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

POUR LES TEMOINS. *(RO (Can) 2093.)*

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

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

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

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

Re-exam: None.

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

RP 83(B) complied with.

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

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

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

(i) Opening address by Defending Offr. (*RP 89(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or *J.A.* (*RP 40 fn 16*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, b).*)

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

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 88(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

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

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except one provided by RP 86(E), KR Can 562(a).*)

(vii) Summing up by J.A. if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

(i) Charge Sheet. (*Fm 69.*)

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

(iii) Medical Certificate(s). (*KR Can 347.*)

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

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or item of original see KR Can 560. As to certified copies of regimental books see AA 145 (1), (g) (h).*)

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(3), RP 118(C), MML p 759.*)

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

MEDICAL OFFICERS CERTIFICATE

(KR(Can)Para 557)
CMHQ CL 173

I certify that I have this day examined C30691 (Number)

PTE (Rank) DURAND, M.L. (Name) and in my opinion he is

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

Station FIELD

Date 14 FEB. 45

J.M. Waterman Capt
Medical Officer

(Unit) 9 Bde. 2 C.A.R.C.

Witness for prosecution in case of Pte Durand.

1st Witness Sgt. Horne having been duly sworn and being identified the accused states.

On the 4th Jan at approx 2000 hrs I checked the duty roster which was posted in the guard room at Havenock petrol dump I found that Pte Durand was supposed to be on guard at this time. This duty roster was posted at least 24 hrs ahead of the duty to be performed. Pte Durand was not in the guard room and could not be located in the petrol dump. I waited Cpl. Tindale was present at this time both he and myself took turns at doing carrys out this guard until approx 2100 hrs. At this time Cpl. Tindale & myself, as Pte Durand was still absent went down the road to try & locate Pte Durand We succeded in locating him at approx 2100 hrs.

2/ I told Pte Durand that he was supposed to be on guard at 2000 hrs he said he thought he was on guard at 2200 hrs I asked Pte Durand if he was going on guard and he said no Cpl Tindale and myself then returned to the petrol dump and both of us carried out Pte Durand's tour of duty until 2200 hrs At approx 2345 hrs Pte Durand returned to the petrol dump & ofter a few minutes he went to bed next tour of duty was I to the guard room we had our duty roster up When I told him he was supposed to be on guard I explained that it was an order to come back & he did not make any motion to return I asked him if he was going on guard he said "No" I have no doubt that I made the point clear to Pte Durand that he was to return immediately At approx 0400 hrs on 5 Jan 45 I checked the duty rosters and found that Pte Durand

was scheduled to go on duty at
0400 hrs. Cpl. Tindale was
present at this time I went over
and shook Pte Pacaud & he mumbled
"Yess Yes" etc. As he did not make
any motions toward getting up I
went back again and shook him
and tried to awaken him he mumbled
"Yes, Yes, Yes; etc" I then said "Pacaud
its 0400 hrs and you are going on guard
now" he said "Yes Yes etc." I then
asked him if he was going on guard
& he answered "No" I personally
took over his tour of duty from 0400
hrs until 0600 hrs I did this
in order that the duty roster would
not have to be changed by the
absence & placing another man
on his duties.
The first time I shook him I am not
certain he was awake but the
second time he was.

Q. by Defence

Q Where did you find the accused that night

A In a café about 200 yds down the road

Q What time did you find he was missing

A. Not until 2000 hrs

Q What time did you get to the Cafe

A. approx 2100 hrs.

Q What time did you tell him to leave the cafe

A approx 5 minutes after I entered the cafe

Q Was anyone else on guard at the same time

A Yes

Q On the duty roster

A Yes.

Q At 0400 hrs are you sure he was awake or aint you sure

A After I gave him a direct question he answered "no"

Ped. Witness

B6064 Cpl. Tindale WC having been duly sworn & having identified the accused states

On the 4th 45 at Tavenor Pet. Camp at 2000 hrs Sgt Horne looked at the duty roster & saw Pte Durand to be on guard at that time - he was not present then so at 2100 hrs Sgt Horne and myself went to look for him. In the meanwhile Sgt Horne had taken over Pte Durands duties. We located Pte Durand at 2100 hrs Sgt Horne told Pte Durand that he should have been on guard at 2000 Durand said he thought that was 2400 Sgt Horne then asked him to go on guard then and he said No I am satisfied that Sgt Horne made it quite clear to Pte Durand that he must go back then Pte Durand did not come back then & Sgt Horne took over the remainder of Pte Durands tour.

At approx 2345 hrs Pte Durand returned and went to bed. ~~not~~ I don't know if he checked the duty roster as to his next tour of duty.

At 0400 hrs Sgt Stone checked the roster again & found the Pte Durand was due for another tour. He then went to wake him up & I went along. Sgt Stone shook him & told him it was time to go on guard again. Pte Dur. just mumbled a few words & did not get up. The Sgt then reminds Sgt Stone called him again by ~~shaping~~ to wake Pte Durand. Durand said "Yes Yes Yes etc" but he did not get up. The Sgt then said Durand "you are going on guard" Durand said "No" & did not get up. Sgt Stone then told Durand to tour of duty & that sufficient effort was made on the part to wake Sgt Stone Durand [illegible] as guard [illegible] Sgt

Cross by Defence

Q How far is the cafe from the guard post?

A 500yds approx

Q Was it allowed for men to be away when not on duty

A Yes Sir

Q How long had that guard been on duty

A 2 days or 3 weeks

Q What time was the accused told to leave the cafe

A Approx 2100 hrs but no later than that

Q Have you ever taken a man who he was drunk & asked him a question & got a direct answer

A Yes

Q Do you remember this letter

A Yes

Q Are you sure the accused did awaken up

A Yes Sir

Q Why are you sure

A When he has been bathed so long as that he will wake up to my signal

Sgt Hare made out the duty roster

Statement by accused regarding his plea of guilty of Breaking out of Custody

Was transfered from

When I was 12 hrs ~~detained~~ to 9 hrs.

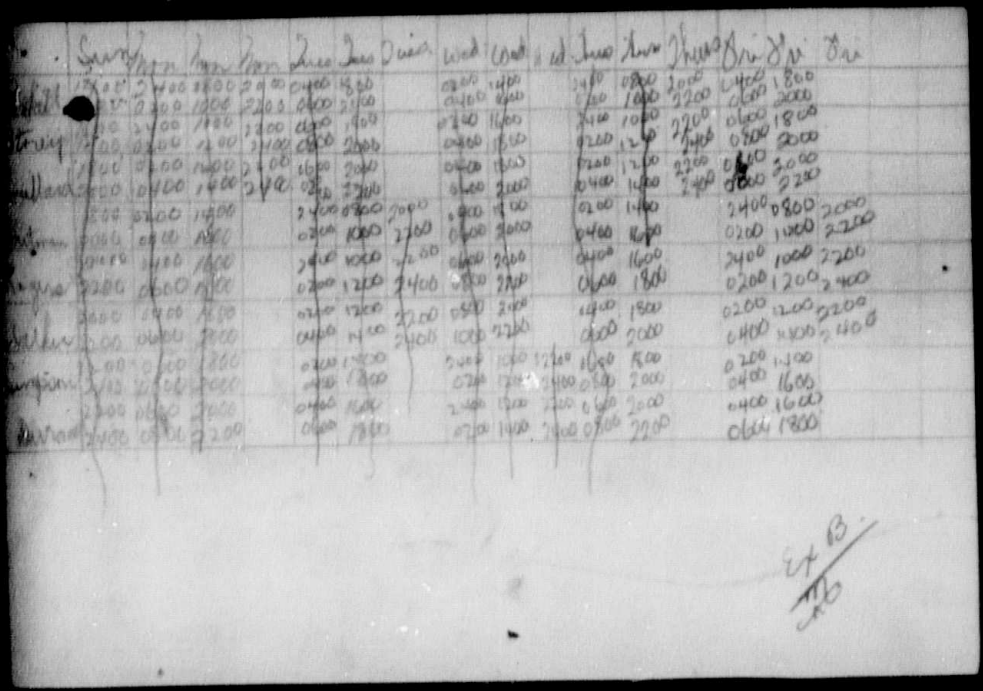
we recieved new guards to look after. They were chasing us around the place where we were staying was not fit for an animal. We were just laying around doing nothing & no fresh air so we broke out of detention.

D M Peabble

- Plea of Mitigation -

This man enlisted Oct 1940 and has given the army good service (DFC) since then as a D/r first with the 4PLDG (1st Dis Recce) after. latter with Public relations. He realized his mistake and is now anxious to go & finish the job he started. In consideration of this I ask the court bring in a lenient sentence as he will be doing his country no good in detention

A Fit Lieutenant



SUMMARY OF EVIDENCE IN THE CASE OF
C-3091 Pte Durand M L, on strength of 12 Bn, 2 CBRGp.

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

FIRST WITNESS FOR THE PROSECUTION — H-2299 Sgt Horne G A, 47 Coy, 12 Bn, 2 CBRGp, having been duly sworn states:-

I, H-2299 Sgt Horne G A, acting as NCO i/c guard at Lavernock Petrol Dump, on the 4 Jan 45, checked on the duty roster which was posted at least 24 hrs ahead and found Pte Durand M L, whom I now recognize to be on guard at 2000 hrs. At the time I checked this roster it was 2000 hrs. Pte Durand was not present and could not be located in the petrol dump. At approximately 2100 hrs Cpl Tindale and myself went down the road to try and locate Pte Durand, we succeeded in doing so in the cafe at approximately 2100 hrs. I told Pte Durand that he was supposed to be on guard at 2000 hrs and Durand said that he thought he was on guard at 2200 hrs. I asked him if he was going on guard and he said "No". During the time that he was supposed to be on guard the duty was taken over by Cpl Tindale and myself. Pte Durand returned to the dump at approximately 2345 hrs, and went to bed without asking any questions about his tour of duty.

His next tour of duty was due to start at 0400 hrs 5 Jan 45. At approximately 0400 hrs on the morning of 5 Jan 45, I went over to awaken Pte Durand, I shook him a few times and he mumbled "yes, yes, yes, etc. A few minutes later I went over to awaken him again. I said "Durand, it's four O'clock and you are on guard now", and he answered "yes, yes, yes" and so on. As he did not make any signs to get up I asked him if he was going on guard and Durand said "No". I personally took over his tour of duty. That is all.

Accused declines to cross-examine the witness.

H-2299 Sgt Horne G A

SECOND WITNESS FOR THE PROSECUTION: — B-60614 Cpl Tindale W G, 47 Coy, 12 Bn, 2 CBRGp, having been duly sworn states:-

I, B-60614 Cpl Tindale W G, acting as 2 i/c of the guard at Lavernock Petrol Dump. I was present on the 4 Jan 45, at approximately 2000 hrs when Sgt Horne checked the duty roster and found Pte Durand, whom I now recognize, being on guard at 2000 hrs. He was not present at this time and could not be located in the Petrol Dump. At approximately 2100 hrs, Pte Durand still could not be found. Sgt Horne and myself walked up the road to see if we could locate Pte Durand, we located Pte Durand and Sgt Horne told him that he was supposed to be on guard at 2000 hrs. Pte Durand said that he thought he went on guard from 22 to 2400 hrs. Sgt Horne asked him if he was going on guard now and Pte Durand said "No". Sgt Horne and myself returned to the petrol dump and Sgt Horne tried to telephone the officer in charge of the guard but could not get in touch with him at that time. Pte Durand returned to the guard room at approximately 2345 hrs.

(Cont'd)

SECOND WITNESS (Cont'd)

During the tour of duty from 2000 hrs until 2200 hrs Sgt Horne and myself did the tour of duty from 2000 hrs until 2200 hrs.

At 0400 hrs on 5 Jan 45, Sgt Horne looked at the duty roster and found Pte Durand to be on guard at that time. He shook Pte Durand to awaken him and Pte Durand just mumbled "yes, yes, yes". As he did not get up, Sgt Horne shook him again and said "Durand, you're on guard", he then asked Pte Durand if he was going on guard and he said "No". Sgt Horne took over the duties as a guard sentry from 0400 hrs until 0600 hrs of the same morning and I stayed in the guard room as guard commander. That is all.

The accused declines to cross-examine the witness.

W. G. Tindale

B-60614 Cpl Tindale W G.

The accused was cautioned as follows:-

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

The accused declines to make a statement or give any evidence.

The accused does not call any witnesses for the defence.

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

R. Dubois Lieut

R Dubois Lieut
12 Bn, 2 CBRGp

In the field in Belgium
13 Jan 45.

ADDITIONAL SUMMARY OF EVIDENCE

in the case of

C.30691 Pte. Durand, Marcel Leo, 47 Coy., 9 CBR Bn.

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

FIRST WITNESS FOR DEFENCE

Documentary. Certificate of Arrest in Accordance with Army Act, Section 163 (i) (j). This certificate has been shown to the accused, marked by me as exhibit "A" and is attached to the proceedings.

(D.E.McFee) Capt.
Officer detailed to take Summary of Evidence.

SECOND WITNESS FOR DEFENCE

A.42812 L/Cpl. Carnegie, E.M. Cdn. Prov. Corps, PE 9 C.B.R.Bn. sworn, states:

At 1750 hrs 24 Jan 45, I was duty N.C.O. in charge of Detention Barracks (Annex) 9 CBR Bn.

At that time, I checked accompanied by the NCO who I was relieving, the personnel of the Detention Barracks (Annex) and found all were present.

At 1800 hrs. 24 Jan 45 I, myself, again checked the personnel in Detention Barracks (Annex) and found all were present.

At 1810 hrs, 24 Jan 45, I again checked the personnel in Detention Barracks (Annex) and found at that time a hole had been made in the brick wall of the Detention Barracks (Annex) large enough to allow men to escape.

Immediately, I had all the personnel put into one room and I checked them. I found the accused, Pte. Durand, whom I now recognize, was missing. I re-checked and was sure that the accused had escaped.

I then informed Sgt. Penrose, N.C.O. in charge of Detention Barracks, 9 CBR Bn of the escape and the particulars.

The accused declines to cross examine the witness.

E.M. Carnegie
(E.M. Carnegie) L/Cpl.A42812

The accused was cautioned as follows:

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

After the above caution the accused does not wish to make any statement or to give evidence.

The accused does not wish to call any witness for the defence.

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

D. E. McFee Jr. Capt.

(D. E. McFee) Capt.
Officer detailed to take Summary of Evidence.

In the Field
4 Feb 45

CERTIFICATE OF ARREST IN ACCORDANCE WITH
ARMY ACT, SECTION 163(1) (ii)

I certify that No. 3.30691 Rank PTE Name DURAND, W.L.

of R.C.A.S.C. No. 2 C.A.R.U. (unit) was arrested at [illegible] (place)

at 1700 hrs on 31 JAN 45 (date). He was dressed in uniform

Date 17 JAN 45

Signature of Provost Marshal, AAG or other officer into whose custody the above-named person was taken on arrest

(H. JEFFERY) Capt.,
O.C. 242 H.Q. PROVOST COMPANY, C.M.P.

This is to be referred to in the Additional Summary of Evidence in the case of 3C30691 Pte Durand W.L.

Date FEB 10 1945

2 CBRR G

1. I hereby acknowledge receipt of one copy of Charge Sheet and one copy of the Summary of Evidence delivered to me

M^{te} Durand.

R. ✓ (a) I request that Lt. McIntosh if available, be appointed, OR

(b) I request that an officer be appointed as my Defending Officer at my trial by Court-Martial.

M^{te} Durand

I hereby certify that Lt A.J. McIntosh was appointed to defend C30691 Pte Durand M.L. at his forthcoming trial by Court Martial and that the said Lt A.J. McIntosh was notified that he was defending officer on FEB 06 1945

A/S Phm. Capt

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
C-3091	Pte	Durand, M.L.	12 Bn., 2 CBRG

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

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.
† See para. 877, K.R., 1940.
* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.
INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	A.A. Sec 40 Two times	Two times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct ~~mentioned~~ —Nil—

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

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

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

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

4. The accused has been in confinement, awaiting trial on the present charges, for ~~34~~ days ~~in civil custody, and~~ ~~days in military custody, making a total of~~ ~~days~~ ~~of which~~ ~~days were spent in hospital.~~

5. The present age of the accused according to his ~~record of service~~ MEM1 Pt I ~~attestation paper~~ is 30 Jan 1922

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ MEM1 Pt I ~~attestation paper~~ is 20 Feb 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 11 mths

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 11 mths service.

9. The accused is entitled to reckon 3 yrs 11 mths service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). CVSM & Clasp

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

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

W.L.55427/1159 20M. 5/40. P. L.&S. Vic.1.

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

No. C-30691 *Rank* Pte *Name* Durand, M.L. of 12 Bn 2 CBRD *Regiment (or as the case may be)*

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

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

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

Signed this 14th day of Feb 45.

Capt

In the rank of

In the rank of

In the rank of

(INSTRUCTION—*If any sentence or any of the above paragraphs cannot be found in the regimental books the paragraph must be struck through with red ink, and a note made thereof in the remarks column. Any erasure or correction in the entries in the regimental books must be attested by the initials and rank of the officer who made it.*)

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

Date of Promotion

No. C-30691 Name DURAND M L | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40(PAS)/106 (1943)

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

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Aug 44	Pte		AA Sec 40 - failing to carry out an order given by an NCO.	Documentary	10 days CB	22 Aug 44	R P Collyer Maj	
Field	16 Sep 44	Pte		AA Sec 40 - left camp area with a WD Motorcycle on an unauthorized trip resulting in an accident.	CQMS McCoy ACW	5 days Pay FRAI 149(2)	21 Sep 44	R P Collyer Maj.	

CERTIFIED TRUE COPY OF DOCUMENTS NOW IN MY POSSESSION.

Capt
Adjt, 12 Bn, 2 CBRGp

(PTO)

LIST OF WITNESSES

In the case of

C.50691 Pte. Durand, M.L. 47 Coy., 9 CLR Bn.

FOR PROSECUTION

1. A.4281LS L/Cpl. Carnegie, M.M. Cdn Prov. Corps, FE 9 CLR Bn.

FOR DEFENCE

Nil

LIST OF EXHIBITS

in the case of

S.20691 Pte. Durand, M.L. 47 Coy., 9 CBR Bn.

(A) (Documentary) Certificate of Arrest in Accordance with Army Act, Section 163 (1), (3).

4D 72

PTE DURANT R.J.

RECORDED AT CMHQ IN AB 160, 40-72

RECEIVED 15 NOV 1944 JAG BRANCH C.M.H.Q.

Correspondence to be PINNED here

DUPLICATE

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 10 day of Oct, 19 44

Whereas it appears to me, the undersigned, an officer in Command of 1st Cdn Special Service Bn (A), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

*Omit if not applicable.

*[I am unable to appoint :—

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

*(2. A Field Officer as President.)

for the following reasons, namely :—]

PROCEEDINGS REVIEWED 16 Oct 44

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

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

*Waiting member

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

President.

Rank.	Name.	Regiment.
Maj	[illegible], 1st Cdn Spec Svc Bn, Hq 1st Cdn Spec Svc Bn	

Members.

Rank.	Name.	Regiment.
~~Maj~~ Capt	[illegible], 1st Cdn Spec Svc Bn, ~~Hq~~	
Lieut	[illegible], 1st Cdn Spec Svc Bn, 2nd Bn	
Lieut	[illegible], 1st Cdn Spec Svc Bn, Hq 2nd Bn	

*Signed [illegible] Lt Col

Commanding 1 Cdn Spec Svc Bn

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F 60042 Pte Raymond Joseph Durant 1st Cdn Sp Co Bn 3rd Coy. 3rd Regt 7.1.17	1st Charge Sec 15(1) AA	guilty	guilty 60 days detention 14 days confinement to Lines 2 days confinement to Lines 14/10/17 X/C (1) 14/10/17 X/C (2)	Confirmed J.R.A.

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—

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

Answer. (*to be recorded on separate sheet if necessary*) — N/A.

(Signed) J.R. Akehurst Lt Col (Signed) _____

Commanding 1 Cdn Spec Sv Bn

Convening Officer (a) *President.*

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

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

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

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

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

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

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13 day of Oct 17, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

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

were duly sworn.

Signed this 14 day of Oct 1917

A.C. Winter Major R.E.
President of the Court Martial.

C. Certificate in case of death sentences.

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

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

Signed this _____ day of _____ 19 .

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this 21 day of Oct 1917.

J.R. Akehurst Lt Col
Confirming Officer.

Promulgated and extracts taken in the case of 60042 Pte Durant RA

(a) (Dated) 26 Oct 17 (Signed) for Lt Col Commanding 1 Cdn Spec Sv Bn.

Promulgated and extracts taken in the case of _____

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

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

CHARGE SHEET

The accused F60042 Pte. Raymond Joseph DURANT, 3rd Company 3rd Regiment, 1st Canadian Special Service Battalion C.A.(A) First Special Service Force, a soldier of the Canadian Army on Active Service is charged with:

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

Charge Sec 15(1) Army Act

at Nice, France, absented himself without leave from 0600 hrs 15 Sept 44 until 1030 hrs 3 Oct 44. (Total time absent 18 days, 4 hrs, 30 mins) (Surrendered Voluntarily).
Close Arrest 12 Oct 44.

In the Field
France.
10 Oct 44.

A.W. Becket Lt-Col

(R.W. Becket) Lt.-col.,
1st Cdn Sp Sv Bn, C.A.(A).
Commanding, 3rd Regt
1st Sp Sv Force.

To be tried by Field General Court Martial.

J.F.W. Akehurst

(J.F.W. Akehurst) Lt.-col.,
1st Cdn Sp Sv Bn., C.A.(A).
Commanding.

In the Field
France.
10 Oct 44.

Appx "B"
K Winston Mair

FIRST CANADIAN SPECIAL SERVICE BATTALION C.A.(A).

In my opinion, Officers other than those of the First Canadian Special Service Battalion C.A.(A)., are not available to sit as members of the Field General Court Martial in the case of F60042 Pte. Durant, R.J.

(J.F.R. Akehurst) Lt.-col.,
Officer Commanding,
First Canadian Special Service Bn C.A.(A).

Appx

FIELD GENERAL COURT-MARTIAL

ACCUSED

Number.	(a) Permnt R (b) Appnt, A/R or A/Appmt.	Full Name	Unit
F-60042	Pte.	Raymond Joseph Durant	1st Can Sp Sv Bn. 3rd Coy 3rd Dept 1st Sp Sv Force

CONVENING ORDER

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

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

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

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

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

PRESIDENT

Major (Rank)	W.W. Mott (Must be named, HP 106)	1st Can Sp Sv Bn. (Unit)

MEMBERS

Capt. (Rank)	W.M. Tuliden (Named, or detailed)	1st Can Sp Sv Bn. (Unit)
Lieut. (Rank)	G. Irvine (Named, or detailed)	1st Can Sp Sv Bn. (Unit)

WAITING MEMBER

Lieut (Rank)	J.G. Sims (Named or detailed, if any)	1st Can Sp Sv Bn. (Unit)

JUDGE-ADVOCATE

(Rank)	(Must be named, if any)	(Unit)

On Active Service in the Fd

in France (Country)

Date 19 Oct 44

J.D.R. Akehurst (Signed personally) Lt.-Col. (Rank)

Commanding 1st Canadian Special Service Bn. C.A.(A.) Convening Officer.

CONVENING OFFICER WILL INITIAL ALL DELETIONS AND ALTERATIONS

MEDICAL OFFICER'S CERTIFICATE

I certify that F-60042 Pte. Durant, R.J., 1stCanadian Special Service Battalion, C.A.(A)., 3rd Coy 3rd Regt., 1st Special Service Force is fit to undergo trial by Court-Martial.

Signed at Nice, France, this 13th Day of October, 1944.

(R.J.Kaye) Captain
Medical Officer,
Base Detachment.

MEDICAL OFFICER'S CERTIFICATE

I certify that F60042 Pte. Durant, R.J., 1st Canadian Special Service Battalion, C.A.(A)., 3rd Coy 3rd Regt., 1st Special Service Force, is fit to undergo trial by Court-Martial.

Signed at Nice, France, this 14th Day of October 1944.

"H"
App

(R.J. Kaye) Captain
Medical Officer
Base Detachment

App. "D"

Pleas in Mitigation of Sentence in Case of Pte Shurent.

Pte Shurent enlisted in the Edr Army on 23 Feb 40 and has been serving overseas for nearly 3½ years. During this period he has been in action against the enemy for nearly 4 months. The record shows that this man has not caused any trouble whilst with his present Company. Also that he was a good man in action. Being a good front line soldier these days is something that proves to be a very important factor. Pte Shurent has not been granted any leave for some time. He admits going AWL and is prepared to suffer the consequences, but in view of the fact that he is such a good man in action I ask the Court to consider this fact before passing sentence on him.

Proceedings of a F.G.C.M. at Nice, France on 13/19 Oct 44
by Order of Lt. Col J.F.R. Akehurst Commanding 1 Cdo
Sp. Sv. Bn.

President: Major A.W. Mair, 1st Cdo Sp. Sv. Bn, H.Q. 1st Regt. Fld F.
Members: Capt W.M. Watson, 1st Cdo Sp. Sv. Bn H.Q. Fld F.
Lieut. C. Lynard, 1st Cdo Sp. Sv. Bn, 2 Coy, 3rd Regt, Fld F.
~~Visiting Member: Lieut J.W. Simmo, 1st Cdo Sp. Sv. Bn, H.Q. 2nd Regt. Fld F.~~

Trial of F 60042 Pte Raymond Joseph Laurent, 1st Cdo Sp. Sv. Bn, 3rd Coy, 3rd Regt, Fld F.

The order convening the Court, the Charge Sheet and the Summary of Evidence are laid before the Court.

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

The accused is brought before the Court.

Prosecutor: Capt I.I. Lynard, 1 Cdo Sp. Sv. Bn, H.Q. 3rd Regt, Fld F.
Defending Officer: Lieut W.E. Broussan, 1st Cdo Sp. Sv. Bn, 1 Coy 2nd Regt, Fld F.

At 1300 hrs the Trial Commences.

The Order Convening the Court is read by the President, marked Appx 'A', signed by him and attached to the proceedings.

Pte Laurent.

The names of the President and members of the Court are read out in the hearing of the Accused and they answer severally to their names.

Q 1 (RP 35) Do you object to be tried by me as President or by any of the Officers whose names you have heard read out

A 1 No Sir

The President and members are duly sworn.

At 1330 hrs the Court ajourns until 0930 hrs on the 14 Oct 47. On 14 Oct 47 at 0930 hrs the Court reassembles, pursuant to adjournment; pursuant the same members as on 13 Oct 47.

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

The accused is arraigned on the charge (Sec 15(1) RP 2) in the above mentioned charge sheet.

Q 2. Are you guilty or not guilty of the charge against you which you have been read.

A 2 Guilty Sir.

R.P 33(3) has complied with and plead guilty entered.

[illegible]

The accused No F 60042 Pte Raymond Joseph Vincent, 1 Can Sp Sv Bn, 3rd Coy, 3rd Regt, F.S.F. is found guilty of the charge (Sec 15(1) A.A.)

In accordance with R.P. 37(B) the Summary of Evidence as read, marked Appx "C", signed by the President and attached to the proceedings.

Q 3 Do you wish to make any statement in mitigation of punishment.

A 3. Yes. Defence Officer hands in written plea which is read by President, signed, marked Appx "D" and attached to proceedings.

Q 4 Do you wish to give evidence yourself or to call any witnesses as to character.

A 4 I wish to bring forward one witness as to character.

/28 Witness for the Defence. No 6472665 1st Sgt Lim de Pains having been duly sworn states:

I am No 6472665 1st Sgt Lim de Pains, 3rd Coy. 3rd Regt. F.S.F. I recognize the accused as Pte Vincent. He joined us at Enzo and he has been a very satisfactory soldier in the Coy. I have never heard any complaints regarding him from his P.C. Cmdr.

Prosecution declines to cross examine the witness.

R.P. 83(B) is complied with and witness with leave
Prd Witness. Major J.W.J. Bracco, Admin Officer for 1st Cdn
Sp. So Force is duly sworn and states:
I am Major J.W.J. Bracco, Admin Officer for 1st Cdn Sp Sv
Berlin 7.8.27

Q5 Have you evidence to produce as to Character and
Particulars of Service of the Accused.

A5. Yes, I produce a Statement as to Character and
Particulars of Service of Accused and also a Certified
True Copy of Min No. 6.
The above statement (with schedule of Convictions) and
Min No. 6 are read, marked Exhs "E" & "F" respectively,
Signed by the President and annexed to the proceedings.

Q6 Is the Accused the person named in the Statement
which you have heard.

A 6 Yes Sir

Q 7. Have you compared the contents of the above
statement with the Regtl books.

A 7: Yes Sir

Q 8: Are they true extracts from the Regtl books and is
the statement of entries in the Column sheets a fair
and true summary of those entries. Yes.

A. D: Yes sir.
The defending Offr declines to cross-examine
In the opinion of the Court it is not necessary to
comply with R/P 83(B) and the witness withdraws.
Q 9: Do you wish to address the Court.
A 9: No Sir
The Court is closed for consideration of the sentence.

The Court sentence the accused No F60042 Pte
Raymond Joseph Thurant, 1st Cdn Sp Sv Bn, 3rd Sp.
Sqd Regt. R.S.S.
to undergo detention for 60 (sixty days)
with automatic forfeiture of pay, as follows
19 days pay under F.R.C.I. 149(1A)
42 days pay under F.R.C.I. 149[1C(1)]

Lt Col
Pres. FGCM.
10 Oct 44

List of Appendices.

App "A"	Convening Order.
" "B"	Charge Sheet.
" "C"	Summary of Evidence
" "D"	Plea in Mitigation & Sentence
" "E"	Statement as to Character & Particulars of Service of accused
" "F"	A.F.M. 6.
" "G"	Application for Court Martial
" "H" & "H1"	Medical Certificates for 13th & 14th [illegible]
" "J"	List of Witnesses
" "J"	Statement of Accused re Defence

App "C"

SUMMARY OF EVIDENCE

In the case of F60042 Pte. Durant, R.J., First Canadian Special Service Battalion, C.A.(A). 3rd Coy, 3rd Regt, First Special Service Force.

Charged with: (1) Absenting himself without leave, in that he, at Nice, France, absented himself without leave from 0600 hrs 15 Sept 44 until 1030 hrs 3 Oct 44. (Total time absent - 18 days, 4 hours, 30 minutes.) A.A. Sec 15 (1).

A certified true extract copy (Signed by Captain Peronneau Mitchell, 1st Spec Serv Force, Assistant Adjutant) showing that F60042 Pte. Durant, R.J. was among the Dispositions to Duty (Class A-1) from the 514th Clearing Station, Less 1st Clearing Platoon, A.P.O. 758, U.S. Army, was produced and shown to Private Durant. The date of disposition being the 14th Sept 44.

The accused had no questions regarding the disposition document.

FIRST WITNESS: 6972665, 1st Sgt Payne, W.D., First Special Service Force, having been duly sworn states:

On 3 Oct 44 I was 1st Sgt of 3rd Coy 3rd Regt. "Pte. Durant reported to 3rd Coy 3rd Regt for duty at 1600 hrs 3 Oct 44."

Ques: "Did Pte. Durant ever report for duty between 0600 hrs 15 Sept 44 and 1600 hrs 3 Oct 44?"

Ans: "He did not." W.D. Payne

The accused had no questions.

The accused F60042 Pte. Durant, R.J. having been duly cautioned "Do you wish to make any statement or to give evidence on oath?" "You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence."

The accused did not wish to make any statement or to give evidence on oath.

This statement has been read back to the accused. He does not wish to make any additions or deletions.

Rules of Procedure 4 have been complied with.

R.J. Moffat

(R.J. Moffat) Lieut.
1st Cdn Spec Serv Bn.,
C.A. (A).

Officer detailed to take Summary of Evidence.

App "E"

ARMY

Statement as to Character and Particulars of Service of Acc

Number. P-50012 Rank. Pte Name. Dupuis, R.J. Regiment (or as the case may) 3rd Coy., 3rd Regiment.

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

Note.—A.C.I. trial by field general court martial (the summary may be abridged from the last con duct sheet). The conduct sheet(s) mentioned above is to be produced with this statement but not annexed to the proceedings.

1 Ter pers. ETC. R.R. 1940

* The previous records stated should com prise only the num ber of entries in the conduct sheets, pro ceedings (trials) and offences (trials) of the most serious in each entry, and no more need be recorded and no mere record of solita tion or of flirting should be entered.

Instructions.—If the charge is for misconduct, the words "in connection with the circumstances stated in charge" must be stated separately and

	* Within last 12 months.	*Since Enlistment.
For A.W.L.,	2 times	8 times.
For Drunk & in poss., etc.	Nil times	2 times.
For	times	times.
For	times	times.
For	times	times.

Number of times [illegible] or distinguished conduct

There are no entries in the conduct sheets of the accused

2. The accused has not been previously convicted by court martial or a civil court, summary award under section 47 of the Army Act, also not of any of the civilian crimes set out in the Army Act, section [illegible] and dealt with under section [illegible] of the Army Act.

3. The accused has not been recommended for any decoration and is not entitled to wear any decoration at the present time. He served in the [illegible] war and was [illegible]

The accused is not entitled to wear any decoration.

4. The accused has been in confinement awaiting trial on the present charge, — nil — days, and in military custody on active service for — 2 — days, making a total of — nil — days in military custody, making a total of — 2 — days.

— nil. — days in hospital.

5. The present age of the accused according to his record of service is 22 Years, 197 days.

6. The date of his attestation, enrolled in his record of service is 23rd Feb., 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 Yrs 11 mths 7 days.

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

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

10. The accused is in possession of, or entitled to, no military decoration or military [illegible]

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

12. (In the case of an officer.) The accused holds in the army the rank of N/A dated

and in his regiment (or corps or department) the rank of N/A dated

[illegible]

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

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

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

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

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

Signed this 13th day of Oct 44

[signature] Maj.
Brig Admin

If the accused has served as a non-commissioned officer continuously, without reductions, to the present date,

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

(Signature of officer)

Strike out the words in italics if the accused has not been tried by court martial, and the words in italics and the words "or civil court" if the accused has not been tried by court martial or civil court.

No. F60042 Name DURANT, R.J. Sqn., Battery, or Company — Corps C I C — Date of enlistment 23 FEB 40 G.C. — Badges — Tradesmen's Rates of Pay — Character

"A" — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122) 100M—11-41 (24995) H.Q. 1772-99-1052

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Last sheet destroyed 23/8/43					
Halifax	11/9/40	PTE		AWL 2330 HRS TO 1740 HRS 12/9/40 AB SEC 15	Cpl Jr Blackmore	5 DAYS CB	21/9/40	Maj Jones	2/4 Field Reg RCA
"	21/2/41	"		AWL 22 HRS 2 MINS TO 2000 HRS 22/2/41 AB SEC 15	C.S.M. Lowe	3 DAYS CB	3/4/41	"	2/4 Field Reg RCA
"	6/3/41	"		CREDITED TO THE PAY ROLL FOR MARCH 1941 AB SEC 41	S/SGT. JONES R.C.	7 DAYS CB	8/3/41	"	
Debert	1/JUNE/41	"		AWL 2300 HRS 1/6/41 TO 1945 HRS 2/6/41 AB SEC 15	CAMPBELL	14 DAYS FD NO DRILL	9/JUNE/41	Maj Jones	AUTO FORF 5 DAYS PAY FOR C
"	1/JUNE/41	"		AWL 1945 HRS 2/6/41 TO 1945 HRS 3/6/41 AB SEC 15	ORDNANCE CP	14 DAYS FP	7/JUNE/41	"	
Debert	7/JUNE/41	"		AWL 1945 HRS 3/6/41 TO 1945 HRS 4/6/41 AB SEC 15	CPL. McDONELL	7 DAYS CB	21/JUNE/41	CAPT. J.C. LOVELL	
Cornwallis Sig	25/JUNE/41	"		CREDITED TO THE PAY ROLL FOR JUNE 1941 AB SEC 41					
IN THE FIELD	26 JUNE 41	"		[illegible]	S/SGT THOMPSON	3 DAYS CB	22/JUNE/42	Lt. W.P. HILMER	
IN THE FIELD	1/1/43	L/CPL		AWL 2230 HRS 31/12/42 TO 0700 HRS 1/1/43 AB SEC 15	C.S. HANSON	REVERTED TO RANK	4/1/43	"	AUTO FORF 10 DAY PAY
"	2/1/43	PTE		AWL 1330 HRS 2/1/43 TO 0800 HRS 9/1/43 AB SEC 15	CAPT. DUNN R.C.	REMOVED TO GUARD DUTY	18/2/1943	CAPT. TO STEWART	
"	2/2/43	"		AWL 2330 HRS 12/2/43 TO 2715 HRS 12/2/43 AB SEC 15	C.S.M. WHALEN, R.C.	7 DAYS CB	20/2/43	D. CLARK - CAPT.	AUTO FORF 5 DAY PAY
"	2/2/43	"		AWL FROM 1300 HRS 18/2/44 TO 2100 HRS 18/2/44		FINE 30 DAYS PAY			AUTO FORF 5 DAY PAY
	18/2/44	"		(20 DAYS 8 HOURS)		F.P. No 1 (168 DAYS)	20/3/44		AFB 1199 (3) (A)

Authorized time 20 days 8 hours

for O.C. Discipline Officer Administration

W Warden Main

12 Oct 44.

STATEMENT OF ACCUSED: F60047 Pte. Durant, R.J.

"I desire to have an Officer assigned by the Convening Officer to represent me at my trial."

Raymond Durant
Pte. Durant, R.J.
1st Can Spec Serv Bn C.A.(A)

LIST OF WITNESSES

For the Defence

6072665 1st Sgt. Payne, W.D.
First Special Service Force

For the Prosecution Major J.V.J. Biscoe,
Administration Officer,
1st Canadian Special Service Bn.

App 23

FORM OF APPLICATION FOR A COURT-MARTIAL

First Canadian Special Service Battalion Regiment

Station Nice, France Date 9 Oct 19 44

Application for a Field General **Court-Martial**

SIR,

I have the honour to submit one charge against

No. F 60042 Pte. Durant, R. J.

of the 3rd Coy. 3rd Regt. under my command, and request you will ~~obtain the~~ sanction of

that a Field General Court-Martial may be assembled for his trial

xx in the field (France)

The case was investigated by (a) Lieut. R.Y. Moffat

Lt.-col. R.W. Becket

A Court of Inquiry was held on (b) N/A (date)

at (Station).

President		Ranks,
Members		names
		and
		corps.

The accused is now at Duty His general character is (c) Good

I enclose the following documents (d):—

1. 1 Charge Sheet (in duplicate) (e).
2. Summary of Evidence, original (f) and one copy. ~~xxxxx~~ Rudy
3. ~~Original Exhibits~~ (g). Rudy
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. ~~List of Exhibits~~ (h). Rudy
6. ~~Correspondence (g).~~ Rudy
7. Statement as to character (M.F.B. 355) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient servant,

Signature of Commanding Officer R. W Becket Lt-Col.

R. W. Becket, Lt.-Col.

To: First Canadian Special Service Battalion

Officer Commanding 3rd Regiment.

MEDICAL OFFICER'S CERTIFICATE

I certify that No F60042 Pte. Durant, R.J. 1st Can Spec Serv Bn., Regiment,

is Fit to undergo trial by Court-Martial.

R Kaye Captain.

Signature of the Medical Officer

First Special Service Force

*Insert "fit" or "unfit."

(a) Here insert name of—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 5 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 7 and 8 to be sent to the President.
(i) If the accused has elected to be tried under A.A. 86 (3), the fact should be recorded at the top of this form.)

M.F.B. 321
20-7-43-500

ADMISSION AND DISPOSITION REPORT
514TH CLEARING STATION Less 1st Clr Plat
APO 758, US ARMY

15 September 1944.

ADMISSIONS - 14 September 1944 - FSSF

DISPOSITIONS - 14 September 1944- FSSF

To Duty (Class A-1)

39003622	Delaney, Howard R. Maint Co FSSF	Pvt		APO	W	DIS	Malaria, clinical (improved)
37477456	Hutton, Thomas G. 2-2 FSSF	Pvt	INF	APO	W	DIS	Pylorospasm
P-60042	Durant, Raymond 3-3 FSSF	Pvt	INF	APO	W	DIS	Angroneurotic, edema. (improved)
37510640	Long, James L. 2-1 FSSF	Pfc	INF	APO	W	DIS	Gonorrhea, acute.

Trfd to the 51st Evac Hosp

/s/ Harry Goodman
/t/ HARRY GOODMAN,
Major, MC.
COMMANDING

A CERTIFIED TRUE EXTRACT COPY:

Veronica Mitchell

PERONNeAU MITCHELL,
Capt., 1st Sp Sv Force,
Assistant Adjutant.

X-100

Pte DURANT T.C.H

I Hereby amend my Order convening a Field General Court Martial to try B87693 Pte DURANT T.C.H., 81 Cdn Arty Coy, R.C.A.S.C., dated 21 Jan 43, by appointing as Waiting Member, a Lieutenant to be detailed by Officer Commanding 81 Cdn Arty Coy, R.C.A.S.C., in place of Lieutenant P.J. Ivey, 81 Cdn Arty Coy, R.C.A.S.C.

(R.J. Leach) Brigadier,
Comd,
1 Cdn Arty Gp.

30 Jan 43

X-100

Correspondence to be PINNED here.

Army Form A.3.

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

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 21st day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Artillery Group, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

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

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

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

*Omit if not applicable.

*[I am unable to appoint a

*(1) Three Officers to form the Court]

*(2) A Field Officer as President]

for the following reasons, namely:—]

JUDGE ADVOCATE: Lt-Col J.J. Kelly, AJAG
First Cdn Army

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

President.

Rank.	Name.	Regiment.
Major	W.A. Lucas	Coad, 1 Cdn Tpt Col, RCASC

Members.

Rank.	Name.	Regiment.
Capt	W.C. Bower	2 M.A.C., RCASC
Lieut	T.A.J. Moll	52 A A Bde Coy, RCASC
Lieut	P.J. Ivey	41 Cdn Arty Coy, RCASC

WAITING MEMBER

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

*Signed R.J. Leech, Brigadier
Commanding 1 Cdn Arty Gp
Convening Officer.

SCHEDULE

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-87693, PTE DURANT, W.C.H., 81 CDN ARTY COY, RCASC	FIRST CHARGE A.A. Sec.41 WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE See Charge Sheet Att'd	Not Guilty	Not Guilty Lt. Col. H.S. L. A. Lemay Major	

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) H. J. Leach (Leach) Brigadier
Commanding 1 Cdn Arty Gp
Convening Officer (*c*)

(Signed) L. A. Lemay Major
W. J. Reilly Lt.-Col.
J.A.

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

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

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

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

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

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

B. Certificate of President as to proceedings.

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

I also certify that :—

1. The members of the Court
2. The witnesses
*3. ~~The Interpreter~~ The Judge Advocate
*4. ~~The officers under Instruction~~

*Omit if not applicable.

were duly sworn.

Signed this 1st day of February 1943.

W. J. Reilly Lt.-Col. J.A.
L. A. Lemay Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (2) on page 787 M.M.L. 1929.

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

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

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

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

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

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

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

(20756) W'S 47/2/41/242 25,000 2/42 G.S. & M. Ltd. Gp.443
(21755) W'S 38/36/1/310 40,000 7/42 — —

CHARGE SHEET

THE ACCUSED B-87693, PTE DURANT, THOMAS CHARLES HENRY, 3RD MED REGT PL, 61 CDN ARTY COY, RCASC, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH

FIRST CHARGE
A.A. SEC.41

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY ATTEMPTED BURGLARY WITH INTENT TO COMMIT A FELONY CONTRARY TO SECTION 25(1) OF THE LARCENY ACT, 1916.

in that he

in the Field, on the 24th day of December, 1942, during the night, did attempt to break and enter the dwelling house of Mrs Elizabeth Rebecca Harris, with intent to commit a felony therein, contrary to Section 25(1) of the Larceny Act.

(J.G. Mallon) Capt
Acting Officer Commanding
61 Cdn Arty Coy, RCASC

In the Field
3 Jan 43

To be tried by Field General Court Martial.

(R.J. Leach) Brigadier
Comd, 1 Cdn Arty Gp

In the Field
2/ Jan 43

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B-87693, Pte. Durant, Thomas Charles Henry, 81 Cdn. Artillery Coy. R.C.A.S.C. is fit to undergo trial by Court-Martial.

(R.D. Barron) Capt. R.C.A.M.C.
Medical Officer
81 Cdn. Artillery Coy. R.C.A.S.C.

Field
1 Feb 43.

President.

[redacted]

C.M.H.Q. 50.2
40/P.A. 8/343

Accused B87693 Pte Thomas Charles Henry Hewett 81 Cdn Anty Coy R.C.A.S.C.

Held in the Field in England on 1 Feb 1943.

	Rank	Name	Unit
PRESIDENT:	Major W.A. Lucas,	1 Cdn Syst Ck.	R.C.A.S.C.
MEMBERS:	Capt W.C. Baker,	2 M.A.C.,	R.C.A.S.C.
	Lieut D.A.J. Mell,	82 Cdn A.A. Bde Coy,	R.C.A.S.C.
JUDGE-ADVOCATE: (if any)	Lt Col J.J. Kelly,	A.G.,	1 Cdn Army
OFFICERS UNDER INSTRUCTION:			
PROSECUTING OFFICER	Capt G. Lamontagne,	81 Cdn Anty Coy R.C.A.S.C.	Lawyer? Ans. No
DEFENDING OFFICER:	Capt J.R. Steele,	81 Cdn Anty Coy R.C.A.S.C.	Lawyer? Ans. No

(The following procedure must be carefully carried out)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (R.P.107 (1), (2), (3)).

The President, in closed court (R.A.49; R.P.1), reads the Convening Order and the Charge Sheet(s) to the members, and the Court satisfy themselves that it is properly convened (R.A.49; R.P. 106) and constituted that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106).

The accused is (are) brought before the Court, and at 10.00 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President, and attached to the proceedings.

President to accused:

Do you object to _____ as interpreter? Ans. _____

The interpreter (is) (is not) sworn.

Do you object to Rank Wm R Lambert as shorthand writer? Ans. No

The Shorthand writer is duly sworn. (Forms of Oath on Page 'D').
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.110)

President to accused:

Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans. No

The President, Members, Judge-Advocate, Prosecutor, Interpreter, are duly sworn (R.P. 26-7) (Forms of Oath on Page 'D')

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused ~~was~~ (has not) elected trial by court martial (A.W.46(2)).

President to accused:
Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans _____

(If special pl a(s) is (are) made for separate trial on one or more charges (Rs P 62(2), 108; or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P. 36); or as to accused's mental fitness to stand trial (A.W. 130, R.P. 67)), record such pleas and evidence (if any) on separate sheet(s) to be initialled by the President and attached to the proceedings)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (A.W.72). He pleads as follows: First Charge Second Charge Third Charge Fourth Charge

Not Guilty ✓ ✓ ✓

Fifth Charge Sixth Charge Seventh Charge Eighth Charge

✓ ✓ ✓ ✓

(For procedure on alternative charges, see R.P. 37, (n 2))

Further proceedings are recorded on pages hereto attached.

PART II

(For use when accused pleads 'Not Guilty' to all Charges)

(All printed matter not included to be struck out, and all alterations, erasures, and additions to be initialled by the President)

1. President to accused:
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P. 39(A)). Ans No!

2. The Prosecutor's opening address (if any) (R.P.39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto. (See RECORD OF EVIDENCE on Page D)

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P. 80 (n) (i) R.P. 70 Fn 1)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P. 40 Fn 2) as to that he may, if he wishes, make an unsworn statement, upon which he can not be cross-examined. (R.P. 40(D)(ii)(a)).

5. President to accused:
Q. Do you intend to give evidence yourself on oath as witness? Ans _____
Q. Do you intend to call any other witness in your defence? Ans _____
Q. Is he a witness as to character only? (R.P.40(D)) Ans _____

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses see Rs P 40, 41 and 42)

8. The Court is now closed to consider the finding (Rs P 43 and 119) (Record Finding on Page E of A.F.A.3)

9. The Court being re-opened, the accused is again brought before it, and the findings of 'Not Guilty' (if any) are announced and the findings of 'Not Guilty' on all charges) the accused is released. (R.P. 117(B))

10. _____ sworn,
(Rank) (Christian Names) (Surname) (Unit)
produces Statement of Character and Services, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books, certifying as such. The said documents are read, marked ' ', ' ', initialled by the President and attached to the proceedings (R.P.46)

11. President to accused:
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct put in either of you in mitigation of punishment? (R.P.44(B)).
Ans _____
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

12. The Court is now closed to consider the sentence (Record on Page E of A.F.A.3). (Punishments, A.A.44, K.R.(Can) 63-66; one sentence only awarded, (R.P. 45); sentences should be listed.

The sentence is not announced to the accused by the Court.

W. A. Lucas Major.
(Signature of President)

FIELD GENERAL COURT MARTIAL

in the case of

No. B-87639 Pte. Durant, T.C.H., 3rd. Med. Regt. Pl., 81 Cdn. Arty. Coy. R.C.A.S.C., Canadian Army (Overseas), a soldier placed on active service.

The Prosecutor makes an opening address in writing, which is handed to the Court marked "A", initialed by the President and attached to proceedings.

First Witness

Percy Collier, Temporary Constable, No. 235, stationed at Lingfield, Surrey, having been duly sworn.

Examined by the Prosecutor.

Q. Do you recognize the accused.

A. Yes sir, (indicating the accused)

Q. When did you first meet the accused.

A. At approx. 2315 hrs 24 Dec 42.

Q. Will you tell the court the circumstances surrounding the first meeting with the accused on the night of 24 Dec 42.

A. At 2310 hrs on 24 Dec 42 a complaint was received by telephone I went to the Coach and Cage Cafe, where I arrived at approx 2315 hrs. I went in through the front gate and flashed my torch on the side of the building and in the garden but did not see any person.

I walked along the side of the house to the corner of the back of the building, and from there I saw a soldier, the accused, he was standing about six feet from a window and opposite to it.

I walked towards him and he turned as if to go out a gate in the fence. I said to him "What are you doing here" and he said "I have just had a pee".

I walked back to the corner of the building where I had first seen him and Mrs. Harris came out a side door of the cafe.

Q. Who is Mrs. Harris

A. Mrs Harris is the prop. of the Coach and Cage Cafe, Lingfield.

I had some further conversation with the accused and asked him to produce his Army book, which he did and from this I took the name and particulars of the accused and then allowed him to go

Then following a conversation with Mrs. Harris, I examined a window at the back of the building and found that the putty had been scraped from a pain of glass near the catch of the window

Q. When you first saw the accused how far was the accused from the window.

A. Approx. 6 ft.

The putty had fallen on the ground and window sill. It was a bright moonlight night and the weather dry. I made examination of the ground at the back, but found no trace were any person had urinated.

I should like to suggest now that the following speaking to the accused, I noticed that the fly buttons of his trousers where undone and also greatcoat.

Q. When you saw him was he in the motion of buttoning trousers.

A. No sir.

Q. What did you do when you noticed the putty on the ground.

A. At 0410 hrs on 25 Dec 42 together with P.C. Osment, I went to an Army billet at Lingfield, where I saw the accused and identified him as being the soldier at the cafe.

Q. When you examined the window did the puddy you saw on the sill seem to be fresh.

A. Yes sir.

Cross-examined by Defending Officer.

Q.- Mr. Collier you state that you first saw the accused standing approx. 6 ft. from the window.

A. Yes, sir.

Q. What distance is there between the back of the cafe and the house adjoining.

A. Approx 9 ft. sir.

Q. In other words the accused was closer to the house than to cafe.

A. Cannot swear he was closer to house than cafe.

Q. In other words Mr. Collier the accused was approx. half way in the passage between house and cafe.

A. Yes, I can't say the distance between the two, so cannot say.

Q. To what extent did you examine the ground at Coach and Cage Cafe in respect to the accused hurinating on it.

A. At the back of the Coach and Cage cafe between the two buildings is a concrete floor, the concrete dry and showed up fairly white. I looked around the stretch of yard but could find no water.

Q. This stetch of yard concrete or grass.

A. Concrete sir, the side of the house is grass but the back of of the house concrete.

Q. Did you examine the grass.

A. No sir.

Q. You stated in your evidence Mr. Collier that you had further conversation with the accused.

A. Yes sir, I asked the accused how long he had been in Lingfield and he reported about a fortnight, I said to him don't you no there is public house urinal right opposite this Cafe, he replied in words of this effectthat he hadn't noticed it.

The accused also volunteered the information he had just left the public house around the corner, I took that to be the Star Hotel.

Q. What time was this.

A. It was approx. 2320 hrs.

Q. What time does Star Hotel close.

A. Should close at 2200 hrs

Q. Was there any other damage beside this window.

A. I Could see no other damage sir.

Q. Is it true that Mrs. Harris of the cafe pointed out to you that the gate was also damaged that night.

A. No Sir.

Q. Did you see any damage at the gate.

A. I did not expect the gate, sir.

Q. When you saw the accused first, did he have any implement in his hand.

A. I did not see any implement in his hand or around him.

Prosecutor declines to re-examine.

Cross-examined by the Court

Q. What instructions did you receive at your police station when you were sent to this address.

A. To go immediately to Coach and Cage Cafe, that is all sir, no other information.

Q. When the accused told you he had just had a pee, did you ask him to show you were.

A. No sir.

Q. When you first arrived at the scene you did not know what you were going to find or look for.

A. No sir.

Q. It was after the accused had been released that you were shown were the window had been tampered with.

A. Immediately after Mrs Harris conversation, I examined the window.

Q. I gather from what you say that there is grass between the buildings.

A. No sir, concrete, grass beside the building.

Q. You walked over grass to get to the window.

A. No sir, grass is at the right of the building.

Q. Could you draw a sketch of the building.

A. Yes sir.

The witness prepares and produces a sketch of the location in question which is marked "B", initialed by the President and attached to the proceedings.

Q. To what extent was the putty of that window interfered with.

A. Almost all of the putty had been scraped away on one pane , that is pane nearest to catch of the window. Pane about 4 inches square.

Q. What would be achieved by removing a pane that side.

A. By removing a pane that size could reach the catch.

Q. Was it a casement window, that swung back and forth.

A. Yes sir,

Q. The pane hadn't actually been removed.

A. No sir.

Q. Was the tampered pane the one closest to the catch.

A. Was one of two panes adjacent to catch.

Witness withdraws.

In the opinion of the Court it is unnecessary to comply with R.P. 83 (B)

Second Witness

Allan Norman Osment, Police Constable, No.337, stationed at Baldwins Hill, Lingfield, Surrey, having been duly sworn

Examined by the Prosecutor

Q. Can you identify the accused.

A. Yes sir.

Q. When did you first meet the accused.

A. At 0410 hrs on 25 DEC 42.

Q. Where did you meet the accused.

A. In a Army billet at Lingfield.

Q. Where you alone when you first met the accused.

A. I was accompanied by Mr. Collier.

Q. Will you tell the Court what took place then.

A. Yes, I saw the accused lying in bed. I said to him "is you name Durant", and he replied "Yes", I then said "You were seen earlier this evening in the gardens of the Coach and Cage Cafe" and he said "Yes". I then said "I am going to arrest you for attempt of house breaking" and he replied "Who is laying the charge.

He commenced dressing and I said to him "where is your Jack knife" he took a knife from his right hand trouser pocket and unfastened it from his trousers, I said "is this yours" and he replied "yes" army issue". I examined the knife and on the blade I found a small piece of putty and a a piece of red paint. I preserved the knife and at 0600 hrs the same morning I handed it to Detective Sgt. Cox.

The accused was taken to Oxted Police Station and in my presence he was cautioned and charged with the offence now before the court

Q. Is this the knife you got from Pte Durant.

A. Yes sir.

Knife is produced and marked exhibit "C" initialled by the President and filed.

Cross-examined by the Defending Officer.

Q. Constable Osment, you said when he was cautioned and charged with the offence now before the Court and he replied No sir.

A. He was cautioned and charged sir and made no reply and asked by the Sergeant if he had anything to say and he stated No, sir.

Cross-examined by the Court.

Q. Why did you go to the scene attempt of burglary.

A. Due to information received from Police Constable Becker.

Q Just can't understand why you went to the scene of the burglary, would like to clear up this lapse of time between 2310 hrs and 0410 hrs the following morning. Just hearsay why you went up.

A. Yes sir.

Q. Did you have any conversation with the accused about paint and putty found on knife.

A. No sir.

Q. Was there any reason why you didn't ask him.

A. Not at all.

Q. Where did you first notice the putty on knife.

A. As soon as he gave it to me, I opened it in his presence but did not tell him what I saw.

Witness withdrawn.

In the opinion of the Court it is unnecessary to comply with R.P. 83 (B).

Third Witness
Ernest Frank Cox, Detective Sergeant, stationed at Oxted, having been duly sworn

Examined by the Prosecutor.

Q. Do you recognize this exhibit "C"

A. Yes sir, knife received from Constable Osment on 26 Dec 42.

Q. Tell the Court how you received exhibit "C".

A. Constable Osment showed me the knife at Lingfield Police Office and when I examined it I found a small piece of what appeared to be putty, and a small particle what appeared to be red paint, adhering to the upper portion of the blade. I preserved the knife in a envelope.

The next day 26 Dec 42, I went to Coach and Cage Cafe where I examined a window at the rear of the premises, kitchen window which was indicated to me at 0645 hrs on 25 Dec 42 by Chief Constable Osment.

Q. That window was indicated to you by Constable Osment.

A. Yes sir.

Q. You said in your statement that you took a sample of the paint and putty from the window in question at 1115 hrs 26 Dec 42.

A. Yes sir.

Q. What did you do then with the knife

A. At 1430 hrs on the 26 Dec 42 I handed the knife and samples of putty and paint to Dr. Walls at the Metropolitan Police Laboratory Hendon.

Q. Why did you hand this knife over to Dr. Walls.

A. For expert examination.

Witness withdrawn.

In the opinion of the Courtit is unnecessary to comply with R.P. 83 (B)

In the permission of the Court , Prosecutor recalls Allan Norman Osment for cross examination.

Q. Did you go back to the premises of Mrs Harris cafe on 26 Dec 42

A. No sir.

Q. Whereyou accompanied by any one when you examined the premises

A. I went there at 0315 hrs 25 Dec 42, I went to the premises and examined window at the rear on the ground floor and found that putty had been scraped away from three sides of one pane.

Q. What premises.

A. Coach and Cage Cafe.

Q. Did you take anyone there.

A. I showed Detective Sergeant Cox the window.

Q. Did he take any sample.

A. Yes sir, from window and knife.

Cross examined by Defending Officers.

Q. What time did you actually see the window with Mr. Collier.

A. He showed me this window at a poroximately 0300 hrs.

Fourth Witness.

Henry J. Walls, B. Sc., Ph. D., Metropolitan Police Laboratory, Hendon, N.W. 9.

Examined by the Prosecutor

Q. How long have you been employed as such.

A. Since 1936.

Q. Do you recognize this knife exhibit "C"

A. I do

Q. When did you first see this knife.

A. I received the knife from Detective Sergeant Cox. 28 Dec 42.

Q. What did you do with the knife

A. I examined the knife.

Q. Did you receive anything else from Detective Sergeant Cox.

A. Yes I received also a sample of red paint and sample of putty which I now produce

Sample of red paint marked exhibit "D" initialed by the President and attached to proceedings

Sample of putty marked exhibit "E" initialed by the President and attached to the proceedings.

Q. Dr. Walls what were the results of your examination.

A. On the blade of the knife close to the edge about ¼ of an inch from the point there was a fragment of red paint and a fragment of putty. These were respectively identical in composition with the samples of red paint and of putty submitted to me. There was a further fragment of putty in the nail slot of knife blade.

Cross-examined by Defending Officer.

Q. Mr. Walls, was the putty in the nail slot the same.

A. Cannot say sir, did not examine it.

Q. Is it possible for two pieces of putty to have same composition.

A. Yes sir.

Re-examined by the Prosecutor

Q. You mean to say that putty on the windows of this room could be the same as the putty on the Cage and Coach Cafe.

A. Yes sir, quite possible. I may add that putty is very uniform.

Q. You did analyse also the paint and it was the same as brought to you by Sgt. Cox.

A. Yes sir.

Examined by the Court.

Q. How much paint by weight would there be on the knife.

A. About a milligramme.

Q. Could you mark on this knife roughly were the paint was.

A. Yes sir.

Witness withdrawn

In the opinion of the court it is unnecessary to comply with R.P. 83 (B)

Court adjourns at 1210 hrs, for ten minutes, at the request of the Judge Advocate.

At 1230 hrs the Court reassembles, present the same members as upon adjournment.

BY THE COURT

In this case the Court adjourned in order that consideration might be given to the evidence already introduced.

The Judge Advocate advised the Court that in his opinion a Prima Facie case had not been made out against this accused and that it was his duty to so instruct them. The members of the Court agreed with that view, and the accused is found not guilty of charge and is to be discharged from custody.

COURT IS CLOSED.

Lt-Col Major
President
Judge Adv

"A"

Opening address for the Prosecution.

Gentlemen, I shall endeavour to prove through witnesses, the following narrative of events which have led to the preferment of the charge against the accused, private Durant, T.C.H.

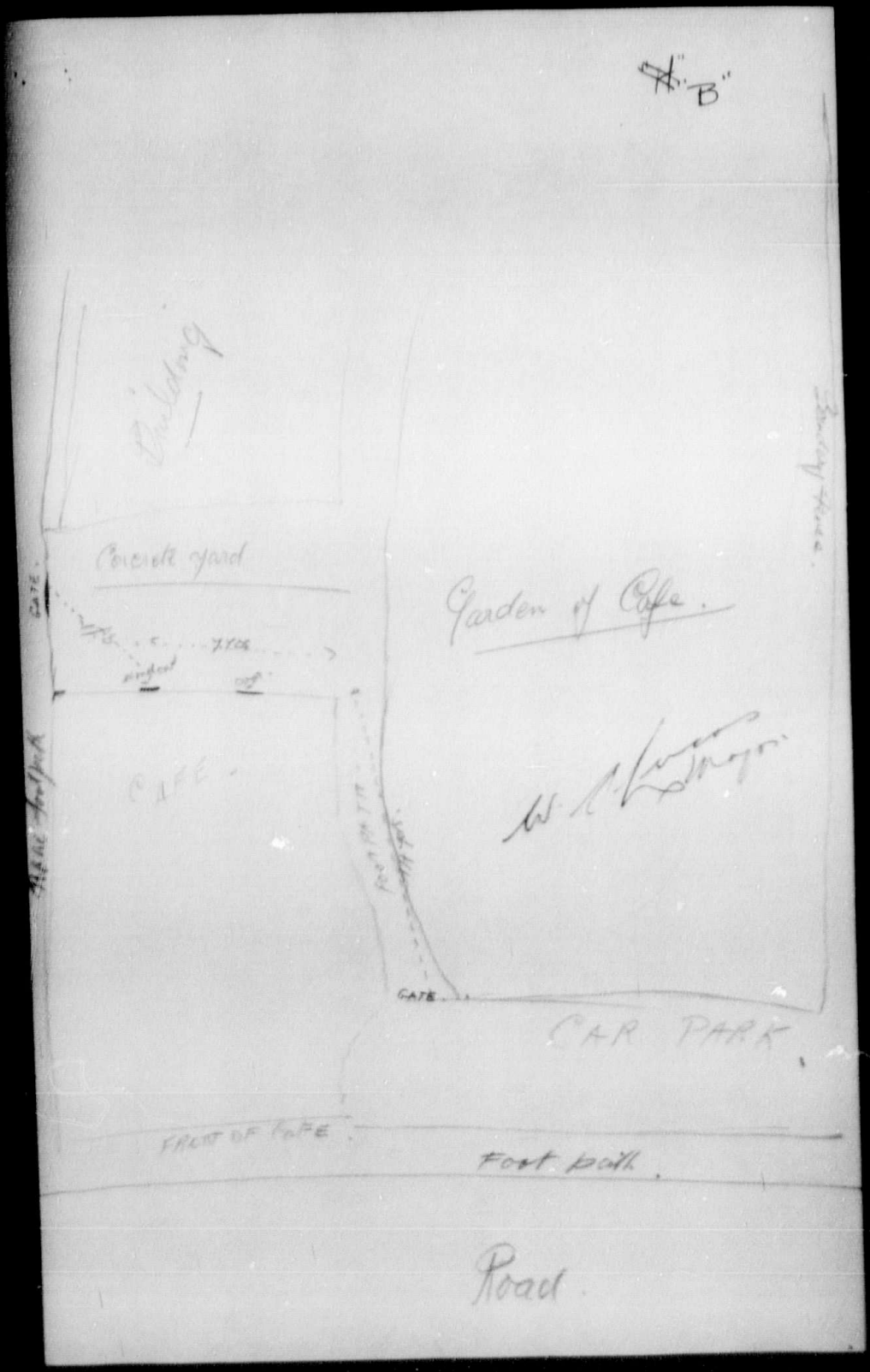
Firstly, that on the night of December 24th. 1942, an attempt was made to illegally enter the Coach and Cage Cafe, in Lingfield, Surrey..

Secondly, that a soldier, the accused was in the vicinity of the said Coach and Cage Cafe at the time of the attempted house break.

Thirdly, that he was questioned by the civil police nearby the window which showed evidence of having benn tampered with in an effort to open same from the outside and thus gain admission to the building.

Fourthly, I shall endeavour to prove that the window concerned was tampered with by a knife and that the knife in question was the Army property of the accused that was ceased whilst in his possession and was found upon examination particles of putty and paint identical in composition with the putty and paint of the window in question.

Signed. [signature] CAPT.
(G. Lamontagne, Capt.,
Prosecuting Officer.


"B"
Building
Concrete yard
GATE
Garden of Cafe.
CAFE.
GATE
CAR PARK
FRONT OF CAFE.
Foot path.
Road.

SUMMARY OF EVIDENCE

in the case of

No. B.87639, Pte. Durant, T.C.H., 3rd Medium Regiment Platoon, 81 Cdn. Artillery Coy. R.C.A.S.C., Canadian Army (Overseas), a soldier placed on active service.

The Acting Commanding Officer directs that the evidence be taken on oath.

First Witness

Percy Collier, Temporary Constable, No. 235, stationed at Lingfield, Surrey, having been duly sworn, states:-

I am Percy Collier, Temporary Constable, No. 235, stationed at Lingfield. At 2310 hrs. on Thursday the 24 Dec 42 as the result of a complaint received by telephone, I went to the Coach and Cage Cafe, Lingfield, where I arrived at approximately 2315 hrs.

I entered the front gate and flashed my torch round the building and garden but could see no person.

I walked along the side of the Cafe until I reached the corner of the back of the building. I then saw a soldier, the accused, standing about six feet from a window and opposite to it.

I started walking towards him and he turned towards a gate in the fence. I said "What are you doing here" and he said "I have just had a pee". I noticed the fly buttons of his trousers were undone and the bottom of his greatcoat was undone.

I started walking with him to the corner of the building when Mrs. Harris came from a side door to the Cafe.

I had some conversation with the accused and then asked him for his Pay Book which he produced and I took particulars from it. I then allowed the accused to go.

It was a bright moonlight night and was dry. I made an examination but could not find any trace of where any person had urinated.

In consequence of what Mrs. Harris said to me I examined the window near where I had seen accused standing and I saw the putty round the pane of glass near the catch had been scraped off and some loose putty scrapings on the ground. This appeared to have been freshly done.

During the time I was at the Cafe I saw or heard no persons other than Mrs. Harris and the accused in the vicinity of the Cafe.

The distance from the front gate of the Cafe to the corner of the back of the building is approximately 14 yards.

The distance from the corner of the back of the Cafe to the window where I saw the accused is approximately 7 yards.

A public footpath runs alongside the other side of the Cafe with a gate in the fence which is approximately 8 feet from the kitchen window.

At 0410 hrs. on Friday the 25th December 1942 I went to an Army billet at Lingfield in company of P.C. 337 Osment where I saw the accused and identified him as being the soldier I had seen at the Cafe.

The Accused declined to cross-examine this witness:

R. P. 83(B) complied with:

(Sgd) Percy Collier.
Percy Collier, Lingfield, Surrey.

SUMMARY OF EVIDENCE
in the case
of
B-87639 PRIVATE Durant, T.C.H. (Page 2)

SECOND WITNESS Allan Norman Osment, Police Constable No 337, stationed at Baldwins Hill, Lingfield, Surrey, having been duly sworn, stated:

"I am Allan Norman Osment, Police Constable No 337, stationed at Lingfield, Surrey, at 0315 hours on the 25th December 1942 went to the Coach and Cage Cage, Lingfield. I made an examination of the premises, and examined a kitchen window at the rear. The putty had been scraped from a pane of glass near the catch.

At 0410 hours accompanied by P.C. Collier, I went to an Army Billet in Lingfield. I there saw the Accused in bed. I said to him, 'Is your name Durant', he replied 'Yes'. X I said, 'I am going to arrest you for Attempted Housebreaking' and I cautioned him. Durant replied, 'Who's laying the Charge'.

He commenced dressing and I said, 'Where is your knife'. He took the knife (produced) from his right hand trousers pocket and un-fastened it from his trousers strap, and handed it to me. I said, 'Is this yours' and he replied 'Yes Army Issue'.

I examined the knife and on the blade I found what appeared to be a small piece of Putty and a small piece of red Paint. I preserved the Knife and at 0600 hours I handed it to Detective Sergeant Cox.

The accused was conveyed to Oxted Police Station and I was present when he was cautioned and charged with the Offence now before the Court and he replied 'No Sir'

X I said, 'You were seen earlier this evening in the ~~beach~~ Coach and Cage garden at the Coach & Cage Cafe' and he replied 'Yes'

The Accused declined to cross-examine this witness: R.P.83(B) complied with:

Allan N Osment 337

THIRD WITNESS Ernest Frank Cox, Detective Sergeant, stationed at Oxted, having been duly sworn, stated:

I am Ernest Frank Cox, Detective Sergeant, stationed at Oxted, did at 0600 hours on the 25th December 1942 receive from P.C. 337 Osment, the knife produced.

At 1100 hours on the 26th December 1942 I went to the Coach and Cage Cafe Lingfield, where I was shown a window, by the occupier - Mrs. Harris.

From around the pane of glass near the catch I took a sample of putty and a sample of paint.

At 1430 hours on the 28th December 1942 I handed the knife and samples of putty and paint to Dr. Walls at the Metropolitan Police Laboratory Hendon.

The Accused declined to cross-examine this witness:
R.P.83(B) complied with:

E. F. Cox D/Sgt

SUMMARY OF EVIDENCE

in the case of

No. B.87639 Pte. Durant, T. C. H.

FOURTH WITNESS:

HENRY J. WALLS, B. Sc., Ph. D., Metropolitan Police Laboratory, Hendon, N. W. 9

I herewith certify that it is my opinion that the attendance of the above mentioned witness is not readily procurable owing to the loss of time and additional expense; that a written statement of his evidence purported to be signed by him and received from the Civil Police, Lingfield, Surrey has been read to the Accused and included in this Summary Of Evidence; that the Accused has been given to understand that he may demand the above mentioned witness to attend for cross-examination provided if such person can be compelled to attend.

Statement of Evidence attached as "Appendix "A"

R. P. 4(G) complied with: C.B.M. Foster Captain
(C. B. M. Foster)
Officer Charged With The Taking Of This Summary Of Evidence.

FIFTH WITNESS:

ELIZABETH REBECCA HARRIS, Coach & Cage Cafe, Lingfield, Surrey.

I herewith certify that it is my opinion that the attendance of the above mentioned witness is not readily procurable inasmuch as this person is aged in years and suffers from a heart ailment and that in the opinion of a duly qualified medical practitioner (certificate attached as Appendix "B") this person is medically unfit to give evidence; that a written statement of her evidence purported to be signed by her and received from the Civil Police, Oxted has been read to the Accused and included in this Summary Of Evidence; that the Accused has been given to understand that he may demand the above mentioned witness to attend for cross-examination provided if such person can be compelled to attend.

Statement of Evidence attached as Appendix "C".

R. P. 4(G) complied with: C.B.M. Foster Captain
(C. B. M. Foster)
Officer Charged With The Taking Of This Summary Of Evidence.

Question to the Accused:

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

Answer by the Accused:

"I have nothing to say."

R. P. 4(C), (D), (E) & (F) complied with:

Taken down in the presence of the Accused this Sixth, Seventh and Eighth days of January, 1943.

C.B.M. Foster Captain
(C. B. M. Foster)
2nd Med. Sect. Fln., 81 Cdn. Arty. Coy., RCASC.
Officer Charged With The Taking Of This Summary Of Evidence.

EFC. Appendix "A"

S.C.A.

Surrey Constabulary

4

Station or Section Oxted. Division OXTED.

C.1037 -7,000- 10/2/41. Date 30th December 1942.

SUBJECT MATTER:

Name Henry J. WALLS. B.Sc. Ph.D.
(In full—Block Letters)

Address Metropolitan Police Laboratory. HENDON. N.W.9.

Age Occupation Physicist.

Will say:-

" On the 28th December 1942 I received from Detective Sergeant Cox the following:-

One Jack Knife, the property of Thomas Charles Henry DURANT, One sample of putty and One sample of Red paint, both from the window of the Gosch and Cage Cafe. Lingfield.

The above have been examined with the following results:-

On the blade of the Jack knife, close to the edge and about one third of an inch from the point, there was a small fragment of putty and a small fragment of red paint which were respectively identical in composition with the samples of putty and of red paint submitted.

There was a further fragment of putty in the nail slot of the blade.

Signature of Person making statement. Sd Henry J. Walls. B.Sc. Ph.D

Witness to the above

Drs. BENT & ROUGIER CHAPMAN,

SUNNYSIDE,
LINGFIELD.

Mr. Harris

This is to state that in my opinion above is quite unfit to give evidence, as he is suffering from 'Cardiac Disease & Blood Pressure', a condition that is not likely to improve, but progress.

Peny. C. V. Bent.

5/1/43

Appendix B

MB. Appendix "C" Not Used S.C.4.

Surrey Constabulary

Station or Section Oxted. Division OXTED.

Date 26th December 1942.

C.H.W.—2,000—10/42.

SUBJECT MATTER:

Name Elizabeth Rebecca HARRIS (Mrs.)
(In full—Block Letters)

Address Coach & Cage Cafe, Lingfield.

Age 66 yrs. Occupation Cafe Proprietress.

I have been the proprietress of the Coach and Cage Cafe Lingfield for the last twenty years. I live in rooms attached to the Cafe.

Just before 6 p.m. on the 24th December 1942 I locked and secured all the windows, doors and made sure the outside gate was properly fastened.

At approximately 11.10 p.m. on Thursday the 24th December 1942 I was in my sitting room when I heard a scraping noise in the Kitchen. Thinking it may be rats I crept quietly to the Kitchen and then saw a man standing outside the kitchen casement window and he was scraping the putty from a pane of glass near the window catch. It was moonlight and I could see this quite plainly, but could not identify the man, neither could I say whether it was a soldier or a civilian.

I went to the telephone near the foot of the stairs and I lifted the receiver quietly and whispered to the operator. I thought it would not be heard so I went upstairs and made another call from the extension.

I returned to the kitchen and could still hear the man scraping the window.

I then went to the back door with the object of seeing the Policeman arrive and also escaping should the man get in the Kitchen. I could still hear the scraping at that time.

I waited there a few seconds and then walked through my living room to the Cafe where I unbolted the side door which leads to the garden. As I did this I heard voices.

I went outside and saw two figures, one a Policeman and one a soldier. The Policeman said "Alright its the Police".

They were standing near the corner of the building which would be only a few yards from the window.

I heard certain conversation between the Policeman and the soldier and saw the soldier hand the Policeman some papers.

A few minutes later the soldier went away and I made a certain complaint to the Policeman and showed him the kitchen window. I later examined the side gate and found the fence broken and the staple out of the catch and a large shutter had been moved away.

I cannot truthfully say that the soldier who I saw with

Signature of Person making statement (Sgd.) E.R.Harris.

Witness to the above (Sgd.) Ernest F.Cox Det/Sergt.

MB.

S.C.4.

"Appendix 'C'"

Surrey Constabulary

Station or Section Oxted. Division OXTED.

Date 26th December 1942.

C 6997—7/43—10/2/43.

SUBJECT MATTER:

Name Elizabeth Rebecca HARRIS (Mrs.)
(In full—Block Letters)

Address Sheet 2.

Age Occupation

I saw with/

the Policeman was the man I saw at the window but I do know that the scraping noise was continuous until a few seconds before I saw both the Policeman and soldier together.

(Sd.) E.R.Harris.

Signature of Person making statement

Witness to the above (Sd.) Ernest F.Cox DET/SERGT.

4/B-147

PTE DURELLE A.

SCHEDULE.

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

Accused: G 52298 Pte Alyre Durelle, 10 Cdn Inf Bde Coy RCASC.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 40.	Guilty	Guilty	
2nd	AA 130(1)	Guilty	Guilty	
3rd	AA 11	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 43 and MML p 753, and in loss of kit see RP 44 fn 6.)

R.M. [illegible] beginning on (date) [illegible]

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

Time in confinement awaiting present trial—a total of 4 days, of which 0 days were spent in hospital.(1)

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

Sentence Awarded by the Court:

To undergo detention for Nine (9) Months.

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

21 Oct 44 Date awarded.

(Sgd) R. Willson Major President. (RP 45, 50.)

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

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

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

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

(For duties and powers see AA 54, 57, RP 27(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 154(4), 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

– Confirmed –

I direct that the accused be not committed to prison or detention barracks until further ordered.

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

(Sgd) K.G. Blumer Lt Col

Date 24 Oct 44 Confirming Officer. Commanding RCASC 4 Cdn Armd Div

Date 31 Oct 44

No illegalities or irregularities such as would warrant withholding confirmation. Ref Canada Exp Force

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

Accused.	Date.	Signature of Offr.
G52298 Pte Alyre Durelle 10 Cdn Inf Bde Coy RCASC	26 Oct 44	K.G. Blumer Capt. 40 10 Cdn Inf Bde Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 105. 483-147

RECEIVED 10 NOV 1944 JAG BRANCH CMHQ

CPA86 (To issue of AFA21) 40,000 pads 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of M.L. Brennan Lt Col Comd RCASC 4 Cdn Armd Div. dated 20 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or unconfirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 162, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G52298	Pte.	Alyre	Durelle	10 Cdn Inf Bde Coy RCASC.

PROCEEDINGS REVIEWED 11 Nov 44 JAG

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED Date 30 Oct 44 Office GHQ 2 Echelon 1 Army Gp D.J.A.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 21 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/43

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

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

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

A3. The Court is opened. The accused is (✓) brought before the Court. At 1000 hours trial commences.

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

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

R.M. ~~A5. Does/Does he or each/Do you object to the interpreter I have sworn. The interpreter is sworn(1). Do you object to the shorthand writer I have sworn. The shorthand writer is sworn.~~

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

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

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

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

President	Major.	R.F. Willson	Linc & Welld R.
Member	Lieut	K.W. McKearns	15 CDA Forest Regt RCA
Member	Lieut	A.B.K. Eayes	28 CAR
Judge-Advocate			
Prosecutor	Capt	A.J. Blamey	10 CIB Coy RCASC.
Defending Offr	Lieut	C.D. Glover	10 CIB Coy RCASC.

Questions by President: Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No.(1)

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

R.M. A8. The accused before arraignment makes(s) (are) (✓) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(5), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or for one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or opposal, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full nature and name of the accused making the plea.)

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

(1. RP 21, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings. 2. RP 32, RP 23. If otherwise, delete and make appropriate record per Notes.)

R.M. A10. The Court is cleared and reconsiders the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" "E"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused: Do you wish to make a statement? Ans. No. (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

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

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

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(2).)

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

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

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFE* 253 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 48-50, 97, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 109, 1323, *MML p* 90, 732-739. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(7), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

R Th

The accused, G52298 Pte. Alyre DURELLE, "C" Platoon 10 Canadian Infantry Brigade Company, RCASC, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 40
Army Act

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

in that he,

in the field, on 13 Oct 44, improperly and without authority used Canadain Military Vehicle No. CL4866483 for private purposes.

Second Charge
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, on 13 Oct 44, at 2200 hrs. did absent himself from his unit, 10 Cdn Inf Bde Coy, RCASC, until apprehended at 2315 hrs, 13 Oct 44.
(Total time absent 1 hr 15 mins.)

Third Charge
Sec 11
Army Act

WHEN ON ACTIVE SERVICE NEGLECTING TO OBEY UNIT PART I ORDERS

in that he

in the field on 13 Oct 44 at approximately 2315 hours was in Antwerp contrary to Unit Part I Order No. 223 paragraph 2166 dated 23 Sep 44, directing that all towns in 2 Cdn Corps Area are out of bounds.

Major
(C.R. Waller) Major
Officer Commanding
10 Cdn Inf Bde Coy, RCASC

In the field
19 Oct 44

To be tried by Field General Court-Martial

(M.L. Brennan) Lieut.Colonel
CRASC 4 Cdn Armd Div

In the field
19 Oct 44.

R3h

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFAD) 40/P&S/1497 (2068)

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

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G52298	Pte	Alyre	DURELLE	10 Cdn Inf Bde Coy RCASC

CONVENING ORDER.

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

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

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

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

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

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

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

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

PRESIDENT.

(Rank.)	(Name must be named. RP 106.)	(Unit.)
Major	R. F. WILLSON	Linc & Welld Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	K. W. McKEARNS	15 Cdn Fd Regt RCA
Lieut	A. B. K. RAYES	28 CAR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt G. B. W. BECKETT		4 Cdn Armd Div Sigs

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Belgium
(Country.)

(Signed personally. RP 105(C)(2).)

Date 20 Oct 44

Commanding C.R.C.A.S.C. 4 CDN. ARMD DIV.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution:

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

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

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

Re-exam: None.

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

RP 83(B) complied with.

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

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

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

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

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 1(i)*), or evidence by accused, as to facts or his character or both. (*See RP 43 fn 3, 46 fn 1, 85.*)

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

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

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

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by J.A. if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

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

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

(iii) Medical Certificate(s). (*KR Can 527.*)

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

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

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 114(C), MML p 759.*)

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

MEDICAL OFFICER'S REPORT

I certify that No. G52298 Pte. Alyre DUBELLE

of 10 Cdn Inf Bde Coy, RCASC is in a normal state of health, and fit to undergo Trial by Court martial.

Capt.
Medical Officer.

Station in the Field, in Belgium

Date 21 Oct 44

M. F. B. 246

Character Witness

Lieut. C.D. GLOVER, 10. C.T.B. Coy. R.C.A.S.C.
Sworn, States.

"Until about four weeks ago I was the accused persons pl. Comd. I was his pl. Comd for 6 mos. I know the accused particularly well. He is a good worker and an excellent driver. He did have our troubles but during the time I was with him he was definitely an asset."

No Cr. Ex.

R.P. 83 (B) Complied with.

Statement in Mitigation by ~~Prosecution~~ Defence - (R.Th.)

"a man with the capabilities, the accused regarding driving and maintenance is certainly an asset to an RCAF Sqdn. Following the shortest ~~time~~ that is necessary for this man to learn discipline he can go back and be of value to his Coy."

~~R.P. 33(b) complied with.~~

Exhibit "A"

RJM

SUMMARY OF EVIDENCE

in the Case of -

No. G52298 Pte. Alyre DURELLE, "C" Platoon, 10 Canadian Infantry Brigade Company, RCASC, charged with:

(1) AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

(2) ABSENTING HIMSELF WITHOUT LEAVE, at 2200 hrs 13 Oct 44 until 2315 hrs 13 Oct 44.

(3) DISOBEYING UNIT PART I ORDERS.

The CO directs that the evidence be taken on oath.

First Witness

D81242 Cpl. Young, G., 7 Cdn Provost Detachment.

Document purporting to be a signed statement of the evidence of D81242 Cpl. Young, G., 7 Cdn Provost Detachment, was read over to the accused, marked Exhibit A, and attached hereto.

I certify that in my opinion, owing to the exigencies of the Service, including the time involved, the attendance of this witness at the taking of the Summary of Evidence cannot readily be procured.

(Signature of Officer taking Summary)

I do not demand the attendance of this witness for cross - examination.

A Durelle
(Signature of the Accused)

Second Witness

A9557 Cpl. Burgard, F.W.J., Section Commander, 13 Section, "C" Platoon, 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 13 Oct 44, and still am Sec Comd, 13 Sec, "C" Pl, 10 Cdn Inf Bde Coy, RCASC. I am well acquainted with B52298 Pte. Durelle, A., whom I recognize here as the accused, and who, for the last year, has been a member of my section. At approx 1900 hrs 13 Oct 44, I parked my Norton Motorcycle No. C4866483 in the Section lines and turned in to sleep. At approx 0800 hrs 14 Oct 44 Pte. Durelle, in company with P816 Pte. Richardson, S.E., reported to me that 7 Provost Detachment, ANTWERP, had my M/C in their possession. I reported same to Lieut. Campbell in the presence of Pte. Durelle and Pte. Richardson. Lieut. Campbell asked them how they got passed the guard with the M/C, and they said they ~~xxxxxx~~ pushed it out the back way and started the motor outside the Pl lines. He also asked them if they had signed out or had a pass for 13 Oct 44 and they stated that they had not. Lieut. Campbell, Pte. Richardson and myself proceeded to ANTWERP and reclaimed the M/C. On return to Pl area, Lieut. Campbell placed Pte. Durelle and Pte. Richardson under Open Arrest.

The accused declines to cross-examine this witness.

F. W. J. Burgard
(Signature of Witness)

Third Witness

Lieut. G. A. Campbell, Platoon Commander, "C" Platoon, 10 Canadian Infantry Brigade Company, sworn, states:

I was, on 14 Oct 44, and still am, Pl Comdr, "C" Pl, 10 CIB Coy, RCASC. I am well-acquainted with B52298 Pte. Durelle, A., whom I recognize here as the accused. At 0800 hrs 14 Oct 44, Cpl. Burgard brought the accused along with Pte. Richardson to me and reported that the night before, they had taken a Norton M/C from the Pl area, had gone to ANTWERP with it, and were picked up by the Provost.. I asked the accused when he had taken the M/C out and how he got it out of the area and he told me he did not know what time he had taken the M/C out, but that they had not started the motor in the area, but had pushed the M/C out of camp and then started the motor. They also explained that they had been drinking. I asked them if they had a pass for the evening of 13 Oct 44 and they said they had not. As the M/C was still held by the Provost and required the signature of an officer before it could be retrieved, I took Cpl. Burgard and Pte. Richardson with me and got the M/C from the Provost, and returned to Pl area.

Third Witness (contd)

I placed Pte. Durelle and Pte. Richardson under Open Arrest.
The accused declines to cross-examine this witness.

G.A. Campbell Lt.
(Signature of Witness)

Fourth Witness

Major C. R. Waller, Company Commander, 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 9 Oct 44, and still am, Coy Commander, 10 Cdn Inf Bde Coy, RCASC. I am acquainted with G52298 Pte. Durelle, A., whom I recognize here as the accused. At 0930 hrs 9 Oct 44 Pte. Durelle was paraded before me for promulgation of sentence by FGCM. After the sentence was read to the accused I gave him a definite order that he was not to drive a WD vehicle or motorcycle as long as I was Coy Commander. I then asked Pte. Durelle if he understood the order, to which he replied, "Yes sir.".

The accused declines to cross-examine this witness.

C.R. Waller Major
(Signature of Witness)

Fifth Witness

K75644 CSM (WOII) Bridgement, H., CSM 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 9 Oct 44, and still am, CSM, 10 Cdn Inf Bde Coy, RCASC. I am acquainted with G52298 Pte. Durelle, A., whom I recognize here as the accused. I have known him for approx 9 months. At 0930 hrs, 9 Oct 44, I paraded the accused before the Coy Comd, Major C. R. Waller for promulgation of sentence by FGCM. On conclusion of promulgation, Major Waller gave the following order, "Now I am giving you an order, and this time I have a witness; as long as I am Coy Comd of this unit, you will never operate a WD veh or M/C under any circumstance."

The accused declines to cross-examine this witness.

H. Bridgement
(Signature of Witness)

The Third Witness, Lieut. G.A. Campbell, is recalled to give further evidence, and states:

On the 24 Sep 44, on the 1730 hrs parade, I read out Part One Order No. 223 dated 23 Sep 44 in its entirety to "C" Platoon, at which parade Pte. Durelle was present. Special emphasis was laid on para 2166 "OUT OF BOUNDS". The Part One Order which I have here is a copy of the Order which I read out on parade on that date.

The accused declines to cross-examine this witness.

G.A. Campbell Lt.
(Signature of Witness)

*The Part One Order referred to by the witness, produced, read over to the accused, marked Exhibit "B", signed by me, and att hereto.

(Signature of officer)

The accused was warned as follows:

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

The accused: I have nothing to say at this time.

H Durelle
(Signature of accused)

The accused declined to call witnesses in his own behalf.

I certify that RP 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 17th day of October, 1944.

[redacted] Capt.,
(Signature of Officer taking Summary)

CHARGE 10-A-7-9-10

Army Form B 252
(See King's Regulations)

R.C.A.S.C. Regiment

10 C.I.B. COY Battery / Squadron / Troop or Company

CHARGE against No. G-52297 Rank PTE.

Name DURELLE, A.

Place ANTWERP Date of Offence 13/10/44

OFFENCE W.O.A.S.

(1) IMPROPER POSSESSION OF W.D. VEH

(2) IMPROPER DRESS

(3) OUT OF BOUNDS.

W. E. S. Thomas Sgt.

Names of Witnesses:—

D-71242, SPL. YOUNG, G. 7 Pres DET ANT.

L-154267, L/CPL. SCHUR, " " " ".

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

Punishment Awarded

By whom Awarded

Adjutant

F.T.O.

This is Exhibit A referred to in the summary of evidence in the case of G52298 Pte. Durelle, A. taken before me this 17th day of October 1944.

(Signature of Offr taking summary)

IN THE CASE OF - REG. N
B-52298, PTE
DURELLE, A
10 C/B. COY. (R

EVIDENCE

While on patrol in the city of ANT
13 OCT 44, in company with L/Cpl Sc
I saw a m/c mount the sidewalk a
front of the GARRISON CINEMA, at appr
2315 hrs. On investigating I found the
m/c a soldier riding 'Triton' m/c. NO. C.
4766483, with another Can soldier as
a pillion passenger. He was not wearing
a Crash Helmet & informed me that the
m/c belonged to his Cpl. The soldier in
question also had no authority to be
in the city. I confiscated the m/c.
warned him that charges would be laid
& ordered him to return to his unit
immediately.

K.H. Young CPL.

I have read over & corroborate the above
statement. J.J. Schurr L/CPL.

REMARKS

PART ONE ORDERS

Last Order No. 222
Dated - 22 Sep 44

Part One Order No. 223
Dated - 23 Sep 44

by

MAJOR C. R. WALLER [redacted] OFFICER COMMANDING

10 CDN INFANTRY BRIGADE COMPANY, RCASC

Canadian Army Overseas

2164 COMPANY DUTIES

	23 Sep 44	24 Sep 44
Orderly Officer	Capt. H.V. Harnett	Capt. R.J. Chandler
Duty Clerk	Cpl. Trefry, A.F.	Sgt. Dobie, A.J.
Duty NCO, HQ	Cpl. Harris, W.A.	Cpl. Neilsen, J.C.

2165 DAILY ROUTINE - Sunday, 24 Sep 44

Reveille	- 0630 hrs	Dinner	- 1215 hrs
Breakfast	- 0715 hrs	Afternoon Parade	- 1330 hrs
Morning Parade	- 0800 hrs	Supper	- 1715 hrs
Sick Parade	- 0830 hrs	Tattoo	- 2200 hrs

2166 OUT OF BOUNDS

Republished from 2 Cdn CRO No. 391 dated 19 Sep 44.

1. All towns and villages in 2 Cdn Corps Area are out of bounds within the meaning of Cdn Routine Order (21 Army Gp) No. 169 which is republished for the infm of all concerned.

"2 The town is "out of bounds" to all ranks except for:

(a) Personnel on duty in or passing through the town.
(b) Personnel actually billeted in the town.
(c) Organized par ties under comd of an offr (see para 4).

3 There will be no parking of vehs in the town except in the established official car park.

4 Organized parties may enter the town if under comd of an offr, but will be subject to the following restrictions.

(a) An organized party will only enter the town for the purpose of bathing, attending a welfare entertainment, or for such other purposes as may from time to time be authorized.

(b) If the party arrives in vehs, the vehs will proceed direct to the official car park where the party will debus.

(c) The party will be marched direct from the official car park to its destination. It will not be permitted to fall out and disperse in the town at any time during its visit.

(d) Immediately on completion of the purpose for which it entered the town, the party will fall in and march back to the car park where it will embus and move off.

5. All personnel quartered in the town will carry a pass stamped by the unit.

6. All ranks will be back in billets by 2200 hrs unless they are on duty.

7. The permit for estaminets and hotels to serve drinks will be 1200 hrs to 1400 hrs and 1800 hrs to 2100 hrs. Light wines and beers only may be served to ORs.

- P.T.O. -

This is Exhibit "B" referred to in the summary of evidence in the case of G52298 Pte. Durelle, A. taken before me this 17th day of Oct. 1945.

(Signature of Offr taking summary)

MAIL

PART ONE ORDERS

Dated - 23 Sep 44

2167 OUT OF BOUNDS CONT'D.

8. All brothels are out of bounds.

9. All offrs in the town will be prepared to establish their identity on the demand of any offr or member of the Mil Police."

2. This order will be strictly enforced.

2168 IMPROVEMENT OF RD MOV
Republished from 2 Cdn CRO No. 392 dated 19 Sep 44.

1. A study of traffic problems during the recent rapid adv indicates that the great majority of traffic tangles and blockages were caused by one of the following faults:

(a) Halting nose to tail on rd.
(b) Double banking.
(c) Overtaking by convoys.
(d) Nose to tail driving by hy and slow moving vehs which prevents overtaking by lighter vehs under authorized conditions.
(e) Halting of vehs and convoys without sentries to wave on passing traffic.

2. Shortage of TC resources precludes all routes being regulated or even patrolled. It is the duty of every offr to take effective action to check traffic offences. Offrs will not overrule TC personnel but will act in the absence of such personnel or to assist them. This duty will be notified to all offrs and disciplinary action will be taken in any case of failure to perform such duty.

3. Overloading of rds has been caused in a number of cases by convoys travelling on routes for which a mov authority had not been obtained. In future, cases of overloading of rds to the detriment of normal mov will be dealt with by putting such unauthorized mov off the rd until the congestion has cleared, when they will be allowed to proceed.

2169 NEWSPAPER/S & T REPORT CENTRE

1. Pls are reminded that items for publication must be in the hands of the CSM by 1200 hrs Monday of each week.

2. Pers are invited to submit poetry, articles, or any such matter that they consider worthy of publication. Submit above items either direct to CSM or through your pl reporter.

W.A. Smith Capt.,
for: (C.R. Weller) Major,
Officer Commanding
10 Cdn Inf Bde Coy, RCASC.

Exhibit "B" R.J.B.

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G52298	Private	Alyre DURELLE	10 Cdn Inf Bde Coy, RCASC

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

	Within last 12 months		Since enlistment	
For	A.W.L.	2 times	A.W.L.	2 times
For	Breaking Camp Orders	1 times	Breaking Camp Orders	1 times
For	Conduct to the Prejudice etc.	1 times	Conduct to the Prejudice etc	1 times
For		times		times

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

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

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

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

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

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

~~The accused at the present time is under sentence for~~

~~Beginning on the~~

~~Subject of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and ~~44 days~~ days in military custody, making a total of ~~44 days~~ days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24 years 9 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 20 November, 1941

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

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

9. The accused is in possession of or entitled to ~~air force decoration, or air force reward (or military, or military)~~ State any ~~air force~~ military decoration or reward.

Canadian Volunteer Service Medal and Clasp

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

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

Permanent Force
unit
.....dated....., and in his regiment (or corps), the rank of

.....dated.....

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

.....Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

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

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank Private Name Alyre DURELLE of 10 Cdn Inf Bde Coy, RCASC Regiment

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

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	7 October, 1944 in the Field in Belgium	A.W.L. Sec 15 (1) Army Act	Forfeiture of all ordinary pay for 20 days	NIL

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

Signed this 18th day of October, 1944 [signature] Capt.
A.C. 10 Cdn Inf Bde Coy, RCASC

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

Exhibit C (R.)

No G52295 Name DURELLE, A. Sqn, Battery, or Company Corps R.C.A.S.C. Date of enlistment 20-11-41 GC Badges Service or Proficiency Pay

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

MFM 6 (AFB 122) 40/PAM/126 (3428)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Feb 43	Pte.		Conduct to the Prejudice of Good Order & Military Discipline Sec 40 AA	Lt.Isbelle Sgt. LaSelle	7 days Pay	4 Feb 43	Capt. J.G. Mallon	Forf 7 days Pay FR&I 149 (2)
Field	30 Dec 43	Pte		Sec 11 AA Breaking Camp Orders Entering Public House Placed OUT OF BOUNDS	L/Sgt. Carter, F.	4 days C.B.	21 Dec 43	Capt. L.J. Henderson	
U.K.	17-5-44	Pte.		Absent without leave. (From 2300 hrs 17 May 44 to 1700 hrs 18 May 44. TTA 18 hrs) Sec 15 (1)AA	A9557 Cpl Burgard F.E.J.	7 days Fd Pun Forf 7 days pay	19 May 44	Major C.R.Waller	Auto forf 1 days pay

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Belgium	26-9-44	Pte.		Sec 15 (1) AA WOAS, AWL from 1700 hrs 26-9-44 til 1400 hrs 28-9-44 TTA 1 day 21 hrs		20 days forf of pay	7-10-44	F.G.C.M.	C.R.Waller Major.

CERTIFIED TRUE COPY from the Regimental Books in my custody

Capt.
Officer ic Regimental Books

HB-23.

Ste. Dunelle A.

SCHEDULE.

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

Accused: G 52298 Pte Alyre Duralle 10 Cdn Inf Bde Coy RCASC.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 40	Not Guilty	Not guilty	
2nd	AA 9(2)	Not Guilty	Not guilty	
3rd	AA 40 (alternative)	Not Guilty	Not guilty	
4th	AA 15(1)	Not Guilty	Guilty -	
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and as to loss of kit see RP 44 fn 6.)

At present ~~under sentence for~~ beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 56(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial: a total of 6 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To forfeit all seniority pay for 10 days -

(Sgd) Anderson Capt (Sgd) E.M. Weeks Lt Col.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

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

Date (Sgd) Commanding

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

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals receive no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 94. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

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

— Confirmed —

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

(Sgd) E.M. Weeks Lt Col.

Date 7 Oct 44. Commanding RCASC 4 Cdn. Armd Div.
Confirming Officer.

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

Accused.	Date.	Signature of Offr.
G 52298 Pte Alyre Duralle 10 C I B Coy RCASC	9 Oct 44	[illegible] Capt 10 C I B Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN Vol 103 413-23.

CF A68 (To Dep of AFAIs 40, P & R-1688) (1950) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col. M. Brennan Comd RCASC dated 4 Cdn Armd Div. 3 Oct 44.

ACCUSED.

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

Number.	(a) Prmnt R. (b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 52298	(a) Pte	Alyre	Duralle	10 Cdn Inf Bde Coy RCASC.

PROCEEDINGS REVIEWED 30 Oct 44
[illegible]
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on date(s) 7 Oct 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 11/106

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

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

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(as) attached thereto (1) The Court is satisfied that it is properly convened and constituted(2), accused is (were) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

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

A4. The Prosecutor produces a Medical Certificate that accused is (was) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans N/A.
The Interpreter is sworn.(1) Do you object to _____ as shorthand writer? Ans N/A.
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the Presidnent and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No. (2)
(1. RP 110. 2. If no objection, waiting member remains. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

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

President	Major	E.H. Dennish	5 Cdn Armd Regt RCA.
Member	Captain	O.F. Dutchak	Algonquin Regt.
Member	Lieutenant	W.A. Findlayson.	21 CAR.
Judge-Advocate	Captain	H.A. Hansen.	HQ 4 Cdn Armd Div.
Prosecutor	Captain	H.C. Hankshill	10 C I B Coy RCASC.
Defending Offr	Lieutenant	C.D. Tilson.	10 C I B Coy RCASC.

(1. RP 25, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 95 (E) and fn 2 were not followed. See DI p 2.)

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(1)

A8. The accused, before arraignment, makes(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on some or more charges (RP 62(1), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 30), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. Four fmns of record see reference in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (was) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no (are) amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. Where ensure that one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A68a as record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. No 156

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

D2. The Prosecutor makes (an) ~~(ors)~~ opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

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

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2)~~ The Court is closed, and considers the submission.(3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence save on ground of irrelevance.* (*RP* 40(*C*), *116, 115.*)

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

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

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement~~s~~ as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet~~s~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *MFB* 355 *or IVB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement~~s~~ and Conduct Sheet~~s~~ and in mitigation of punishment ?(1) Ans No.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP* 71 (*D*). *Give sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 108, 119(*A*), *KR Con* 308, 330, 343-346. *Overseas RO* 309, 2323. *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(*5*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 64(*1*) (*b*), 168(*1*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 367. *As to assembly and dispersal of records after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The accused has elected to be tried by F.G.C.M. GM

CHARGE SHEET

The accused, G52298 Pte. Alyre DURELLE, "C" Platoon 10 Canadian Infantry Brigade Company, RCASC, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 40
Army Act

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

In the Field, on 26 September, 1944, at 1330 hrs did negligently operate W.D. vehicle No. CL4239196 resulting in an accident in which damage was occasioned to the said vehicle in the amount of £7. 3. 0

Second Charge
Sec 7 (2)
Army Act

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER in that he,

In the Field, on 26 September, 1944, did leave his vehicle W.D. No. CL4239196, after having been ordered by his Pl Comd, Lieut. G.A. CAMPBELL, to remain with said vehicle until the breakdown lorry arrived to recover it.

Third Charge
(Alternative)
Sec 40
Army Act

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

In the Field, on 26 September, 1944, at 1700 hrs did leave his vehicle W.D. No. CL4239196 unattended.

Fourth Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE, in that he,

In the Field, on 26 September, 1944, at 1700 hrs, did absent himself without leave from his Unit, 10 Cdn Inf Bde Coy, RCASC, until he surrendered at 1400 hrs 28 September, 1944. (Absent 1 day, 21 hrs)

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

(M. L. Brennan) Lt.-Col.,
CRASC, 4 Cdn Armd Div.

HQ/FIELD.
20 Oct 44

C. L. Walker Major,
Officer Commanding
10 Cdn Inf Bde Coy, RCASC

EUM

FIELD GENERAL COURT-MARTIAL

(AFA55 (In lieu of AFA3)
40/PA&S/1697 (2958))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C82298	Pte		Alyre	DUMELLE	10 Cmd Inf Bde Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Oct 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

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

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

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

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

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E. H. WARWICK		5 Cdn A Tk Regt. RCA

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	O.P. DUTCHAK		Algonquin Regiment
Lieutenant	R. A. BINLAYSON		21 C.A.R.

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain	R. de la B. GIROUARD		4 Cdn Armd Div Tps Coy RCASC

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Captain	H.A. Hanson		Hq 4 Cdn Armd Div

On Active Service in the Fd

in BELGIUM
(Country.)

Date 5 Oct 44

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

Commanding C.R.C.A.S.C. 4 CDN. ARMD. DIV.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

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

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 99(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 86(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

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

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accd to go on parade. He refused and did not go on parade.

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

Re-exam : None.

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

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 86(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

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

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

(i) Opening address by Defending Offr. (*RP 98(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 45 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 3.*)

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

(v) Closing address (*in matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 9-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

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

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

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

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

(iii) Medical Certificate(s). (*KR Can 587.*)

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

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 586. As to certified copies of regimental books see AA 165 (1) (g) (h).*)

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not forms part of record of proceedings. (*RP 99(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

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

6HQ

MEDICAL OFFICER'S REPORT

I certify that No. 952298 Pte Durrelle A.
of 10 C/B. Can ACASC. is in a normal state of health,
and fit to undergo Trial by Court martial.

J. Spurling Capt
Medical Officer.

Station Driffield.

Date 7th Oct 44

M. F. B. 246

Prosecution

1W D 91202 Pl. M. Mc Intosh A.
10 CMB by R Cook sum.

Dec 16 Sep 44 I was driving a lorry in convoy. ~~I was~~ I stopped, stopped my motor and about ½ minute later the accused ran his lorry into the rear of mine. I did not sign all my statements. The collision was not hard.

X to accd.

I stopped because the convoy stopped and stopped without turning lorry in front of me. It might be longer or shorter than 30 seconds I was stopped until I was hit. Before I stopped I was in 3rd gear travelling 10 m.p.h. I only took three more forward a foot by the blow.

Re-exam. I ~~was~~ was travelling 10 yds behind the lorry in front.

R P 3181 complies with.

L.

Lw Pros

Lr. G. A. Campbell to Cubley

Please serve.

Dec 26 Sep 22 an accident in my pl. was reported to me. I went to the scene of the accident and away. I went away for a breakdown and found Cubley again. When I came back the accident was not with his vehicle as required by steering ~~wheel~~ wheel. He had no spare wheel. I had previously ordered him to stay with the vehicle until the breakdown arrived. He did not return with the vehicle and I did not see him again until 2 Sep at approx 1 pm by R.S.

X Exam:

Mc Intosh's lorry did not hit any other lorry. I do not think Russell's lorry ~~was~~ was driven into Mc Intosh's lorry but was pushed into that vehicle by Brown who was driving behind.

No Rus am: RP83 (B) complies with

B.

C 35-194 Pt Gnn Ct 10 Oct
Cpl Drake sworn.
On 16 Sep I was
spare driver of Brown's
vehicle. Just whilst
we were into the mth. of the
accused. Dunells had no
spare driver.
Mr Campbell came to
the scene of the accident
and then left. After
he left the accused
went away and did
not return. He left his
vehicle with me.
X Exam.
Dunells vehicle was
travelling about 15 mph
at the time of the
accident. Mr Campbell
told me to stay with
the vehicles until he
got back with the
breakdown.
Re-Exam.
Exam by Ct. The accused
left at approx at 16 30 hrs.
saying he was going with
Brown for a meal. He then
and something to eat and
he would be back to
relieve me.
R P 83 (B) complied with.

4W Pvt K/15661 Pte Warrington aft 10 Cubby Release Exam.

On 16 Sep 17 I went to the scene of the accident with a Lieutenant. I got there at 1900 hrs. The casualty was not present. Same was entrusted into Sub Units. At approx 1915 hrs I left the casualty.

To Exam: I have noted that the casualty was a careful driver. His behaviour is good.

To Duncan.

Examined: The casualty was not present at roll call 1800 hrs 17 Sep 17.

RP 83 181 complies not

4W Pvt HF/15/1 Cpl Tunks C.T. to Cubby Release Form.

At 1400 hrs 17 Sep 17 the casualty reported in to me at the unit. and duly came from absence.

To Exam.

RP 83 181 complies not.

C W
Pros Capt A J Blamey 1 Aust R.
Coy Direct sworn.
On 27 Sep 44 I estimated
damage on C4 42 89196
at 8 p.s.o. The damage
was done by the front of
the lorry. The lorry
was stop by Pte Durelle.

Xd L Evans
RP P3181 complies not.

Defence.

1W
Def C 5-2298 Pte Alyn Durelle
A Aust Coy Direct sworn
One mile before the
ambush spied 20 m.p.h.
I was 50-60 yds from
the vehicle in front. I
means a clear up
signal from a D.R. and
closed up to 15 yds and
slowed down to 15 m.p.h.
The lorry in front of
me stopped fast. I
put on my brakes and
could not stop. My
brakes were good. I was
carrying two cans pet.

Dr. Compere came back to the accident. He gave us bill for bumping the bones. Burton and Green were there. To order was given by Dr Compere.

I went over to pick up 3 pieces of pipe which fell from the lorry. Brown came with me.

After Dr Compere I got to get something to eat. ~~Burton Brown~~ The lorry was not smashed. The motor was unbolted and Green was with both wheels.

I returned to the spot of the accident and found the bones gone. In one hrs or got back 3 minutes to 8. We started home almost at once. walking. We got some rides and then slept with the white Bear. The next day we started walking again. We could not get a ride and walked home

I.

Examination
I hit no outside long
grade hard. I did not
see any sigs. No spare
driver.

I see Dunn was
going to get something to
eat— a bite and a wash.
He went a good walk
away.

When a long steady
down avoiding to Divis
Regs. the driver is supposed
to stay with it.

And one delays in
getting nuts as we lost
to change our Brg many
to Fr. We were away
5½ hrs. up to 17.00 hrs. and
not away after the

RPB3(B) complied with

NW FH50 W3 Ph- Gilbert N.C. 10 cwt
by lay R case sworn.
I SRO Mt convoy.
The ground was rising
the surface last long
in the packet. I signalled
that they to close up.
about 1 mile out of
Felton Dunn hit- v.t.m.
interval was to great.

L Exam

I knew the road. a shop cannot was coming up and they had to stop behind me - knowing when I got up to the front they had stopped at the corner. I started two vehicles at front slowing up. They are pretty short spaces and do not stop fast.

No Reexam

RP 83 (B) complied.

Sig. Off.

1. No negligence shown.
(2) Gets down.
2. No disobedience
3. Two vehicle not in attitudes. As vehicle immediately in front of accused did on his own admission. he did his best to get home.

Pros Off.

1. Driver in any doubt must stay with vehicle. not sufficient to show space driver if absent long.
2. Absence voluntary and delay in returning unreasonable

I.

Jq

Jw cannot see matter of fact to consider.

Reasonable doubt explained.

Unanimous assent explained per Jw Davis.

90

Chandler

Lt. C.O. Glenn. 1st Lt K
Cty Reserve Troops.
Was pl off of duties
for 5 mos. He was
one of our best divers.
and although he had
our trouble he was one
of our best workers.

Lt Evans.
RP 8 S B / complied.

No. G52298 Name DURELLE, A | Bdn, Battery or Company | Corps RCASC | Date of enlistment 20-11-41 | CC Badges | Service or Proficiency Pay "B" | MFM 6 (AFB 1137) 433/P&S/136 (5/43)

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

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Feb 43	Pte		Conduct to the prejudice of good order & Military discipline Sec 40 AA	Lt. Labelle Sgt LaSalle	7 days pay	4 Feb 43	Capt. J.G. Mallon	Forf 7 days Pay FR&I 149 (2)
Field	30 Dec 43	Pte		Sec 11 AA. Breaking Camp Orders: Entering Public House placed OUT OF BOUNDS	L/Sgt Carter, F.	4 days C.B.	21 Dec 43	Capt L.J. Henderson	
U.K.	17-5 44	Pte		Absent without leave (from 2300 hrs 17 May 44 to 1700 hrs 18 May 44. TTA 18 hrs) Sec 15 (1) AA	A9557 Cpl Burgard FMJ	7 days Fd Pun Forf 7 days pay.	19 May 44	Major C.R. Waller	Auto Forf 1 days pay

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

Officer i/c Regimental Books

(PTO)

"A" EHW

M.F.D. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G52258	Private	Alyre DURELLE	10 Cdn Inf Bde Coy, RCASC

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

	Within last 12 months		Since enlistment	
For	A.W.L.	1 times	A.W.L.	1 times
For	Breaking Camp Orders	1 times	Breaking Camp Orders	1 times
For	Conduct to the Prejudice etc	1 times	Conduct to the prejudice etc	1 times
For		times		times

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

~~—or—~~

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

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

2. The accused has not been previously convicted

~~—or—~~

~~Previous convictions of the accused by a court-martial or a civil court, summary awards under Air Force Act, A.F.A. 68, Section 47 of the Army Act, and dispensations with trial under A.A. 71 are set out in the Schedule annexed to this statement.~~

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

~~—or—~~

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

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 56 days in military custody, making a total of 56 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24 years 9 months

6. The date of his ~~commission~~ specified in his ~~record of service~~ attestation paper is 20 November, 1941

~~7. The service which the accused is allowed to reckon towards discharge is ———.~~

~~8. The accused is entitled to reckon ——— service for the purpose of determining his position, etc.~~

9. The accused is in possession of or entitled to ~~be in possession of or entitled to~~ ~~air force~~ ~~military~~ ~~air force~~ ~~military~~ decoration or reward.

Canadian Volunteer Service Medal and Clasp

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

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

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

dated

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

In the rank of years.

In the rank of years.

In the rank of years.

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

SCHEDULE

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

Name of Regiment

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

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

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

Signed this 3rd day of October, 1944 Capt. A.C.C. 1 Cdn Armd Bde Coy, 1 Cdn ACASC

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

SUMMARY OF EVIDENCE

in the case of

No. G52298 Pte. Alyre DURELLE, "C" Platoon, 10 Canadian Infantry Brigade Company, RCASC, charged with:

(1) NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

(2) DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

(3) (Alternative)
NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

(4) ABSENTING HIMSELF WITHOUT LEAVE, from 26 September, 1944 to 28 September, 1944.

The CO directs that the evidence be taken on oath.

First Witness

Lieut. G. A. Campbell, "C" Pl Comdr, 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 26 Sep 44 and still am "C" Pl Comdr, 10 CIB Coy, RCASC. I am a acquainted with G52298 Pte. Durelle, A., whom I recognize as the accused. On 26 Sep 44 my platoon drew petrol at 134 Pet Depot, Aubers, and after the draw I decided to send the pl back to pl area by sections, under control of sec NCOs. On checking up on the sections, at about 1340 hrs, it was reported to me by one of the M/Cs that there had been an accident in Armentiers, involving two lorries of "C" Pl. I immediately proceeded to the scene of the accident and found both lorries with broken radiators. Both lorries were Chevrolets, 3-ton, GS, No. CL 4239195 on charge to B91970 Pte. Brown, H.R., and CL 4239196 on charge to G52298 Pte. Durelle, A. C35194 Pte. Green, C.E., spare driver to veh CL 4239195. Lorries and pers were of my pl. I asked them how the accident occurred and both Pte. Durelle and Pte. Brown replied to the effect that they had been proceeding along the road in Armentiers in convoy at approx 15 m.p.h. at 15 yds distance between vehs, and on approaching a corner to turn right onto the main road, the veh in front of Pte. Durelle, driven by C101229 Pte. Pitts, G.R. came to a sudden stop. Pte. Durelle could not stop in time and hit the lorry Pitts was driving and Pte. Brown's lorry, which was the last lorry of the convoy ran into the rear of Pte. Durelle's lorry. I instructed Pte. Durelle and Pte. Brown to stay with their lorries until the breakdown arrived to take them in tow. I then returned to Coy HQ area and instructed K 75667 Sgt. Waddington, A.J., my pl Sgt. to return to the scene of the accident with the breakdown lorry and take the two damaged vehs in tow and return them to "C" pl area. I then took two empty lorries to the scene of the accident to off-load the petrol from the two damaged lorries, arriving there at approx 1700 hrs. When I arrived, I found Pte. Green in charge of both vehs. Pte. Green told me Ptes. Durelle and Brown had not returned to their damaged vehs, I started to look for them. The time was about 1750 hrs. I looked in two or three cafes, two hotels and two pubs and I could not find them. In all, I spent about one hour looking for them. I then instructed Pte. Green to stay with the lorries until the breakdown lorry arrived to bring the damaged vehs into pl area, and I returned to "C" Pl. I did not see either Pte. Durelle or Pte. Brown again until the 1700 hr parade 28 Sep 44, when I placed them under arrest.

The accused declines to cross examine this witness.

G.A. Campbell Lt.
(Signature of Witness)

Second Witness

C35194 Pte. Green, C.E., Driver Mechanic, No. 11 Section, "C" Platoon, 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 26 Sep 44, and still am, Driver Mech, No. 11 Sec, "C" Pl, 10 CIB Coy, RCASC. I am well acquainted with G52298 Pte. Durelle, A., whom I recognize here as the accused. On 26 Sep 44 I was spare driver to Pte. Brown, veh No. CL4239195. We were proceeding from Aubers to "C" Pl area with a load of petrol, and on approaching an intersection at about 15 m.p.h. the veh in front of us, driven by Pte. Durelle, stopped suddenly and our veh ran into it. No signal was given for the stop. The radiator of the lorry was damaged, also the steering. Pte. Durelle's lorry also had a damaged radiator and was stopped in front of ours. About twenty minutes later, Lieut. Campbell came along and inquired about the accidnets. I told his both vehs would be tow jobs. Lieut. Campbell then told me to stay with the vehs until the breakdown lorry arrived. Ptes. Durelle and Brown were standing on the opposite side of the road when Lieut. Campbell gave me this order. Lieut. Campbell then proceeded in the direction the convoy had gone. I have no idea what time it was when Lieut. Campbell was speaking to me. After some time waiting, Ptes. Durelle and Brown said they were going for a shave, wash and something to

Second Witness (contd)

eat. They left and walked up the street. About ten minutes after they had left, Lieut. Campbell arrived with two lorried and asked where the accused were. I told him they had just left for a shave, wash and something to eat. I helped unload petrol from damaged vehs to the vehs Lieut. Campbell had brought up. On completion of the loading, Lieut. Campbell told me to remain with the damaged lorries and then left. A few minutes later the breakdown lorry arrived. Sgt. Waddington, who came up with it, only gave me ten minutes to look for Ptes. Durelle and Brown while he was hooking up the lorries. I made a search and could not find them. I then returned to "C" Pl area with the two damaged vehs in tow.

The accused declines to cross examine this witness.

(Signature of Witness)

Third Witness

K75667 Sgt. Waddington, A.J., Platoon Sergeant, "C" Platoon, 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 26 Sep 44, and still am, Platoon Sergeant, "C" Platoon, 10 CIB Coy, RCASC. I am well acquainted with 052298 Pte. Durelle, A., whom I recognize here as the accused. On 26 Sep 44 I was instructed by Lieut. Campbell to proceed to Armentiers with the breakdown lorry to tow two damaged vehs to the wksp. I arrived in Armentiers at approx 1900 hrs. Upon arrival, I found that the only person with the lorries was Pte. Green. I then ordered Pte. Green to search for Ptes. Durelle and Brown. Pte. Green returned in approx 15 minutes and stated that he could not find them. The breakdown crew completed their job of preparing the two damaged vehs for towing and we then returned to Coy locn. We left Armentiers at approx 1945 hrs and upon arrival at Coy locn at 2300 hrs I reported to Lieut. Campbell that the drivers of the two lorries I had brought in could not be found and that I had left without them. At 1000 hrs. 27 Sep 44 I called the roll of the pl and Pte. Durelle and Pte. Brown did not answer their names. Lieut. Campbell attended this parade. The next time that I saw the accused was at 1500 hrs 28 Sep 44. I asked the accused if they had reported in and they said they had reported to Cpl. French at the Pl Orderly Room lorry at 1400 hrs. At the evening parade, held at 1700 hrs 28 Sep 44, I was instructed by Lieut. Campbell to place a guard on the accused, which I did.

The accused declines to cross examine this witness.

(Signature of Witness)

Fourth Witness

R87571 Cpl. French, C.J., Section Corporal, No. 15 Section, "C" Platoon, Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 28 Sep 44, and still am, Section Cpl., #15 Sec, "C" Pl 10 CIB Coy, RCASC. I am well acquainted with 052298 Pte. Durelle, A., whom I recognize here as the accused. I was in the Ord Rm lorry when Pte. Durelle and Pte. Brown reported in. I looked at a watch that another soldier had and noted that it was 1400 hrs. Pte. Durelle and Pte. Brown then left the Ord Rm.

The accused declines to cross examine this witness.

(Signature of Witness)

Fifth Witness

D91202 Pte. McIntosh, A., spare driver, No. 15 Section, "C" Platoon, 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 26 Sep 44, and still am, spare driver #15 Sec, "C" Pl, 10 CIB Coy, RCASC. I am acquainted with G52298 Pte. Durelle, A., whom I recognize here as the accused. I was in convoy, returning from 134 Pet Depot to "C" Pl area with a load of petrol. The driver of the veh, Pte. Pitts, was sitting beside me, I had been driving the Chevrolet, GS, veh, No. CL4264678 all day. When p assing through Armentiers, the convoy slowed down, and finally stopped and I shut off the motor. We were stopped about half a minute and a lorry ran into the back of me. It was not a very heavy bump and I did not get out of the lorry right away. I then got out and found that a lorry was at the rear of my lorry and the radiator was leaking. The driver of the lorry was Pte. Durelle and the veh Pte. Brown was driving was behind Durelle's. At this time the convoy moved off and I got in my lorry, pulled in behind another section, and continued in convoy.

The accused declines to cross examine this witness.

A McIntosh
(Signature of Witness)

Sixth Witness

Capt. A. J. Blamey, Workshops Officer, 10 Canadian Infantry Brigade Company, RCASC, sworn, states:

I was, on 26 Sep 44, and still an Officer In Charge of Workshop, 10 CIB Coy, RCASC. At about 2330 hrs on 26 Sep 44, Chevrolet GS 3-ton lorries, Nos. CL4239195 and CL4239196 were towed into the Wksp area by the breakdown lorry. The following day, 27 Sep 44, I appraised the damage to the vehs and estimated the damage to veh CL 4239196 as follows:

Damage to the front end of the vehicle requiring a new radiator, water pump and fan.

Estimated cost of repairs:

Labour: 6 hrs @ £ 0.3.0. per hr.....£ 0.18. 0
Materials: .....£ 6.05. 0
Total.....£ 7.03. 0

The accused declines to cross examine this witness.

A J Blamey Capt
(Signature of the Witness)

The accused was warned as follows:

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

The accused : I have nothing to say at this time. A Durelle
Signature of accused

The accused declined to call witness on his own behalf.

I certify that RP 4 has been complied with.

Taken by me in the fd in the presence and hearing of the accused this first day of October 1944.

(Signature of Offr taking [illegible])

4T-91

Rifle Durham C.T.

SCHEDULE.

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

Accused: B75145 Rfn Charles Thomson Durham 2 OR of C

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

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

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

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

Time in confinement awaiting present trial—a total of 19 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 62.)

Sentence Awarded by the Court: To undergo Detention for a period of one (1) year.

(Sgd) ..... Judge-Advocate, if any. 25 Jan 45 Date awarded. (Sgd) Fred Moon Major President. (RP 45, 50.)

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

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

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

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

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

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

Confirmed

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

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

(Sgd) Jas Roberts Brig

Date 26 Jan 45 Commanding 8 Cdn Inf Bde. Confirming Officer.

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

Accused.	Date.	Signature of Offr.
B75145 Rfn C. T. Durham	29 Jan 45	J. Macleay Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AS 160, 47-91

RECEIVED 6 MAR 1945 JAG BRANCH

FIELD GENERAL COURT-MARTIAL

(RAISED (To time of AFAB) 40 F & S/1946 (Corr))

4/38B

Convened by Order of Brigadier J.A. ROBERTS Comd 8 Cdn Inf Bde dated 24 Jan 45

ACCUSED.

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

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B75145	Rfn	Charles Thompson	DURHAM	2OR of C

PROCEEDINGS REVIEWED

Capt Riedy Capt 7 Mar 45

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

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 25 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

19/126

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF CT OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fons RQs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

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

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

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

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

A5. President to accused: ~~Do you object to~~ as Interpreter? Ans ~~The Interpreter is sworn (1). Do you object to~~ as shorthand writer? Ans ~~The shorthand writer is sworn (1).~~

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

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

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

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

President	Major	Fred T. Moon	N. Shore R
Member	Capt	R M Hargrave	R de Chaud
Member	Capt	W.P. Sramek	Q.O.R. of C.
Judge-Advocate			
Prosecutor	Capt	S.W. Beam M.C.	Q.O.R of C
Defending Offr	Lt	C.H. Jefferson	Q.O.R of C

Questions by President: Is the Prosecutor a lawyer? Ans N/A Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 105, 106. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 88 (B) and fn 2 were not followed. See DF p 3.)

A8. The accused B75145 Rfn Charles Thomson Durham before arraignment make(s) (no) ~~No~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

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

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. Empress III p. 102

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

President to accused : Do you wish to make a statement ? Ans. No.(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 25(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form* E. *5. Statement, if any, recorded per Notes.*)

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

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

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

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

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP* 113. *2. RP* 40(*F*), *see* 80(*D*). *3. RP* 40 *fn* 12. *4. RP* 40 *(on* 2, 3.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf RP* 89-5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 3, 86(*C*). *As to the further opportunity in para* E2 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*B*).)

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

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 1 of the Schedule is dated and signed.(2)
(*1. AA* 34(*3*) (*d*), *RP* 45, 120(*A*). *2. AA* 34(*3*), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 3. *Accused and witnesses are sworn. Evidence is recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. MFR* 255 *or AFB* 296. *2. MFM* 6 *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 3 *para* 1.)

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

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 34(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *See sentence only, computation of the punishments laid down in AA* 41, 44 *and the provisions, as to be awarded to cover all charges in all charges sheets on which accused found guilty. RP* 46. *As to sentences see AA* 64, 128, 132, *RP* 46-50, 69, 108, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 2019, 2020, *MAML p* 60, 737-738. *As to sentences assigned for civil offences by the law of England see AA* 40(*2*), *MML p* 130. *When sentence already under sentence of imprisonment, or detention see AA* 44(*B*), 98(*C*), *KR Can* 564. *2. RP* 50. *As to release from arrest, see Convening Offr see KR Can* 567. *As to assembly and disposal of Record after trial, see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, B75145 Rfn Charles Thompson DURHAM, 1st Bn The Queen's Own Rifles of Canada, a soldier of the Canadian Army Overseas, (AF), is charged with:

FIRST CHARGE
SEC 15 (1)
ARMY ACT

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, did absent himself without leave from 2355 hrs 16 Dec '44 until apprehended in GHENT at 0950 hrs 0950 hrs 10 Jan '45. (Total time absent - 24 days, 9 hrs, 55 mins).

In the Field
21 Jan '45

(W. M. Lett) Lt-col
Comd 1st Bn The Q O R of C

To be tried by Field General Court Martial.

24 Jan 45

Jas A Roberts Brig
Cmd 8 Can Inf Bde.

FIELD GENERAL COURT-MARTIAL

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

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

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

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B75145	Rfn		Charles Thompson	DURHAM	QOR of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on the (date) 24 Jan 43 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

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

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

4. ~~I am unable to appoint an Officer to serve on the Court as a Member as President for the reason that he is~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

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

PRESIDENT.

Maj (Rank.)	F.F. Moar (Must be named. RP 106.)	N Shore R (Unit.)

MEMBERS.

Capt	R.M. Lavigne	R de Chaud
Capt (Rank.)	W.P. ~~C~~Hassick (Named or detailed. RP 106.)	QOR of C (Unit.)

WAITING MEMBER.

Lt (Rank.)	B.A.J. McElwaine (Named or detailed, if any. RP 106.)	N Shore R (Unit.)

JUDGE-ADVOCATE.

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

On Active Service in the Fd

in Holland (Country.)

Dat 24 Jan 43

Jno G Roberts (Signed personally. RP 105 fn 2.) Brig (Rank.)

Commanding 8 Cdn Inf Bde. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

(CFA 90, 1b Sers of AFA 2)
No. 9 A.G.S. (1697 16162)

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

A 12245 Cpl H. Jones, RWR, sworn, states:

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

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

Re-exam: None.

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

RP 82(H) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

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

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

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

(ii) At option of accused, statements by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 2, 42 *fn* 1, 46.)

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

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 88(C).)

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

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Con* 565(*a*).)

(vii) Summing up by J.A. *if any.* (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

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

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

(i) Charge Sheet. (One sep.)

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

(iii) Medical Certificate(s). (*KR Con* 567.)

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

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Con* 560. *As to certified copies of regimental books see AA* 149 (1) (g) (h).)

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

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 52(9), *RP* 118(C), *MML p* 759.)

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

B75145 Rifmn DURHAM, C.T. 1st Btn QOR

I have examined the above named soldier 25 Jan 45 and find him fit to stand trial by FGCM

R B Rowed Capt.
for (M.O. 5 Cdn FDS RCAMC)

R fm Dunham C. T. B 75145 joined up as a volunteer Oct 16 th 1941. trained in Canada until Nov 1942 and was sent to the West Indies he served in Jamaica until May 1943. Dunham arrived in England in July 1943. Joined unit a field unit in England until August 1944. He was then sent to Normandy as a reinforcement for the 3 Div of Canada.

TERWINDT
STRAATWEG 32
BERG EN DAL
TELEFOON 298
KENGETAL K 8805
GIRO No. 44518

(1)

BERG EN DAL. 19

Summary of Evidence
in the case of
B 75145, Rfn Dunham, C.J. "B" Company, 1st Battalion The Queen's Own Rifles of Canada (IAF) charged with absenting himself without leave (IAA sec 15 (1))

By direction of the Commanding Officer, the evidence is taken on oath:-

1st witness

~~On December 16 last~~ B 66089, Cpl Scott, K.F. "B" Coy, 1st Bn Q.O.R. of C having been duly sworn, states:-

I am section leader of number 7 section ~~—~~ to which the accused belonged. On December 16, I at 23.55 hrs. I called him for guard and he was not present.

The accused declines to cross-examine this witness

K.F. Scott Cpl

TERWINDT
STRAATWEG 32
BERG EN DAL
TELEFOON 298
KENGETAL K 8805
GIRO No. 44518

BERG EN DAL, 19

Second Witness

B Coy, 1st Bn R.O.R of C
B44539 Rfn McGuire, G.W. having been duly sworn, states :-

I am Company Clerk of "B" Company My records show Rfn Durham, C.J. as absent from 23.55 hrs. 16 Dec '44 to 09.50 hrs 9 January '45.

The accused declines to cross examine this witness

G. W. McGuire.

Third Witness

M 38123, Lt[c] Hamilson, W.

Owing to the exigencies of the service, the presence of the above witness is not easily procurable. I attach hereto ~~as Appendix B~~ certificate of apprehension, signed by the above, and read over to the accused.

A/Capt [illegible]

I do not require the presence of the above witness

C.J. Durham

K. 3849

TERWINDT
STRAATWEG 32
BERG EN DAL
TELEFOON 298
KENGETAL K 8805
GIRO No. 44518

BERG EN DAL, 19

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

The accused declined to make a statement or to give evidence on oath.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that R.P. H (c), (d), (e), (f), and (g) have been complied with.

Capt
1st Bn Princess Louise Fusiliers of Canada

In the Field
16 Jan '45

A

SUMMARY OF EVIDENCE

In the case of B75145, Rfn DURHAM, C T, "B" Company, 1st Battalion, The Queen's Own Rifles of Canada, (AF) charged with absenting himself without leave (A.A. Sec 15(1))

By direction of the Commanding Officer, the evidence is taken on oath:-

FIRST WITNESS B66089 Cpl SCOTT, K.F., "B" Coy, 1st Bn The QOR of C having been duly sworn, states:-

I am section leader of number 7 section to which the accused belonged. On December 16, '44 at 2355 hrs I called him for guard and he was not present.

The accused declines to cross-examine this witness.

K.F. Scott, Cpl

SECOND WITNESS B44539, Rfn McGUIRE, G.W., "B" Coy, 1st Bn The QOR of C, having been duly sworn, states:-

I am Company clerk of "B" Company. My records show Rfn DURHAM, C.T. as absent from 2355 hrs 16 Dec 44 to 0950 hrs 9 January '45.

The accused declines to cross-examine this witness.

G.W. McGuire

THIRD WITNESS B3823 L cpl THOMLISON, W.N., Ghent Det., 2 Cdn L of C Pro Coy.

Owing to the exigencies of the service, the presence of the above witness is not easily procurable. I attach hereto as Appendix "A", Certificate of Apprehension, signed by the above, and read over to the accused

A/Capt P.C. Rea

I do not require the presence of the above witness

C.T. Durham

The accused was cautioned as follows:

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

(Con'd)

and may be given in evidence"

The accused declined to make a statement or to give evidence on oath.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that RP A (c), (d), (e), (f), and (g) have been complied with.

In the Field
16 Jan '45

P.C. Nes, A/Capt
1st Bn The Queen's Own Rifles
of Canada

This is Appdx "B" Ref. to in Summary

CERTIFICATE UNDER ARMY ACT, SECTION 53 (1) (j)

Certified that No. B.75145 Rank Rfm Name Durham, C.T.

of the "B" Coy G.O.R.R. 3 Cdn Div Regt., surrendered to No. M.2021

Rank L/Cpl Name Thomlison, W.H. was apprehended by 2 Cdn L of C Provost Coy of the

Detach at Ghent Belgium at 0750 hrs, on the 10th

day of January as an absentee without leave.

He was wearing Military Uniform at the time of his ~~surrender~~ arrest.
Civilian Clothes.

Place Ghent Belgium
Date 10.1.44

H.W. Mahaffy Lieut.
Canadian Provost Corps.
I/c Ghent Detach

GHENT DET. 2 CDN. L of C. PROVOST CCY

CHARGE 10/1/296 Ghent

Army Form B
(See King's Regulation

"B" Coy
G.O.R.
3 Cdn Div

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. B.75145 Rank Rfn

Name Durham, C.F.

Place Ghent Date of Offence 10 Jan 45

OFFENCE W.O.A.S.

L/A.W.L. from . . . . . .
Until Apprehended by Member Cdn Provost Corps
at approx 0950 hrs 10 Jan 45.

M.W. Mahaffy
M.W. Mahaffy Capt
C/o Ghent Detach

GHENT DET. 1 Cdn C.P.C. PROVOST COY

Names of Witnesses:—

M.3823 L/Cpl Thomlison, R.J.

B.56539 L/Cpl Hhank Ferris, K.E.

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

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Copy of charge to be forwarded to formation H.

EVIDENCE in the Case of

Statement of
B.75145 Rfn, Durham, C.T., B Coy 4.C.R.
3 Cdn Div

1. At approx 0950 hrs 10 Jan 45, ~~xxxxxx~~ On information received, accompanied by B.56539 L/Cpl Ferris, E.E., I proceeded to Zingem, Belgium, and called at 10 Heirweg. I there accosted a soldier whom I now know as the m/n OR. He could not produce authority allowing him to be absent from his Unit.

2. I placed him under close arrest, escorted him to Det H.Q. where his particulars were taken, later he was escorted to 10 Bn Guard Room Leopold brks, Ghent, where a live body receipt was obtained and is now held at this Det H.Q.

W.H. Hodgson L/Cpl
W.3025 Hodgson, W.H.

1. I have read the statement of evidence above and corroborate same.

E. E. Ferris L/Cpl
B.56539 Ferris, E.E.

REMARKS

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

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

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D75145	Pte	Charles Thompson DURHAM	1st Bn The Q O R of C

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

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

For AA SEC 15 (1) ..... 1 times.
For AA SEC 15 (1) ..... 1 times.
For AA SEC 15 (1) ..... 1 times.
For AA SEC 15 (1) ..... 1 times.

Date of first entry in Field Conduct Sheet 10 Nov 41

Date of last entry in Field Conduct Sheet 11 Nov 44

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

*Strike out if not applicable.

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

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 15 days in military custody, *i.e.*, No days in open arrest, 15 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 22 years

6. The date of his attestation ~~enlistment~~ ~~calling up for military service~~ 16 Oct 41

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of: C V S M and Clasp

Obtain the military decorations to any held by accused.

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

Date of Promotion.

~~In the substantive rank of~~ .....

~~In the war substantive rank of~~ .....

~~In the acting rank of~~ .....

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

(21114) W1667/968 100,000 4/45 A.A.L.W. Ltd. Gp.698 Forms/B.296(War)/2
(72458) W1295/1573 80,000 6/42

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

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

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

Signed this 21st day of January '45

(S. M. [illegible]) Lt-Col
Comdg 1st Bn The Q O R of C

FIRST SHEET DESTROYED 16-4-42

No. B75145 Name DURHAM, Charles | Sqn., Battery, or Company B | Corps CIC | Date of enlistment 16-10-41 | G.C. Badges | Service or Proficiency Pay 1.50

M.F.M. 6 (A.F. B.122) 40 P.S. 8136 (2068)

Date of last entry in Company Conduct Sheet 17-1-42 | No. and date of last drunk Thompson | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. G.H. MacFarland, Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Newmarket	10-11-41	Pte		AA Sec 15(1) AWL from 2230 hrs 4-11-41 until 2010 hrs 9-11-41 (4 days 21 hrs 40 min)	Cpl Whitmore	7 days CB	10-11-41	Major Craig	Forf 5 dys pay PRI
Niagara	13-6-43	Pte		AWL from 0600 hrs 13-6-43 to 0145 hrs 14-6-43 AA 15(1)	Sjt Highfield	5 dys C.B.	14-6-43	Capt Coons	Forfeits 1 dy pay
				-----Entries complete to date -------		J.M. Davis, Lieut.			
Field	5Jul44	Pte		AWL whilst proceeding on draft from CTS to 3 CIRU from 1310 hrs 5 Aug44 until apprehended by CPC at London at 1500 hrs 5 Aug44 (Total absence 1 hr 50 mins) AA 15(1)	Documentary	5 dys pay FRI 149(2)	10Aug44	C.S. Hadley Lt-col	Total forf 5 dys pay to undergo stop $1/6/6 for cost of apprehension
Field	6Aug44	Pte							

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Nov 44	Pte		AA 15(1) AWL from 1600 hrs 27 Nov 44 until 1630 hrs 27 Nov 44. Absent 16 dys 2 hrs 30 mins.	L cpl Morton L cpl Rhyan	28 days Pay	1 Dec44	Lt-col S.M. LETT	Forfeits 17 dys under PRAI 149 (1)(a) Total forfeiture 45 dys pay.

CERTIFIED A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

(J P SEWARD) CAPT
ADJT, 1st Bn The QOR of C

3N-110

Pte. Durkin, W.M.

SCHEDULE.

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

Accused : .....

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

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

~~At present, further punishment for~~ ~~awaiting promulgation~~ ~~[illegible]~~

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

Time in confinement awaiting present trial—a total of 57 days, of which 31 days were spent in hospital.(1)

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

Sentence Awarded by the Court :

To be imprisoned with hard labour for two years

(Sgd) "A P L DesRosiers" Major — Judge-Advocate, if any.
11 June 45 — Date awarded.
(Sgd) "Y Bernier" Major — President. (RP 45, 90.)

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

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

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

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

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 347-377. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(F). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be [illegible] before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 373. Duties and powers of reviewing [illegible] AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

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

I confirm

~~I direct that the accused be not committed for further punishment [illegible]~~

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

(Sgd) "C D Thompson" Lt Col
Date 16 June 45 — Commanding 5 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 376, 377.)

Accused.	Date.	Signature of Offr.
B149063 Pte Durkin W M	19 JUN 45	"M Warden" Lt A/Adj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SM 410

FIELD GENERAL COURT-MARTIAL (CPA86 (In lieu of APAM 40/F & R/1080 (R144)) 4/38B

Convened by Order of Lt Col C D Thompson A/ Comd 5 C I B dated 14 May 45

ACCUSED.

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

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B149063	Pte	~~Certified true copy~~ [illegible] DJA	William Michael	DURKIN	R H C

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 14 May & 11 JUN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 34/42

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

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn HQs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for seals and instrs on how to record addresses, evidence, etc., which costs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 65-70, 73, 74, 94, 103, 108, 112.)

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

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

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1700 hours trial commences.

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

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

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

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

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

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

Ans Nil (2)

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

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

President	Major	Y	BERNIER	R DE MAIS
Member	Captain	HJS	PEARSON	Calg Highrs
Member	Captain	PA	Brien	R de Mais
Judge-Advocate	Major	APL	DesROSIERS	2 Cdn Inf Div
Prosecutor	Lieut	JD	Metrakos	R H C
Defending Offr	Lieut	WA	ROSE	R H C

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

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

A8. The accused ..... before arraignment make(s) (no) ~~(a)~~ plea AD
(2)

(1. If a special plea is made for separate trial (cl save on more charges (RP 62(1), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the advocate made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

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

(1. RP 26, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 71, RP 33. If otherwise, delete and make appropriate record per Notes.)

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol V Fol 78

PROCEEDINGS REVIEWED D.J. Adv. Gen. 8 Cdn Inf Bde 21 Army Gp

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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

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

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

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

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

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

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

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

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

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

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

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

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

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(5) (*g*) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

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

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

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP* 71 (2). *One sentence only, comprised of the punishment or punishments next down in AA* 41, 44 *and its provisos, is to be awarded to cover all charges on all charge sheets on which accused thereof pleads guilty. RP* 46. *As to sentences see AA* 44, 130, 182, *RP* 46-52, *KR,* 118, 119(*A*), *KR Can* 308, 326, 562-566, *Overseas AO* 3091, 2223, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 40(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3) (*b*), 98(7), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE (A.F.(Can) Para 567)

I certify that I have this day examined B149063

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

Station Field "AN Berneaud" (Sgd)

Medical Officer Capt

Date 11 Jun 45 1 R H C

Unit

12.

MEDICAL OFFICER'S CERTIFICATE (Reg(Can)Para 567)

I certify that I have this day examined B149063

Durkin W M A and in my opinion he is fit/~~unfit~~ to undergo

trial by Court Martial.

Station Field

Date 14 May 45

"Leince Gaulreault" (Sgd)
Medical Officer Capt

Unit

OATHS FOR USE IN COURTS-MARTIAL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

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

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

First Witness for Prosecution.

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

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

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

Re-exam: None.

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

RP 83(B) complied with.

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

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

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

(i) Opening address by Defending Offr. *(RP 86(C), 87(C), 92(C) (D).)*

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

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

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

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

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

(vii) Summing up by JA, if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 507.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to furnishing in evidence a certified copy in lieu of original see KR Can 586. As to certified copies of regimental books see AA 163 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(3), RP 118(C), MML p 755.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

CFA46 (In lieu of AFAS) 40/FAS/1497 (2058)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B149063	Pte	William Michael	DURKIN	R H C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 12 May 1945 endorsed by me, (~~or on the annexed information~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable that the person(s) above mentioned should be kept in close custody for the purpose of being tried by such a Court~~).

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~ thereat the Offr mentioned hereunder.

(RP 106(A). Delete if none appointed.)

5. I also appoint as Judge Advocate

PRESIDENT.

MAJOR (Rank.)	Y BERNIER (Must be named. RP 106.)		R DE MAIS (Unit.)

MEMBERS.

CAPTAIN	H.J.S. PEARSON		CALG HIGHRS
CAPTAIN (Rank.)	P.A. BRIEN (Named or detailed. RP 106.)		R DE MAIS (Unit.)

WAITING MEMBER.

LIEUT (Rank.)	C.M. WILLIAM (Named or detailed, if any. RP 106.)		CALG HIGHRS (Unit.)

JUDGE-ADVOCATE.

MAJOR (Rank.)	A.P.L. DES ROSIERS (Must be named, if any. RP 106.)		HQ 2 Cdn Inf Div (Unit.)

On Active Service in the Fd

in GERMANY (Country.)

Date 12 May 1945

"C D Thompson" (Signed personally. RP 105 fn 2.)

~~A/Brigadier~~ A/Commanding 5 Cdn Inf Bde

Convening Officer.

Lt Col (Rank.)

~~Brigadier~~

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

AD

CHARGE SHEET

In the case of B149063 Private William Michael DURKIN 1st Bn The Black Watch (RHC) of Canada, a soldier of the Canadian Army Active Force is charged with:

FIRST CHARGE
Sec 12(1)(a)
Army Act

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE,

IN THAT HE

In the Field at Terborg after having been warned that his company was to go into the attack, absented himself without leave with intent to avoid taking part in said attack from 0545 hr 1 Apr 45 until 1215 hrs 14 Apr 45. Total absence 13 days 7 hrs.

Signed "In the Field"
at ALHORN, GERMANY

THIS 22 day of Apr 45.

"C D Thompson" Lt Col
Officer Commanding
1st Bn The Black Watch
(RHR)of Canada.

5 May 45

To be tried by F.G.C.M.

"C D Thompson" Lt Col
A/Comd 5 C. I. B.

12 Oct 45

J.A.G. Nav

Original proceedings concerning
Becker to DTD.

Date D.S. 10/Durkin WM/s

Dated 11 Oct 45

Judge Advocate
NO, Navy

On behalf of the accused the Defending Officer makes the following statement:

Acc. did not intend to avoid a particular service - was rather an intention to get some where where he could quietly think over the mental condition he was suffering under.

Defending Officer states he is not ready to proceed on plea of NOT guilty.

Court is Adjourned.

1. AD

On 11 Jun 45 Court re assemble pursuant to adjournment
Prseent same members.

1st Witness
For Prosec. D81041 CSM J P Young 1 Bn The Black Watch RHC sworn states:

On 1 Apr 45, at approx 0515 hrs I searched the area for the accused, Pte Durkin, whom I recognize, he could not be found I came across his equipment and arms. I did not see Accused until 16 April 45 when he came back to unit under close arrest.

Cross-Examined

I did not speak to accused on morning of 1 April 45, acc. left a sten gun behind and i carried ti into action.

By JA

I was not present at briefing of pln. I do not know if acc. was briefed for an attack.

RP 83 (b) complied with - Witness withdraws.

2nd Witness
For Prosec D81169 HQMS TD Tweedale 1 Bn The Black Watch sworn, states:

At approx 1215 hrs on 14 April 45, the accused Pte Durkin was on lunch parade at "B" Ech. He told me he was LOB and that he had permission to visit the educational corporal. On 16 April 45 at about 0800 hrs I asked the acc if he was AWL. He answered that he w s I put him under close arrest.

AD

2.

Cross Examined

Acc. was not carrying any weapon at that time, that I remember. We were 35 miles from Bn.

1st Witness for Defence

On morning of 1 April 1945 at about 0400 hrs I was in a house iwth my section. I was very nervous, there were airbursts coming at us. and I was very nervous. I went AWL I took my steal helmet, but no weapon of any kind. I was under a strain and I feel I was not responsible for my actions.

Cross-Examined

On that date, 1 April 1945 I had been with that platoon about 6 months. Our section comdr L/Cpl Matulis briefed our section that here was going to be an attack. This was at 0500 hrs on 1 April 45. I knew that an attack was to be carried that morning.

Summing up by Prosecution

Unit was to attack that morning. Accused admits orders passed down to section, also that he did not participate in attack. Acc intended to avoid that particular action. Charge has been proved.

Summing up by Defending Officer

Accused knew of impending attack but he was extremely strained. Acc left weapon behind him and was carrying no equipment which shown he was not acting reasonably. Acc volunteered for navy in 1943 when he was 19. Lied to join. served on a destroyer. Honorably discharged asmedically unfit, for nervous condition. Was in Navy from May 43 until March 44. Volunteered in Army as GS arrived in England in Jun 44. In July 44 TOS RHC. Since then with exception of one 48 hr leave, served continuously at 1 RHC or 5 CIB. Nervous condition may have resulted from action with the Navy. Not responsible for his actions because of extra strain..

By JA

You must remember that the accused must be presumed innocent until proven guilty. Definition onus of proof on shoulders of prosecution. If guilt not proved beyond reasonable doubt acc must be found NOT guilty. By reasonable doubt is meant the doubt of a common sense man arising out of the evidence and not cased on imagination, fancy or undue simpathy. Acc is charged with desertion under AA 12(1) (a). To establish charge proc must prove absence and intent of not coming back or of wanting to avoid particular service. Should you think that such an intent was not proven beyond reasonable doubt but that acc was away without leave then you may bring in a lesser finding of Guilty of AWL. You are to decide on matters of facts and of law but should take my advice on the latter. The president, prosecutor, defending officer declare they have no further points they wish clarified.

AD

Statement in Mitigation

May Court consider that acc saw service in Navy and Army. Length of service in European zone of operations. Acc only 20 yrs. Volunteered twice for active service.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B149063	Pte	DURKIN W.M.	1st Bn The Black Watch (RHR) of Canada

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

a Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AA Sec 40 ..... six ... times

For AA Sec 15 (2) ..... two ... times

For AA Sec 6 (2)(a) ..... one ... time

For .... times

2. Previous convictions of the Accused by a court martial or a civil court are set out in the Schedule overleaf.

3.a The Accused at the present time is under sentence for ..... nil .....

beginning on the ..... day of .....

4. The Accused has been awaiting trial on the present charges for .nil days in civil custody, and for 8 ... days in military custody, making a total of ..8xxx days of which nil .. days were spent in hospital.

5. The present rate of the Accused is ..$1.30 per day.

6. The date of his attestation is ..28 Aug 39.

7. The service which the Accused is allowed to reckon is ..1.10/12 xxxxxx YEARS .....

8. The Accused is in possession of #

Nil

9. (If the Accused is a warrant officer or NCO). The Accused has served continuously, without reduction, to the present date - N/A

Date of Promotion

In the substantive rank of ....

In the war substantive rank of ....

In the acting rank of ....

EXPLANATION - If any matter in any of the above

State the military decorations (if any) held by Accused.

"A"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B149063	Pte	DURKIN W.M.	1st Bn The Black Watch (RHR) of Canada

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AA Sec 40 ..... six ... times

For AA Sec 15 (2) ..... two ... times

For AA Sec 5 (2)(a) ..... one ... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....nil.....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for .nil days in civil custody and for 8 ... days in military custody, making a total of ..8xxx days of which .nil.. days have been spent in hosp.

5. The present age of the accused is 20 yrs 10 mos 12 yrs

6. The date of his attestation is 28 Aug 43

7. The service which the accused is to be brought to reckon is ..1.10.42 xxxxxxx years.....

8. The accused is in possession of

Nil

9. (If the accused is a warrant officer or non-commissioned officer). The accused has served continuously without reduction, to the present date - N/A

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION - If any entry in any of the preceding paragraphs is not applicable, the word "Nil" should be inserted therein.

* Strike out if not applicable

State the military decorations (if any) held by accused.

"A"

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of APR 45

"E I Duffield" Capt Adjt

1st Bn The Black Watch

(RhR) of Canada.

Sheet destroyed 28 12 43

No. B149063 Name DURKIN W M | Sqn, Battery, or Company | Corps CIC | Date of enlistment 28-6-43 | QC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM/136 15418

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc MBC JENNERY | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	29.12 43	Pte		AA 40 Neglect to the prejudice quarters in a dirty condition	Sgt Swann " Brannigan	Admonished	30.12.43	Maj RB Hughes	
Long Branch	12.2 44	Pte		AA 40 Unlawful possession of prop of a comrade i.e. a wire frame for a large pack.	L/Cpl Bethley	6 days CB	12.2.44	Col WB McGloughlin	Ex B "AD
Long Branch	15.2 44	Pte		AA 40 Conduct to the prej etc whilst a defaulter failed to carry out his duties as hut orderly	Sgt Peddle Cpl Bethley L/Cpl Fox	5 days CB	18.2.44	Col WB Mcgloughlin	
Long Branch	29 Feb 44			Donated blood at Lakeshore Blood Donors clinic New Toronto Ont on 29 Feb 44					
Long Branch	20.3. 44	Pte		AA Sec 40 Neglect to the prej neglect to attend to fires allowing same to go out	Cpl Montgomery	5 days CB	21.3.44	Col WB Mcgloughlin	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Long Branch	1.4.44	Pte		AA15(2)Failing to appear at place of parade appointed by his Commanding Offr.	Cpl Murray	5 days CB	4.4.44	Col WB Megloughlin	
Long Branch	17.4.44	Pte		AASec40 Cond to the prej etc failed to get up at reveille 17 Apr 44 according to Camp Standing Orders.	Sgt Reid	Admonished	17.4.44	Col WB Megloughlin	
Long Branch	17.4.44	Pte		AA Sec15(2)Failing to appear at a place of parade failed to report for dutyat 0630 hrs17 Apr 44 at Mens Mess.	Cpl Murray	28 Days Detention	17.4.44	Col WB Megloughlin	
Brampton France	13.5.44	Pte		Gran"ed one day remission of sentence	of above		13.5.44	Capt WH West	
	13.Sep.44	Pte		AA Sec6(2)(e)When acting as guard sleeping at his post. 0530 hrs 13 Sep 44	P1545 Sgt McDonald	28 days FP B 28 days pay	16Sep44	BM 5 Cdn Inf Bde	Summary disposed Auth by DAAG 2 Cdn Inf Div
Field	17Jan45	Pte		AA Sec 40 Neglect to the prej of good and mil discipline in that he at approx 17 00 hrs 17 Jan 45 after being ordered by Sgt Fisher to report to fatigues neglected to do so.	B38474 Sgt Fisher J K	14 days pay	19 Jan 45	BR Ritchie Lt Col	14 days pay FR&I 149(2)

Certified true copy of regtl record held in my possession

"B G Duffield"
1 RCSC Capt Adjt

5 X 89

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Lt. Durocher, A. J.
Missing

1/14 CMHQ 40-1
40-P-2-5-43
(Stores of)

98-S.

O. H. M. S.

Pte DUROCHER, A.J.

M. F. B. 270

98.S

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this NINETEENTH day of OCTOBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 5 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior competent officer]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*~~[I am unable to appoint XX
[Three Officers to form the Court
[Field Officer as President
[Three Officers having more than one year's service
XXXXX
for the following reasons, namely:XX]~~

* Omit if not applicable

In my opinion, military exigencies, namely, the dispersion of Units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistant with Appendix "A" to D.H.C. 772 on the trial of person named in the annexed schedule.

CAPT. W.M.W. SHAW, A.D.J.A. 2 CDN DIV IS HEREBY APPOINTED JUDGE-ADVOCATE

Proceedings Reviewed

President.

Rank.	Name.	Regiment.
Major	D.F.Robertson	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
Capt.	G.Arcinasseault	R. de Mais.
Lieut.	W.Doheny	R.W.C.
Capt.	WAITING MEMBER A.J.Mills	u.c. 5 Cdn Inf Bde

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (G.V.Whitehead) Brigadier
Commanding 5 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D/82458 Pte. DUROCHER, Antoine Joseph, R.H.C. a soldier of the Canadian Army Overseas.	FIRST CHARGE A.A. Sec 15(3) See charge sheet attached.	Not guilty	Not guilty	
	~~Second~~ CHARGE Alternative A.A. Sec 40 See charge sheet attached.	Not guilty	guilty	
	THIRD ~~CHARGE~~ CHARGE A.A. Sec 40 see charge sheet attached.	Not guilty	guilty	
	FOURTH CHARGE A.A. 15(1) See charge sheet attached	Not guilty	guilty (special finding) To undergo detention for 120 days 22 Oct 42 D.K. Robertson Maj.	I Confirm (G.W.).

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No, sir.

(Signed) (G.W. Whitehead) Brigadier — *Commanding* 5 Cdn Inf Bde

(Signed) D.K. Robertson Maj. — *Convening Officer* (*e*) — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

329

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 22nd day of October 1942.

D.K. Robertson Maj.
President of the Court Martial.

* See footnote (f) on page 764 M.M.L. 1940.

~~I certify that the terms of *A.A. Sec. 40(1) was not complied with.~~

C. Certificate in case of death sentence.

~~Sentence~~ ~~Date~~ ~~Hour~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer neither has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison, until further orders.~~

Signed this 23 day of Oct 1942

G.W. Whitehead
Brig. Commanding 5 Cdn Inf Bde
Confirming Officer.

Promulgated and extracts taken in the case of D82458 Pte. Durocher, A.J.

(*a*) (Dated) 24 Oct 42 (Signed) J.D. Caulfield
S. D. CAULFIELD LT. COL. O.C. 1ST BN. THE BLACK WATCH (R.H.R.) OF CANADA.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

3

MEDICAL OFFICER'S REPORT

I certify that No. 32458 Pte Durocher A.J.
of 1 D.H.C. is in a good state of health,
and fit to undergo Trial by Court martial.

J. H. Reed Capt
Medical Officer

Station In the field
Date 22 Oct 42

D.K. Robertson Maj.

M. F. B. 246

CHARGE SHEET

The accused D-82458 Pte.Durocher, [illegible] Joseph, 1st Bn The Black Watch (RHR) of Canada, Overseas, a soldier of the Canadian Army, Active Force, is charged with:-

FIRST CHARGE:
Army Act.
Sec 18(2)

While on Active service, wilfully injuring with intent thereby to render himself unfit for service ~~rendered unfit to carry on duty~~

in that he,

at approx. 2200hrs 3rd June 42 did cause a rifle to be discharged and thereby injured his right shoulder.

~~First~~ Second CHARGE
Alternative
Army Act.
Sec 40

While on Active service, conduct to the prejudice of goo d order and military discipline

in that he,

At approx. 2200hrs 3rd June 42 negligently handled a rifle as to cause it to be discharged and thereby injured his right shoulder and rendered himself temporarily unfir for duty.

~~SECOND~~ Third CHARGE
Army Act
Sec 40

While on Active Service, conduct to the prejudice of good order and military discipline

in that he,

At Eastbourne on 3rd Jun 42 was in possession of a document purporting to be a genuine leave pass, knowing it not to be genuine.

~~THIRD~~ Fourth CHARGE
Army Act
Sec 15(1)

While on Active service, absent without leave, from 1600hrs 2nd June 42 until 1200hrs 3rd June 1942.

Signed IN THE FIELD

THIS 19 DAY OF Oct 42

[illegible] Lt.Col
Officer Commanding,1st Bn The Black Watch (RHR) of Canada, Overseas.

To be tried by FGCM.

B2

I DO/ ~~DO NOT~~ WISH TO HAVE AN OFFICER APPOINTED BY THE COMMANDING OFFICER TO DEFEND ME AT MY TRIAL BY FIELD GENERAL COURT MARTIAL.

Maj BR Ritchie
Name of officer, if available

Bouchard AJ Pte.

D Carnegie Capt

Signed IN THE FIELD
THIS 19 DAY OF Oct 42

9

11.

7

A Army Form A 9.

**All printed matter not applicable to the particular Court (etc.) held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the field
on the 22 day of October 19 42 by order of
Brigadier J. V. Whitehead
Commanding 5 Cdn Inf Bde
dated the 19 day of October 19 42.

President.

Major D. K. Robertson, Calg. Highrs

Members.

Capt A. J. Ellis, HQ 5 Cdn Inf Bde
Lieut W. Doheny, RHC.

Capt W. M. W. Shaw, ADJA, 2 Cdn Div, Judge Advocate.

Trial of* D 82458 Pte Antoine Joseph Dumoulin,
1st Bn The Black Watch (RHR)

The order convening the Court, the charge-sheet and the ~~evidence~~ abstract) of evidence are laid before the Court.

The Court satisfy themselves that Capt S. Buchanan is not available to serve owing to absence on duty, Capt A. J. Ellis, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† ~~Major~~ Lieut E. R. Bennett, The Black Watch (Lawyer)

~~Counsel~~ defending officer† Major B. A. Ritchie - - (Lawyer)

At 1400 o'clock the Trial commences.

The order convening the Court is read, and is marked C1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* no, Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert Name, Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

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B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.
Lieut V.E. Traversy & Lieut L.P Candler, 14 Bn The Black Watch (RHR)

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 45 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

not guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

Defending officer:- Objects to 1st charge on grounds that particulars are not sufficient to support offence + to 2nd charge ingrains that he should be charged with neglect. Refers to R.P. 93(3) + specimen charges in MML.

Prosecutor in reply:- States particulars given sufficient + 2nd charge "neglect" can constitute "conduct" - Refers to R.P. 108

Court closed to consider

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Court disallows objection

Court re-opened + decision announced.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No, Sir.

The prosecutor makes an opening address [redacted]

The prosecutor proceeds to call witnesses.

First witness for prosecution. D/11178, Sgt Marsh, J. W., 1st/5th Black Watch (RHR)

being duly sworn, is examined by the prosecutor.

2 identify accused as Pte Durocher, A.J. while in Petawawa camp on 2 June at approx 2130 hrs - as 2 passed tents where Durocher stays. 2 heard a shot, smelt it was a live round. 2 went into trees + as 2 approached a truck 2 saw Durocher - he was holding his arm + mumbling "help me". 2 took hold of him + helped him to RAP - on the way we passed thru 2 coy lines + one of medical orderlies came to our assistance - 2 questioned Durocher on way over but as he was in pretty shape he could only say that he had an accident + wanted help - 2 left him with RAP + reported to Duty officer, Capt McLaurin. On going back 2 found rifle which was loaded with 4 live rds in mag + 1 expended round in the chamber. Couldn't hear his exact words but it was to the effect that he had accident cleaning rifle. The truck backed in + the rifle was leaning against a tree approx 10' from rear of truck. There was a trace of blood from the tree back towards some tents which were 25 to 30' away. The trace of blood lead around the tents + into clearing where 2 met Durocher. Woods were reasonably open quite a number of large trees + quite a bit of bushes + shrubs - trace was fairly easy to follow. Durocher was sitting on ground in tram + standing where rifle found.

C 2

Cross-exam.
Knew it was rifle shot. Had orders to investigate because lot of thunderflashes were put off previous + all NCO's ordered to check up all bangs. Would be possible to be shooting to simulate thunderflash — Had been training but was then clear + quite light. Matter of a minute or so between shot + when 2 met Durocher — Couldn't place shot immediately + went with behind latrine first then around + met Durocher. — Durocher mumbled about accident + I gathered that it was from cleaning but he didn't say so.

Re-exam
2 was 50' from track when 2 heard shot.

Court.
Butt on ground + muzzle leaning against tree. Rifle in good condition — safety catch was off, was definitely in working order. Durocher is not in my section.
2 went down to RAP when time taken off + it was wounded in shoulder (indicating) Were various marks in mud because men going around — but no marks other than blood around rifle — blood trail leading from track toward what 2 thought was Durocher's tent. Blood followed usual path.
Live ammo had been issued.

2nd Wit Pros. D 82536 Pte Stewart, W., 1st Bn Black Watch (R.H.R.)
duly sworn, states:-
2 knows Durocher (indicates accused)
On 3 June around 9 o'clock I saw Durocher coming down lines + blood streaming down his right arm — 2 took him to RAP + gave him first aid. He was then put into ambulance. Another man was helping Durocher — 2 heard rifle shot in distance about 5 mins. before. 2 had no conversation with Durocher.
No cross-exam.

Court. Wounded thro front + right out back collar blade — right shoulder (indicating) Went straight in, struck shoulder blade, went up + out. 2 examined as carefully as 2 could but didn't spend much time; 2 bandaged it.

3rd Wit. Pros. Det Sgt Arthur Stringer, Eastbourne of Eastbourne Police.
duly sworn, states:-
Have had contact with accused Durocher. About 9.20 am on 3 June 2 was engaged at Eastbourne on certain enquiries in consequence of something 2 was told 2 went with PC 98 Thomas

to grand parade Eastbourne where I saw Durocher on a seat - I said I am police officer would you care to tell me what you are doing here - He replied I am on leave - He produced a pass made out in his name to Inverness & was valid until 1800 hrs 7 June 42 - I questioned him about pass & he replied I got fed up with Inverness & came to Eastbourne - In presence of Durocher I showed pass to PC Thomas & drew his attention to the date. - He was in my company after that for about an hour.

Cross-Exam

Can't tell you who signed pass. - It appeared to be usual pass & I was only interested in the date of expiry - He produced 3 transport during certificates made out in same name as pass - Pass in handwriting - Positive pass valid until 7th - that was my main interest - It was valid on that date - I'm positive it was a 7. I returned it to the soldier. He said "I got fed up with Inverness & came here - quite sure he said "fed up"

No Re-exam.

Court accused accompanied me of his own free will. left me about 10.30 a.m.
I thought pass was genuine.

Accused's right to apply for adjournment explained since following witness's evidence not in the absence of

4th Wit. Pros. P.C. 98 Thomas, B.Q., Borough of Eastbourne police duly sworn, states:-

I know Durocher (indicating accused). about 9.15 am I saw accused asleep & at about 9.30 same day, 3 June, I accompanied Sgt Stringer to Grand Parade & pointed out the dft. at that time Sgt interrogated accused in my presence & accd produced a pass which Sgt handed to me after examining it. On my own

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examination I saw this pass expired at 1200 hrs on 7 June the purpose for which to proceed to Smeaton - Dept then accompanied by Sgt Stringer in a police car. - I did not accompany them. accused was on same seat at 715 + 930. Didn't see him between 715 + 930

Cross-exam

Was asked to produce other identification - don't recall seeing railway ticket - Pass was written quite legible writing - main object to see that he was on leave that day - wouldn't concern us if pass for later time - If figure was badly made it wouldn't concern us.

Re-exam

Expiry date was 1200 hrs 7 June

Court Examined for expiry date + fact of signature only.

5th Wit Pros

D82413 A/Cpl Roe, J. T., 1st Bn Black Watch (RHR) duly sworn, states:

At Buccleuch sitting over there (indicating accused) For first few days in June while Bn on Exercise Tiger 2 was orderly room clerk. Before exercise 2 started I inserted for railway warrant + made out privilege leave pass for 1200 hrs 23 May to 1200 hrs 25 May + privilege leave pass 1200 hrs 25 May until 1200 hrs 1 June. When Buccleuch returned on 1 June he reported in to me. He handed in short leave pass + he told me the other pass had been lost. I have short leave pass here. Until Bn returned from Tiger on 6 June Buccleuch was not granted any leave. At approx 630 or 645 on 3 June I received phone call + as a result I found Buccleuch in camp area about 715 + took him over to see Capt McLaurin + Capt McLaurin spoke to him - While Capt McLaurin on the phone I heard a rifle shot

CS.

Then Durocher was down at RAP where 2 saw him — he was given medical attention. 2 took statement + acsd said he had taken rifle out + tripped over a twig.

Cross-exam:

2 made out passes for all ~~pass~~ personnel of rear party + 2 did not make out any pass for extension of leave.

2 recognize P/L II order #49 of 1 aug. 42. - 2 don't make out casualty returns so 2 can't say as to date on them. (Exhibit "A")

no passes issued except through orderly room. C.O.P. notified me of AWL's + 2 wasn't notified on 2nd + 3rd June that Durocher was AWL.

2 had all passes + warrants locked up.

Re-exam:

2 don't do casualty returns + can't explain discrepancies in evidence re privilege leave — Durocher reported to me on 1st the day he was due back.

Court: 2 am positive the 7 day pass was made to follow directly after the short leave pass - the short leave pass is made to Inverness + the 7 day pass was to Inverness + London. 2 have 2 day pass here + it definitely states 1200 hrs 25 may as expiry date.

Prosecution closed.

Defending officer submits no prima facie case established on 1st, 3rd + 4th charges.

no intention on 1st charge

no conclusive proof on pass or on AWL.

Prosecutor in reply: submits 3rd charge prima facie established + 4th there is evidence that acsd was absent for shorter period than charged but he was absent + that is sufficient.

Court closed to consider submission.

Court allow submission on 1st charge + disallow on 2nd + 4th charge

15

D

DAY - Court re-upon [illegible] decision is announced.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. no, sir.

Question. Do you intend to call any other witness in your defence?

Answer. yes, sir

Question. Is he a witness as to character only? *Answer.* no.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. [illegible]

Answer. [illegible]

DAY

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

16

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

1st Wit D81994 L/Cpl Young, J. W., 1st Bn Black Defence Watch (RHR) duly sworn, states:-

I identify Coy record of leave book. I made entries on page 2 2 was by Coy clerk on 28 May - Entry " Durocher, A. J. date of leave 28-5-42 to 4-6-42, previous leaves 2, previous warrants 2, warrants & destination Annuaness" I go around to men when leave is due & ask them where they want to go & submit to Coy Ord. room.

Cross-exam

Frequent changes between time man wants to go & when he really goes - am not sure man went merely because entry in book.

Re-exam - nil.

Court couldn't say when I made list out. couldn't say when Durocher went on leave We were on scheme & he left from scheme. He would come in from scheme to Bn orderly room & get his pass there. Don't know when Bn left on scheme. I made entry into book when we came back from scheme from a list I kept. Bn in Pulborough at end of may it is about 30 to 40 miles to Eastbourne.

Defence closed.

Defending officer:- no evidence of negligent handling rifle - Only thing close is that is statement that he had an accident, is not evidence of negligence. Evidence on 3rd & 4th charge leaves doubt in favour of the accused. Pass could have been on 4th Battalion 7th not reported AWL during this time.

Prosecutor:- Sgt Marsh's evidence that was good safety catch not on - reasonable precaution therefore not taken. submits that second charge establishes negligence by the fact of it happening. On third charge, two civilian witnesses' evidence undertaken & definite on expiry date. On AWL charge direct conflict of evidence but Pte Rae's orders not infallible & Cpl Rae's evidence very ~~reform~~ definite, no doubt as to time of accd's leave - Had made them out & delivered to Durocher & remembers Durocher reporting back on 1 June.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

guilty of the 2nd charge
guilty of the 3rd charge
guilty of the 4 & charge except
absence commenced 0715 ~~hrs~~ 3 June 42
& terminated 1030 hrs 3 June 42.

Proceedings on Conviction before Sentence.

*Where the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut E. R. Bennett, 1st Bn Black Watch (RHR) is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes AFB 2967 MFMC

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B3, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer yes

Cross-examined by the accused. — none

(Observations of the witness, if any, are to be recorded in the words in which they are delivered. In framing the finding of the Court which may make the accused's previous character relevant, care must be taken to ascertain from the Court its precise meaning, and the attention of the Court to the fact, and to the exact terms, of any evidence given in favour of the accused.)

Question to the accused.

Do you wish to address the Court? *Answer.* Defending officer draws attention to length of time in custody

The Court is closed for the consideration of the sentence.

18

F

Sentence.

~~The Court sentence the accused~~ Sentence.

W M W Shaw Capt
Judge Advocate

D K Robertson Maj
President.

No 49 Pte Wander 1st Bn Black Watch (RHR)
d/1 aug 42.

Para 2 (f)
"Granted 7 days P.L. from 28 May 42 to
4 June 42.
D82458 Pte Dunocker. A.J. P.L."

Exhibit "A"
Certified true copy.
D.K. Robertson Maj.
President.

ABSTRACT

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FIRST WITNESS: Capt.A.L.MacLaurin, 1st Bn The Black Watch (RHR) of Canada, states as follows:
"I was orderly Officer on the night of the 3rd June 42. Around dinner time I was told by the C.O.S that the Eastbourne Police had phoned and would phone again regarding a charge of shopbreaking against a man whom they thought was Pte Durocher. I sent for Pte.Durocher and questioned him and he denied all knowledge of that charge saying he had been in camp at that time. Later in theevening I spoke at some length to the Eastbourne Police on the Orderly Room telephone on the subject of Pte.Durocher. While I was speaking to them Pte.Durocher was brought to the RAP suffering from a Gun shot wound in the right shoulder.

SECOND WITNESS: D-81178 Sgt.Marsh, J.W., M.M., 1st Bn The Black Watch (RHR) of Canada,Overseas, states as follows:
"At approx. 2135hrs 3rd June 42 I heard a rifle shot and went into the woods to investigate. I met Pte. Durocher with blood running from his arm. He was mumbling "Help me, Help me" I helped to the RAP and on instructions from Capt.MacLaurin I went to the scene of the accident and took possession of a rifle which was loaded and one round had been fired from it. I turned the rifle and ammo. over to Capt. MacLaurin.

THIRD WITNESS: D-82536 Pte.Fawcett,W., 1st Bn The Black Watch (RHR) of Canada,Overseas, states as follows:
"I am Medical orderly of D Coy, 1 RHC At approx. 2130 hrs 3rd Jun42 I was called to attend to Pte.Durocher He was walking towards the lines with blood streaming down his right arm. I gave him firstaid and brought him down to the RAP where he was put in an ambulance and sent to 8th Cdn Fd. Amb.

FOURTH WITNESS: D-82413 L/E Roe, J.T. 1st Bn The Black Watch (RHR) of Canada,Overseas, states as follows:
"I was Orderly Room clerk of the rear party during Tiger scheme on 1st June Pte.Durocher reported back from Priv. leave. He handed in a 48th hr pass from 23rd to 25th May. He said he had lost his priv. leave pass. The C Coy absentee reports and parade states were "All present and correct" for 2nd and 3rd June 42. About 1900hrs 3rd Jun42 the Eastbourne Police, Det. Sgt.Stringer, alled. He asked if Pte.Durocher was on our strength and if he were on leave. I told them he was on our strength and was not on leave. They said they had seen him in Eastbourne on the 3rd June and that he had a pass to Inverness expiring 7th June. and that he was suspected of shopbreaking and had had his fingerprints taken. I asked them to call back at 2100hrs and I would have more information. . I then looked for Pte.Durocher and found him in the camp and paraded him to Capt. MacLaurin the Duty Officer. Capt.MacLaurin questioned Pte.Durocher . Pte.Durocher denied having been out of camp or having any knowledge of the Eastbourne affair. At approx 2115hrs the Eastbourne Police phoned and spoke to Capt.Maclaurin. While this conversation was going on a rifle was fired approx. 2130hrs a few minutes later Sgt.Marsh brought Pte. Durocher to the RAP which was next door. Pte.Durocher was treated there and was sent in an ambulance to the 8th Cdn Fd. Amb.

FIFTH WITNESS: Det.Sgt.Arthur Stringer, City of Eastbourne Police,

See documentary evidence attached.

I do certify that RP 4(e) has been duly complied with.

[signature] Lt
Officer detailed to take evide.

COPY

EASTBOURNE COUNTY BOROUGH POLICE

Our Ref. 274/1/42.

Police Headquarters
Grove Rd.Eastbourne
7th June 1942.

Subject: ~~SHOPBREAKING - 37, SEASIDE RD, EASTBOURNE~~

1. ~~With reference to the above, I beg to report that between 11.16 p.m.,~~ Tuesday the 2nd and 7-45 am, Wednesday, the 3rd June 1942, No. 37 Seaside Road, in the occupation of "The Southern Counties Dairies Limited," was feloniously entered.

2. Entry was effected by ~~making~~ a hole in small panel of tongue boarding which covered part of what had previously been a glass panel in the shop door, inserting hand and operating spring lock.

3. Fifteen eggs, 1½ pints of milk in two bottles, one tin of baked beans, and the contents of four charitable collecting boxes were stolen. Two tins of pork sausage meat had been removed from the display window and were found to bear finger impressions.

4. Enquiries were at once made and patrolling Police officers recollected having noticed a soldier on a seat under some trees a short distance from the entered premises. This soldier was eventually found on a seat on the parade and interrogated. I asked him to produce his pass and he did so. It was made out to No.D82458 Pte.A.J.Daroucher, 1st Bn The Black Watch Regiment, for a journey to Inverness. He stated that he got "fed up" with Inverness and came down to Eastbourne. The pass was due to expire at 1200hrs, 7th June42. Daroucher also produced three Motor Transport driving licences, which described him as age 38, weight, 184 lbs, hair brown and eyes brown.

5. Daroucher denied all knowledge of the crime and told a specious story of having seen a civilian who he described about 7 am on a seat near the shop, and added that he had seen this man open and drink a pint bottle of milk. I was not satisfied with Daroucher's story but in the absence of any evidence it was not possible to detain him. He readily agreed to be taking fingerprints and obviously he did not believe that useful clues had been found at the scene of the crime. I took his fingerprints and he was then allowed to go.

6. The same evening I telephoned to the Adjutant, 1st Bn, The Black Watch Regiment, Pulborough 165, and verified that Daroucher was a member of that Unit. He had apparently returned, and was at once interrogated by the Officer about having been in Eastbourne on the night of the 2nd, and 3rd. instant. He denied having been in this town, and I then informed the Adjutant that Daroucher's fingerprints had been found to be identical with those found in the shop. Daroucher apparently was informed of this development and shortly afterwards I was informed that he had been accidently wounded by a shot in one of his arms. A further telephone message on the evening of the 5th instant, ascertained that Daroucher is suffering from a wound in the right chest, and is detained under military guard at the 19th Canadian General Hospital, Bramshott.

7. Meanwhile, the photographs of the finger impressions found at the shop together with Daroucher's fingerprints were forwarded to the Commissioner of Police, Finger Print Department, New Scotland Yard, London, S.W.1 and a telephone reply has now been received that Daroucher's fingerprints are identical with those found in the shop at 37 Seaside Road, Eastbourne. Daroucher is therefore definitely wanted at this Borough for this offence of shopbreaking.

8. I respectfully beg to suggest that duplicate copies of this report be forwarded to the Superintendant of Police, West Sussex Constabulary, Petworth and that he be asked to be good enough to cause enquiries to be made of the Officer Commanding, 1st Bn The Black Watch Regiment, Canada, as to the probable date of Durocher's discharge from hospital, when it is requested that he be detained pending the arrival of an escort from this Force, and further that the Officer Commanding be handed the duplicate copy of this report for the purpose of his records, and the result to be communicated to the Chief Constable, Eastbourne in due course.

SIGNED Arthur Stringer
Detective Sergeant.

CERTIFIED TRUE COPY

Capt.Adjt
1st Bn The Black Watch (RHR)
of Canada, Overseas.

(Substitite for A.F.B. 290)
or N.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED.

No. D-82458 NAME Pte. Durocher Antoine Joseph UNIT 1 RHC.

AGE 39 MARRIED OR SINGLE Married No.of Dependants four

DATE OF ATTESTATION 29 June 40

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL 14 MILITARY 11 HOSPITAL — TOTAL 25

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

Nil.

A CERTIFIED TRUE COPY OF N.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

[signature] Capt. Adjt. Unit
1st Bn. The Black Watch RHR of
Canada, Overseas.

Dated at In the Field
This 22 day of Oct. 1942
(To be dated and signed as of date of Trial)

No. D82458 Name DUROCHER, Antoine Joseph | Sqn., Battery, or Company | Corps 1 RHC | Date of enlistment 29/6/40 | G.C. Badges Nil | Service or Proficiency Pay Nil | M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Stone Cross	23 Nov 41	Pte.		WOAS Neglect to the prejudice of good order and military discipline, in that he was late for breakfast parade on 23 Nov 41. A.A.Sec 40	D-81776 CQMS Williamson, J.S.	Fined one days pay	24 Nov	H.M. Jaquays Major	For 1 days pay.
IN the field	1/4 42	Pte.		WOAS neglecting to obey HO 80, 41, in that he at 1630hrs on 1 Apr. 42 drove a W.D. vehicle to exce[illegible] to the speed of 20mph as laid down in this order, A.A. Sec 11	Lieut.A.P. MacLaurin D-81474 Pte. Coates.A.	For 5 days pay	13 Apr 42	S.B.Cantlie Lt.Col	For 5 days pay by art. FR&I 149 2.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY:					
				[signature] Capt.Adjt 1st Bn The Black Watch (RHR) of Canada, Overseas.					

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39 R.

Pte DUROCHER, THR

O. H. M. S.

M. F. B. 270

39 R.

Army Form A.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twentyfourth day of October 1942.

Whereas it appears to me, the undersigned, an officer in Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible] (

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[illegible] (

*[illegible] (

*[illegible] (

for the following reasons, namely :—]

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Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F.B. Courtney	West N.S.R.

Members.

Rank.	Name.	Regiment.
Capt	M.S. Sutherland	~~Carls & York R~~
Capt	T.S. Porter	~~Carls & York R~~
(Waiting) Lieut	A.W. Rogers	West N.S.R.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Brigadier.

Commanding 3 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D106055 Pte Joseph Henri Roger DUROCHER. R 22e R	1st Charge:- Sec 15 (1) A.A.	Guilty	Guilty	
	2nd Charge:- Sec 24 (2) A.A. See charge Sheet Attached	Guilty	Guilty	(1) One (1) year Detention and to undergo stoppage of pay in the amount of Two shillings and eight pence in order to make up the amount of £1-7-2 to cover deficiencies in Kit (2) Under go stoppage of pay in the amount of £1-7-2 to cover deficiencies in Kit

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (s)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [illegible] Brigadier (Signed) [illegible] Major
Commanding 3 Cdn Inf Bde — President.
Commanding Officer (d)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26 day of Oct 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~
4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 26 day of October 1942

President of the Court Martial.

* See footnote (b) on page 782 M.M.L. 1929.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) Cf

Signed this 28th day of October 1942

Brigadier.
Confirming Officer. 3 Cdn Inf Bde

Promulgated and extracts taken in the case of (1) 106055 Pte Durocher, J.H.R. Royal 22e Regt

(a) (Dated) 31st Oct 42 (Signed) [illegible] A.D.C.M.
ROYAL 22e REGIMENT, C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

C H A R G E S H E E T.

The accused, D.106055 Private Joseph-Henri-ROGER DUROCHER, Royal 22e. Regiment, a soldier of the Canadian Army, Oversees is charged with:-

FIRST CHARGE
A.A.Sec.15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, at about 1400 hrs on the 18th of May, 1942, absented himself without leave until he was apprehended at about 1710 hrs on the 19th of October, 1942, thereby incurring expenses for his apprehension and his return to his Unit in the amount of seven shillings and eight pence.

SECOND CHARGE.
A.A. Sec.24(2).

WHEN ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING, AND REGIMENTAL NECESSARIES

in that he,

In the Field, on the 21st of October, 1942, was deficient on the u/m articles in the amount of one pound seven shillings and two and a quarter pence.

	WOC. Price. £	s.	d.	75% WOC. Price. £	s.	d.
1 Cap badge			9			6.75
1 Brass button			2			1.5
1 Brush blacking			8.5			6.375
1 Brush button			8			6.
1 Brush polishing		2.	1		1.	6.75
1 Brush shaving		1.	2			10.5
1 Brush tooth			4.5			3.375
1 Comb			2			1.5
1 Pants woollen		5.	1		3.	9.75
1 Holdall			9			6.75
1 Housewife			6			4.5
1 Clasp knife		2.	10		2.	1.5
1 Razor			5.5			4.125
1 Eyeshield			4.5			3.375
1 A/G. Resp. complete		16.	10		12.	7.5
1 Individual detector			4			3.
1 Vest cotton gym.		3.	-		2.	3.
	£	1.	16. 3	£	1.	7 2.25

(J.P.E.BERNATCHEZ) Lieut-Co
COMMANDING
Royal 22e Regiment,
Canadian Army, Overseas.

In the field,

This 22nd day of October, 1942.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(C. Foulkes), Brigadier
Comd 2 Cdn Inf Bde

In the Field
23 Oct 42

In the trial of D106055 Pte Durocher, J.H.R. the undermentioned officers will attend as Officers under instructions.

Lieut. A. J. Mac Kenzie Carlt & York R

Lieut. R.W. Bullock West N.S.R.

Comd. 3 Can. Inf. Bde.

"F"

D106055 Pte Durocher J. H. R.

C

26 Oct.

"A"

Hamilton
Pte

I certify that I have this morning seen D166055 Pte Drucker J.H.R.
of C. Coy, Royal 22e Regiment, and in my opinion he is fit to undergo trial
by Court Martial

In the Field
26 Oct 42

Royal 22e Regt CAC

SUMMARY OF EVIDENCE

in the case of

D 106055 Private Joseph-Henri-Roger DUROCHER, Royal 22e Regiment, a soldier of the Canadian Army, Overseas.

FIRST WITNESS FOR PROSECUTION — Lieutenant B.J.GUIMOND, Royal 22e Regiment, prosecuting officer, who will be called as a witness at the trial of the above soldier to produce in evidence the following documents in accordance with section 163 of the Army Act:-

i) Declaration of a court of Inquiry held in the Field on the 10th of June, 1942, on the illegal absence of D 106055 Private Durocher, J.H.R., Royal 22e Regiment.

ii) Certificate of apprehension in accordance with section 163 of the Army Act showing the apprehension of the accused as having taken place in High Road at Whetstone, at about 1710 hours on the 19th of October, 1942.

iii) Certificate of expenses incurred in returning the accused to his unit in accordance with K.R.& O.(CAN) para.539 dated 20th Oct., 1942.

The accused declines to cross-examine/ this witness.

The accused was duly warned in accordance with R.P.4 (E), but declines to make a statement and reserves his defence.

The evidence was brought to the knowledge of the accused by the undersigned on the 22nd day of October, 1942.

Compliance with R.P.4 (C),(D),(E),and (F) certified.

(B.J.GUIMOND) Lieutenant,
Officer detailed by O.C.
Royal 22e Regiment, to
take Summary of Evidence

In the Field,

This 22nd day of October, 1942.

for O.C. 5 C.M.

LIST OF WITNESSES

in the case of

D 106055 Private Joseph-Henri-Roger DUROCHER, Royal 22e Regiment, a soldier of the Canadian Army, Overseas.

PROSECUTION

Lieutenant B.J.GUIMOND Royal 22e Regiment.

DEFENCE

N-----I-----L

- - - -

This is to certify that no member of the Court in the case of D.106055 Pte Durocher, J.H.R., of R 22e R, was a member of any Court of Inquiry pertaining to this case.

(P.E. Courtney), Major, West NSR
President of the FGCM.

26 Oct

D 106055 Pte DUROCHER, J.H.R. R22eR

LIEUT B.J. GUIMOND R22eR
LIEUT T.L. BULLOCK R22eR
LIEUT A.J. MACKENZIE Battalion R
LIEUT R.W. BULLOCK Hdqrs 5 Bde

No

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the Field

on the 26 day of October 1942 by order of

Brigadier Charles Foulkes

Commanding 3 Cnd Inf Bde

dated the 26 day of October 1942

President.

Majo D B Cantley Unit NSR

Members.

Capt WS Sutherland, ~~Cdn York R~~ RCAMC

Capt DS Porter, Cdn York R

Trial of* D106055 Pte Deschner, SHR ~~Judge Advocate~~ R 22e R

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† LIEUT B J GUIMOND R 22e R

~~Counsel~~ or defending officer† LIEUT TL BULLOCK R 22e R

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NIL.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

LIEUT. A.J. MACKENZIE, Can. York R.
LIEUT R.W. BALLOCK, Can. 11th R.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Guilty

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

Answer.

The accused having pleaded Guilty to all charges, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? N/A

Answer.

The prosecutor makes an opening address [hands in a written address which is read, marked N/A, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

N/A

being duly sworn, is examined by the prosecutor.

no

yes

yes

Lieut B. J. Summond. R.A.S.C.

yes

B. Commond Lieut
West N.S.R
Pres. G.S.C.M.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* Yes

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Nil

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

Evidence of 1st Witness for Defence.

LIEUT P Gibbs - R.2.F.R. having been duly sworn,

I knew the accused for over a year in H.Q. Coy. - He came to me while we were in Caterham.

I then became Mess Secretary and he was manager of the bar.

He was always a good soldier and an honest one too.

Lt. Gibbs
Wit. for Def.
Pros. for Crn

Do you wish to give evidence yourself or to call any witnesses as to character? Yes

Question to the accused.

Answer.

Evidence as to character

CC

Proceedings on Plea of Guilty.

To be struck out in case no plea of Not Guilty has been recorded.

~~*The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" is read to him again.~~

The accused is found guilty of First charge Second charge.

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Plea for Mitigation

The accused, whose M.F.M.6 is before the Court, is in his 3rd year in Great Britain. He has a wife and family in Canada. He came overseas with a close chum of his who was killed in the Blitz, and since then has apparently been subject to periods of depression. When he was transferred from the Officers Mess to C Coy he felt that he was being discriminated against, since his record in the Mess (in a position of trust) has been a good one.

Under these circumstances the defence feels that this man who is undoubtedly not of a normally cheerful disposition is entitled to all the consideration which the Court may feel it wise to show in fixing the sentence.

Neil Sullow Lieut
For the Defence.

B Gunter Sergt
Asst DSR
Pres Bd Of

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is cleared for the consideration of the finding.~~

~~The Court find that the accused~~

~~Guilty on all charges~~ J.S.C

Dismissed with ignominy from H.M. Service

Sentenced to be imprisoned with hard labour for 12 months

From 7.8.20

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

~~The Court being re-opened, the accused is again brought before the~~ J.S.C

Evidence of character, &c.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] ~~is read, marked~~ , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer* The A.F.M.6 is a temporary sheet the original Lost

Cross-examined by the accused.

[Suggestions as to course of the inquiry, if the accused is a commissioned officer, or a chaplain, the Court must take it into consideration whether the proceedings are to be continued in open Court, or in camera. If in camera, the prosecutor must withdraw, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused Sentence

D106 085 Pte DUROCHER JHR R22eR

~~6 12 months Detention~~

~~[illegible] Cent Pnlb~~

~~[illegible] D.C. Cdn~~

26 Oct 1942

(1) Do undergo One (1) year detention

(2) Do undergo stoppage of pay in the amount of Seven shilling and eight pence, to cover the cost of apprehension and return to unit

(3) Do undergo stoppage of pay in the amount of £1-7-2 to cover the cost of Effluvenic in kit.

[illegible]
West Nova
Pres FGCM

RECORD OF THE DECLARATION OF A COURT OF INQUIRY assembled in the Field on 10 Jun 42 for the purpose ofinvestigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. D.106055 Pte. J.M.R. Durocher, Royal 22e.Regiment.

DECLARATION.

The Court declare, that No. D.106055 Pte. J.M.R. Durocher absented himself without leave at 1400 hours 18 May 42, that he is still absent and that on 18 May 42 he was deficient and is still deficient of the following articles:-

	£		
1 Cap Badge.		0.	9
1 Battle Dress blouse	1.	2.	6
1 Battle Dress trousers.	1.	0.	6
1 boots ankle	1.	1.	0
1 brass button			2
1 brush blacking			8
1 brush buttons			8
1 brush polishing		2.	1
1 brush shaving		1.	2
1 brush tooth			4
1 comb			2
1 pants woollen		5.	1
1 holdall			9
1 housewife			6
1 clasp knife		2.	10
1 razor			5
eyeshields			4
1 respirator		16.	10
1 individual detector			4
2 vest cotton gym		3	6
	£	5.	6

Names of President and Members:

President:-	Captain L.F. Trudeau,	R.22e.R.
Members :-	Lieut. H.G. Wells,	R.22e.R.
	Lieut. P.E. Potvin,	R.22e.R.

Signature of Commanding Officer.....
(J.P.R. DESMARCHAIS), Lt.-C
Commanding Royal 22e.Regt.

Certified True Copy.....
(P. DA RT), Capta n,
Adjutant, Royal 22e.Regiment.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(2222) W1.42867/327 20,000 12/55 A.A.E.W.Ltd. Gp.698 Forms/O.1617/13

I CERTIFY that the man whose personal description is given below was arrested by P.S.102"S" Taylor,

at High Road, Whetstone, at (hour) 5410 P.M. on the 19th. day of October, 1942 as being No. D.108055.

(Rank and Name) Private Joseph Henri Roger LAROCHER,

a deserter (or absentee without leave) from Royal 22nd. Regiment.

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 32	Height 5 Feet 6 Inches
Complexion dark	Hair dark brown Eyes Brown
Marks None	
In uniform or plain clothes	Uniform

Probable Date and Place of Attestation	22/5/40. Montreal, Canada.
Probable Date of Desertion or beginning of absence, and from what place	18/5/42. Goring by Sea, Sussex.

H Bond P.S.32"S"

Signature of Officer of Police in charge of Whetstone Station.

19th. October, 1942. Date of Signature.

Army Form O.1611
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Exhibit D

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. D10655 Rank Pte Name Durocher, J.H. Unit R. 22 R.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
30/10/42	Escorts return fare from LONDON To Lewes (½ portion)		3	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Lewes		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		7	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H. W. Lowing Lieut.

Officer Issuing Railway Warrant and Expense vouchers
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/33
40/P & S/483

(1) M 7 m 6 - is not available It was sent to 2nd Echelon who apparently cannot locate it.

(2) Information as detailed on Temporary M 7 m 6 was obtained from M F m 4 of 2nd Echelon.

D Sturdevant Capt
HQ 2 C I S
27 Oct 42

No. D166055 Name DUROCHER, J.H. Battery or Company "C" Corps R.22eR. Date of enlistment 28-5-40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 17336—7-42 (1219-30) H.Q. 1772-89-1632

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. TEMPORARY Sheet | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5-4-41	Pte		A.A. Sec 15(1) A.W.L. fr 0800 hrs 5-4-41 to 2.000 hrs 18-4-41 14 days.	—	14 days F.P.	—	O.C. R.22eR.	Forf 28 days pay
Field	11-5-42	Pte		AA Sec 15(1) AWL fr 1600 hrs 8-5-42 to 2030 hrs 10 May 42 3 days	—	admonished	—	Major Dowson	Forf 3 days pay

Temporary 1177 Mob.

Adjutant, 22nd REGIMENT, C.A.S.F.

(P.T.O.)

"E"

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

D 106055 Private DUROCHER, Joseph Hugh Roger
Royal 22e Regiment, Canadian Army O.

(a) The accused has been in confinement awaiting trial on the present charge (s) for Nil days in civil custody and 7 days in military custody making a total of 7 days of which Nil [illegible] days were spent in hospital

(b) The present age of the accused according to his own statement is 32 years

(c) The date of his attestation specified in his attestation paper is 28 May 1940

(d) The accused is in possession of or entitled to no military decoration or military award. (or is in possession of or entitled to No Military Decorations

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

[signature] Lieut. Maj. for Adjutant
Royal 22e Regt

Date 26th October 1942.

4H-83.

Pte. Denocher. J.H.R.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if outhorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate outhy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D106055	Pte	Joseph Henri Roger	DUROCHER	CIC 4 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXX] committed the offence[X] set forth in the Charge Sheet[X] attached and on (date) 30 Nov 44 endorsed by me, [XXXXXXXXXXXXXXXX] " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial ; [XXXXXXXXXXXXXXX

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accused in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on *defence* RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court considers such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn, or subject to cross-exam by Prosecutor. Court or JA (RP 40 fn 10),*) or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(42).*)
(vii) Summing up by JA, *if any.* (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED. All erasures MUST BE INITIALLED by President or JA, if any.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Convening Order(s). (*KR Can 587.*)
(iiia) Medical Certificate(s). (*KR Can 588.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to authenticating or evidence of certified copy in lieu of original see KR Can 589. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings *per* mail by any convenient route with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CHARGE SHEET

The accused, No L-106388 Private Joseph Henri Roger DUROCHER, of The Canadian Infantry Corps, on the strength of 4 Canadian Infantry Training Regiment, a soldier of The Canadian Army Overseas, is charged with:

~~UNDER CHARGE~~
~~SECTION 18(1)~~
~~ARMY ACT~~

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 1800 hours on the 31st day of August 1944 until surrendering himself to the Military Police at 2300 hours on the 17th day of November 1944.

(Total absence 78 days 6 hours)

(J. Gavan Power) Col
Commanding Officer
4 CDN INF TRG REGT

IN THE FIELD
30 Nov 44.

To be tried by Field General Court Martial.

(K G Blackader) Brigadier
Commander
13 Cdn Inf Trg Bde

In the Field
30 Nov 44

Medical Officer's Certificate
K R (Can) para 557

I certify that I have this morning examined No: D.196055 (Rank) J.H.R. Durocher (Name) of 4.C.I.T.R and in my opinion he is fit to undergo trial by Court Martial.

Station 4. C.I.T.R

Date 2-12-44

Signed [signature] (Medical Officer)

SUMMARY OF EVIDENCE

In the case of No D-105055 Private Joseph Henri Roger DUROCHER, of The Canadian Infantry Corps, on the strength of 4 Canadian Infantry Training Regiment, a soldier of The Canadian Army Overseas.

By direction of The Commanding Officer this Summary of Evidence is taken on oath.

First Witness for the Prosecution

Lieut R.A. Barberis, of The Can Inf Corps, on strength of 4 C.I.T.R., having been duly sworn states as follows:

" I produce the following documents relating to the accused:

(a) Certified true copy of an extract from 6 C.I.R.U. Daily Orders Part II No 214 d/10 Sep 44. PRODUCED AND MARKED EXHIBIT "A". This is to show the start of A.W.L.

(b) Certificate under the Army Act Sec 163(1)(i), certificate of surrender, d/18 Nov and signed by Major R.R. Holmes, RAF, CMHR. PRODUCED AND MARKED EXHIBIT "B". This is to show the end of A.W.L.

The accused declines to cross-examine this witness.

..... Lieut
(R.A. Barberis)

The accused was then cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to make any statement unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) & (F) have been duly complied with.

..... Capt
(C.A. St Pierre)
Officer detailed to take the Summary of Evidence

In the Field
28 Nov 44.

Exhibit "A"

Exhibit B

LAST ORDER
NO 213
8 Sep 44

6 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
Issued by
COLONEL F.GAVAN POWER, E.D., OFFICER COMMANDING

THIS ORDER
NO 214
10 Sep 44

SECTION "B" OTHER RANKS

14. ABSENT WITHOUT LEAVE

14-B A.W.L. from 1600 hrs 31 Aug 44. Still A.W.L. at 1600 hrs 7 Sep 44. (8th day)

D-106016 Pte Durocher, J.N.R. (R 22e R)

Signed ..R. Laverdure...
(R. Laverdure)A/Captain
for Adjutant
6 Cdn Inf Reinf Unit

Certified true copy
of extract
28 Nov 44

.....
Officer having custody of
Regt'l books)
Capt
Adjt Dep Bn
4 Cdn Inf Trg Regt

Exhibit "B" C

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (3)

I, R.R.Holmes, Major A.P.M. London Area. certify that

Regt. No. D 106055 Rank. Pte. Name. Durocher.J.H.R.

Regiment. No.4.C.I.T.R.

Unit. C.R.U.

Stationed at.

Surrendered himself to No.C 28364 Rank. L/Cpl. Name. Dunfield.R.C.

of the. No.6.(Area)Provost Coy. Canadian Provost Corps.

on the 17 day of. November 1944., at. 2200hrs. hours.

.....AS AN ABSENTEE WITH OUT LEAVE.

At the time of his surrender he was wearing (Military uniform) or (~~Civilian clothes~~).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer, or the non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering.

(Strike out part inapplicable).

(R.R.Holmes), Major.
A.P.M. C.M.H.Q.

London.
18 Nov 44.

ARMY FORM B.2[illegible].

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-106055	Pte	Durocher, J.H.E.	4 CDN LNF TRG REGT

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 671, K.R., 1940.

* The accuser, before whom accused stands, must verify this statement by oath or affirmation if the conduct sheets produced relate to a period during which the accused was serving in the naval service of Canada or of any of His Majesty's dominions, colonies, protectorates or mandated territories.

Instructions.—If the charge is for drunkenness the matter for attestation must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	AA Sec 16(1) times	8 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Numb. of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused~~

2. ~~The accused has not been previously convicted of~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence of~~

~~imprisonment for the term of days~~

4. The accused has been in confinement, awaiting trial on the present charges, for N-L days in civil custody, and ~~17 15~~ days in military custody, making a total of ~~17 15~~ days, of which N-L days were spent in hospital.

5. The present age of the accused* according to his ~~attestation paper~~ record of service is 34 yrs old

6. The date of his ~~attestation~~ specified in his ~~attestation paper~~ record of service is 20 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 120 days

8. The accused is entitled to deferred pay or gratuity in respect of 3 yrs 120 days service.

9. The accused is entitled to reckon 3 yrs 120 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decorations or rewards~~ (*or is in possession of or entitled to (state any military decorations or rewards)*). CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

Exhibit "D"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D-100955 Rank Pte Name Dingwall J.E.R. of 6 CIR Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FCCM	Field Bn Oct 42	AA Sec 15(1) AWL 139 days	1 yrs detention	139 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2 day of Nov 44 [illegible]

[illegible] Capt
Adjt Dep Bn
4 Cdn Inf Trg Regt

19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

To the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

In this rank of ..... years.

(Insert years, months and days, as the case may be.)

If any soldier to any of the above paragraphs cannot be dated from the regimental books the paragraph must be struck out, and the reason why the date cannot be supplied stated in the margin. Where the recommendation can be omitted from such soldiers as are ineligible for consideration, the paragraph should be struck out.

COMPILED FROM MFM 4 ORIGINAL NOT AVAILABLE

No. [illegible] 106058 Name Durocher, J.H.N. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 26 May 40 | CC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 8(P&R/136 (5413)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21-4-41	Pte		AA sec 15(1) AWL 16 days	Doc	14 days FP 26 days pay	21 Apr 41	DO 19/41	forf 16 days pay for AWL
"	11-5-42	"		AA Sec 15(1) AWL 3 days	Doc	admonished	11 May 42	DO 23/42	forf 3 days pay for AWL
"	10-8-42	"		AA Sec 15(1) AWL 129 days	Doc	1 yrs detn 129 days remission	26 Oct 42	FOOK	forf 1 29 days pay for AWL
"									

Certified true copy ..... Officer i/c of charge of Regt'l Books.

Capt
Adjt Dep Bn
4 Cdn Inf Trg Regt

24 Dec 1944

Exhibit E

(PTO)

LIST OF WITNESSES

In the case of No D-105058 Private Joseph Henri Roger DUROCHER, of The Canadian Infantry Corps, on the strength of 4 Canadian Infantry Training Regiment, a soldier of The Canadian Army Overseas.

PROSECUTION

Lieut W.A. Barbaris, of The Cdn Inf Corps, on strength of 4 C.I.T.R.

DEFENCE

NIL

In the Field
28 Nov 44

LIST OF EXHIBITS

In the case of No D-106055 Private Joseph Henri Roger DUROCHER, of The Canadian Infantry Corps, on strength of 4 Canadian Infantry Training Regiment, a soldier of The Canadian Army Overseas.

EXHIBIT "A" - Certified true copy of extract from 6 CIBU Daily Orders Part II No 214 d/10 Sep 44.

EXHIBIT "B" - Certificate under Army Act Sec 165 (1)(j), certificate of surrender d/16 Nov 44.

In the Field
26 Nov 44.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by CM.

2. I desire the services of an officer to represent me at my trial by CM. I request the services of:

.....To be appointed.....

if he is available.

In the Field
28thday of Nov 1944. Pte. J.W. McCracken

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D106055 Pte Joseph Henri Roger DUROCHER - CIC - 4 CITR

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 6.)

At present under sentence for ~~[illegible]~~ beginning on (date) ~~[illegible]~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for a period of nine (9) months.

(Sgd) ~~[illegible]~~ Judge-Advocate, if any. 2 Dec 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ~~[illegible]~~ (Sgd) ~~[illegible]~~ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sentence not confirmed, accused may be tried again: AA 157, MML p 64. Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings but commute the sentence to read "to undergo field punishment for 28 days and to forfeit all ordinary pay for a period of 90 days" and I confirm the sentence so commuted.

I ~~direct that the accused be sent to~~ [illegible] (1)

(1. AA 57A. Delete if not used.)

(Sgd) (C B Ware) Colonel

Date 5 Dec 44 A/Commander 13 Cdn Inf Trg Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused: D-106055 Pte DUROCHER J.H. Date: 7 Dec 44 D.O. 31/Dec 44

Signature of Offr. [illegible] Capt Adjt Dep En 4 Cdn Inf Trg Regt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 15 DEC 1944 JAG BRANCH

RECORDED AT CMHQ 27 DEC 44

4H-83

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA81, 40/P & B/1680 (H44) 4/38B

Convened by Brigadier K G Blackader DSO, MC, ED Comd 13 CITB dated 30 NOV 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D106055	Pte	Joseph Henri Roger	DUROCHER	CIC 4 CITR

PROCEEDINGS REVIEWED [illegible] Judge Advocate General 16 DEC 44

REVIEWING OFFICER.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 2 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto. The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [illegible] fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 561(a). Delete, if not applicable.)

A5. President to accused: ~~Do you object to [illegible] to interpreter~~? Ans ~~[illegible]~~

~~The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans [illegible]~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	G M. MacMillan	2 CITR
Member	Capt	N. Molisseau	4 CITR
Member	Lt	R.H. Baudain	4 CITR
Judge-Advocate			
Prosecutor	Capt	A.H. Michaud	4 CITR
Defending Offr	Lt	L. Binette	4 CITR

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP (H) (5) and fn 2 were not followed. See [illegible] p 33.)

A8. The accused D-106055 PTE Duroche[illegible] before arraignment makes(s) (no) [illegible] plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is [illegible] arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37(*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 193 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 2. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No .(5)

(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (Court) plea of Guilty to Not Guilty on the charge(s). The accused is (not) so informed, and he (does) changes his (their) plea(s) to Not Guilty on the charge(s). Part I of the Schedule is (partially) accordingly.

(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such paras only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), *114, KR Con* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is cleared, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114*, 116.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 495. *Evidence for accused as to his character should, if on his own interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E3 *of Record Form* E. *Record per Notes address, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*E*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA* 54(2) (*a*), *RP* 43, 120(*b*). 2. *AA* 54(2), *RP* 42, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No .

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(*b*) (g) (h), and (ii) their purport to refer to (a) witness(es) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)

(*1. MFB* 2013 *or AFB* 2916. 2. *MFM* 6. 3. *RP* 46, *KR Con* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No .(2)

(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to produce or call anything there or previously stated which would affect the amount of punishment. RP* 37(*f*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(*a*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. Where several accused tried separately see RP* 71 (*D*). *One maximum only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to maximums see AA* 44, 136, 182, *RP* 46-50, 48, 118, 119(*b*),(*c*), *KR Con* 536, 537, 543-546. *(Versions RO* 209, 2242-3, *MML p* 60, 757-759). *As to sentences awarded for civil offences by the Court off England see AA* 41(3), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(1), (*a*), (*b*), *KR Con* 564. 2. *RP* 52. *As to release from arrest, the Confirming Offr, see KR Con* 547. *As to assembly and disposal of records, officer tried see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CC-55
PTE DUROCHER L.

CC-55

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty- Sixth day of March, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint]—

*[1. Five Officers to form the Court.]

*[2. A Field Officer as President.]

[or the following, viz., namely:—]

Proceedings Received [illegible] 28 Apr 43

107

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Capt.	R.F. Defoe	Host A PER

Members.

Rank.	Name.	Regiment.
Capt.	T.M. Gentley	R.C.E.
Lieut.	C.M.G. Arthurs	Hq 1 Cdn Inf Bde
Lieut.	G. Fraser	48 Highrs.

Waiting Member

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier
(H.D. Graham)
Commanding 1 Cdn Inf Bde.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D105782 Pte.DUROCHER, Leo 2 Cdn Inf Bde Coy RCASC	FIRST CHARGE A.A.Sec.9(1)	Not Guilty	Guilty as charged. R.t.d. 60 days detention. R.t.d.	Finding and sentence confirmed 29. mar. 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) H.D. Graham Brig. Commanding 1 Cdn Inf Bde. Convening Officer (e)

(Signed) R.t.d.Dafoe Capt. Asst. JAG President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 27 & 29th B. day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

* Omit if not applicable

were duly sworn.

Signed this 29 & day of March 1943.

R.t.Dafoe - Capt.
President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. D. Confirmation

*(I direct that the soldier named in the margin be put compulsorily to prison or detention barracks until further orders.)

Signed this 29 day of Mar. 1943.

H.D. Graham
(H.D. Graham) Brigadier
Comd. *Confirming Officer.*
1 Cdn Inf Bde.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of D105782 Pte Humphreys 2 Cdn Inf Bde Coy RCASC

(a) (Dated) 31 March (Signed) Gordon Knight Lieut. A/Adjt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2

CHARGE SHEET

The accused, No. D/105782 Private Leo DUROCHER, 2 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Army (Overseas) is charged with, while on Active Service

First Charge
Section
9 (1)
Army Act

DISOBEYING IN SUCH A MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER, IN THE EXECUTION OF HIS OFFICE,

in that he

in the Field, at approximately 1130 hours, 23 Mar 43, when personally ordered by B/86038 Sgt. McCracken, J. to place his kit in a vehicle and accompany the driver to 4 Cdn Fd Amb RCAMC, did reply "I am not going", and did not go.

M.H. Hodgins
M.H. Hodgins, Capt.,
A/Commanding,
2 Cdn Inf Bde Coy,
R.C.A.S.C.

Field
25 Mar 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

H.D. Graham Brigadier
(H.D. Graham)
Comd., 1 Cdn Inf Bde.

In The Field
26 Mar 43

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. D/105782 Pte DUROCHER, Leo

of 2 Can Inf Bde Coy R.C. (A.S.C.) and in

my opinion he is fit to undergo Trial by Field General

Court Martial.

Station...Field...

Date 29 Mar 43

A.L. Jacobs Capt
Medical Officer

R.A.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No D/105788 Pte. Leo DUROCHER

of 2 Cdn Inf Bde Coy (R Ont) R.C.A.S.C. and in

my opinion he is fit to undergo Trial by Field General

Court Martial.

Station Field

Date 29 Mar 43

Medical Officer

A

All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at In the Field
on the 27 day of March 1943 by order of
Brig. H.D. Graham Commanding 1 C.I.B.
dated the 26 day of March 1943.

President.

~~Capt~~ R.T. Dafoe H&P.E. ~~Regt~~.

Members.

Capt T.M. Cantley R.C.R.
Lt. H.S. Fraser ~~HQ~~ 48th H of C.

R.T.D.

, ~~Judge Advocate~~ R.C.A.S.C.

Trial of* D-105182 Pte DUROCHER, Leo

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Lt. W.S. Arthurs is not available to serve owing to

H.S. Fraser, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt J.T. Wright R.C.A.S.C.

Counsel‡ or defending officer† Accused conducts own defence.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. "No sir."

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
1GM—4-41 (3319)
H.Q. 1771-49-124

B

The President, members ~~and judge advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn:~~

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet. at 1025 hrs. 27 March 1943.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

"Not Guilty" *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

N.A *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

NA *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

NA *Answer.*

The accused having pleaded Guilty to N.A charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. "Yes, Sir" On the grounds that I have not had sufficient time to prepare my defense.

The Court adjourns until 1000 hrs. 29 Mar. 43.

~~The prosecutor makes an opening address [hands in a written address, which is read, marked , signed by the President, and attached to the proceedings].~~ K.F.J.

Court re-opens 29th Mar. 43 at 1000 hrs - Same members present.

The prosecutor proceeds to call witnesses.

First witness for prosecution. B-86038 Sgt. McCracken, J. RCASC (See attached)

being duly sworn, is examined by the prosecutor.

2nd Witness for prosecution B-86531 L/Sgt Carroll, R.J. R.C.A.S.C. being duly sworn, is examined by the prosecutor. (See attached evidence).

3rd Witness for prosecution H-37368 Cpl Ward, E.R. R.C.A.S.C. being duly sworn, is examined by the prosecutor. (See attached evidence)

4th Witness for prosecution Capt. M.H. Hodgins R.C.A.S.C. being duly sworn is examined by the prosecutor. (See attached evidence)

P.1 Evidence in the case of Pte L Durocher D-105782.

Prosecuting officer - Capt Boyd, R.C.O.C.

Defence:

D105782 Pte Durocher.
2nd R.I.B by R.C.O.C. :- Pleads in abatement of the Court on the grounds he has not had sufficient time to prepare his defence. He states that he was not warned for Court Martial till he by it was convened 27 Mar 1943.

Statement by prosecuting officer:- It has been stated by the accused that he had not time to prepare his defence as it was only made known to him that Summary Court Martial would be convened on the day. The accused was personally warned by me, that the Court Martial would or all probability be convened on the 27th of March and that he was to prepare his defence. A.M. 104 was made available for his use in the preparing of his defence.

Statement by D-105782 Pte Durocher. R.C.O.C. I was informed last night by Capt Boyd that my Court Martial may not be held this morning and he again informed me to by 27 Mar 43 that it was to be held.

Court Adjourned until 1000 hrs 27th 1943 as the witnesses for the prosecution not available. Also a privilege to Pte Durocher request for adjournment.

Court adjourned at 1230 hrs 27 March 43.

To C-R.

Court - Re-opened at 1000 hrs 27 March 1943
Same members, Prosecutor and member present.

First Witness for the Prosecution :— I am B.86038 Sgt J McCracken of the 2nd C.I.A Coy R.C.A.S.C.

Q Do you Recognize the accused as No 6 Dvr Dawson 2nd C.I.A R.C.A.S.C

A Yes Sir I do.

Q Would you tell the Court in your own words what occured on the 23 March 1943

A On the morning of the 23rd March at 1120 hrs I was left in charge of 7 R.C.I. I ordered No 6 Dvr Dawson to please put his kit on the staff car. Driven by Sgt Myers Corps of the 4th Light ambulance. The Unit is where No 6 Dvr Dawson was being Transfered. No 6 Dvr Dawson refused to do so.

I cautioned him regarding his behaviour by asking him if he knew what he was doing by refusing to comply with an order. He answered yes he did and I ordered him once more to place his kit in the car. He refused a second time I ordered Sgt Hall who was standing close by to take an escort and to place No 6 Dvr Dawson under arrest and to turn him over to the Regimental Police of this Company. Sgt Hall did so.

Cross Examined by Accused

By accused. 1 Q Exactly what did you say to me on the Morning of March 23 1943. 1100 hrs

A I can not remember what I said at 1100 hrs

Q Exactly what did you say to me when I was being transfered.

2 Q Did you not say that I was to be transfered to the 4th Field ambulance

A yes Sir.

3 Q Did I not ask you to please me the Unit Ambulance

A Yes I transport by you.

4 Q What did I not Refuse by

A I believe he said that he would take the

matter up with Capt Rodgers

5 'Q' Sgt McCracken you say I refused to obey an order will you tell the Court the exact words you gave the order in

'A' That you return the [illegible] car you are going to the 4th Field Ambulance & words to that effect.

6 'Q' Were you present when I was spoken to by Capt Rodgers

'A' Yes.

7 'Q' Do you remember what he said that I appeal to you

'A' That I was legally to be transferred

'A' Yes.

'Q'

R. further question.

RC - Examined by Prosecution.

By Prosecution 'Q' Sgt McCracken at approximately 10 30 hrs as will has been shown in the evidence brought out you told the accused that he was being transferred on arrest or what authority did you tell him this.

'A' At 10 00 hrs I was in the Orderly room when the message came through I presume it was from Rodgers as he told the Driver who had the Car to tell the accused that he was being transferred on arrest

9 'Q' Was this or what without that you asked the Driver to please let me know the order as I accompany the Drivers to 4th Field Ambulance at Egypte 10 30 hrs 23 August 43

'A' I was ordered by Capt Rodgers O/C of this Unit.

R. Further Question.

By Court 10 'Q' Sgt McCracken Could the words mentioning the transfer of the Driver come to you from Capt Rodgers

'A' That was a verbal order by Capt Rodgers personally

" 'Q' Sgt McCracken at what time and where was this order given by Capt Rodgers.

'A' The Order referred to was given to me by Capt Rodgers in the Pte Offrs Tent of No 1 Coy Pln of this Unit at approx 11 15 hrs 23 Aug 43.

R.C.M.P. Completed Mail.

Solemn Affirmation

Witness for the Prosecution — I am 13-865 31 Sgt Caswell R.J. having been duly sworn state.

12 Q Do you recognise accused as
A Yes Sir

13 Q Will you in your own words what occurred at approx 1120 hrs 28 Mar 42
A On the morning of the 28 March 42 I was present when Sgt McCracken ordered Pte Dawkes to place his kit on a lorry and proceed with the driver to 4th Field Ambulance. I saw Pte Dawkes refuse by shaking his head on the negative. I heard Sgt McCracken caution him as to whether he knew what he was doing in refusing to obey an order. Pte Dawkes answered that he did, and Sgt McCracken again ordered him to place his kit on a lorry Pte Dawkes refused by saying I won't do it or I am not going. Sgt McCracken then turned to Cpl Gill and ordered him to place Pte Dawkes under close arrest, which he did.

14 Q Was the order given by Sgt McCracken clear and
A audible
Yes Sir.

15 Q Was the accused close enough that he could have heard the order on both occasions given by Sgt McCracken
A Yes Sir.

Cross Examination by accused

16 Q How far away were you standing when the conversation was taking place
A When Sgt McCracken gave the order about Eight feet away from Sgt McCracken from Pte Dawkes approx Eighteen feet

17 Q Did you know I was to be transferred
A Yes

18 Q What were my exact words in refusing to by the order
A I do not know the exact words

19 Q How far from you was Sgt Mc at that time

A. From just away
Q. Was there [illegible] when Charles was going.
A. Leaving from the second floor window in the officers building.
Q. What exactly did Sgt McCracken say when giving the order.
A. I can not recall the exact words.
Q. Did Sgt McCracken not say "Alright Dawcher get you hat and coat & on the car"
A. It is possible that Sgt McCracken could have said that.

Q. Further Questions by accused
Cross-Examined by Prosecution

By Prosecution Q. You have given in your evidence that you can not recall the exact words used in giving the Dawcher an order. Do you recall whether or not the substance of the order left any doubt as to what to be done
A. It did not Sir
Q. Re-P. 83713 Complied With.
Palace Hill Lines

The Witness for the Prosecution - Pte 4-37358 Sgt Ward G R 2nd C I R
Company R Battle Being duly sworn states:-
Q. Do you recognize the accused
A. I do
Q. Were you present at approx 1120 hrs 28th April when an order was given to the accused
A. I was.
Q. Who gave the order and what were the substance of the order
A. Sgt McCracken gave the order to pack his hat and coat on a staff car.
Q. Did the Dawcher put his hat on a staff car
Q. What occurred following this
A. The Dawcher stood his head and replied "No"
Q. Sgt McCracken then cautioned him by asking him if he realized what he was doing & replied he did. Sgt McCracken then ordered him to put his hat on the staff car. The accused was "No" Sgt McCracken then orders me to place him under close arrest which I did
Q. Do you recall the exact words used by Sgt McCracken and the Dawcher

A. No Sir

29 Q. Are the words and orders given by Lt M. Durocher and given by accused as brought out in your evidence exact quotation of what was said

A. (The question might not be put this fast as Pte Durocher said it.) Lt M. Carlton

30 Q. Approximately how far was Pte Durocher from Lt M. Carlton when the order was given.

A. Approximately 25 feet.

31 Q. Then was Pte Durocher and Pte M. Carlton when the order was given

A. Pte Durocher was upstairs of one building with [illegible] and the window. Lt M. Carlton was standing outside on the ground.

32 Q. Then the order given to Pte Durocher in such a way that its meaning could be fully understood.

A. Yes Sir.

Cross-Examined by Accused.

33 Q. Apl Ward on the morning of 23 Mar 43 you were present when Lt M. Carlton ordered me to take off his hat and place it on the car. Do you know the exact words Lt M. Carlton used

A. I can not speak the exact words.

34 Q. But is not my alright Durocher get your hat and put it on a staff car.

A. I can not say whether they are the exact words or not.

35 Q. How did I refuse to obey the order.

A. By not doing it

36 Q. Exactly what was my reply to Lt M. Carlton

A. You shook your head and replied "No"

37 Q. Is it true that on the summary of Evidence I did not say anything

A. It is not true.

38 Q. Do you remember when Lt M. Carlton was standing when the order was given

A. No. not exactly

R.P. 53-B Completed Nil
W. Friends Questions.

VII

Smith Thomas for Prosecution :- Ian Lloyd Rodgers 4/0c 2/0xo R.I.B. having been duly sworn states :-

K.C.S.I.

34 "Q" If he has been brought [illegible] at what orders did you get Sgt. McCracken at approx 1110 hrs on 23 Mar. 43

"A" At 1110 hrs I told Sgt McCracken to order Pte Dawes to get his kit put from B Mess Goodes Jas. Carmichael

40 "Q" What was the substance of the conversation carried out when the accused was paraded before you at 1 Sqt Mess

"A" Pte Dawes stated he did not want to go to the 4th Field Ambulance as a driver I told Pte Dawes that as he was in the Unit was not good & felt that we were doing him a favour by sending him to drive and if on his reputation would not be held against him were he would have an opportunity to re-habilitate himself.

41 "Q" During the time was it made known to the accused that he would be charged after he had replied that he did not want to go to the 4th Field Ambulance as a driver

"A" Pte Dawes after my remarks said he would not go. I told Pte Dawes that my instructions were that he would go. He again replied I am not going. I told the Sgt to march him out.

Cross-Examined by accused

42 "Q" Before I left the orderly room on the 23rd Mar. 43 you gave me leave to stay in the City. You did not specify till as I was leaving the City.

"A" Yes R.P. 83-B Completed Witness Withdrew

D.I.

Statement by
Pte Dunsdon
D-105782
Rank

I am Pte Dunsdon D-105782 Regt No 2 Coy
R.C.A.S.C. having been duly sworn state
As on about March 1943 at approx 1030 hrs I
was told by Sgt McCracken that I was to be
transferred to the 4th Field Ambulance I immediately
asked him to parade me to Lieut Robbins O/C
#1 Sqt Plat. 2nd C.R.C. Mr Robbins informed
me I was being transferred on orders from Div
H.Q. I was then paraded to Capt Hodgson.
enquired why I was being transferred. He told me
it was on account of my past record. I assured
him that I did not wish to be transferred. After
a short conversation with him he ordered Sgt
McCracken to march me out upon leaving the
orderly room I walked into the adjoining room
and some one went downstairs and began
calling Pte Johnson who I knew wished to
be transferred. I walked back to the Orderly
room and was in order to avoid hearing
the conversation I went over to look out the
window. It was then that Sgt McCracken
told me to take my kit and put it in the
car.

After hearing Pte Johnston being called to
the orderly room I was under the impression
that he also had requested my wish to
remain in the Coy. I answered Sgt McCracken
by saying "No I am not going" He said
something to the effect of realizing what I was
saying by appearing to begin again.

I repeated yes I do I believe Sgt McCracken
ordered me again and I gave the same answer.
I was then placed under close arrest by Capt Ward.

Cross-Examination by Prisoner

Q. You Capt Hodgson told you that you were
being transferred to the 4th Field Ambulance
what was your reply

A. I told him I did not want to be transferred

IX

C-9.

Q Did Capt Hodgins speak to you that you were being transferred.

A Not that I can remember.

44 Q By the time you were marched out of the orderly room were you definitely aware that you were being transferred

A No. Sir.

45 Q Will you explain then your statement that when you heard the Johnston called you were under the impression that you thought to the 4th Field Ambulance had been reconsidered by the A.P.C.

A Yes I thought I knew the Pte Johnston wished to be transferred and I thought that he was to take my place.

46 Q Up till the time that you said to Sgt McCracken "No I am not going" had any one told you that you were not being transferred.

A No. Sir.

R.P.-83-13 Complied With.
No Further Questions

Statement by prosecution

As has been brought out in the Evidence of the first three witnesses called the Accused did not obey a lawful command given personally by a superior officer. Capt Hodgins has brought forward evidence that the accused would not carry out the order that was given later.

He was given ample time to obey the order. He knew what the order meant he was cautioned, and further he admits on his own statement that he did not obey the order in question. From the time he was paraded to Capt Hodgins till the time he was placed under close arrest he did thereby in such a manner to show wilful defiance of authority.

Court Closed for consideration of sentence at 1305 hrs. 29 Mar. 43

R.T.D.

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. "Yes sir, on oath"

Question. Do you intend to call any other witness in your defence?

Answer. "No sir".

Question. ~~Is he a witness as to character only? Answer~~

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (~~and of the witnesses for the defence including witnesses as to character~~) is recorded on a separate page (~~or overleaf~~). attached

---

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says~~†

~~[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

The accused D-105782 Pte Durocher, Leo RCASC being duly sworn states: (See attached evidence.)

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused GUILTY

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

CAPT. J.T. WRIGHT RCASC is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* "YES"

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* "YES"

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* "YES"

Cross-examined by the accused.

ATTACHED R4D.

Question to the accused.

Do you wish to address the Court? *Answer.* "YES."

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

in the case of

D/105782 Pte. Lac Durocher, 2 Cdn Inf Bde Coy RCASC, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness for the Prosecution

B/86036 Sgt. McCracken, J., 2 Cdn Inf Bde Coy, RCASC, having been duly sworn states:

On 23 Mar 43 at approximately 1120 hrs, I ordered Pte. Durocher to get his kit and place it in a Staff Car, driven by CSM Goodie of 4 Cdn Fd Amb RCAMC. On orders from Capt. M.H. Hodgins, A/Officer Commanding, 2 Cdn Inf Bde Coy RCASC Pte. Durocher was to be transferred to 4 Cdn Fd Amb. Pte. Durocher refused to obey this order by shaking his head and saying "I am not going". I cautioned the accused in regards to his behaviour, asking if he knew exactly what he was doing in refusing to obey an order. He replied, "Yes, I do know". I once again ordered him to place his kit in the car and go with CSM Goodie. He refused again, by shaking his head and saying "No, I am not going". I turned to Cpl. Ward, E.R., who was standing approximately 5 paces away and ordered him to place the accused under close arrest, which he did.

The accused does not desire to cross-examine this witness.

2nd Witness for the Prosecution

H/37368 Cpl. Ward, E.R., 2 Cdn Inf Bde Coy RCASC, having been duly sworn, states:

On the morning of 23 Mar 43 at approximately 1120 hrs, Sgt. McCracken, J., ordered the accused, Pte. Durocher, L. whom I now recognize, to take his kit and put it in the Staff Car belonging to 4 Cdn Fd Amb RCAMC. The accused refused to do so. Sgt. McCracken then cautioned the accused by asking him if he knew what he was doing by refusing to obey an order. Pte. Durocher replied that he did. Sgt. McCracken then repeated the order and Pte. Durocher again refused to obey it. Sgt. McCracken ordered me to place the accused under close arrest, which I did.

The accused does not desire to cross-examine this witness.

3rd Witness for the Prosecution

B/86531 L/Sgt. Carroll, R.J., 2 Cdn Inf Bde Coy RCASC, having been duly sworn, states:

On the morning of 23 Mar 43 I was present when Sgt. McCracken, J., ordered Pte. Durocher, whom I now recognize to place his kit in a staff car and proceed with the driver to 4 Cdn Fd Amb RCAMC. I saw Pte. Durocher refuse to obey the order by shaking his head in the negative. I heard Sgt. McCracken caution him by asking him if he realized what he was doing by disobeying an order. Pte. Durocher replied that he did know. I heard Sgt. McCracken again order the accused to place his kit in the staff car and proceed with the driver. I heard Pte. Durocher refuse by saying either "I will not do" or "I'm not going". I then heard Sgt. McCracken order Cpl. Ward, E.R. to place Pte. Durocher under close arrest, which he did.

The accused does not desire to cross-examine this witness.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence."

The accused does not desire to make any statement or give any evidence.

L. L. Durocher
D/105782 Pte. Durocher, L.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence was taken down by me, in the presence of the accused and that Rule of Procedure 4 (c) (d) (e) and (f) have been complied with.

J. J. Wright, Capt.

Field
24 Mar 43

LIST OF WITNESSES

For the Prosecution

B/36038 Sgt. McCracken, J.
2 Cdn Inf Bde Coy RCASC
Cdn Army (Overseas)

H/37368 Cpl. Ward, E.R.
2 Cdn Inf Bde Coy RCASC
Cdn Army (Overseas)

B/36831 L/Sgt. Carroll, R.J.
2 Cdn Inf Bde Coy RCASC
Cdn Army (Overseas)

CAPT. M H HODGINS

For the Defence

Nil.

M H Hodgins

M.H. Hodgins, Capt.,
A/Commanding,
2 Cdn Inf Bde Coy,
R.C.A.S.C.

Field
25 Mar 43

TO WHOM IT MAY CONCERN:

I, D/105782 Pte. Leo DUROCHER, of 2 Cdn Inf Bde Coy RCASC, do not request the services of an officer to represent me at my trial by F.G.C.M.

Pte L A Durocher

D/105782 Pte. Durocher, L.

Field
25 Mar 43

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT IN MY POSSESSION — Gordon Wright Capt

No. D105782 Name DUROCHER, Leo Corps R.C.A.S.C. Date of enlistment 25 May 40 Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 127) (12134—7-41 (1219-30) H.Q. 1771-39-1012)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | or Company | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Nov 41	Pte.		Sec 9 (2)-Disobeying a lawful command given by his superior officer, did not stay with his vehicle when ordered to do so.	L/Cpl. Taylor	14 days C.B. & to forfeit 7 days pay.	15 Nov 41	Capt. Doney	Forfeits 7 days pay. FR&I 149 (2)
Field	6 Mar 42	Pte.		(1)Sec 40 - Conduct, etc. (2)Sec 40-Neglect etc., in that at Slindon at 1400 hrs on 6 Mar 42 negligently operated a W.D. vehicle thereby causing damage to brick wall at Slindon House.	Documentary Evidence	14 days C.B. & 7 days C.B. (awards to run concurrently)	14 Mar 42	Major Diehl	
Field	31 Mar 42	Pte.		Sec 40-Conduct etc. in that he did use improper language in reference to his superior officer	Lieut Paterson, L/Cpl. Amer, Cpl Hutson	28 days F.P. & to forfeit 28 days pay.	21 May 42	Major Diehl	Forfeits 28 days pay FR&I 149(1)(b)

(P.T.O.)

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Oct 42	Pte.		(1)Sec 15 (1)A.A.-A.W.L. from 0900 hrs to 1025 hrs 15 Oct 42. Time absent 1 hrs 25 mins.(2) Sec 40-Neglect etc. (3) Sec 10 (4) breaking out of barracks. (4)Sec 10(4) Breaking out of barracks.	Sgt McCracken Cpl Gleeson L/Cpl Kempling Sgt McDougall Lt. Williams Cpl Boston	28 days F.P.	17 Oct 42	Major Diehl	Forfeits 28 days pay FR&I 149 (1)(b)
Field	6 Feb 43	Pte.		Sec 11 A.A.-Failing to obey Pl standing Orders-did not appear on 0830 hrs parade.	Sgt Charlton C.E.	14 days C.B.	6 Feb 43	Major K.K. Thomson	
Field	20 Feb 43	Pte.		Sec 9(2)A.A.-at approx 2230 hrs disobeyed lawful command given by superior officer.	Lieut Kelly L/Sgt Gadsdon L/Cpl MacNeil	27 days F.P.	9 Mar 43	Major K.K. Thomson	Forfeits 27 days pay FR&I 149 (1)(b)

ARMY FORM B 295.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D/105782	Private.	Lac DUROCHER	2 Cdn Inf Bde Coy RCASC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 577, K.R., 1940.

* The manners herein stated should correspond with the number of entries in the conduct sheets, provided that each offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec. 40 A.A.	2 times	4 times.
For Sec. 9 (2) A.A.	1 times	2 times.
For Sec. 10 (4) A.A.	2 times	2 times.
For Sec. 11 A.A.	1 times	1 times.
For Sec. 15 (1) A.A.	1 times	1 times.

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 77 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused is under the following sentence to be~~

~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and two days in military custody, making a total of two days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service ~~or identity paper~~ is 22

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation~~ record of service ~~or identity paper~~ is 29 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (*or* corps *or* department) the rank of dated

(**1354**) Wt.30244/7972 75,000 12/40 A.S.R.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D/105782 Rank Private Name Leo DUSCHER of 2 Can Inf Bde Coy R.C.A.S.C. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge, or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of Mar 43

M A Hodgins Capt.
A/O.C. 2 Cdn Inf Bde Coy RCASC

93. The accused has served as a non-commissioned officer continuously, without reduction, to the present date, viz.:

	Date of Promotion.
In the rank of	years.
In the rank of	years.
In the rank of PRIVATE	years.

(Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned completed accordingly.)

HHH-81 (Cont #3)

PTE DUROCHER L.

See CC-85 for 1st Cont
" FFF2 " 2nd "

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D.105782 Pte. LEO DUROCHER 85 Cdn Br Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

At present under sentence for 60 Days FP + 60 days FP beginning on (date) 14 Mar 44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

~~Forty (40) days F.P. No 2~~

To suffer Field Punishment for 40 days and to forfeit all ordinary pay for a period of 40 Days.

(Sgd) ..... Judge-Advocate, if any. 5 Apr 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

~~Confirmed~~

Date 8 April 44 (Sgd) [illegible] Lt.-Col. Commanding HQ RCASC FIRST CDN ARMY TPS

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(As to duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 125, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence of the Court.

I direct that the accused be [illegible] further proceedings [illegible]

(Sgd) [illegible] Lt.-Col.

Date 8 APRIL 44 Commanding (P.W. Seyvard), Lt.-Col. HQ RCASC First Cdn A. Tps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-105782 Pte Durocher LEO	11 April 44	[illegible] Major O.C. No. 85 Can. Bridge Coy. R.C.A.S.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

No illegation or irregularities in the proceedings would warrant withholding confirmation

DATE 7 APR 44

ENTERED IN RECORDS OF C.M. HHH87

FIELD GENERAL COURT-MARTIAL

CFA90 (1n lieu of AFA3) 40. P.A.H. 1608 (2804)

Convened by Order of Lt.-Col. P.H. Savard Comd HQ RCASC First Cdn A Tps Dated 27 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for shewing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.105782	Pte.	LEO	DUROCHER	85 Cdn Br Coy RCASC

PROCEEDINGS REVIEWED

R. Beaudoin

20 Apr 44 capt.

REVIEWING OFFICER, HQ BRANCH C.M.F.G.

PROCEEDINGS REVIEWED A.A.G. FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 5 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6.) (2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected (a) to be tried by court-martial instead of being dealt with summarily by the CO (RP 60).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to [illegible] as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(2). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major C.C. Rollit 84 Cdn Arty Coy RCASC
Member	Capt. C. McKenzie HQ First Cdn A. Tps Coy RCASC
Member	Capt. C.E.M. Foster 62 Cdn A. Tpt Coy RCASC.
Judge-Advocate	
Prosecutor	Lt. P.W. Trudel 85 Cdn Bridge Coy RCASC.
Defending Offr	Capt. D.S. Stephens 85 Cdn Bridge Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment makes(s) (no) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 145, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~severally~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 15(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement(s)~~ . The Court decides (not) to advise accused to change his (~~those~~) plea(s) of Guilty to Not Guilty on both charge(s). ~~The accused to (not) withdrawal, and for (the~~ ~~changes) his (their) (~~plea~~) on ~~charge(s)~~ . Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP U (C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AA 91. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in paras E2 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans I wish to call Lt. G. P. de Avigneau as witness as to character
(*1. If evidence then already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4. 46 fn 6. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and thence to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(j) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans In mitigation of sentence only I wish to say that I am sorry for having committed the offence and
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to comment on anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 114, 119(A), KR Can 308, 330, 563-566, Overseas RO 3029, 3032, MML p 80, 737-738. As to sentences assigned for civil offences by the law of England see AA 4 (5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	Field 29 Mar 43	A.A. Sec 9 (1)	to undergo 60 days detn	Nil
F.G.C.M.	Field 14 Mar 44	A.A. Sec 9 (2)	to undergo 120 days detn	sentence commuted from to 60 days Field Punishment

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 24th day of MAR 44

T.E. Matheson Lieut Major
for O.C. 85 Cdn Bridge Coy RCASC

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

B1 GMR

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-105782	Pte	Durocher, Leo	85 Cdn Bridge Coy RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence at the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 40	Four times.
For A.A. Sec 8 (2)	One times.
For A.A. Sec 9 (1)	One Three times.
For A.A. Sec 9 (2)	Two times.
For A.A. Sec 10 (4)	One times.
For A.A. Sec 15 (1)	Two times.
A.A. Sec 11	Two One times.

Date of first entry in Field Conduct Sheet 12 Nov 41

Date of last entry in Field Conduct Sheet 14 March 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for 60 days

beginning on the 14 th day of March 44

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~Nil~~ days in military custody, *i.e.*, Nil days in open arrest ~~Nil~~ days in close arrest ~~Nil~~ of which Nil days were spent in hospital.

5. The present age of the accused is 23 yrs 4 mos 23 days

6. The date of his ~~enlistment~~ calling up for military service is 25 May 40

7. The service which the accused is allowed to reckon is Nil

8. ~~[illegible]~~

9. ~~[illegible]~~

*State the military decoration (if any) held by accused.

Date of Promotion.

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be ascertained from the regimental books the paragraph must be struck through.*

Form B.296(W) 2

No. D-105782 Name Durocher, Leo Sqn., Battery, or Company Corps RCASC Date of enlistment 25 May 40 G.C. Badges Service or Proficiency Pay $1.50 M.F.M. 6 A.F.B. 122; 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	On March 14, 1944 tried by F.G.C.M.								
	CHARGE:			A.A. Sec 9 (2)					
	FINDINGS:			Guilty					
	SENTENCE:			To undergo detention for 120 days					
	CONFIRMATION:			Findings of the Court confirmed but sentence commuted to sixty days (60) day Field Punishment by Comd First Cdn Army Tpt Coln on 16 Mar 44					
	CLOSE ARREST:			Held in close arrest from 1400 hrs 29 Feb 44 until 1400 hrs 14 March 44					
	FORFEITURES:			Forfeits 60 days pay FR&I 149 (1) (b) Forfeits 14 days pay FR&I 149 (1) (c) (i) Total Forfeiture 74 days					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified to be a true copy of original document held in my possession

G.E. Mathieu Lieut

(G.E. Mathieu) Lieut & Adjt..
85 Cdn Bridge Coy R.C.A.S.C.

Field
25 March 44

No. D-1057 Name Durocher, L. Sqn., Battery, or Company Corps R.C.A.S.C. Date of enlistment 25 May 40 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.H. 177) 40/P & S/138 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
F.C.C.M.	Was on 29 Mar 43 tried by Field General Court Martial on the following charges contrary to AA. Sec 9 (1)								
	PLEA:			Not guilty					
	FINDINGS:			Guilty					
	SENTENCE:			To undergo 60 days detn w.e.f. 29 Mar 43					
	CONFIRMATION:			Findings and sentence confirmed by H.D. Graham Brig. 1 Cdn Inf. Bde. on 29 Mar 43					
	CLOSE ARREST:			Held under close arrest from 1120 hrs 23 Mar 43 till 1000 hrs 29 Mar 43 (5 days 22 hrs 40 mins)					
	FORFEITURES:			Forfeits 60 days pay FR&I 149 (1) (b)					
				Forfeits 6 days pay FR&I 149 (1)(c)(i)					
				Total Forf: 66 days pay					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Jul 43	Pte		AA Sec 8(2) Using insubordinate language to a superior officer	Cpl Heath CQMS Clegg	Forfs 5 days pay	28 Jul 43	Lt.-Col.W.C. Fletcher	Forf 5 days pay FR&I 149 (2)
Field	3 Dec 43	Pte		AA Sec 15(1)AWL from 0745 hrs until 0830 hrs 3 Dec 43 ABSENT 45 mins	C-92084 Cpl J.V. Brydges	14 days C.B.	3 Dec 43	Major Alex Gagnon	

AWARDED THE CANADIAN VOLUNTEER MEDAL AND CLASP w.e.f. 15 Jan 44 P.W. Trudel, Lieut.

No. D-105782 Name Durocher, L. Sqn., Battery, or Company Corps RCASC Date of enlistment 25 May 1940 G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F.B. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature G.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Nov 41	Pte		AA. Sec.9(2)Disobeying a lawful given by his superior officer i.e. he did not stay with his vehicle when ordered to do so	Com- L/Cpl Taylor	14 Days C.B. Forf 7 days pay	15 Nov 41	Capt Doney	For 7 days pay FR&I 149(2)
Field	6 Mar 42	Pte		(1) AA.Sec.40 Conduct Etc. (2) AA.Sec.40 Neglect Etc. in that at Slindon at 1400hrs. on 6 Mar42 Negligently operating a WD vehicle thereby causing damage to a brick wall at Slindon House.	Documentary Evidence	14 days C.B. & 7 days C.B. to run con-currently	14 Mar 42	Major Diehl	
Field	31 Mar 42	Pte		AA.Sec.40.Conduct etc.in that he did use improper language in ref-erence to his superior officer	Lt. Peterson L/Cpl Amer Cpl Hutson	28 days F.P. Forf 28 days pay	21 May 42	Major Diehl	Forf 28 days pay FR&I 149 (1) (b)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Oct 42	Pte		(1)Sec.15(1) AWL from 0900hrs to 1025hrs.15 Oct 42 ABSENT 1hr 25 min.(2) AA.Sec.40 Neglect etc. (3) Sec.10(4)Breaking out of barracks	Sgt McCracken Cpl Gleeson L/Cpl Kempling Lt. Williams Cpl Boston	28 days F.P. Forf 28 days pay	17 Oct 42	Major Diehl,L.W.	Forf 28 days pay FR&I 149(1) (b)
Field	6 Feb 43	Pte		A.A. Sec 11 - Failing to obey Pl Standing Orders-did not appear on 0830 hrs parade	Sgt Charlton C.E.	14 days C.B.	6 Feb 43	Major K.K. Thompson	
Field	20 Feb 43	Pte		A.A. Sec 9(2) at approx 2230 hrs disobeyed a lawful command given by superior officer	Lt. Kelly L/Cpl.Gadson L/Cpl.MacNeil	27 days F.P. forf 27 days pay	9 Mar 43	Major K.K. Thompson	Forf 27 days pay FR&I 149 (1) (b)

FOURTH WITNESS C-31740 L/Cpl. R.L. Fitzpatrick, 85 Cdn Bridge Coy RCASC having been duly sworn states:-

"I am C-31740 L/Cpl. R.L. Fitzpatrick, of "D" Platoon, 85 Cdn Bridge Coy RCASC. On Saturday 18 March, 1944 I was on duty as guard commander at Coolhurst. When I took over at approximately 1600 hours there were two prisoners in the guard room one of whom was Pte. Durocher. At approximately 1730 hours another prisoner was brought in, he being Pte. Lemieux. At around 1800 hours Pte. Marshall,one of the guards left the guard room saying that he was going for a wash, about three minutes later Pte. Durocher and one of the prisoners got up and followed Pte. Marshall out. I did not stop them nor dod I enquire where they were going as I thought they were going to the abolution room and that Pte. Marshall would look after them. I did not warn or tell Pte. Marshall that the two prisoners were following him out. When Pte. Marshall returned some 15 minutes later, I asked him where Pte. Durocher and the other prisoner were and he replied "I Didn't know they were out with me". When they did not return I went out to look for them but, could not find them. I later reported the escape to the Orderly Sergeant.

Sgd. C-31740 L/Cpl. R.L. Fitzpatrick

The accused declined to cross examine the witness.

FIFTH WITNESS D-123123 Cpl. Lefebvre, J.L., 85 Cdn Bridge Coy RCASC having been duly sworn states:-

"I am D-123123 Cpl. Lefebvre, J.L. of "D" Platoon, 85 Cdn Bridge Coy RCASC. On 20 March, 1944 I was on duty as guard commander at Coolhurst. At approximately 2210 hours, D-105782 Pte. Leo Durocher came into the guard room and surrendered himself to me. I immediately advised the Orderly Room that Pte. Durocher had returned of his own accord and without escort.

Sgd. D-123123 Cpl. Lefebvre, J.L.

QUESTION TO THE ACCUSED

Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED

I have nothing to say at the present time.

Sgd. D-105782 Pte. Leo Durocher

I certif that the foregoing summary of evidence was taken down by me in the presence and hearing of the accused, jointly, and that the Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Signed by me in the Field this 20th day of March, 1944

(H.G. Davidson) Capt.
Officer detailed to take
Summary of Evidence

SUMMARY OF EVIDENCE in the case of D-105782 Pte. Durocher, Leo, 85 Cdn Bridge Coy RCASC, a soldier of the Canadian Army Overseas.

A'

The Commanding Officer directs that the evidence be taken under oath

FIRST WITNESS B-85606 Pte. W.C. Marshall, 85 Cdn Bridge Coy RCASC having been duly sworn states:-

"I am B-85606 Pte. W.C. Marshall, of "D" Platoon 85 Cdn Bridge Coy RCASC. On Saturday, 18 March 44 I was on guard duty on the east camp gate at Coolhurst. My first tour of duty was from 1400 - 1600 hours and before going out on my first tour I noticed that we had two prisoners in the guard room one of whom was Pte. Durocher. When I completed my first tour of duty and was relieved by Pte. Lake at 1600 hours, I returned to the guard room and found that both prisoners were still there. I later went for supper and on my return at approximately 1730 hours both prisoners were still there. As L/Cpl. Fitzpatrick, the guard commander was in the guard room I proceeded to the wash room at around 1815 hours and when I returned to the guard room at approximately 1830 hours I noticed that the prisoners one of whom was Pte. Durocher were not there. I did not see Pte. Durocher again until approximately 2300 hours, 20 March, 1944 when it was reported that Pte. Durocher had returned to the guard room on his own accord.

Sgd. B-85606 Pte. W.C. Marshall

The accused declined to cross examine the witness

SECOND WITNESS F-87158 Pte. W.A. Lake, 85 Cdn Bridge Coy RCASC having been duly sworn states:-

"I am F-87158 Pte. W.A. Lake of "D" Platoon, 85 Cdn Bridge Coy RCASC. On Saturday, 18 March, 1944 I was on guard duty on the east camp gate at Coolhurst at 1600 - 1800 hours. Before going on my first tour of duty I found that we had two prisoners in the guard room, one of them being Pte. Durocher. At approximately 1630 hours I was relieved by Pte. Richards, so that I could go for supper. I went to my hut for my mess tins, had my supper and then returned to my post to relieve Pte. Richards and complete my tour of duty. When I completed my tour of duty and was again relieved by Pte. Richards, I returned to the guard room and found that both the prisoners were not there, but that another prisoner Pte. Lemieux had been received. I did not see Pte. Durocher again until around 2300 hours, 20 March, 1944 when it was reported that Pte. Durocher had returned to the guard room of his own accord

Sgd. F-87158 Pte. W.A. Lake

The accused declined to cross examine the witness

THIRD WITNESS G-4385 Pte. V.T. Richards, 85 Cdn Bridge Coy RCASC having been duly sworn states:-

I am G-4385 Pte. V.T. Richards of "D" Platoon, 85 Cdn Bridge Coy RCASC. On Saturday 18 March, 1944 I was on guard duty on the east camp gate at Coolhurst from 1800 - 2000 hours. When I left the guard room to go on duty there were three prisoners there one of whom was Pte. Durocher. When I completed my tour of duty and returned to the guard room shortly after 2000 hours I found that only one of the prisoners was still there, he being Pte. Lemieux. I did not see Pte. Durocher again until around 2300 hours, 20 March, 1944, when it was reported that he had returned to the guard room of his own accord.

Sgd. G-4385 Pte. V.T. Richards

The accused declined to cross examine the witness

Question to the accused: Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused.
I have nothing to say at the present time

F. Hawkes
Signature of accused

I certify that the foregoing summary of evidence was taken down by me in the presence and hearing of the accused, and that the Rules of Procedure 41(1)(d) (e) and (f) have been complied with.

Signed by me in the field this 20th day of March 1944

R. Stevenson Capt
Officer detailed to take Summary of Evidence

When they did not return I went out to look for them but could not find them:
I later reported the escape to the orderly sergeant.

The accused declined to cross-examine the witness

1/Sgt. R.K. Fitzpatrick
Signature of Witness

Fifth Witness: 0123123 Cpl Lefebvre J.L. 85 cdn. Bridge Cy, RCASC having been duly sworn states.
I am 0123123 Cpl J.L. Lefebvre of R Sqn 85 cdn. Bridge Cy. RCASC.
On 20 Mar 1944 I was on duty as guard commander at Cookhead.
At approximately 2210 hrs 0105782 Pte Lee Dunsden came in to the guard room and surrendered himself to me.
I immediately advised the Orderly Room that Pte Dunsden had returned of his own accord and without escort.

The accused declined to cross-examine the witness.

Cpl J.L. Lefebvre
Signature of Witness

Fourth Witness: C 91740 L/Cpl R.L. Fitzpatrick, 85 Cdn Bridge Coy, RCASC having been duly sworn states.

I am C 91740 L/Cpl R.L. Fitzpatrick of Ogdn, 85 Cdn. Bridge Coy, RCASC.

On Saturday 18 March 1944 I was on duty as guard commander at Carbonnet.

When I took over at approximately 1600 hrs there were two prisoners in the guard room one of whom was Pte Dunsdon.

At approximately 1730 hrs another prisoner was brought in, he being Pte. Lemieux.

At around 1800 hrs Pte. Marshall one of the guards left the guard room saying that he was going for a walk. About 3 minutes later Pte Dunsdon and the two prisoners got up and followed Pte Marshall out.

I did not stop them nor did I enquire where they were going as I thought they were going to the ablutions and that Pte Marshall would look after them.

I did not warn or tell Pte Marshall that the two prisoners were following him out.

When Pte. Marshall returned some 15 minutes later I asked him where Pte Dunsdon and the other prisoners were and he replied "I don't know they were not with me".

The accused declined to cross-examine the witness.

Pte M.A. Lake
Signature of Witness

Third Witness - G 4385 Pte. V.T. Richards, 85 cdn Bridge Coy, RCASC having been duly ~~sworn~~ sworn states:

I am G 4385 Pte V.T. Richards of D Gp 85 cdn. Bridge Coy. RCASC.

On Saturday 18 March 1944 I was on guard duty on the east camp gate at Coolhurst from 1800-2000 hrs.

When I left the guard room to go on duty there were three prisoners there one of whom was Pte Dunsdon.

When I completed my tour of duty and returned to the guard room shortly after 2000 hrs I found that only one of the prisoners was still there, he being Pte. Lemieux.

I did not see Pte Dunsdon again until around 2300 hrs 20 March 1944 when it was reported that he had returned to the guard room of his own accord.

The accused declined to cross-examine the witness.

V. Richards G.S.
Signature of Witness

approximately 2300 hrs 20 March 1944 when I was visited that the Prisoner had returned to the guard room of his own accord.

The accused declined to cross-examine the witness

P/L V.C. Marshall
Signature of Witness

Further Witness:- F8715-8 Pte W.A. Lake, 85 Cdn. Bridge Gy, RCASC having been duly sworn states.

I am F8715-8 Pte W.A. Lake of Ogden 85 Cdn. Bridge Gy RCASC.

On Saturday 18 March 1944 I was on guard duty on the east camp gate at Cockhurst from 1600-1800 hrs.

Before going on my first tour of duty I found that we had two prisoners in the guard room, one of them being Pte Prisoner.

At approximately 1630 hrs I was relieved by Pte Richards, so that I could go for supper. I went to my hut for my meal time, had my supper and then returned to my post to relieve Pte Richards and complete my tour of duty.

When I completed my tour of duty and was again relieved by Pte Richards, I returned to the guard room and found that both the prisoners were not there, but that another prisoner the Leminy had been received.

I did not see the Prisoner again until around 2300 hrs 20 March when it was reported that the Prisoner had returned to the guard room of his own accord.

Summary of evidence in the case of D105782 Pte Leo Durocher, 85th cdn. Bridge Coy, RCASC, a soldier of the cdn. Army Overseas.

The officer Commanding directs that the witness be sworn on oath.

First Witness - D85606 Pte W. C. Marshall, 85th cdn. Bridge Coy - RCASC having been duly sworn states.

I am D85606 Pte W. C. Marshall of D plm, 85th cdn. Bridge Coy RCASC.

On Saturday 18 Mar 44 I was on guard duty on the east camp gate at Aldershot.

My first turn of duty was from 1800 hrs to 2000 hrs and before going on this my first turn I noticed that we had two prisoners in the guard room one of whom was Pte Durocher.

When I completed my first turn of duty and was relieved by the Corporal at 1600 hrs, I returned to the guard room and found that both prisoners were still there.

I later went for supper and on my return at approximately 1730 hrs both prisoners were still there.

As Sgt Fitzpatrick the guard commander was in the guard room I proceeded to the washroom at about 1815 hrs and when I returned to the guard room at approximately 1830 hrs I noticed that both prisoners one of whom was Pte Durocher were not there.

I did not see Pte Durocher again until

LIST OF WITNESSES IN THE CASE OF D-105782 Pte. Dur ocher, Leo

PROSECUTION.....

First Witness	B-85606 Pte. W.C. Marshall, 85 Cdn Bridge Coy RCASC
2nd Witness	F-87158 Pte. W.A. Lake, 85 Cdn Bridge Coy RCASC
3rd Witness	G-4385 Pte. V.T. Richards, 85 Cdn Bridge Coy RCASC
4th Witness	C-31740 L/Cpl. R.L. Fitzpatrick, 85 Cdn Bridge Coy RCASC
5th Witness	D-123123 Cpl. J.L. Lefebvre, 85 Cdn Bridge Coy RCASC

DEFENCE

Nil

I, D-105782 Pte. Durocher, L. desire the assignment of an officer to defend me at my trial by F.G.C.M.

Sgd. _____
(D-105782 Pte. Durocher, Leo

85 Cdn Bridge Coy
RCASC

Cdn. Army Troops

Charge Sheet

The accused 0105782 Dvr Lev Dunckley, 85 Cdn. Bridge Coy RCASC, a soldier of the Cdn. Army Troops, is charged with

First charge — Whn on active service and when in confinement escaping
Sec 42(AA) — in Kath

in the field on 18 March 1944 when in confinement in Unit guard room at Cotehunt awaiting admission to field punishment camp, escaped.

Second charge — Whn on active service absenting
Sec 15(1) AA — himself without leave

in Kath

in the field on 18 March 1944 when in confinement in Unit guard room at Cotehunt did absent himself without leave from 1800 hrs 18 March 1944 until he surrendered himself to Unit guard commander at 2210 hrs 20 March 1944.

Total time absent: 2 days, 3 hrs, 40 mins.

Field
20 March 1944

Officer Commanding
85 Cdn Bridge Coy
RCASC

Transcript of Plea in Mitigation of Sentence

STATEMENT OF DEFENCE PTE DUROCHER

This man has pleaded guilty to a charge of escaping when in confinement and to being absent without leave for a short time. One naturally asks what motivated such behaviour. I maintain that this was the act of a desperate boy who felt he had been very badly treated by a previous Court Martial. About a month ago Pte Durocher was charged in front of the O.C. 85 Cdn Bridge Coy. RCASC. on a charge of disobeying a lawful command under section 9 (2) of the Army Act. He could have received only 27 days detention from the said O.C. but nevertheless elected trial by Court Martial, a perfectly proper procedure if he wished to make use of it. For this offence he was sentenced to the savage sentence of a hundred and twenty days detention, which was mercifully reduced to sixty days field punishment by CRASC. First Cdn Army Tpt Coln. The reduction was not enough. The following were the trivial facts for which this preposterous sentence was meted out. A L/Cpl. with whom he had formerly been associated with as a private, and had no connection with his section, gave him an order to unload a vehicle. At the time he was buisy doing maintenance on his own vehicle and refused this none to well authorized command until he had complied with the previous order to do maintenance. When he finished his maintenance the lorry had been unloaded. In my opinion there was not enough evidence for a conviction under the Army Act. Much less the imposition of this monstrous sentence. Now what was the reaction on the mind of a boy who had only had the advantage of a seventh grade education in the Province of Quebec. He felt the world to be against him. He was overcome with a desire to escape from a situation where he did'nt seem to have a friend. While he was awaiting transportation to a field punishment camp he met another prisoner with a bad record who outlined to him the method of escape outlined in the Summary of Evidence. Could any fair minded man blame him for taking advantage of this opportunity to escape. What would the members of this Honourable Court do if they found themselves in a similar predicament. I maintain that only their superior education would keep them from following a similar course. At the trial this man was prosecuted by a Captain with years of experience in such matters. As his defending counsel he had a very sincere Lieut. taking his first case. That was neither fair to the accused or this counsel. I ask this Court to remedy a great wrong by punishing this man by giving him a sentence of one day C.B. which would be in my opinion just one day too many. I crave the indulgance of this Court.

D. J. Anderson
Capt.
D Adjutant

E. 1. Witness as to character for the accused.

Lt. G. H. Ashigne of 85 Base Bridge Coy RCASC, sworn states:-

I am Pte Dunoher's P.L. off on his occasions. I have always found him a satisfactory man in a platoon I have not known him to have any counts against & cannot recollect any Orderly room cases while I have known him. It does not appear to me to be typical of Pte Dunoher to escape from detention at 90 and I think that it may have been due to lonesiness which he expected when he closed tent by O.C. instead of Cook Sentry, and did not receive I have discussed the case with Pte Dunoher & other officers and feel that his case was not properly handled I intended to handle his previous case myself but as we were on exercise I remanded him to the O.C. & Pte Dunoher, feeling that his misdemeanour was not serious & that he should not receive other than a minor punishment elected trial by case instead of accepting the O.C.'s punishment. This I think is what led him to break out of confinement & go AWL as he felt he had not been justly treated The sentence awarded him by the Coy. was 60 days D.P.

Sworn

MEDICAL OFFICERS CERTIFICATE
(K.R. CAN) (para 557)

I certify that I have this morning examined D-105782 Pte. Durocher Leo of 85 Cdn. Bridge Coy. RCASC and in my opinion he his fit/~~unfit~~ to undergo trial by Court Martial.

Field
5....April 1944

S. H. Solway Capt RCAMC
Medical Officer.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized, and the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWB, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 121.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening *(if any)* by Defending Offr. *(RP 80(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 40 fns 9-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 87.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).)*

(vii) Summing up by J.A. if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 567.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy or item of original see KR Can 566. As to certified copies of regimental books see AA 143 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(9), RP 118(C), MML p 759.)*

4. The President or J.A. if any, will return proceedings promptly with covering letter and in envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

CFA 65 (In lieu of AFAS) 40/PAM/1697 (Sec8)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.105782	Pte		Leo	DUROCHER	85 Cdn Br Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~how~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Mar 44 endorsed by me, ~~or to which are annexed~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~or that it is not practicable to delay the trial to a later date~~

(Delete part in brackets when not required for compliance with RP 108(C).)

3. I hereby convene a Field General Court-Martial to try the said person and to consist of the Offrs appointed or detailed hereunder.

~~4. I also appoint as Prosecutor for the Court, the Offr or Prosecutor for the reasons stated hereunder.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	C C Rollit		82 Cdn Arty Coy RCASC

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	C McKenzie		HQ First Cdn A Tpt Coln RCASC
Capt	C M Foster		63 Cdn Army Tpt Coy RCASC

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	J R Danaher		47 Cdn Army Tpt Coy RCASC

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

is Field (Country.)

(P.H. Bevan) (Rank.) Lt Col.

Commanding HQ RCASC First Cdn A Tps (Convening Officer.)

Date 26 Mar 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

85 CDN BRIDGE COY
R.C.A.S.C.
CANADIAN ARMY OVERSEAS

CHARGE SHEET

The accused D-105782 Pte. D'ROCHER, Leo, 85 Cdn Bridge Coy RCASC, a soldier of the Canadian Army Overseas is charged with

FIRST CHARGE
SEC 22 (A A)
ARMY ACT

When on Active Service and when in confinement escaping

in that he,

In the Field on 18 March, 1944 when in confinement in Unit Guard Room at Coolhurst awaiting admission to Field Punishment Camp, escaped

SECOND CHARGE
SEC 15 (1)

When on Active Service absenting himself without leave

in that he,

In the Field on 18 March 1944 when in confinement in Unit Guard Room at Coolhurst did absent himself without leave from 1830 hours 18 March, 1944 until he surrendered himself to Unit Guard Commander at 2210 hours 20 March, 1944.

TOTAL TIME AMOUNT:- 2 days, 3 hours, 40 minutes

Alex Paquin

(Alex Paquin) Major
Officer Commanding
85 Cdn Bridge Coy
R.C.A.S.C.

Field
24 March 44

To be tried by [illegible]

C Howard

(C.H. Howard) Lt.-Col.,
[illegible] RCASC First Cdn Army Tps

Field
27 Mar 44

FFF 2
PTE DUROCHER L.

ENTERED IN RECORDS OF C.M. FFF-2

FIELD GENERAL COURT-MARTIAL

CPA96 (To face of AFA21) 40/P.R.(S.)/5608 (38604)

Convened by Order of Lt.-Col. R.T. Leah Comd HQ First Cdn Army Tpt Coln dated 9 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.105782	Pte.	LEO	DUROCHER	85 Cdn Br Coy RCASC

PROCEEDINGS REVIEWED
W. C. Mole Lieut
27 Mar 44
REVIEWING OFFICER, 1ST CDN CORPS

PROCEEDINGS REVIEWED
Date 26 Mar 44
Major
for A.A.G.
FIRST CDN ARMY

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 14 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 - 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 51-53, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1730 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ... as interpreter?~~ Ans ~~... as shorthand writer?~~ Ans

~~The interpreter is sworn.(1) Do you object to ... as shorthand writer?~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc.

President	Major	W.J. Pepall	65 Cdn Tk Tpt Coy RCASC
Member	Capt	J.C.M. Clarke	66 Cdn Tk Tpt Coy RCASC
Member	Capt	A.O. Allen	86 Cdn Br Coy RCASC
Judge-Advocate			
Prosecutor	Capt	R.G. Dunbar	85 Cdn Br Coy RCASC
Defending Offr	Lieut	R.G. Desmarais	85 Cdn Br Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans N.A. Is the Defending Offr a lawyer? Ans N.A. (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D105782 Pte Durocher L. before arraignment makes(a) (no) objn and pleas (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 140, RP 57), or to be one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 36, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D 2 E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D.105782 Pte. Leo DUROCHER 85 Cdn Br Coy RCASC

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA sec 9 (3)	Not guilty	guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ WP beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: WP

~~To undergo detention from ... to~~ To undergo detention for 120 days

(Sgd) ... Judge-Advocate, if any. 14 Mar 44 Date awarded. (Sgd) ... President (RP 45, 50.)

(See back of Convening Order re custody and disposal of record after trial.)

No illegalities or irregularities exist as would warrant withholding confirmation. KING, FIRST CDN army.

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

DATE 17 Mar 44

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sentence back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding of Court but commute sentence to Sixty Days Field Punishment No 2

~~I direct that the accused be and remain committed to ... detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not applic.)

(Sgd) ...

Date 17 March 44 Commanding 49 T. LEAH Lieut-Col Comdg Officer Comd First Cdn Army Tpt Coln

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

D-105782 Pte Durocher L. 18 Mar 44 ... No. 85 CDN. BRIDGE CO. R.C.A.S.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5, para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (1) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Pres's oath for giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Yes Do you intend to call witnesses on your behalf ?
Ans Yes Are they witnesses as to character only ? Ans No
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 395. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces that Confirmation, if any, of Not Guilty, and status to the accused that the findings of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~Or, The President announces that the accused is found Not Guilty on all charges and as to be relieved from arrest, and that the proceedings are accordingly terminated. Part I of the Schedule is amended accordingly.(2)~~
(1. AA 54(2) (d), RP 45, 125(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there is a plea of Guilty outstanding and dealt with under Record Form B by C.)

D8 The President informs the accused that the findings of the Court on the first charge being subject to confirmation will be promulgated later.

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. AFB 203 or AFB 296. 2. AFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. Where several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its paragraphs, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44. 138, 183, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 309, 2223, MML p 86, 2107-2109. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Elects trial by FGCM

USR

85 CDN BRIDGE COY
R C A S C
CANADIAN ARMY OVERSEAS

C H A R G E S H E E T

The accused D-105782 Pte DUROCHER, Leo, 85 Cdn Bridge Coy RCASC, a soldier of the Canadian Army Overseas is charged with

FIRST OFFENCE
SEC. 9 (2)
ARMY ACT

When on active service disobeying a lawful command given by a superior officer

in that he,

In the field on 26 Feb 44 when ordered by L-17307 A/L/Cpl Kerr, L.R. to unload bridging equipment from a truck, did not do so.

Alex. Paquette
~~Alex Gagnon~~ Major
Officer Commanding
85 Cdn Bridge Coy RCASC

Field
5 Mar 44

To be tried by FGCM:

[illegible]
Lt.-Col.
Comd First Cdn A Tpt Coln

Field
9 Mar 44

FIELD GENERAL COURT-MARTIAL

CFA50 (In lieu of AFAB) 40/PA&N/1001 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 324, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.105782	Pte.		LEO	DUFOCHER	85 Cdn Br Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Mar 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is expedient to try the said person(s) without delay.~~ (RP 105(C).)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Pd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate (Must be named. RP 106) the Offr detailed hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Unit.)
Major	W.G. PEPALL (Must be named. RP 106.)	85 Cdn Tk Tptr Coy RCASC

MEMBERS.

(Rank.)		(Unit.)
Capt.	J.G.M. CLARK	66 Cdn Gen Tpt Coy RCASC
Capt.	A.C. Allan (Named or detailed. RP 106.)	86 Cdn Br Coy RCASC

WAITING MEMBER.

(Rank.)		(Unit.)
Lt.	J.P. ODY (Named or detailed, if any. RP 106.)	66 Cdn Gen Tpt Coy RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Field (Country.)

(E. Leah) Signed personally. RP 105 fn 2.) Lt. Col (Rank.)

Date 9 Mar 44

Commanding No. First Cdn A Tpt Coln
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 85(C))*, any objections *(RP 96(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Opl H. Jones, RWR, sworn, states:

I am a opl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. *(or,* None.*)*

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 60-62 will apply so *far as* practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. *(RP 60(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 46 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 46 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(K), KR Can 565(a).)*

(vii) Summing up by JA, if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by Prosecutor or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 29fn, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 567.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides where both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting as evidence a certified copy in lieu of original see KR Can 566). As to certified copies of regimental books see AA 162 (1) (g) (ix).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 92(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 52(9), RP 113(7), MML p 759.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE
(K.R. (Can) para 557)

WDR

I certify that I have this morning examined D-105782 Pte DUROCHER L., of 85 Cdn Bridge Coy RCASC and in my opinion he is FIT/~~UNFIT~~ to undergo trial by Court Martial

Station: 9 Cdn Gen Hosp RCAMC

Date: 14 March 1944

C.D. Anderson Maj.
Medical Officer

F. G. C. M. I

14 March 44.

85 cdn. Bridge Coy. R.C.A.S.C.

D. 105787 Pte Durocher, Leo. pleads NOT GUILTY to charge under A.A. sec 9. (v).

The prosecution has no opening address.

First Witness For the Prosecution. # L-17307 A/L/Cpl. Kerr. L.P. of the 85 cdn Bridge Coy. R.C.A.S.C. having been duly sworn. states-

" I am L-17307 A/L/Cpl Kerr of 7 Platoon, 85 cdn Bridge Coy RCAS.C.

Q.1- Do you recognize the accused.

A-1- yes. it is Pte Durocher

Q. 2- Will you tell the court what you know about the case

A-2- On 26 Feb 44 we were to unload bridging I asked Pte Durocher to help me and he refused. So then I told him to go and help unload the bridging and he again refused Pte Durocher was then put under open arrest

Q. 3 What words did you use to Pte Durocher

A-3 I don't think I remember Sir.

Q 4 How long developed between the time you told him to unload bridging equipment and the time he was placed under open arrest

A 4 Ten or fifteen minutes.

Q 5 after placed under open ~~arrest~~ arrest, did he unload the bridging equipment

A 5 No.

Q. 6 When you told him to unload bridging equipment did anyone hear you.

A-6 yes. Cpl Ponnce

The Prosecution rests

Cross Examination by the Defence

Q 1. Which section of the platoon are you in?

A-1- Number One section (cross)

6. Cross examination of 2/Cpl. Kerr by defense continued.

Q. 2. Which section is Pte Durocher in
A. 2. Number two section
Q. 3. What is your responsibility in your section
A. 3. My lorry.
Q. 4. How many men have you put on charge since that time
A. 4. None
Q. 5. How do you account for the fact that you do not remember the words used in giving the order to Pte Durocher
A. 5 I've never been on a Court Martial before, I don't remember the words
Q. 6. Was Pte Durocher working at the time you gave him the order
A. 6 No Sir.
Q. 7. Did he have anything to do
A. 7. He just had his maintenance to do, which everyone else ~~had~~ in the platoon had to do.
Q. 8. Was he at his lorry at the time.
A. 8 No. he was standing on the highway beside Cpl Ponnée's bike
Q. 9 How long does it take to unload bridging equipment from a lorry
A 9 about half an hour from an accessory lorry
Q. 10. How many lorries did you have to unload.
A. 10. Two (2) lorries
Q. 11 Is it a fact that there was only one lorry left to unload when you first asked Pte Durocher.
A 11 That's right sir.
Q. 12 Do you remember the answer of Pte Durocher
A. 12 yes, he said "Go to hell. I won't do it"
Q. 13. How is it that you remember these words when you do not remember your own.
A 13. I have already said that I do not remember what I said to him
Q. 14. How long was it from the time you gave the command and the time you asked Cpl Ponnée to put him on charge
A 14. about five minutes

(3) Cross examination of 2/Capt Ken by Defense (continued) III

Q. 15. Would you say you were arguing at that time with Pte Dunocher.

A. 15 No Sir

Q. 16 What happened then

A 16 There was no argument sir

Q. 17 What happened then during the four minutes

A. 17 I tried to reason with him to persuade him to unload the bridging. There was no argument sir

Q. 18. Are you aware of Pte Dunocher was part of a detail which went out the night before

A. 18 I don't know sir

Q. 19 But the bridging equipment belong to No 1. Section

A 19. No sir, it belonged to No 4 Sec

~~Q. re~~ The Defense rests

The Prosecution Re-examines

Q. 1. You have said that Pte Dunocher was one of the men who was carrying on maintenance, tho he was ~~not~~ actually not doing it at the time

A. 1. That is right sir

Q 2. But all of these men who were the maintenance gang from F Section unload the bridging

A. 2 Yes, except Pte Dunocher and the 2 IC

Q 3 Will you tell the Court what your platoon was doing when this incident occurred

A. 3. We were on a bridging scheme

Q. 4. Who gave you the order to unload the bridging equipment

A. 4 Sgt Allardyce, F Plat 2/Sgt

The Prosecution rests

Rules of Procedure - 83 b has been complied with

Second Witness
For the prosecution

F 32317 Cpl. Ponnle, M. E. of "F" Plon. 85 Cdn Bridge Coy. R.C.A.S.C. having been duly sworn states

II

"I am F-32317 Cpl. Ponnle, M.E. of "F" Plon. 85 Cdn Bridge Coy. R.C.A.S.C.

Q 1- Do you recognize the accused
A 1- Yes. sir, he is Pte Durocher.
Q 2. Do you recall an incident in which Pte. Durocher was involved.
A 2. Yes. sir
Q. 3. Do you remember when it was.
A 3. I don't remember the date, It was on a Saturday
Q. 4. Did you receive any orders that Saturday
A 4 Yes. sir. I had received orders from L/Sgt Allardyce to have the lorries unloaded.
Q. 5. What men were to be used for off loading
A. 5 I understood that all the men were to be used.
Q. 6. Where were the men at the time
A. 6 At the vehicle park.
Q. 7. Was Pte Durocher one of them
A. 7. Yes sir.
Q 8. What was he doing around the vehicle park
A. 8 Nothing at the moment
Q 9 What were the other men doing.
A. 9. One was working on his bike and the rest were off loading
Q 10. Did you hear an order given Pte Durocher
A 10. Yes sir
Q. 11 Who gave the order
A. 11. L/Cpl. Kerr
Q 12 What was the order given by L/Cpl Kerr
A 12. That Pte Durocher was to go down and help off load the lorry with the rest of the men
Q. 13. Did Pte Durocher say or do anything
A. 13. He said he wasn't going
Q 14 Did he go
A 14. No sir
Q. 15. Did Pte Durocher say anything else
A 15. Not that I recall sir

5. Second witness (continued for prosecution

Q. 16. What happened then
A. 16. About 5 minutes later I repeated the order
Q. 17. Why did you repeat it
A. 17. Because I thought it was my duty
Q. 18 Did he obey your order
A. 18 No sir
Q. 19 How much time elapsed between the 2 orders.
A. 19 about 5 minutes
Q. 20 and then from time you gave him the order till the time he was placed under arrest
A. 20 About 15 minutes
Q. 21 after Pte Durocher was placed under arrest did he unload the bridging equipment
A. 21 No sir
Q. 22. Did he make any attempt to do so
A. 22 No sir
Q. 23 Was Pte Durocher excused any duties
A 23 No sir
Q 24 Had he been on a detail the night before
A 24 I am not sure but I believe so
Q. 25 Were any of the others on a detail the night before
A 25 yes sir, 3 men were
Q. 26 Did those help unload the bridging equipt
A. 26 Yes sir

The Prosecution Rests

Cross Examination by the Defence

Q 1- How far were you from Pte Durocher and L/Cpl. Kerr when the incident occurred
A. 1- about one yard
Q 2 Would you say you heard everything that had been said
A 2 Yes the biggest part of it. I would
Q 3 Can you repeat the words L/Cpl Kerr said to Pte Durocher
A 3 The words were " Go down and help off load the lorry with the rest of the men" I heard him say that
Q 4 Do you recall what Pte Durocher said in his words
Q 5 He said " No I am not going"
Q 6 What happened then
A. 6 The other men went down and unloaded the lorry and Pte Durocher stayed where he was

Defence Cross examination of second witness (continued).

Q1- All that time you were standing at the same place where you.

A.7. Yes, sir

Q.8. The incident between L/Cpl. Kerr and Pte Durocher was there cloud is that right.

A.8 There were words in between but I don't remember what they were.

Q.9. After L/Cpl. Kerr left, did you and Pte Durocher have words

A.9. Yes sir

Q.10. Could you repeat the words.

A.10. I said " If you had gone down by the lorry instead of standing there, there would have been nothing said.

Q. 11 Was this before or after Pte Durocher was on charge

A 11. It was before he was on charge

Q. 12. Will you continue on what happened after that

A. 12 I placed him on charge

Q 13. Did you notice if Pte Durand had worked at all after being placed under arrest

A 13 I don't know sir. He did not assist in unloading the vehicle

Q. 14 Could you say that he stayed idle for the rest of the day

A. 14 I was only away 10 minutes and when I came ~~on~~ back he was still standing by the bike

Q. 15 By what time was the lorry unloaded

A 15 By about 11 30 hours.

The Defence Rests

The Prosecution Re-examines

Q.1- When did you repeat L/Cpl Kerr's order to Pte Durocher

A1. about 5 minutes after L/Cpl Kerr's order

Q.2 That was before L/Cpl Kerr went away and before you started to reason with Pte Durocher

A 2 yes sir

Q. 3 When all the bridging was off loaded had Pte Durocher assisted or attempted to assist

A 3 No sir

R.P. 83 (B) complied with

Joint Witness for the defence

M 67418 Pte D'ell T F of F Pl 85 Cdn Bn Cy RCASC having been duly sworn states

VII

- I am M67418 Pte D'ell T F of F Pl 85 Cdn Bn Cy RCASC

Examination by the defence.

Q① - What are your duties in the platoon

A① - I am a driver mechanic

Q② - Do you recognize the accused

A② - Yes, it is Pte Dunsden

Q③ - Do you recall an incident that happened on Saturday 26 January between Lieut Kerr and Pte Dunsden

A③ - No sir I don't know anything about it at all

Q④ - Do you recall what you were doing about 11 o'clock on Saturday 26 January

A④ - I was working on one of the lorries

Q⑤ - Do you recall Pte Dunsden coming up to you and asking you for oil

A⑤ - Yes sir he just left just ten or twelve to clean

Q⑥ Did you give Pte Dunsden any oil

A⑥ Yes I did

Q⑦ Did you go down to his lorry with him

A⑦ No sir I happened to go back up the line where his lorry was and I gave him a hand in putting the oil in his sump

Q⑧ How long did you stay with him

A⑧ about 5 minutes

Q⑨ Did Pte Dunsden mention to you about any work that he had to do on his maintenance

A⑨ No

Q⑩ Did you notice any work left to be done

A⑪ As far as I could see there was maintenance to be done

First witness for defence, continued.

VIII

VIII

on his long

Q① What time would you say your left Pte Dunsdon after UH putting in the oil

A① About 20 minutes to eleven.

Prosecution declines to cross-examine

Rule of Procedure 83 ① complied with

Second Witness for the Defence

D105782 Pte Dunsdon L. of F. Platoon 85 Cdn Bn CyRCASC, having been duly sworn, states:

I am D105782 Pte Dunsdon L. of F. Platoon 85 Cdn Bn CyRCASC

Q① Will you tell the court what happened at 1100 hours on 3 January

A① at approximately 1045 I was doing my maintenance after doing my oil I found that I needed oil and I went to the line to see the DR Pte Dell, and I asked myself Pte Dell asked me if I had a can and I said I had to get one and gave it to Pte Dell While I was waiting for the oil, L/Cpl Kerr asked me if I would go up and help them to unload an ammo truck. I replied "I can't go for I'm doing my maintenance" L/Cpl Kerr replied "I'll do the maintenance, go and help them unload." I answered "I will the unloading" It was then that Cpl Power asked me to go and help them unload and I told him I was doing my maintenance. And Cpl Power knew I was on charge. I was to stand under arrest till about 1700 hours on 3 January 29 3 January

Q② What did you do after Cpl Power told to you

A② Pte Dell gave me my oil and I walked him to my truck with it

Sworn Witness for the Defence (continued)

IX

Q ① What time did you finish with your rod
A ① About 11 o 5 hrs
Q ② What did you do then
A ② I carried on with the remainder of my maintenance for I saw that the unloading party was finished

Cross examination by prosecution

Q ① Who gave you the order to do your maintenance on your lorry
A ① As far as I know in daily maintenance we are posted every day
Q ② At what time was maintenance last done for that day
A ② 0800 hours
Q ③ What is the usual time allotted for daily maintenance
A ③ At that time we were allowed all morning
Q ④ Is it not true that Pte Dell came back after you had got on your lorry
A ④ Yes he helped me with it
Q ⑤ You admit receiving an order from L/Cpl Kerr
A ⑤ Yes I did receive it an order
Q ⑥ You admit to being asked to get down and help unload the lorry
A ⑥ Yes I do admit that
Q ⑦ You also admit to offering to go down and help unloading
A ⑦ Yes I did offer
Q ⑧ You admit to offering or following Dell the unloading
A ⑧ Yes I admit to that
Q ⑨ You admit to not helping unloading the lorry yourself
A ⑨ Yes I admit to that
Q ⑩ What time was it when L/Cpl Kerr first spoke to you
A ⑩ About 11 o clock

Second Witness for the Defence (continued)

Q(11) Had the unloading started then

A(11) It was nearly finished

Q(12) Both holds

A(12) Yes, both.

Q(13) Did you think it strange that L/Cpl Kerr would go and tell you to help unloading when it was nearly over

A(13) Yes I do

Q(14) Why did you refuse Cpl Power's order

A(14) I don't consider it an order

Q(15) Is it for the same reason that you refused L/Cpl Kerr's order

A(16) L/Cpl Kerr didn't give me an order. It wasn't an order

Q(16) Did you refuse it because you didn't consider it an order

A(16) Yes

Re-examination by Defence

Q(1) Who is inspecting maintenance in your platoon

A(1) An officer from battalion

Q(2) Who is your platoon used to give you your dates to do maintenance

A(2) Sgt Knott

Q(3) Does Sgt Knott inspect your lorries to see if your maintenance is done

A(3) Yes sir

Closing Address by Defending Officer

Note 7 on page 435 of MML states that the command must be a specific command; and culpability for having failed with the formation. It has been proven that there were two sets of orders, one from

Closing address by Defending Officer (Continued)

Knott, MT sergeant of the platoon and the other from Lt Lt Lt Allardyce, who is usually administrative NCO. The man was doing his maintenance in accordance with the set of orders, when he receives another order. Being in charge of, and responsible for the lorry, he is right in giving for a reason that he has some act to put in the lorry.

The defence submits that the proof of the command has not been proven well enough that it was a lawful command. The way it happened, to make it a lawful lawful command, the corporal should have noticed that another order came in, and that he would relieve Pte Dunsden from responsibility of doing that urgent part of his maintenance, that is, to put some oil in the lorry now.

Para 11, chap 2, page 17 of MML states that the man must have had an opportunity even if he said "I will not do it". From the evidence of L/Cpl Kerr, there is only one thing that can be deduced that L/Cpl Kerr, Pte Dunsden and Cpl Pace talked together during about five minutes with the result that by that time, by the end of five minutes, Dunsden was already on charge under fourteen, although nothing was mentioned about it.

The defence admits that Pte Dunsden was performing his duty as a driver while the unloading, in the situation they were in, could have been done by four drivers.

From Pte Dunsden's evidence there is only one thing to believe, that he was a responsible man that

Closing Address by Defending Officer (continued)

gave an donation, and stuck to his donation which in some para 11 chap 3 page 17 of MML it is asserted that desertion should be wilfull and deliberate

And if at that point he smoked a little too much, it is on account of misapprehension, in other words even at that point he did not consider that the order was strong enough to reverse previous when that he had received.

closing Address by the Prosecution.

The defence contends that the command was not specific. In my humble opinion, the prosecution has proven, particularly on the admission of the accused himself, that he was told by L/Cpl Kerr and Cpl. Pownall to get down and help unload the truck.

The defence also contends that there were two sets of orders given. The prosecution would point out again, on the admission of the accused, that no specific order was given for daily maintenance, other than the fact that it was a daily routine and subject to the particular judging requirements as required by the exercise on which they will participating. Even Conceding the defence the benefit of the doubt, the accused has been in the army some three years and should have at least acquired the knowledge that it is the last order issued which supersedes all others and is the one which has to be obeyed.

The defence has quoted several extracts from M.M.L. one of which I would like to quote, which is para. 12, page 18, which defines a lawful command as one which is justified by Military law, ~~to~~ namely to do or not to do or to desist from doing a particular act. Such being the case in the command given by L/Cpl Kerr and Cpl Pownall, on the accused's own admission the command called for instant or proximate obedience, yet in spite of the fact that the remainder of the platoon were on the vehicle park originally for the same purpose as the Burochers, namely the maintenance of their vehicles and with the order to unload the equipment from the two trucks was issued to the platoon W.O.O by the platoon L/Sgt, the men so engaged were split up into two parties, excluding the D.R's, in such a way as one party could be allotted to each vehicle. They carried out the order to unload the equipment but the Burocher felt that he should first consider whether such a thing was an order or not; would not acting as a soldier of three years

standing and complying with the order, did not do so and was permitted at least fifteen minutes to make up his mind before he was placed on charge and under open arrest, still did not do so. However having decided that after all it might be better to consider the command given by Cpl. Ponnle and L/Cpl. Kerr to be an order, he decided he better make an attempt to unload the bridging equipment, but then found that it had all been unloaded.

In closing I believe the prosecution has fully established that a specific command was given and that the accused disobeyed this command not through any misapprehension or slowness and that the refusal was definitely deliberate and obstinate

Plea In Mitigation

The only thing I want to say is that from his conduct sheet, that every time he has been on charge and dealt with summarily he has been punished to the fullest extent and that this time, despite fact that he spent fourteen days under close arrest to prove that he is innocent is self evidence of his good faith. These documents should be great assets in Pte Durocher favour. He just waited fourteen days under close arrest, to be tried by a court and have justice.

SUMMARY OF EVIDENCE in the case of D-105782 Pte Durocher, Le
86 Cdn Bridge Coy RCASC, a soldier of the Canadian Army Overs

The Commanding Officer directs that the evidence be taken unde

WITNESS No. 1-17307 L/Cpl Kerr, L.H. 86 Cdn Bridge Coy RCASC
having been duly sworn states:

"I am L-17309 L/Cpl Kerr, L.H. of one pln, 86 Cdn Bridge
Coy RCASC. On Saturday 26 Feb 44 at approximately 1100hrs
I received an order from my Pln Sergeant to see that all
equipment on two of our pln trucks was unloaded. I proc-
eeded to the vehicle park and had some of the men unload
one truck. When they had finished unloading that truck
I picked out the party to unload the remaining truck. One
of the party that I picked to unload the last truck was
D-105782 Pte L. Durocher and when I asked him to help un-
load the second truck, he refused. I then told him to go
down and help unload the truck but he replied "I won't go
down and help unload". When he make no attempt to follow
out my order I had L/Cpl Jones lay a charge against him."

Sgd. 1-17307 L/Cpl L.H. Kerr

The accused declined to cross examine the witness.

SECOND WITNESS F-32317 A/Cpl Jones, M.E. 86 Cdn Bridge Coy RCASC
having been duly sworn states:

"I am F-32317 A/Cpl Jones, M. E. of one Pln, 86 Cdn Bridge
Coy RCASC. On Saturday 26 Feb 44 at approximately 1100hrs
orders were issued by our Pln L/Sergeant that all bridging
equipment was to be unloaded off two of our Pln trucks. I
went to the vehicle park where some of our men were and
L/Cpl Kerr detailed One party to unload one of the trucks.
After this truck was unloaded L/Cpl Kerr picked another
party to unload the second truck. D-105782 Pte L. Durocher
was one of the men picked in the unloading party. The five
other men who completed the unloading party proceeded to
help with the unloading but Pte Durocher made no attempt to
do so. I then heard L/Cpl Kerr order Pte Durocher to go
down and help unload but Pte Durocher refused saying "I am
not going" and made no attempt to do so. L/Cpl Kerr then
came over to me and asked me to place Pte Durocher on
charge which I did.

Sgd. F-32317 A/Cpl M.E. Jones

The accused declined to cross examine the witness.

QUESTION TO THE ACCUSED

Do you wish to make any statement or give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED

I have nothing to say at the present time.

Sgd D-105782 Pte Le Durocher

I certify that the foregoing summary of evidence was taken down by me in the presence and hearing of the accused, jointly, and that the Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Signed by me in the field this 5th day of March 1944.

(R.G. DAVIDSON) Capt.,
Officer detailed to take
Summary of Evidence.

Summary of evidence in the case of D105-782 Pte. Lee Duncan, 85 cdn. Bridge Coy - RCASC, a soldier of the Canadian Army Overseas.

The commanding Officer directs that the evidence be taken on oath.

First Witness: L 17307 L/Sgt Kerr L.R. 85 cdn. Bridge Coy. RCASC having been duly sworn states.

I am L 17307 L/Sgt Kerr L.R. of H.Qtrs 85 cdn. Bridge Coy, RCASC.

On Saturday Feb 26/44 at approximately 1100 hrs I received an order from my Platoon Sergeant to see that all Bridging eqpt on two of our trucks was unloaded. I proceeded to the vehicle park and had some of the men unload the truck. When they had finished unloading that truck I picked another party to unload the remaining truck.

One of the party that I picked to unload the last truck was D105-782 Pte L. Duncan, and when I asked him to help unload the second truck he refused. I then told him to go down and help unload the truck but he replied "I won't go down and help unload". When he made no attempt to follow out my order I had A/Sgt Power lay a charge against him.

The.

L 17307 L/Cpl Kerr L.R.
Signature of Witness

The accused declined to cross-examine the witness.

Sworn Witness: F32317 A/Cpl Power M.C., 80 Coln. Bridge Cy. RCMSC having been duly sworn states.

I am F32317 A/Cpl Power M.C. of Hyln. 80 Coln. Bridge Cy. RCMSC.

On Saturday 26 Feb 44 at approximately 1100 hrs while we were visited by my platoon Sergeant that all lodging equipment was to be unloaded off two of our five trucks.

I went to the vehicle park where some of our men were and A/Cpl Lee detailed the party to unload one of the trucks. After this truck was unloaded A/Cpl Lee picked another party to unload the same truck. D105782 Pte Durocher was one of the men picked in the unloading party.

The fifth Man man who comprised the unloading party proceeded to help with the unloading but Pte. Durocher made no attempt to do so.

I then heard A/Cpl Lee order Pte Durocher to go down and help unload but Pte Durocher refused saying "I am not going" and made no attempt to do so. A/Cpl Lee then came over to me and asked me to place Pte Durocher on charge which I did.

F32317 A/Cpl. Power M.C.
Signature of Witness

The accused declined to cross-examine the witness

Question to the accused: Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

Answer by the accused: I have nothing to say at the present time.

Signature of Witness

I certify that the forgoing summary of evidence was taken down by me in the presence and hearing of the accused, jointly, and that Rule of procedure 4(a)(d)(e) and (f) have been complied with.

Signed by me in the field this 6th day of March 1944

R B Hammond
Capt

Officer detailed to take Summary

Es Lists B M.F.M. 67

No. W-105782 Name Durocher, L. Sqn., Battery, or Company RCASC Corps Date of enlistment 25 May 40 Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

(A.F.B. 122) 40/P & S/136 (3617)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Nov 41	Pte		AA.Sec.9(2)Disobeying a lawful command given by his superior officer i.e. he did not stay with his vehicle when ordered to do so	L/Cpl Taylor	14 Days C.B. Forf 7 days pay	15 Nov 41	Capt Doney	Forf 7 days Pay FMAI 149(2)
Field	6 Mar 42	Pte		(1) AA.Sec.40 Conduct etc. (2) AA.Sec.40 Neglect etc,in that at Slindon at 1400hrs.on 6 Mar42 negligently operating a MD vehicle thereby causing damage to a brick wall at Slindon House.	Documentary Evidence	14 days C.B. & 7 days C.B. to run concurrently	14 Mar 42	Major Diehl	
Field	31 Mar 42	Pte		AA.Sec.40.Conduct etc.in that he did use improper language in reference to his superior officer	Lt. Peterson L/Cpl Amer Cpl Hutson	28 days F.P. Forf 28 days pay	21 May 42	Major Diehl	Forf 28 days Pay FMAI 149 (1)(b)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 Oct 42	Pte		(1)Sec.15(1) A/L from 0900hrs to 1025hrs 15 Oct 42 ABSENT 1hr 25 min.(2) AA.Sec.40.Neglect etc. (3) Sec.10(4)Breaking out of barracks	Sgt McCracken Cpl Gleeson L/Cpl Kempling Sgt McDougall Lt.Williams Cpl Boston	28 days F.P. Forf 28 days pay	17 Oct 42	Major L.W.Diehl	Forf 28 days pay FRAI 149(1)(b)
Field	6 Feb 43	Pte		AA.Sec.11-Failing to obey Fin Standing Orders-did not appear on 0830 hrs parade	Sgt Charlton C.E.	14 DAYS C.B.	6 Feb 43	Major K.K. Thompson	
Field	20 Feb 43	Pte		AA.Sec.9(2) at approx.2230hrs disobeyed lawful command given by superior officer	Lieut Kelly L/Sgt.Gadsden L/Cpl MacNeil	27 days F.P. Forf 27 days pay	9 Mar 43	Major K.K. Thompson	Forf 27 days pay FRAI 149(1)(b)

No. D-105782 Name Durocher, L. Sqn., Battery, or Company — Corps RCASC — Date of enlistment 25 May 40 — Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 122) 40/P & S/186 (2635)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
F.G.C.M.	Was on 29 Mar 43 tried by Field General Court Martial on the following charges: Contrary to AA. Sec. 9(1)								
	PLEA:			Not Guilty					
	FINDINGS:			Guilty					
	SENTENCE:			To undergo 60 days detention wef.29 Mar 43					
	CONFIRMATION:			Findings & Sentence confirmed by H.D. Graham Brig.,1 Cdn Inf. Bde. on 29 Mar 43					
	CLOSE ARREST:			Held under Close Arrest from 1120hrs 23 Mar 43 till 1000hrs 29 Mar 43(5 days 22hrs,40 min)					
	FORFEITURES:			Forfeits 60 days pay FRAI 149(1) (b)					
				Forfeits 6 days pay FRAI 149(1)(c)(i)					
				Total forfeitures 66 days pay					
Field	26 Jul 43	Pte		AA.Sec.8(2) Using insubordinate language to a superior officer	lan-Cpl Heath C/SMS Clegg	Forf 5 days pay	28 Jul 43	Lt.Col WC.Fletcher	Forf 5 days Pay FRAI 149(2)

(P.T.O.)

Place	Date of offence	Rank	Casualty or drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Dec 43	Pte		AA.Sec.15(1)AWL from 0745hrs until 0830hrs 3 Dec 43 ABSENT:45 min.	C-92084 Cpl HEYDORN,J.V.	14 days C.B.	3 Dec 43	Major Alex Gagnon	

AWARDED THE CANADIAN VOLUNTEER MEDAL AND CLASP — 6 VE JAN 44

CERTIFIED A TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION

Field
7 Mar 44

for Alex Gagnon Major
Officer Commanding
85 Con Bridge Coy RCASC

Exhibit A

ARMY FORM B.296 (W.A.R.A.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-105782	Pte	Durocher, Leo	85 Cdn Bridge Coy RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with the statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL, Sec 40	Four	times.
For AA, Sec.8(2)	One	times.
For AA, Sec 9(2)	two	times.
For AA, Sec.10(4)	One	times.
For AA, Sec.11	Two	times.

Date of first entry in Field Conduct Sheet 12NOV41

Date of last entry in Field Conduct Sheet 3DEC43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence to [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been awaiting trial on the present charge for Nil days in civil custody; and for 4 Da 17 Hrs 30 Min days in military custody, i.e., 3 days in open arrest, Nil days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 21 yrs 4 mon 12 days

6. The date of his attestation calling up for military service 25 May 40

7. The service which the accused is allowed to reckon is Nil

†State the military decoration (if any) held by accused.

8. The accused is in possession of† Nil

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W1.48170/665 200,000 6/42 A. & E.W.Ltd. Gp.698
(21459) W1.19026/1873 90,000 8/42 Forms/B.296(W.A.R.A.)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.S.C.M.	Field 29 Mar 43	AA. Sec. 9 (1)	to undergo 60 days detn.	Nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14 day of Mar 43

[illegible] Capt
[illegible] Major
O.C. 5th Bridge Coy
RAOC

42-135

Rfm. Darocher A.J.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A/102295 Rfn Durocher Oliver Joseph QOR of C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 5(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

Adjudgment under sentence list. Beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on AF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 17 days, of which days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on AF B.355 or AF B.296 admitted in evidence under 52.)

Sentence Awarded by the Court:

To suffer penal servitude for the term of seven years and to be cashiered with ignominy from His Majesty's Service

(Sgd) [illegible] Capt (Sgd) [illegible] Maj
Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 768.)

I reserve the finding and sentence for confirmation.

Date 16 Oct 44 (Sgd) [illegible] T/ Commanding 8 Cdn Inf Bde
(T C Lewis) Lt-Col

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 719-761, KR Can 547-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding of the Court, but mitigate the sentence so that it shall read 'To undergo penal servitude for three years' and I confirm the sentence as mitigated.

I direct that the accused be not committed to [illegible] (1) [illegible]
(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Crerar

Date Commanding [illegible] Army Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused A/102295 Rfn Oliver Joseph Durocher | Date 7 Dec 44 | Signature of Offr [illegible] Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ [illegible] 42-135-1/8

Original

FIELD GENERAL COURT-MARTIAL

CF AFB 179 (Army Def AFB 179) 4/38B

Convened by Order of Lt-Col T C Lewis a/ Comd 8 Inf Bde dated 8 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A/102295	Rfn	Oliver Joseph	DUROCHER	QOR of C

PROCEEDINGS REVIEWED Capt [illegible] 25 Jan 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 9 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is opened.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to abbreviation or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, add, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans [illegible]

~~The Interpreter is sworn.~~(1) Do you object to S/Sgt Phillips, FH as shorthand writer? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J C H Lapointe	Regt de Chaud
Member	Capt	L J J Bourassa	Regt de Chaud
Member	Capt	H L Day	North Shore (NB) Regt
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Lieut	J L Pond	QOR of C
Defending Offr	Capt	J Y Gosselin	Regt de Chaud

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and (b) 2 were not followed. See Qs A 9.)

A8. The accused A/102295 Rfn Durocher, O J before arraignment makes(s) (has) no plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~adjourns and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

page 112

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without asthy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (ii) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 171(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No, sir (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (4) The Court directs (you)~~ to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(E). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114; KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP 115. 2. RP 40(A), see 80(2). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CS 805. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 86(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any sum ming up by the JA under RP 41, 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(3).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No, sir
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 40 fn 3. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFR 255 or MFR 294. 2. MFM n. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Through my defending officer (2)
(1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(4), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 69. As to sentences see AA 44, 138, 582, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 563-566, Coercion Act 1939, 1123, para 1, 60, 737-739. As to sentences consigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembling and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

QO 5-4-3

1st Bn The Queen's Own Rifles of Canada

6 Oct 44

In the Field

Commanding Officer,
1st Bn The Q O R of C

1. This is to certify that I am aware that the Prosecuting Officer, LT J L POND, has had legal training.

O. J. Durocher.
(O. J. Durocher) Rfn
1st Bn The Q O R of C.

CHARGE SHEET

The accused, Number A102295 Rfn BURGCHER, Oliver Joseph, 10 Pl, B Coy, 1st Bn The Queen's Own Rifles of Canada, C A O, B W E F, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 5 (7)
Army Act

WHEN ON ACTIVE SERVICE,
MISBEHAVING BEFORE THE ENEMY IN
SUCH A MANNER AS TO SHOW COWARDICE,
in that he
In the Field, at approximately 2300 hours, 20th September 1944, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed to obey an order to attack with his platoon.

In the Field
6th day of October, 1944

(S M LETT) Lt-col
Comd 1st Bn The Queen's Own
Rifles of Canada

To be tried by FGCM

9 Oct 44

(T.C. LEWIS) Lt-Col.
T/Comd 6 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or if any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
A-102295	Rfn	Oliver Joseph	DUROCHER	QOR of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and dated (date) 6 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~). "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reasons of a public or military nature~~).
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I HEREBY APPOINT (as the case may be) the Court, (and) as President for the purpose I have set~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	J.C.H. Lapointe		R de Chaud

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	L.J.J. Bourassa		R de Chaud
Capt	H.L. Day ✓		N Shore R

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt	B.B. Score		QOR of C

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	A.C. Hall ✓		HQ 3 Cdn Inf Div

On Active Service in the Fd

in Belgium (Country.)

Dat 6 Oct 44

(Signed personally. RP 105 fn 2.)

t/Commanding 8 Cdn Inf Bde
Convening Officer.

Lt-Col (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFA H. (2a Sers. of AFA 3) & F & S. 1897 181-82)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 85(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarised and, the evidence, subject to RP 85(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 85(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 66(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 40 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 82.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then joined by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declinations made by convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy in lieu of original see KR Can 546. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(6), RP 114(C), MML p 799.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

1st Bn The Queen's Own Rifles of Canada 9 Oct 44

This is to certify that I have this day examined A102295 Rfn Oliver Joseph DUROCHER and have found him fit to stand trial by Field General Court Martial.

R. D. Oatway ..... Capt
RCAMC

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

AHH

Gentlemen of the Court.

The evidence in the case of A 102279 Rfn. O.J. Brooker, G.O.R. of C. has been brought before you. I am of the opinion, before you come to a decision that you should have mercy on the Rfn. Rfn. Brooker has his platoon commander he was and 70 on the operation in account of his record. In that case, he hasn't likely was to give him any medical & worth his record before the operation. Also his platoon commander likely was to send this man to his medical officer. It was not done.

Rfn. Brooker has quite a clean sheet. May a lenient to

PLEASE WRITE ON BOTH SIDES

The president having read to the accused para D5 on record form "B", the Judge Advocate addresses the accused:

I will endeavor to explain to you the effect of a plea of "guilty".

This court and the superior authority who convened this court are most anxious that your trial be fair and just beyond all possible doubt. If, therefore, you have been forced or induced to plead "guilty" by any threat of what would happen if you did not or any promise of a lighter sentence, then it is vital that you now understand that this court has no instructions as to what sentence to give you. If you have been led to think that your sentence would be less if you pleaded "guilty", I must advise you that such is not the case. In fact if you pleaded "not guilty" and witnesses were called, it is possible that facts might be adduced showing extenuating circumstances.

Now if you plead "guilty", no witnesses will be called by the prosecution but the summary of evidence which was taken in your presence will be read to the court so that it will know the circumstances surrounding the offence to which you have pleaded "guilty" in order that it, the court, may be helped in deciding what sentence they will award. Anything that you wish to say or any witnesses you wish to call will be heard and your defending officer may address the court on your behalf, but the whole proceedings will merely be a question of what sentence you are to be awarded.

You have pleaded "guilty" to "misbehaving before the enemy in such a manner as to show cowardice". This is a very serious charge and the court will have failed in its duty if it allows your plea of "guilty" to stand without being convinced beyond all possible doubt that you understand the charge and the effect of your plea of "guilty". This charge is constituted of four distinct elements. The prosecution alleges that all four elements were present when the alleged offence was committed. If you plead "guilty" you admit that all these elements were present, and if any one were not present then you should plead "not guilty". These elements are:

(a) Misbehaviour: That means that you did something which you should not have done, something which, even if it had not been accompanied by the presence of the enemy or by cowardice, would still be misbehaviour.

(b) Before the enemy: The prosecution further alleges that that misbehaviour happened in a place in which the enemy was substantially making his presence felt. To be "before the enemy" either you must be a member of a body in direct contact with the enemy, e.g. making or repelling an assault or a raid, or you must be in an area in which the enemy is substantially making his presence felt, e.g. by close shelling or action by aircraft.

(c) The prosecution alleges cowardice. I doubt if there is any need for me to endeavor to define cowardice. The particulars of the charge allege that "from an unsoldierlike regard for his personal safety in the presence of the enemy (you) failed to stay in order to attack with his pl". If you plead "guilty" you admit to this.

(d) The fourth element is that the cowardice was shown. This means that the prosecution alleges that your actions were seen either by the enemy or by our own troops and that those actions were of such a nature that, if seen by the enemy, it was encouraging to the enemy; or, if seen by our own troops, were discouraging and demoralising to our own troops. The prosecution alleges that not only were your services lost through the cowardice but that it was of such a nature as to be demoralizing to our own troops who were present.

Now if you plead "guilty" you admit that all of these elements were present. If you do not understand anything that I have said or if there be any point of law that you do not understand, the court will close and you may consult me as Judge Advocate. Do you wish to consult me and do you wish to make any statement now?

Accused: No, sir.

E-1A 1/4.

Summary & Condensation
in the case of

A10 2295 Pfc. Benedict O.G. 12th Bn. The O.R.C.
C. C.R.O. BOARD

The Commanding Officer directs that the witnesses be taken on oath.

1st Witness
for the prosecution A71032 Sgt. Collings G.A. 12th Bn.

The O.R.C. having been duly sworn states.

On the night of 20 Sept 44 at approximately 2230 hrs. myself and the rest of the platoon N.C.O.s & 10 pte. B company were briefed on Enemy Taking up position that night, by Capt Elliott the Coy. commander. After this briefing the section leaders issued orders to their sections. All sections then came to get H.Q. to learn their equipment and to be briefed by me. While I was briefing Pfc. Gibson said he wouldn't go and the other men appeared very nervous, so I reported to Capt. Elliott who told me to ask for volunteers. There were 12 volunteers. Capt. Elliott said that was not enough and told me to order the whole platoon to proceed on the operation. I returned and did so and as I stated we that were then were going to refuse to go and I wanted to get shifted if I could. I went to get shifted if I could. I went to get shifted if I could. I went to get shifted if I could.

[illegible] any who refused to go. A102295 Pte. Allen
Brocklebank did not recognize as the accused
and "you can count me out large I'm
two scared". A number of others refused
to go - so Lt Col Allen came and after
consulting Capt Elliott placed them under
close arrest. Then proceeded on the operation
with the necessary part of the platoon. I am
not absolutely sure of the exact words of the
accused but I am sure he did refuse to go.

C. P. Cooling Capt

The second witness to whom this
writes is

2nd witness for the prosecution D155189 Cpl. Kozlowski J. L.
having been duly sworn states:
I am the witness mentioned in the 1st witness Capt Cooling's
evidence. I was present at the platoon briefing by
Capt Cooling & the platoon sgt. on the night 29th
Sept 44 at approximately 2230 - 2245
hrs. He was briefing us with respect
to the taking of our enemy position that
night. When he was finished he would go
and then Sgt Cooling reported to Capt.
Elliott and came back asking for volunteers.
No enthusiasm was shown and Sgt Cooling

again came back from Capt Elliott and said that the whole platoon must go out on the attack. When Sgt Collings was telling them there was only two absentees by request to go the accused came up and said he was too nervous to go. I don't remember his exact words but there is no doubt that he did refuse to go.

The accused
witness
3rd Witness

for the prosecution 6148477 Cpl McGregor C.C.
1st Bn the Queens Own Cameron Highlanders of Canada
having been duly sworn states:

I am section leader of 3 section 10 pl B Coy and Accused is in my section. About 1800 hrs I recognized the accused as belonging to my section. Along with the 10th pl H.Q.s I was briefed in the evening 3rd Sept 1944 at approximately 2230 hrs by Capt Elliott my Coy Cmd concerning the taking up our positions that night. I then went to my section position and briefed my section. After that I took my section to pl H.Q. to learn their equipment and for the pl briefing by Sgt Collings. At that briefing Pte Jackson refused to go as Sgt Collings

After consulting Capt. Elliott
he turned round and asked for volunteers then
[illegible] was not enough so after consulting Capt.
Elliott he said the whole platoon must go.
He then asked if there were any who absolutely
refused to go and after searching refused. C
[illegible] spoke a few words but
I can't remember the words but
I can't remember the words but
[illegible] refused. The accused was
very nervous but very [illegible]

[illegible]

[illegible]

[

I was in the artillery and took for two years.
I had two weeks basic and one week advanced
training in Canada before coming overseas.
I was two weeks in England and then went to
France as a reinforcement. I was with the
Q.O.R. of C. for about a month and a half before this particular
attack. I was in no condition to go into the
attack as I was shaking and nervous. I felt
that I did not have sufficient training to fit
me for infantry work.

Ptn. Durchin J.

The accused declines to call any further
evidence.

I certify that the foregoing summary of
evidence, consisting of three pages was
taken down by me in the presence of the
accused and that all
relevant rules of procedure were complied
with.

J. Lord Lt.

25 Sep 44

Additional Summary of Evidence
in the case of A10229[illegible] Pte. Brocker
O.C. 1st Bn. The Q.O.R. of C. C.A.O. 5th C.A.F.

The Commanding Officer directs the
evidence be taken on oath.

1st witness for pros. Capt. A.C.F. Elliott, 1st Bn. The Q.O.R. of C. C.A.O. 5th C.A.F. having been duly sworn states:- I was temporary coy. comdr. of A coy. 1st Bn The Q.O.R. of C on the night 20 Sep. 44. My coy. had taken up positions in partly demolished buildings approximately 100 yards from enemy strong point. The coy. had been under intermittent fire from the position for approximately 24 hrs. The platform to which the accused belonged had the day before been detailed along with supporting arms to attempt to enter the position. The A.V.R.E.s were unable to make a gap in the wall surrounding the strong point, so the attack was called off. About 1600 hrs. 20 Sep. 44 there were violent explosions in the enemy position causing a portion of the wall to be blown away. I ordered the before-mentioned platoon to enter the enemy position by night through that gap to obtain a foothold and fix the rest of the coy. in. The operation was a complete success. [illegible] first [illegible]

The accused declines to cross examine this witness.

The accused was then cautioned as follows. "Do you wish to make any statement or to give any evidence? You are not obliged to do so but if you do it will be taken down and may be used in evidence."

The accused declines to make a statement or give evidence.

I certify that the foregoing Additional Summary of Evidence consisting of 2 pages was taken down by me in the field in the presence of the accused and that all Relevant Rules of Procedure were complied with.

3 Oct. 44.

N Pond Lt.

(4 A (e-f-2)

SUMMARY OF EVIDENCE

in the case of

A102295 Rfn Dorocher, O J, 1st Bn the QOR of C, CAO, EWEF.

The Commanding Officer directs that the evidence be taken on oath:-

First Witness for Prosecution

A71032 Sjt Collings G A, 1st Bn The QOR of C having been duly sworn states. On the night of 20 Sep 44 at approximately 2230 hrs, myself and the rest of the platoon NCOs of 10 Pl, B Coy were briefed on taking an enemy position that night by Capt Elliott the coy commander. After this briefing the section leaders issued orders to their sections. All sections then came to pl HQ to leave their equipment and to be briefed by me. While I was briefing Rfn Dobson said he wouldn't go and the other men appeared very nervous, so I reported to Capt Elliott who told me to ask for volunteers. There were 12 volunteers. Capt Elliott said that was not enough and told me to order the whole platoon to proceed on the operation. I returned and did so and as I could see that some men were going to refuse to go and I wanted to get started I asked if there were any who refused to go. A102295 Rfn Dorocher O J whom I recognize as the accused said "You can count me out Sarge, I'm too scared". A number of others refused to go so I took their names and after consulting Capt Elliott placed them under close arrest. I then proceeded on the operation with the remaining part of the platoon. I am not absolutely sure of the exact words of the accused but I am sure he did refuse to go.

G F Collings, Sjt.

The accused declines to cross-examine this witness.

Second Witness for Prosecution

B155189 Cpl Kozlowski, J L, 1st Bn The QOR of C, CAO, EWEF, having been duly sworn states:-

I am the section leader of 2 section, 10 pl, B Coy. I was present at the platoon briefing by Sjt Collings the pl sjt on the night of 20 Sep 44 at approximately 2230 - 2245 hrs. He was briefing us with respect to the taking of an enemy position that night. Rfn Dobson said he wouldn't go and

ACB

then Sjt Collings reported to Capt Elliott and came back asking for volunteers. Insufficient men volunteered. Sjt Collings again came back from Capt Elliott and said that the whole platoon must go out on the attack. When Sjt Collings asked if there were any who absolutely refused to go the accused came up and said he was too nervous to go. I don't remember his exact words but there is no doubt that he did refuse to go

Cpl Kozlowski J L

The accused declines to cross-examine this witness.

3rd Witness for the prosecution

B148477 Cpl McGregor G G, 1st Bn The QOR of C, CAC, NWEF having been duly sworn states:

I am section leader of 3 section, 10 pl, B Coy and A102295 Rfn Derocher O J whom I recognize as the accused is a member of my section. Along with the other pl NCOs I was briefed on the evening of Sep 20, 44 at approximately 2230 hrs by Capt Elliott, my coy comd concerning the taking of an enemy position that night. I then went to my section post and briefed my section. After that I took my section to pl HQ to leave their equipment and for the pl briefing by Sjt Collings. At that briefing Rfn Dobson refused to go so Sjt Collings, after consulting Capt Elliott, returned and asked for volunteers. There were not enough so after consulting Capt Elliott he said the whole platoon must go. He then asked if there were any who absolutely refused to go and Rfn Derocher so refused. I don't remember his exact words but I am sure he refused. The accused was very nervous but every one was.

Cpl McGregor, G G

The accused declines to cross-examine this witness.

The accused was then cautioned as follows:-

"Do you wish to make any statement or to give or call any evidence? You are not obliged to do so but if you do it will be taken down and may be used in evidence".

The accused then made the following statement under oath:-

I was in the artillery ack ack for two years. I had two weeks basic and one week's advanced training in Canada before coming overseas. I was two weeks in England and then came to France as a reinforcement. I was with the QOR of C a month and a half before this particular attack. I was in no condition to go into the attack as I was shaking and nervous. I felt that I did not have sufficient training to fit me for infantry work.

Rfn Durocher, O J

The accused declines to call any further evidence.

I certify that the foregoing summary of evidence consisting of three pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with.

25 Sep 44

J L Pond, Lt.

Additional Summary of Evidence in the case of A102295 Rfn Derocher, O J, 1st Bn The Queen's Own Rifles of Canada, C.A.O. B.W.E.F.

The Commanding Officer directs that the evidence be taken on oath:-

FIRST WITNESS FOR PROSECUTION

Capt H C F Elliot, 1st Bn The Queen's Own Rifles of Canada C.A.O. B.W.E.F. having been duly sworn states:- I was temporary coy comd of "B" Coy, 1st Bn The Queen's Own Rifles of Canada on the night of 20 Sep 44. My coy had taken up positions in partly demolished buildingapproximately 100 yards from an enemy strongpoint. The coy had been under spasmodic fire from the position for approximately 24 hrs. The platoon to which the accused belonged had the day before been detailed along with supporting arms to attempt to enter the position. The A.V.R.E.S. were unable to make a gap in the wall surrounding the strong point, so the attack was called off. About 1600 hrs 20 Sep 44 there were violent explosions in the enemy positions causing a portion of the wall to be blown away. I ordered the above mentioned platoon to enter the enemy position by night through the gap to obtain a foothold and fire the rest of the coy in. The operation was a complete success. (H C F ELLIOT) Capt

The accused declines to cross examine this witness.

The accused was then cautioned as follows:

"Do you wish to make any statement or to give any evidence? You are not obliged to do so, but if you do it will be taken down and may be used in evidence."

The accused declines to make a statement or give evidence.

I certify that the foregoing Additional Summary of Evidence consisting of two pages was taken down by me in the field in the presence of the accused and that all relevant Rules of Procedure were complied with.

3 Oct 44 sgnd (J L POND) Lt

C.C 117

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A102295	Rfn	DUROCHER, Oliver Joseph	1st Bn The QOR of C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial if a summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provision being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	AWL - AA 15(1) one time	one time
For	N/A	
For	N/A	
For	N/A	
For	N/A	

2. The accused has not been previously convicted.

3. The accused is not under sentence at the present time.

N/A

4. The accused has been in confinement, awaiting trial on the present charges, for N/A

in close custody and N/A 17 days in military custody, N/A

of which NO days were spent in hospital.

5. The present age of the accused according to his record of service is 27 years and 7 months

6. The date of his attestation specified in his record of service is 16 Aug 42

7. N/A

8. N/A

9. N/A

10. The accused is in possession of, C V S M and clasp.

11. N/A

12. N/A

(Signature) Lt-Col
(Rank)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A102295 Rank Rfn Name BROCHER G J of 1 QOR of C Regiment (or as the case may be).

(INSTRUCTION. A verbatim extract from the regimental books, stating their convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
			N/A ✓	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 6th day of October, 1944

(S M LSTT) Lt-col
Comd 1st Bn The Q O R of C

13. [illegible]

Date of Promotion

[illegible] N/A

[illegible] N/A

[illegible] N/A

[illegible] N/A

Convictions.—If any entries on any of the above two records cannot be copied from the regimental books the paragraphs must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

5E-9

Rt. Drossaer, S.J.

RECORDED AT CMHQ IN AB 160 5E-90

FIELD GENERAL COURT-MARTIAL

CP408 (To take place of AFA21) (C.P.W.B. 1908) (4500)

4/38B

Convened by Order of Colonel S. A. Lee Comd 1 CBR Gp dated 10 Mar 45

RECEIVED 28 APR 1945 JAG's BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A87233	Pte		Stanley Joseph	Durocher	1 CBR Bn.

PROCEEDINGS REVIEWED

J. R. Ingledew Capt.
28 Apr 45
JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

The trial of the above accused by FGCM assembled at (place) Camp Lahr on (date) 11 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (if) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (fit) to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with by Summary by CO.~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to [illegible] as interpreter? Ans —

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans —

~~The shorthand writer is sworn.~~(1a)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans [illegible](2)

(1. RP 110. 2. If no objection, waiting member recites. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J. D. Langhorne	C.O. - 1 CBR Bn
Member	Lt.	J. G. Skelton	C.O. - 2 CBR Bn.
Member	Lt.	E. M. Forsyth-Smith	C.O. - 1 CBR Bn
Judge-Advocate			
Prosecutor	Lt.	J. N. Durnham	C.O. - 1 CBR Bn
Defending Offr	Lt	R. J. Early	C.O. - 1 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See Dis p 4.)

A8. The accused A87233 Pte Stanley Joseph Durocher before arraignment make(s) (no) objection(s) to the (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and names of the accused making the plea.)

A9. The accused is duly arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A87233 Pte Durocher, Stanley Joseph - 1 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st V	Guilty	Guilty	
2nd	10 Mar 45	11 Mar 45	
3rd	J. D. Langhorne Maj	J. D. Langhorne Maj	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for [illegible] beginning on (date) [illegible](1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 41 days, of which 30 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety days.

(Sgd) [illegible] Judge-Advocate, if any. 11 Mar 45 Date awarded. (Sgd) J. D. Langhorne Maj President. (RP 45, 51)

(See back of Convening Order as to custody and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 577.2. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be ~~not~~ committed to prison or detention barracks for the period. (1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Col

Date 12 Mar 45

Commanding Comd 1 Can Base Bft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A87233 Pte DUROCHER S.J. 2 Can WE 22	9 Apr 45	D. H. Burgoyne Maj OC HQ Coy WE 22

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conduced as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*E*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(1), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans. No (4)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part 1 of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 60 fn 1. See MML p 71 para 124 and p 72 para 42. 4. Delete part not used. If accused acquitted on all charges use record alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop P's defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 12. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 6. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) bearing the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(*1. MFB 355 or AFB 294. 2. MCM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 3, para 1.*)

E3. President to accused: Do you wish to address the Court on the aforementioned and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, they are my Defending Officer (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should formally request or ask witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried sep'rately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 209, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 43(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(10), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

LIST OF WITNESSES

in the case of,

A. 87233, Pte. DUROCHER, Stanley, Joseph,

1 Canadian Infantry Base Reinforcement Battalion, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas :

Witnesses for the Prosecution

C. 65972, Cpl. Richards, R.E., 1 CIBRBn, 1 CBRGp.

Witnesses for the Defence

N I L

- - - - - - - -

STATEMENT BY THE ACCUSED.

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 1.8.45 A J Durocher

CHARGE SHEET

CHARGE SHEET

The accused, A. 87233, Pte. DUROCHER, Stanley, Joseph,

1 Canadian Infantry Base Reinforcement Battalion, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with :

FIRST CHARGE

Sec. 15 (1)

Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, at about 0345 hrs, 2 Jan 45, absented himself without leave until apprehended at about 2300 hrs, 29 Jan 45. (Absent, 27 days, 19 hrs, 15 mins).

Lt-Col.
(VINCENT McKENNA,)
Officer Commanding,
1 Cdn Inf Base Rft Bn, 1 CBRGp.

In the Field,
9 March 1945.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
10 Mar 45

(S.A. LEE) Colonel
Comd 1 Cdn Base Rft Group

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40/PAR/1697 (5/45)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.67233	Pte.		Stanley Joseph	DUROCHER	1 Cdn Base Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~have~~ committed the offence~~s~~ set forth in the Charge Sheet~~s~~ attached and on (date) 10 Mar 45 endorsed by me, ~~or by an offr of my staff for me~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~s~~ should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached in relo.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.D. AUGLETTA (CIC)	1 Cdn Inf Base Rft Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 1 Cdn Inf Base Rft Bn		
Capt or Lieut to be detailed by the OC 2 Cdn Inf Base Rft Bn		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 2 Cdn Inf Base Rft Bn		

JUDGE ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

(Signed personally, RP 105 (a) 2.)
(Sgd.) [illegible]

Colonel
(Rank.)

Date 10 Mar 45

Commanding 1 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(E)), and any statements by accused, may be summarized and, the evidence, subject to *RP* 95(A) and 114(b), may be recorded in narrative form as follows:
First Witness for Prosecution.
A 12345 Cpl H. Jones, R.V.R., sworn, states:
I am a cpl in the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(B) complied with.
2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.
3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.
4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court considers such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 9*B*)), or evidence by accused, as to facts or his character or both. (*See RP* 43 *fn* 3, 46 *fn* 1, 86.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(E)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)
(v) Closing address (on matters *other than* on *mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused *charged jointly see RP* 61.)
(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(E), *KR Con* 562(d).)
(vii) Summing up by J.A., *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.
2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Con* 557.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Con* 586. *As to certified copies of regimental books see AA* 162 (1) (g) (8).)
(vi) Summary of Evidence, if not *already* an exhibit.
3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(C), *MML* p 759.)
4. The President or J.A., *if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE
(KR (Can) 557)

I certify that I have this morning examined No. 1987287 Rank Pte
Name DUBECKER S of CBH 1 Bn and in my opinion he is
fit/~~unfit~~ to undergo trial by Court Martial.

In the Field
Date 11-8-45

(MEDICAL OFFICER)

11 Mar 45.

Due to the exigencies of the service it was necessary to hold the trial of this case on Sunday.

J. H. Laughlin Maj

Plea of Mitigation
in the case of

A 87233 Pte DUROCHER, Stanley Joseph,
1 CIB A Bn, ICBRGp., a soldier of the
Canadian Army Overseas

This soldier is a volunteer who has served in the Canadian Army since 9 Oct 42. He has gone through the Italian campaign with his unit and has never had any trouble prior to this charge. His crime sheet is clean. Therefore we request that the Court take into consideration this soldier's length of service and also the fact that this is his first offence and also the fact that his unit was in a rest area and not in the line when he left.

Robert J Haig Lt.
Defending Officer

11 March 45
On the field.

Summary of Evidence

in the case of

A-87233 Pte. Durocher, Stanley Joseph.

/ Canadian Infantry Base Reinforcement Battalion,
/ Canadian Base Reinforcement Group, a soldier
of the Canadian Army overseas.

The Commanding Officer directs that the evidence
be taken under oath.

First Witness for Prosecution

C - 65572 Cpl. Richards, R. E.,
Orderly Room Clerk, / Canadian
Infantry Base Reinforcement Battalion,
/ Canadian Base Reinforcement Group,
having been duly sworn states:-

I am C - 65572 Cpl. Richards R.E. Orderly
Room Clerk, / Ba., / C.B.R. Gp. and as such present
~~R&P~~ The Cape Breton Highlanders Part II Order No. 4
dated 14 Jan. 45, issued by Canadian Section, G.H.Q.,
2 nd Echelon, A.F.H.Q. which states that A-87233
Pte. Durocher S. J. was A.W.L. from 0345 hrs 2
Jan. 45, and struck absent 0345 hrs 10 Jan. 45 (8 days).
Presented as Exhibit 'A'.

I further present ~~R&P~~ The Cape Breton Highlanders
Part II Order No. 11 dated 10 Feb. 45 issued by
Canadian Section 2 nd Echelon, A.F.H.Q. which
states that A-87233 Pte. Durocher S. J. was
T.O.S. on absn. from desertion 2300 hrs 29
Jan. 45. Presented as Exhibit B.
The documents came into my possession during normal routine
of my duties.

Cpl Richards RE

The accused declines to cross-examine the witness.

Lt. X List Cape Province Highlanders Part II dated No 4 dated 14 Jan 45 and No. 11 dated 10 Feb 45 referred to by the witness, produced, read over, shown to the accused, marked Exhibit "A" and "B" respectively and attached to the Summary.

W Hoskins Lieut.
Officer taking Summary of Evidence

Question to the Accused

Do you wish to make a statement or to give evidence under oath. You are not obliged to do so but any evidence you may give or any statement you may make will be taken down in writing and may be given as evidence.

Answer by the Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (a) (i) (ii) (iii) and (g) have been complied with.

W Hoskins Lieut.
Officer taking Summary of Evidence

In the Field
8 Mar 1945.

Exhibit "A"

This is Exhibit "A" referred to in the Summary of Evidence in the case of A-87297 Pte Dunsdon, J. S. taken before me this 8th day of March 1945

Affair taking Summary of Evidence

Last Order No. 3 13 Jan 45

THE CAPE BRETON HIGHLANDERS
Part II Orders issued by
CDN SEC G.H.Q. 2 ECH AFHQ

This Order No. 4 16 Jan 45

"A" OFFICERS

1. STRENGTH INCREASE
(a) T.O.S. From Trng Incre C.B.Highrs 7 Jan 45
Auth - Cdn O2L/ARS/86 d/6 Jan 45
Lieut B. A. Nunn

(b) AMENDMENT: Part II Order No. 3 para 1(a) of 13 Jan 45 insofar as it refers to the u/n is cancelled
Lieut G. Corr

2. STRENGTH DECREASE
(a) S.O.S. to HQ., 11 Cdn Inf Bde 26 Dec 44
Auth - Bde Comd
Lieut F. A. Heubach

3. ATTACHED
(a) Ceases att from 8 Coy C.D.C. Tap except Regtl Duty 31 Dec 44
Major S. K. Cowgle - C.D.C.
Capt M. Cisener - C.D.C.

4. NEXT OF KIN
(a) Change of address N-of-K from Mrs Joan R. Corr (Wife) 100 Tyndall Ave., Toronto, Ontario, Canada to 72 Catherine Road, Scarsdale, New York State, U.S.A.
Lieut G. Corr

"B" OTHER RANKS

5. STRENGTH INCREASE
(a) T.O.S. From X-4 List C.B.Highrs (4 Bn) 10 Jan 45
Auth - 5 CD/37 d/6 Jan 45

F87273	Pte	Adams,	L. A.	
F37390	Pte	Andrews,	M. F.	- Welder "B"-(G.D.)
D144855	Pte	Bell,	F. H.	
F36853	Pte	Beairsto,	E. C.	
H36473	Pte	Beaton,	A. A.	- Miner "B" - (G.D.)
F13167	Pte	Cameron,	J. C.	
F86957	Pte	Dunlop,	H. L.	- Carpenterr"B" (G.D.)
F66027	Pte	Forrest,	F.	- Welder(G&E) "C"- (GD)
F19279	Pte	Gillis,	J. N.	
F56132	Pte	Gottschall,	M.	- Painter "C" - (G.D.)
F36793	Pte	Hilchie,	A. T.	
F57513	Pte	Jack,	E. D.	
F31392	Pte	Landrigen,	F. N.	
F55325	Pte	Malcolm,	C. W.	
F66726	Pte	Murphy,	F. C.	
F57570	Pte	MacLean,	A. A.	
F32012	Pte	McNeil,	G.	
F87573	Pte	Paris,	L.	
F3453	Pte	Sangster,	A. A.	
F28324	Pte	Scott,	E. P.	- Wireless Mech "C" -(GD)
F86224	Pte	Verge,	H. M.	
F87428	Pte	Walsh,	D.	

5. STRENGTH INCREASE (Cont'd)

(b) T.O.S. from X-4 List C.B.Highrs (4 Bn) 10 Jan 45
Auth - 5 CD/37 d/6 Jan 45
F32973 Pte Welsh, V.
F5230 Pte White, B. M.
F66595 Pte Young, J. T.
F66723 Pte Smith, H. R.

(c) T.O.S. from 5 Cdn M.L.B.U.(B) RCOC 4 Jan 45
Auth - 5 Cdn Armd Div AG 23 d/4 Jan 45
C21599 Pte Sculiere, L. J. - Cook "B" - RCASC

(d) T.O.S. from X-3 List C.B.Highrs 8 Jan 45
Auth - LO/T/154 d/8 Jan 45
F43981 Pte MacLeod, G. L.

(e) T.O.S. from X-3 List C.B.Highrs 7 Jan 45
Auth - LO/T/128 d/7 Jan 45
F54608 CQMS Bellefonteine, D. L.

(f) T.O.S. from X-3 List C.B.Highrs 28 Dec 44
Auth - 5 LO/48 d/9 Jan 45
F51619 Pte MacEachern, D. H.

(g) T.O.S. from X-3 List C.B.Highrs 9 Jan 45
Auth - LO/T/174 d/9 Jan 45
F54783 Cpl MacKay, J. E.

6. STRENGTH DECREASE

(a) S.O.S. to X-3 List C.B.Highrs dates shown:
F27773 Pte McMullin, A. 4 Jan 45
F55338 L/Cpl Coshen, M. R. 6 Jan 45
F59420 Pte MacLennan, A. K. - Mot Mech "B" 7 Jan 45
F[illegible]726/ Pte Stuvle, J. 9 Jan 45
F4914 Pte Hawco, T. - Dr Mech (MV) "C" 9 Jan 45
F66677 Pte Williams, M. R. 8 Jan 45
F65806 Pte Perry, P. G. 9 Jan 45
F68303 Pte Roach, P. 9 Jan 45
F88642 Pte Munroe, O. H. 9 Jan 45
F88638 Pte Reid, B. M. 14 Dec 44

(b) S.O.S. to 5 Cdn M.L.B.U.(B) RCOC 2 Jan 45
Auth - 5 Cdn Armd Div AG 23 d/4 Jan 45
D76414 Pte Laramee, E. G. - Cook "C" RCASC

(c) S.O.S. to X-4 List C.B.Highrs (4 Bn) 7 Jan 45
Auth - CBCH/47/27 d/6 Jan 45
F88316 Sgt Slade, H.

(d) S.O.S. to X-6 List C.B.Highrs (Missing -believed PW/ 3 Jan 45
Auth - AFW 3014 Sar 469 P. 38 d/13 Jan 45
F32168 Pte Muse, R. A.
F87679 Pte Muir, A. E.

X.1

Pte. Durocher. S.J.

6. STRENGTH DECREASE(Cont'd)

(e) S.O.S. Killed In Action dates shown:
Auth - AFW 3014 Ser 469 p.38 d/13 Jan 45

F64506	Sgt MacLean,	C. H.	8 Jan 45
F36286	Pte Aucoin,	J. A.	3 Jan 45
F55256	L/Cpl Serroul,	G. A.	3 Jan 45
L86598	Pte Thibeault,	J. O.	3 Jan 45

(f) S.O.S. died of wounds in 66 Gen Hosp (Br) 5 Jan 45
Auth - AFW 3014 Ser 469 P.3 d/13 Jan 45
F63750 Pte Rutledge, C. R.

(g) AMENDMENT: Part II Order No. 2 para 6(b) of 11 Jan 45 insofar as it refers to the u/n is cancelled.
F63750 Pte Rutledge, C. R.

7. ATTACHED

(a) Cenoes att from 8 Coy C.D.C. f.a.p. except Regtl Duty 31 Dec 44

A9196	Pte	Angles,	C. G.
D105071	Sgt	Bellows,	J. A.
B67037	Pte	Douglas,	T.
B5324	Sgt	Dicks,	W.
B5310	Sgt	Raven,	L. A.

8. ABSENT WITHOUT LEAVE

(a) A.W.L. from 2130 hrs 28 Dec 44. Still absent 2130 hrs 5 Jan 45 (8th day)
F45735 Pte Gallant, J. J.

(b) A.W.L. from 0800 hrs 30 Dec 44. Still absent 0800 hrs 7 Jan 45 (8th day)

F65938	Pte	Connelly,	H. D.
F78046	Pte	Runnchan,	M. C.

(c) A.W.L. from 1700 hrs 2 Jan 45. Still absent 1700 hrs 10 Jan 45 (8th day)
~~G24834 Pte VanDoorselaere, A.~~

(d) A.W.L. from 0345 hrs 2 Jan 45. Still absent 0345 hrs 10 Jan 45 (8th day)

B142318	Pte	Third,	R. G.
G59528	Pte	Smythe,	W. C.
F32261	Pte	Spencer,	E. W.
A87233	Pte	Durocher,	S. J.
F78178	Pte	Muise,	J. H.

(e) A.W.L. from 1030 hrs 21 Nov 44. ~~RTU~~ from A.W.L. 1500 hrs ~~5 Dec 44~~.
F66972 Pte Brown, P. L.

(f) AMENDMENT: Part II Order No. 101 para 6(b) of 23 Dec 44 insofar as it refers to the u/n is cancelled.
F76169 Pte McNeil, E. M.

8. ABSENT WITHOUT LEAVE (Cont'd)

(g) AMENDMENT: Part II Order No. 104 Para 5(a) of 30 Dec 44 insofar as it refers to the u/m is cancelled.
F76169 Pte MacNeil, E. M.

9. APPOINTMENTS

(a) To be L/Sgt 11 Dec 44 (C.R. d/23 Dec 44)
F55607 Opl MacCormick, H.

10. PUNISHMENTS

(a) On 1 Jan 45 awarded 28 days F.P. and 28 days forf of pay for an off under AA 15(1) AWL from 1040 hrs 21 Nov 44 to 1500 hrs 30 Nov 44. (absent 9 days 4 hrs 30 mins) Forf 28 days pay under FR&I. 149(2). Forf 10 days pay under FR&I. 149(1)(a). Total forf 38 days pay.
F86972 Pte Brown, P. L.

(b) On 1 Jan 45 awarded 28 days F.P. and 28 days forf of pay for an off under AA 15(1) AWL from 2000 hrs 10 Dec 44 to 1530 hrs 15 Dec 44. (absent 4 days 19 hrs 30 mins) Forf 28 days pay under FR&I. 149(2). Forf 5 days pay under FR&I. 149(1)(a). Total forf 33 days pay.
F86665 Pte Lockman, D. J.

(c) On 1 Jan 45 awarded 28 days F.P. and 28 days forf of pay for an off under AA 15(1) AWL from 0700 hrs 7 Nov 44 to 1200 hrs 15 Nov 44 (absent 8 days 5 hrs) Forf 28 days pay under FR&I. 149(2). Forf 9 days pay under FR&I. 149(1)(a). Total forf 37 days pay.
F73870 Pte Kellum, E. G.

TRG TRAINING INCREMENT

11. STRENGTH INCREASE

(a) T.O.S. From M-4 Lieut J.B.Migata (4 Bn) 9 Jan 45
Auth - ARS/TI/11 d/6 Jan 45.
Lieut F. J. MacNeil.

12. STRENGTH DECREASE

(a) S.O.S. To C.R.Hlfax 5 Jan 45
Auth - CDL/ARS/SI d/5 Jan 45
Lieut E. A. Munn.

(b) AMENDMENT: Part II Order No. 3 para 8(a) of 13 Jan 45 insofar as it refers to the u/m is cancelled.
Lieut G. Derry.

F.F.Knight

(F.F.Knight)Lieutenant
for Officer i/c
Cdn Sec GHQ 2 Echelon AFHQ

HQMacD

Certified True Copy
Warrant Officer
Officer Taking Custody of Records

This is Exhibit 'B' referred to in the foregoing affidavit of [illegible] sworn before me this [illegible] day of [illegible] 1944.

[illegible]
Officer taking Affidavit

Last Order No. 10 8 Feb 45	THE CAPE BRETON HIGHLANDERS Part II Orders Issued by CANADIAN SECTION 2nd ECHELON AFHQ	This Order No. 11 10 Feb 45

"A" OFFICERS

N I L

"B" OTHER RANKS

1. STRENGTH INCREASE

(a) T.O.S. from X-4 list CBH (4 Bn) 2 Feb 45
Auth:- Cdn C2E/ARS/5 OD/171 d/26 Jn 45

F97257	Cpl (A/Sgt)	Corkery, J.S.	
F78355	Cpl	Wesson, ...A.	
F84004	Pte	Gillis, D.F.	
F69953	Pte	Morrison, A.B.	
F68442	Pte	MacLean, R.	
F2865	Pte	McDonald, J.M.	
J102489	Pte	Wise, ...E.	
F97786	Pte	Ynard, T.B.	

(b) T.O.S. from X-4 list CBH (4 Bn) 6 Feb 45
Auth:- ARS/5 OD/212 d/4 Feb 45

F68487	Pte	Arsenault, J.E.	
F68206	Pte	Boutilier, W.O.	
K41426	Pte	Duncan, A.	
F89656	Pte	Francis, L.L.	
F44715	Pte	Gillis, J.W.	
F97240	Pte	Gillis, P.D.	
F68201	Pte	Hubbard, D.A.	Dr Moon (LV) 1
G60928	L/Cpl	Lund, J.D.F.	
G1502	Pte	McLean, H.A.	
F45218	Cpl	McPherson, D.	
F32987	Pte	Lochman, L.F.	
F32826	Pte	Murray, P.F.	
F78639	Pte	Strickland, G.W.	

(c) T.O.S. from X-4 list CBH (4 Bn) 3 Feb 45
Auth:- ARS/639 d/2 Feb 45
F94869 WO II (CSM) MacIntyre, J.G.

(d) T.O.S. on app from desertion 2315 hrs 29 Jan 45
F78178 Pte Muise, J.H.

(e) T.O.S. on app from desertion 2300 hrs 29 Jan 45
A67833 Pte Durocher, E.J.

2. STRENGTH DECR ABE

(a) S.C.O. to X-3 list CBH dates shown

255148	Pte	Croney, L.H.	5 Feb 45
[illegible]	Cpl	Gallant, A.	4 Feb 45
[illegible]	Pte	Johnson, S.S.	2 Feb 45
[illegible]	Pte	Mackeen, A.W.	3 Feb 45
[illegible]	Pte	Soublière, L.	2 Feb 45
[illegible]	Cpl (L/Sgt)	St John, F.	3 Feb 45
[illegible]	Pte	Zlatin, M.	4 Feb 45

(b) S.O.S. to HQ 11 Cdn Inf Bde 1 Feb 45
Attn:- Comd 11 Cdn Inf Bde
[illegible] Pte Devereux, G.T.

3. ATTACHED

(a) Att from X-10 list CBH / 2 Feb 45
Attn:- Cdn CSE/ABS/619 d/1 Feb 45
[illegible] Pte Churchill, C.L.

4. ABSENT WITHOUT LEAVE

(a) AWL from 1715 hrs 6 Jan 45 Rot from AWL
2030 hrs 19 Jan 45
[illegible] Pte MacEachern, D.H.

(b) AWL from 0600 hrs 22 Jan 45 Still absent
0600 hrs 30 Jan 45 (8th day)
[illegible] Pte Bowman, J.
[illegible] Pte Jardine, E.R.

(c) AWL from 1600 hrs 26 Jan 45 Still absent
1900 hrs 27 Jan 45 (1st day)
[illegible] Pte Cook, C.B.
[illegible] Pte Gaudet, J.I.
[illegible] Pte MacEachern, D.H.
[illegible] Pte McNeil, E.L.
[illegible] Pte Townsend, R.J.

(d) AWL from 0700 hrs 29 Jan 45 Still absent
0700 hrs 30 Jan 45 (1st day)
[illegible] Pte Ayun, T.M.

(e) AWL from 0630 hrs 22 Jan 45 Still absent
0630 hrs 30 Jan 45 (8th day)
[illegible] Pte Hulse, H.C.

5. APPOINTMENTS

(a) Appointed L/Cpl 27 Jan 45
[illegible] Pte Sutherland, W.D.

6. PROMOTIONS
(a) To be A/S/Sgt 27 Jan 45
F54892 L/S/Sgt Wadden, A.V.S.

7. CONFIRMATIONS
(a) To be Cpl 5 Jan 45
F96024 Pte (A/Cpl) Amuro, R.J.
F56122 Pte (A/Cpl) Dow, E.H.
F53864 Pte (A/Cpl) Francis, F.M.
F57726 Pte (A/Cpl) Jessome, W.E.

8. TRADESMEN'S QUALIFICATIONS
(a) The Qualifications held by the u/m personnel is reclassified as shown 2 Feb 45

			Present Qual	Reclassified as
D126677	Gfn	Berry, A.J.	Fitt(MV)C	Veh Mech(MV)C
B36444	Gfn	Clancy, J.R.	Fitt(MV)B	Veh Mech(MV)B
B72624	L/Cpl	Ireson, W.G.	Fitt(MV)B	Veh Mech(MV)B
C36560	Gfn	Lakins, G.D.	Fitt(MV)B	Veh Mech(MV)B
B85726	Gfn	McLeod, G.W.	Fitt(MV)B	Veh Mech(MV)B
B2437	S/Sgt	VanDorun, E.R.	Fitt(MV)A	Veh Mech(MV)A
F58256	Pte	Moore, J.E.	Mot Mech C	Veh Mech(MV)C

9. PUNISHMENTS
(a) On 30 Jan 45 awd 28 days F.P. and forf of 28 days pay for (1) an off under Army Act 15(1) AWL from 0600 hrs 30 Dec 44 until app at 1615 hrs 23 Jan 45 (absent 24 days 8 hrs 15 mins) (2) an off under Army Act 15(1) AWL from 0200 hrs 21 Dec 44 until 1200 hrs 23 Dec 44 (absent 2 days 10 hrs) Forf 28 days pay under FR&I 149(2) Forf 28 days pay under FR&I 149(1)(a) Total forf 56 days pay
F65930 Pte Connolly, M.D.

(b) On 29 Jan 45 was reverted to Cpl for (1) an off under Army Act 19(Drunkenness)(1st off) (2) an off under Army Act 40
A22128 Cpl (L/S/Sgt) Gagnier, S.J.
F97172 Cpl (L/S/Sgt) MacNeil, H.A.

(c) On 29 Jan 45 was reverted to Cpl for an off under Army Act 20(2)
F78573 Cpl (L/S/Sgt) Gorrin, T.

(d) On 29 Jan 45 was reverted to perm grade of Pte for an off under Army Act 20(2)
F60206 Pte (A/Cpl) Wedge, C.A.

(e) On 29 Jan 45 was awd 6 SEVERE REPRIMAND for an off under Army Act 20(2)
F60215 Cpl MacInnis, J.A.

9. PUNISHMENTS (CONT'D)

(f) On 29 Jan 45 was reverted to perm grade of Pte for an off under AA15(1) AWL from 2230 hrs 26 Jan45 to 1500 hrs 28 Jan 45 (absent 1 day 16 hrs 30 mins) Forf 2 days pay under FRAI 149(1)(a)
C56506 L/Cpl Doubliere, L.

(g) On 25 Jan 45 was awd 14 days C.B. and forf of 7days pay for an off under AA15(1) AWL from 2230 hrs 26 Jan 45 to 1500 hrs 28 Jan 45 (absent 1 day 16 hrs 30mins) Forf 2 days pay under FRAI 149(1)(a) Forf 7 days pay under FRAI 149(2) Total forf 9 days pay
B21203 Pte Cummings, G.A.

(h) On 24 Jan 45 awd 14 days C.B. for an off under AA15(1) AWL from 2230 hrs 23 Jan 45 to 0700 hrs 24 Jan 45 (absent 6 hrs 30 mins) Forf 1 daypay under FRAI 149(1)(a)
F55051 Pte Abbott, W.H.

(i) On 29 Jan 45 awd 28 days F.P. and forf of 28 days pay for an off under AA40 .Forf 28 days pay under FRAI 149(2)
F59845 Pte Ormsmor, J.

(j) On 29 Jan 45 awd 14 days C.B. and forf of 21 days pay for an off under AA15(1) AWL from 0800 hrs 22 Jan 45 to 2115 hrs 25 Jan 45 (absent 3 days 15 hrs 15 mins) Forf 4 days pay under FRAI 149(1)(a) Forf 21 days pay under FRAI 149(2) Total forf 25 days pay
F53565 Pte Nombourquette, W.

(F.F. Knight) Lieut
for Officer i/c
Cdn Sec 2nd Echelon AFHQ

-/CJF

Certified true Copy.
Appointment Lieut
Officer having Custody of ~~Regt Hqrs~~ Regiment

Army Form B 200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
A87233	Pte.	DUHOCHER, S.J.	1 CIBRBn, 1 CBRGp.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For		

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

3. The accused is not under sentence at the present time, or

4. The accused has been in confinement, awaiting trial on the present charges, for nil days, in civil custody, and 39 41 days in military custody, making a total of 41 39 days, of which 30 days were spent in hospital.

5. The present age of the accused according to his attestation paper is 20 yrs.

6. The date of his attestation specified in his attestation paper is 9 Oct 1942

7. The service which the accused is allowed to count for ~~pay~~ on ~~his~~ discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~the undermentioned decoration or medal~~ (or ~~has forfeited or relinquished his claim to any~~ military decoration or reward): CVSM & Clasp.

11. (*If the accused is a warrant officer.*) The accused is ~~not~~ a warrant officer but held the substantive rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		
		NIL		
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of March 1945.

J. Hawkins Lieut
Officer having Custody of Regt'l Books

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of _____ years _____

In the rank of _____ years _____

In the rank of _____ years _____

(In case of any entries in any of the above paragraphs, cannot be verified from the regimental books the paragraphs must be struck through, except that in the case of a trial by field general court-martial the information may be inserted from such evidence as are available on the prescribed conviction certificate.)

M.F.M. 6
(A.F.B.127)
40/P & /8136 (2965)

No. A87233 Name DURROCHER, S.J. Sqn., Battery, or Company CHH Corps CIC Date of enlistment G.C. Badges Service or Proficiency Pay Character 24 C

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NO REGIMENTAL ENTRIES.					

Certified true extract from MFM 4. 8 March 1945. (Signed) (W.H. Laughlin,) Capt.,
Officer having custody of original documents.
Cdn Sec 2nd Ech, A.F.H.Q.

Certified true copy from regtl books in my custody W.H. Laughlin Capt
(Officer having custody of regtl books)

(P.T.O.)

LL-25

PTE DUROCHER X

D-6307/1 Pte Xavier DUROCHER,
Fus MR - (Admin Wg) C.T.S. LL-25

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this FIFTEENTH day of AUGUST, 19 FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~I am unable to appoint~~
*(1. ~~Three Officers to form the Court.~~)
*(2. ~~A Field Officer as President.~~)
~~for the following reasons, namely~~

*Omit if not applicable.

Still Dvr 1 adl, Capt
12 Sept 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	A.S. PETTAPIECE	HQ CRU

Members.

Rank.	Name.	Regiment.
A LIEUT	FROM	1 CORU.
A LIEUT.	FROM	1 CORU.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.H. Roberts) Maj-Gen.,
Commanding Cdn Rft Units.
Convening Officer.

Lt. A. Pettapiece Mfg Co

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-63071 Pte Xavier DUROCHER, Fus MR, (Adm Wg) C.T.S.	FIRST CHARGE Sec 9(1) A.A.	Not Guilty	Not Guilty	
	See Charge Sheet Attached.			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on proceedings sheet if necessary*) :— No

(Signed) J. H. ROBERTS, Maj-Gen. (Signed) Arthur L. Pettypiece, Major
Commanding ~~Officer~~ *Convening Officer* (a) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8th day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The Interpreter~~
4. ~~The officers under instruction~~

*Omit if not applicable.

were duly sworn.

Signed this 8th day of August 1943.

Arthur L. Pettypiece, Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (a) on page 762 M.M.L. 1-29.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The Accused No D.63071, Private Xavier DUROCHER, Fusiliers Mont Royal, posted to the Administrative Wing, Canadian Training School, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
ARMY ACT
Sec 9 (1)

When on Active Service disobeying, in such a manner as to show wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office,

in that he

at approximately 1150 hours on 9 Aug 43, when ordered by F.14100, A/Sgt Short, M.F., RCASC/CTS, the NCO in charge of the Officers Mess, Canadian Training School, to wait on the tables in the Officers Mess before having his own dinner replied, "If I don't eat, I don't work", or words to that effect, and did not wait on the tables.

E.C. Peckham
(E.C. Peckham) Major, Wing 2 i/c A,
O.C. Administrative Wing,
Canadian Training School.

Savannah Barracks,
Borden Hants,
15 Aug 43.

To be tried by Field General Court-Martial.

J.W. Roberts
(J.W. Roberts) Maj-Gen.,
Comd, Cdn Rft Units.

In the Field,
15 Aug 43

Arthur N. Pettypiece, Major
President

CTS/113

MEDICAL OFFICER'S CERTIFICATE

I hereby declare that I have to-day examined:

No. D.63071, Pte DUBOCHET, Y.

Fusilier Mont Royal

Regiment, ~~attached~~ posted to Canadian Training School and certify that I found him Medically fit/~~unfit~~ to undergo trial by Court-Martial.

18 Aug, 1943

Gordon, Hants.

R.P.J. McMullen Capt

Capt, R.C.A.M.C., Medical Officer,
Canadian Training School.

(To be signed in Duplicate)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Roy Montagu Barracks, Londo, Kent.
ON THE 14 DAY OF August 1943

The accused D/5021 Pte Hendon, X. ....Unit...C.T.C. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. Maj. G.E. Letzgus .....Unit...H.Q. C.T.C.....
Members. Lt. J. Hood .....Unit...C.T.C.....
Lt. C.F. Rose .....Unit...C.T.C.....

~~The officers under instruction are duly sworn:-~~

.....Unit.....
.....Unit.....

Prosecutor. A.C.S.M. G. Singer .....Unit...C.T.C.....
Defending Officer. Sgt. C.J. Morris ...Unit...C.T.C.....

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads guilty to the charge(s) and R.P. 35(B)~~ is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS ~~OF ACCUSED OR HIS DEFENDING OFFICER~~

The accused pleads "Not Guilty" to the charge.

R.P. 39(A) is complied with.

The Prosecutor proceeds to call witnesses.

1st Witness for Prosecution

14416 A/Sgt. Hart, H.F. of C.T.S. being duly sworn, states,

I was in the accused. On 9 Aug 43 about 1130 hrs I saw the accused trying to get his hand in to officers mess kitchen. I told him to go to hut to eat and that he could have to any of his duties or write in the officers mess and get his dinner later. He said that he was late for his dinner was because he was packing clothes. He then said "If I am not fed I don't work" and he went out into the centre road and continued to hang around. I again spoke to him but he made no reply. At 1220 hrs I had my instructions translated in French to the accused with the warning that if he did not go back to duty he would be placed in arrest. At 1240 hrs I told the accused to get dressed and get his hands out of pockets and to get him to the guard room under arrest. I gave this instruction

to the accused as a duty ~~duties~~. He is accustomed to coming in the officers mess at this time and knows what his duty was.

Cross-examination

I am not quite sure of the exact words. I do not remember his saying "I cannot work" instead of "I will not work."

2nd Witness for Prosecution

No 4122 L/Sgt Nelson, P. of C.T.S. having been duly sworn, states:-

On Aug 7th 1943 the accused was in the kitchen and S/Sgt Hall asked me to tell the accused in French that if he, the accused did not go to work he would be put under arrest. I did this. The accused appeared to understand what I was telling him. He said in reply "I cannot work without my shoes". I am positive these are the words he used. I am a P/W of the kitchen staff. The interval usually exists from 10a to 12a but on this day there is no regular meal periods for us to.

Cross-examination

Previous to this event I had given the accused permission to go and pass the time of day.

Re-examination

I gave him the permission right after the breakfast that morning. I did not think that he had to be back at any given time.

The Prosecution is closed.

R.P. 40 complied with.

The Defence proceeds to call witnesses.

1st Witness - [illegible] sworn, having been duly sworn, states:- for Defence.

On the day in question, I got back to the kitchen at 1145 hrs. I was trying to get my dinner and the cook was going to give it to me. The Sgt Mess came along and he said "Medicine for you before the officers eat". I said to him "I am very sorry that I cannot work if I don't eat". He said nothing more, I waited 15 minutes and then at 1200 hrs the Sgt Mess came back and said "What the matter"? I told him what I had said again, then he said he will put me under open arrest. At 1230 hrs SSgt Velan came to see me and he warned me in French that Sgt Mess was going to put me in close arrest if I did not work. At 1245 hrs Sgt Mess came to me and then he took me to the guard house.

I am C 2 category. I have had stomach trouble. I cannot eat meat because it does not agree with me. If I do not eat I faint. I have been examined by the medical people of both in Canada and the United Kingdom. I did not mean to disobey any order, it was just that I thought the Lt. Col was joking as me.

Cross-examination

Lt. Col. did not give me an order. He just said. "If you do not ask you do not get". I was thought passing my clothes about 11:30 hrs.

Re-examination

The Defence is closed.

The Prosecutor makes a final address (attached sheet)

The Presiding Officer makes a closing address (attached sheet)

The Court is closed for consideration of finding.

The Court is re-opened and it is announced that the accused has been found "Not Guilty" of the charge.

Arthur L. Pettypiece
Major

Address by Prosecutor.

Sir

It would appear that the accused was aware that work was required of him. His own statement - "If I don't eat I can't work" points to this. Otherwise, Why should the accused mention work at all? It was more his normal duty is to work in the Mess between 1200 - 1300 hrs regardless of when he eats. He did not perform his work.

Both the witness assert that he made the same remark to them that

15/5/43

Adjt.

[redacted] Address of Defending Off.

The Defense contends that no direct order understandable to the Accused was given to him by Sgt Short and that T/Sgt Palmer when told by Sgt Short to translate the Order did not translate a direct order but stated that if the accused did not work he would be put under arrest.

The words of the accused "If I don't eat I cannot work" was NOT wilful defiance of authority but was merely an explanation to Sgt Short of the fact that due to his physical condition the Accused could not carry on

without a meal.

W Angus Murray
Lt VRC/CTS
Defending Offr

SUMMARY OF EVIDENCE

in the case of D 63071 Pte Xavier DUROCHER, of the Fusiliers Mont Royal, posted to Administrative Wing, Canadian Training School Canadian Army (Overseas).

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR PROSECUTION — K 14100 A/Sgt Short, H.P., RCASC, posted to Canadian Training School, having been duly sworn states:

"I am the Mess Sgt on duty in the Officer's Mess, Canadian Training School. I was on duty in the Officer's Mess at 1150 hrs 9 Aug 43. The accused came into the Mess Kitchen at 1150 hrs, and asked the cook for his dinner. I refused to let him get his dinner from the cook as it was too close to 1200 hrs, when the officers eat. I told the accused, who was on duty as a waiter in the Officer's Mess, that he could have his dinner after the officers had eaten. I asked him why he was late in coming in for his dinner, as the waiters usually dine at 1130 hrs. He replied, "I had permission from L/Cpl Palmer, P., to be in my room from 1000 hrs, pressing my clothes." I was not previously aware that L/Cpl Palmer, P. had given the accused this permission.

I then ordered him to start work in the Officer's Mess waiting on the table between 1200-1300 hrs. He replied, "If I don't eat, I don't work", or words to that effect. I told him, "If you refuse to work between 1200-1300 hrs I will place you under Close Arrest in the Guard Room." The accused understood the order I had given him but did not obey it. At 1230 hrs I had L/Cpl Palmer translate the order into French for the accused's benefit. At 1245 hrs I told the accused to get his lunch after which I took him to the Guard Room and placed him under Close Arrest. It is a definite rule that all waiters parade for their lunch at 1130 hrs although sometimes the lunch isn't ready until 1135 hrs or 1140 hrs."

The accused declines to question the witness.

The evidence was read over by the witness and signed by him.

K 14100, A/Sgt Short, H.P.
RCASC posted Cdn Trg School

SECOND WITNESS FOR PROSECUTION — C 4122 L/Cpl Palmer, P., East & P.E.R. posted to Adm Wing Cdn Trg School, Cdn Army (Overseas), having been duly sworn states:

"At 1230 hrs 9 Aug 43 I was on duty in the Officer's Mess, Cdn Trg School. A/Sgt Short, the Mess Sgt, told me to translate an order into French for the accused's benefit. The order was, "You are to work in the Officer's Mess between 1200-1300 hrs. If you don't obey the order to work in the Mess waiting on the tables, Sgt Short will place you under Close Arrest in the Guard Room." The accused then said, "Sgt Short went give me my dinner, and I wont work unless I get my dinner." I then saw Sgt Short in order to get the accused his dinner, and Sgt Short gave it to him, after which he took him to the Guard Room under Close Arrest.
The dinner parade for waiters has no definite time, being between 1150-1155 hrs depending whether or not the tables are set and the dinner is ready."

The accused declines to question the witness
The evidence was read over by the witness and signed by him.

C 4122, L/Cpl Palmer, P.
East & PER posted Cdn Trg School.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:-
IN FRENCH AND ENGLISH.

" Do you wish to make any statement or give evidence on Oath?" You are not obliged to say anthing or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED, HAVING BEEN DULY SWORN STATES AS FOLLOWS:-

"I came into the Officer's Mess at 1145 hrs 9 Aug 43 and asked the cook for my dinner. The cook was going to give me my dinner, but Sgt Short said that I would have to wait until after the officers had eaten between 1200-1300 hrs. The other waiters were eating. There was still 15 minutes before the doors opened for the officers to start eating. I told Sgt Short that if I didn't eat I couldn't work. Sgt Short had told me that I could have my dinner at 1300 hrs, after the officers had eaten. He said,"If you don't obey the order I have given you I will place you under Close Arrest in the Guard Room."

At 1230 hrs Sgt Short told Cpl Palmer to translate the order into French. Cpl Palmer did this and told me if I didn't obey it Sgt Short would place me under Close Arrest in the Guard Room." At 1245 hrs Sgt Short gave me my dinner and then took me to the Guard Room under Close Arrest. I did not do any work between the hrs of 1145-1300. Being Category C2 I felt that I could not work unless I had something to eat first. I could not wait until 1300 hrs for my dinner. L/Cpl Palmer, Pl had given me permission to go to my room at 1000hrs to press my clothes." Sgt Short did not give me a direct order to work in the Mess at 1145 hrs.

Sgt Lepage, R. having been duly sworn translated and read over the accused's statement to the accused in French. The evidence is signed by the accused.

Xavier Dumoulin

D 62071, Pte Dumoulin, X., Fus R.S.
Posted to Cdn Trg School.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence and hearing of the accused, and Rules of Procedure 4(c),(d),(e),(f), and (g) have been complied with.

Allan Singer, Lt.

(Allan Singer,) Lieut, R.C.A.
Administrative Wing
CANADIAN TRAINING SCHOOL.

Havannah Barracks,
Bordon, Hants.

11 Aug 43.

M.F.M. 6

(A.F.B. 122)
as P & S/136 (2037)

No. D 65071 Name Durocher, X | Sqn., Battery, or Company | Corps Fus M.R. | Date of enlistment 24 July 40 | Service or Proficiency Pay | Good Conduct Badges | Character

Date of last entry in Company Conduct Sheet 25-10-42 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. P.E. Dowler Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon Hants	1-11-42	Pte		AWL from 2130/1-11-42 to 0630/2-11-42 Time absent 9 hrs AA Sec 15 (1)	Cpl Hall HW	168 hrs Detn	2-11-42	Col C.W. Devey	Forf 1 days pay FR&I Forf 7 days pay FR&I
Field	23-3-43	Pte		AA Sec 15(1) WOAS AWL - 1630/23-3-43 - 1245/24-3-43 Total time Absent 20 hrs 15 mins	Pte Palmer P Pte Belnger E Documentary	14 days F.P. 14 days Pay	25 Mar 43	Lt.-Col F. Barber	Forf 1 days pay FR&I 149 (1) (a) E.C. Beckham Maj
Field	22-5-43	Pte		AA Sec 15 (1) AWL - 2130/22/5-43 2245/22-5-43 Absent 1 hr 15 mins	L/Cpl Harris FH L/Cpl Wolinsky L L/Cpl Bougher F.M.	7 days C.B.	25 May 43	Capt P.E. Dowler	FED

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of entry dispensing with Trial	By whom awarded	Remarks
Field	6-7-43	Pte		AA Sec 15(1) AWL from 2300/6-7-43 to 0020 7-7-43 absent 1 hr 20 mins.	Pte Belnger E Documentary	14 days C.B.	7-7-43	Major E.C. Peckham Major	E.C. Peckham

CERTIFIED TRUE COPY OF ORIGINAL IN MY POSSESSION E C Peckham

(E.C. Peckham) Maj Line & Weild R
O C AIM WING C T S

M.F.M. 6
(A.F.B. 127)
40/P & B/136 (2037)

No. D 63071 Name Durocher, X. Sqn., Battery, or Company Corps Fus M.R. Date of enlistment 24 Jul 42 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. P.E.Dowler Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley	21-1-42	Pte		AWL 8 hrs 30 min A.A. Sec 15 (1)		14 days C.B.	21-1-42	O.C. 2 CDIRU	Forf 1 days Pay
"	11-5-42	"		AWL 2005 hrs 11-5-42 to 0100 hrs 12-5-42 Absent 4 hrs 55 mins A.A. Sec 15 (1)		Forf 10 days Pay	12-5-42	O.C. 2 CDIRU	Total forf 10 days pay
"	2-6-42	"		AWL 2200 hrs 5-6-42 to 0600 hrs 6-6-43 (Absent 8 hrs)		Forf 5 days pay	6-6-42	O.C. 2 CDIRU	Total forf 6 days pay
Rowlands Castle	15-6-42	"		AWL 2200 hrs 15-6-42 to 0600 hrs 16-6-43 (Absent 8 hrs)		Forf 4 days pay	16-6-42	O.C. #5 Wing CTS	Total Forf 6 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with DA	By whom awarded	Remarks
									EXTRACTS FROM
Valcartier				A.W.L.		8 days pay	19-8-41		
"				A.W.L.		1 days pay	24-8-41		
"				A.W.L.		5 days pay	16-8-41	M.F.M. 2	
"				A.W.L.		168 hrs Detn	24-8-41	J.M. Davis, SQMS	
Bordon Hants	7-8-42	Pte		AWL from 1130 hrs 7 Aug 42 until his return at 2155 hrs 10 Aug 42 Total time absent 3 days 10 hrs 25 mins	L/Bdr Torrance CJ Documentary AA Sec 15(1)	21 days Detn	11-8-42	Col C.W. Devey	Forf 4 days Pay Total Forf 25 days pay S.R.
Bordon Hants	15-10-42	Pte		AWL from 2130/15-10-43 until 0630/16-10-43 Time absent 9 hrs	Cpl Hall HW	7 days C.B.	16-10-42	Capt P.E. Dowler	Forf 1 days pay FR&I PED
Bordon Hants	25-10-42	Pte		AWL 2200/25-10-42 to 2330/25-10-42 Absent 1 hr 30 mins	L/Cpl Ormandy OG AA Sec 15(1)	4 days C.B.	26-10-42	Capt P.E. Dowler	PED

Certified True Copy. The Original is in my possession

(E.C.Peckham) Maj Insc & Welld B

M.F.B. 355
22M—5-41 (579-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D.63071	Pte	Xavier DUROCHER	Fusiliers Mont Royal posted Administrative Wing Candian Trg School.

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Total Since enlistment or appointment	
For Army Act 18 (1)	Six	times	Army Act 18(1) Fifteen	times
For		times		times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries to the conduct sheets of the accused.~~

~~NOTE.—If the charge is for drunkenness, the entries or drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act~~ ~~R.A.F.~~ Section 47 of the Army Act, and dispensations ~~of trial~~ under A.C.I. 93 are set out in the Schedule ~~annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and 5 days in military Air Force custody, making a total of [illegible] days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~attestation papers~~ is: Casualty form MFM 4 Pt I 25 yrs

6. The date of his ~~enrolment~~ ~~attestation~~ specified in his ~~record of service~~ ~~Regimental Pay Sheet~~ is casualty form MFM 4 Pt I enlistment 1s 4 Jul 40

7. The service which the accused is allowed to reckon towards discharge is [illegible]

8. The accused is entitled to reckon 3 1/12 service for the purpose of determining his pension, etc.

9. The accused is ~~in possession of or~~ entitled to no ~~air force~~ decoration, or ~~air force~~ reward ~~for R.A.F.~~ military military ~~pensions~~ ~~to which he is entitled to~~. ~~State any air force decoration or reward.~~ military

10. ~~If the accused is a warrant officer:~~ ~~That accused before he was raised a warrant officer had held~~ Air Force ~~the substantial rank of~~ [illegible]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R, 83071 Rank Pte Unit

Name Xavier [illegible] of Fusiliers Mont Royal Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL	NIL	NIL	NIL	NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13 th day of August 1943 Allan Dingwall, Lt. R.C.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

FORM OF APPLICATION FOR A COURT-MARTIAL

CANADIAN TRAINING SCHOOL Regiment

Station Savannah Barracks, Bordon, Hants Date 12 August 1943

Application for a Field General Court-Martial

Sir,

I have the honour to submit ONE charge against No. D 63071 Pte Xavier DUROCHER, Fusiliers Mont Royal/Posted to Adm Wing Canadian Training School of the UNIT under my command, and request you will obtain the sanction of Comd C.R.U. that a Field General Court-Martial may be assembled for his trial at a place to be designated by higher authority.

The case was investigated by (a) Major E.C. Peckham O.C. Adm Wing and Lt Allan Singer, Adm Wing Canadian Training School

~~A Court of Inquiry was held on the~~ (date)

~~President~~ (name, rank, unit)

~~Members~~ (name, rank, unit)

The accused is now at Bordon, Hants His general character is (c) four

I enclose the following documents (d):—

1. One Charge Sheet
2. Summary of Evidence, original
4. List of witnesses for the prosecution
5. List Of Exhibits Nil.
6. Correspondence (e)
7. Statement as to character (M.F.B. 355) and regimental and company conduct sheets of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h)

11 Comd. May this request be sanctioned please.
C.R.U.

Your obedient servant,

E.C. Peckham

Commanding Officer
(E.C. Peckham) Maj Line & Field T
ADM WING CTS

1
To: Comd
C T S

MEDICAL OFFICER'S CERTIFICATE

I certify that No D 63071 Pte Xavier DUROCHER Fusiliers Mont Regiment, Royal/Adm Wing CANADIAN TRAINING SCHOOL is fit to undergo trial by Court-Martial.

Signature of the Medical Officer

(W.B.J. McMillen) RCAMC, M.O. CTS School

*Insert "fit" or "unfit."

(a) Here insert name of—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 2, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 5 and 8 to be sent to the President.
(If the accused has elected to be tried under A.A. 40 (8), the fact should be recorded at the top of this form.)

M.F.B. 321
40/F & S. 650

LIST OF WITNESSES

In the case of D63071 Pte DUROCHER, Xavier, of the Fusiliers Mont Royal, Posted to Administrative Wing Canadian Training School, Canadian Army (Overseas).

First Witness. A/Sgt Short, H.F. R0A30/CTS

Second Witness. L/Cpl. Palmer, P Mast/CTS

LIST OF EXHIBITS

NIL

RECEIPT FOR SUMMARY OF EVIDENCE AND CHARGE SHEET

I, No. D 63071 , Pte , Xavier DUROCHER, Fusiliers Mont Royal
Posted to Adm Wing CTS Regiment

attached/posted to Canadian Training School, hereby admit receipt of a copy of the Summary of Evidence in the forthcoming case against me, and state that my rights under Rules of Procedure 14(b) in the Manual of Military Law as to preparing my defence have been explained to me by Lt Allan Singer

I also admit receipt of a copy of the Charge Sheet in the said case and state that said Charge Sheet has been explained to me in accordance with Rules of Procedure 15(b) by the above mentioned Officer.
This Summary of Evidence and Charge Sheet have been handed to me and explained this 14th Day of August 1943. 194.

at 0900 hours.

Xavier Durocher.
(X.Durocher) Pte. D63071 F.M.Regt.

(To be signed in duplicate)

To/
Commandant,
Canadian Training School.

With reference to my pending trial by Field General Court-Martial,

(a) [redacted]

(b) I wish # [redacted] that an officer be assigned to act as defending officer.

(if [redacted] Lt. C. J. Gay, Fus. Mont Royal
(or)#

is available, I wish that he may be assigned for this purpose)

18th August 1943
Bordon, Hants.

Xavier Durocher.
(X.Durocher) Pte D63071 Fus M.R.

(to be signed in duplicate)

Delete where necessary

4E-98

SGT. DURRAND W.D

RECORDED AT CMHQ IN AB 160 4E-98

FIELD GENERAL COURT-MARTIAL

CP498 (In lieu of AFA2) 40/P & B/1668 4388

Convened by Order of Lt Col R H Noble RCEME Comd 4 Con Armd Div dated 6 Nov 44

ACCUSED.

(Note the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent & confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K37684	Sgt	William Daniel	Durrand	HQ Sqn 4 Con Armd Div

PROCEEDINGS REVIEWED 24 Nov 44

PROCEEDINGS REVIEWED 24 NOV 44 HQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held at (place) Holland on (date(s)) 7 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure & on a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for rules and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 133, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (✓) attached thereto.(1) The Court is satisfied that it is properly convened and constituted,(2) that accused is (are) (✓) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (✓) brought before the Court. At 0930 hours trial commences.

R.J.H. A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the (CO).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

~~R.J.H. As President to accused: Do you object to [illegible] as an expert? Ans~~

~~The Interpreter (swears).(1) Do you object to [illegible] as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

R.J.H. President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R F Willson	Linc & Well'd R.
Member	Capt	H Howes	22 Con Armd Regt
Member	Lieut	R M Clements	23 Con Fd Regt (SP)
Judge-Advocate	Capt	H A Thomson	HQ 4 Con Armd Div
Prosecutor	Capt	O J Beatty	HQ Sqn 4 Con Armd Div
Defending Offr	Maj	J K Kelly	15 Fd Amb RCAMC.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

R.J.H. (1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See fn p 2.)

A8. The accused before arraignment make(s) (not) (✓) plea.(1)

R.J.H. (1. If a special plea is made for separate trial on one or more charges (RP 62(5), (6)B), or as to the jurisdiction of the Court, (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or (in one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

R.J.H. A9. The accused is (✓) arraigned (separately) on all charges in the charge sheet.(1) The accused does (✓) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 113. See para 1 of Notes p 2. When more than one Charge Sheet: see RP 62; when several accused to be tried separately see RP 71(C); and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Notes on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D" & "E"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K37684 Sgt William Daniel Durrand HQ Sqn 4 Con Armd Div

	Charge. (Insert "alternative" where applicable.)	Plea. (See Notes p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA § 42	Not Guilty	Not Guilty	
2nd	AA § 40	Not Guilty	Not Guilty	
3rd	AA § 80(2)	Not Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

R.J.H. Sentence under sentence for ~~[illegible]~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

R.J.H. (1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the ranks and to undergo detention for Ninety (90) days.

(Sgd) [signature] Judge-Advocate, if any. 7 Nov 44 Date awarded. (Sgd) R F Willson Maj President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION ON CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(As to duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120; MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 85. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I CONFIRM THE FINDING AND SENTENCE OF THE COURT. BUT CONSIDER THE SENTENCE IS HEAVY. GIVE "IN ADDITION TO THE SENTENCE AND TO PREVENT ALL DELAYS PRE-SENTENCE, ONLY (90)." END I CONFIRM THE SENTENCE AS AMENDED.

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)

(1. AA 57A. Delete if not used.)

Date 7 Nov 44 (Sgd) R H Noble Lt Col

Date 7 Nov 44 Commanding RCEME 4th Con Armd Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K37684 Sgt William Daniel Durrand	8 Nov 44	[signature] Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Date 7 Nov 44 Judge-Advocate, if any. Irregularities such as failure to read warning regarding confirmation

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 17(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No.(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans No. Do you intend to call witnesses on your behalf?
Ans Yes. Are they witnesses as to character only? Ans No.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* A95. *Evidence for accused or as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1; 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 41, 103(*c*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding of the Court on the third charge, being subject to confirmation, will be promulgated later.(1) ~~In the Number(s) aforesaid the accused is found Not Guilty on all charges and so to be discharged and set at large, proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(*1*) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(*2*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Yes - as to character.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*3*) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "A" and Ex "B" respectively.(3)
(1. *MFB* 353 *or MFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Con* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*C*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 89, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 90, 752-758. *As to sentences assigned for civil offences by the law of England see AA* 41(*2*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*1*) (*b*), 98(*1*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B3b

CHARGE SHEET

The accused, K-37664 Sjt William Daniel DURRAND, HQ Sqn 4 Cdn Armd Div, a soldier of the Cdn Army Overseas is charged with:

FIRST CHARGE
AA Sec 9(2)

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field, on or about 17 Oct 44 did not turn in all tk wireless extension equipment to the Tp Signals Instrument Mechanic when ordered to do so by Lieut. J. Derij, HQ Sqn 4 Cdn Armd Div

SECOND CHARGE
(alternative)
Sec 40
Army Act

CONDUCT TO THE PREJUDICE TO GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, at approximately 0600 hrs on 28 Oct 44 improperly was using tank wireless extension equipment without authority from Lieut J. Derij HQ Sqn 4 Cdn Armd Div.

THIRD CHARGE
Sec 8(2)
Army Act

WHEN ON ACTIVE SERVICE USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the field, on 28 Oct 44, when checked by Lieut J. Derij HQ Sqn 4 Cdn Armd Div said to the officer "Oh Horseshit".

Sur the facts
6 Nov 44

(C.E. Campbell) Major
OC HQ Sqn 4 Cdn Armd Div

To be tried by Field General Court Martial.

Sur the facts
6 Nov 44.

(R H NOBLE) Lt Col
COMD HQ RCEME
4 Cdn Armd Div

B JP

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA32)
40(T&S/1697 (20660)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prsnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K37664	Sgt	William Daniel	DURRAND	HQ Sqn 4 Cdn Armd Div

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~these~~) committed the offence(s) set forth in the Charge Sheet attached and on (date) 6 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President for the reasons I have attached hereto~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) B. F. WILLSON (Must be named. RP 106.) Lincs & Welld Regt (Unit.)

MEMBERS.

Capt (Rank.) H. BOWEN 22 Cdn Armd Regt (Unit.)

Lieut (Rank.) R.M. CLAUNTS (Named or detailed. RP 106.) 22 Cdn Fd Regt (SP) (Unit.)

WAITING MEMBER.

Lieut (Rank.) E. C. NEWCOMBE (Named or detailed, if any. RP 106.) 8 Fd Sqn RCE (Unit.)

JUDGE-ADVOCATE.

Captain (Rank.) H. A. HANSON (Must be named, if any. RP 106.) HQ 4 Cdn Armd Div (Unit.)

On Active Service in the Fd

in Holland (Country.)

Date: 6 Nov 44

R. W. Yolk (Signed personally. RP 105 fn 2.) (Rank.)

Commanding HQ RCAMC 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and reasons for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 85(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 86(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 1(b)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 9-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)
(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(*E*), *KR Can* 562(*a*).)
(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can* 557.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 586. *As to certified copies of regimental books see AA* 143 (1) (g) (ii).)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and will form part of record of proceedings. (*KR Can* 557.) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 118(C), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

APPX F

R 370

MED OFFRS CERTIFICATE

I certify that I have this day examined No. K-37684 Sjt William Daniel DURRAND of HQ Sqn 4 Cdn Armd Div and in my opinion he is ~~unfit~~ fit to undergo trial by court martial.

Sta 2 C.A. Fd Amb

Date 2 Nov 44

(Med Offr)

Prisoner
1.

1 W
Pris

Lt J. Duff HQ Sqn 4 Can Armd Div sworn.
Identifies accused.
I am O i/c HQ Sqn Tanks.
At present I am i/c 8 Shermans.
Cross x-mn.
On 17 Oct 44 I had 8 Cmdrs tanks. I was only officer on tanks and was employed in an ops role. I/c should be at least 3 offrs, so I took it only on Nov's to perform offrs duties. The accused was Cmdr commander of a tank on 17 Oct and was up to date of his arrest.
On 17 Oct 44 I issued an order to the tank Cmdrs that all the wireless reception equipment must be turned in to Sigals to instrument Mechanic. The reason for the order was the fire hazard. On that day a fire had been caused by a short circuit the use of ext. equip over drew the batteries I cannot remember if the accused was present when I gave the order but I instructed Sgt Godin to pass it down. Godin is my senior Sgt and my A i/c.

[illegible] on [illegible] and we had an op job - The enemy was out here left and we had a protective job. I had ordered a stand to at that time. I visited the [illegible] of the armour and in going there saw into an estaminet leading from it to his billets, which was in a house. His car was the only one in that house.

I found the armour and asked him what he was doing with the estaminet and if he had received the order concerning it. (No objection taken by Maj) He said he had received the order but he was "first" witness - it. He did not tell me what he was using the wireless station for and I did not look in the house to find out. I ordered him to turn the equipment in. He told me I by order was all wrong and got sarcastic. I told him I was officer i/c the tanks and he would take my orders. I told him to stand to attention.

He did not stand to attention but returned his salute and said "OH Tuesday" and started to walk away.

I called him back, but the Sgt Major place him under close arrest.

He told me that my order was all wrong because there was no danger of fire. As a previous accident we had had a fire which burned the extention.

As crew could not answer was responsible ~~of~~ for the matter concerning his task.

L Cpl Cann.

I saw in my best humour in the morning. I don't remember saying to the man "I don't give a damn if you salute or not" If I had said that I would have encouraged informality. I have not encouraged informality.

The previous fire was started when we were under canvas. ~~Later on~~ There would be much less danger of fire when we were living in billets. I did not investigate the jump

last, but know the
unless sit was at in
question

No Cross am.

Exam by Court. I did not investigate what the trial was for as I had other tasks to visit. It was the task of the accused that did the trial etc.

The accused was a couple of paces from me when he said "OK Hamish" to one other than the accused and I was there when he said these words. The words were said in a normal voice and were said to me.

RP P3(B) complies with.

SW Pros C 58564 Sgt Godin C.W. HQ Sqn 4 Can Armd Div sworn.

I am a Non Com Senior NCO of the Th Pl of HQ Sqn. I recognize the accused. I am a Can Cpl.

On 17 Oct 44 at approx 1600 hrs to Brig [illegible] told me to notify each of the crews of our order. I looked in each and told them when the accused were and

at the port side of the
aerial. I told them that
to Brig. Col. Stiles as he
left them that in future
no unless extinction or
trouble lights would be
used from tank to the
sleeping tents or bivouac.
and hourly inspections equip
would be turned in to
Signal Corps Shacpack (Shoe pack),
instrument mechanic.
Nothing was said as to
how they might be obtained
and used again.
It is impossible for
me to remember the individual
persons to whom I gave in-
dividual orders. I did not obtain
any count of these orders.

Lt Cram: I did not say to the
accused. "This is given
as an order." The was
another officer in the party
besides, Lt. Columbo,
on the day the order
was given.

Re-cross: I heard Lt Davis order
accused and did not hear

order are my own duty.

Exam by Court.

~~Lt Colombo came Not~~
~~to my quarters this morning~~
~~interest this as of 17 Oct 44.~~
I don't know definitely
if Lt Colombo was back on
17 Oct 44. I made it
plain that I was passing
on to Brig's order on 17 Oct 44.
It would have been possible
for the accused not to have
heard the order I passed
on. I did not give the
order personally to the
two cooks, but gave them
to the man generally who
runs in the area at the
time.

RP 63 (B) complied with.

JW Pros. B10860 Sign Shepherd R. allo
He Sgn & can hear this
summ.

(RP 76 complied with
- See attached letter)
Identifies accused -
I am Instructor Wireless
of He Sgn and am att to
H- tank tp -
I heard of Lt Brig's
order on 17 Oct. I am
17 Oct a few ~~days~~ pms

of equipment were items
in also a few more
dates. I made list any
equipment items in
hand that took of the
accused.

No T Exam.

RP 83 B1 complies with

8.

Defense.

1 W Key.

Lt. D.R. Columbo H.O. Sqn. H can hands did speaks. Jump leads are standard equipment for tanks and are intended to be used when the ones are disrounded for purposes of communication. They are most important in ops.

I was not present when the charge was laid. After it was laid Lt Berry came to me and told me the charges of failing to turn in the allotted equip and insolence had been preferred against the accused. I was away when the order was given.

The afternoon when the charges were investigated I spoke to Lt Berry. The tells me the accused had not been very cooperative and issues probably be remanded for a summary. He did say that the accused had taken the attitude he had and

if he had pleaded guilty to that matter he would have probably lost only one stripe and got it back but as the matter was now going to court he would probably be reduced.

I did attempt to influence Duffy to drop that second charge as he might have trouble proving that matter. The facts are he would have no trouble in proving the matter.

(The Duty Officer states he was hindering evidence as to credibility of pros. witnesses).

It was ~~extended~~ made fairly plain that I was to tell the accused, if he had accepted the - Det's punishment he would probably lose only one stripe. Det assumes in some way responsibility.

4. Exam: The students on duty here are equipped with jump leads. I was told at Sandhurst they

was important.

I did not know Lt Berry's order given.

When I go to the tanks I go as a crew of 4 tanks during ops. I return to main Div when I am not on ops. Lt Berry is in full charge of the 4th tp.

Lt Berry has a good record in the 4th tp. The crews are good. Their moral is the 4th of the army is high.

Re-exam. All tank crews are of high moral otherwise they would not be in a tank.

Except by Lt. The accused was not given the opportunity to put this by em. He was warned for this.

RP 83(B) complied

Sw Def. MN5178 Sgt Houghton J.F. Ho Sqn
Kl Can Armd Div Sworn.

I was present when Lt Colombo gave the accused. I heard Mr Colombo tell the accused that he proposed ~~to~~ punished that Sgt Dun and had accepted the O/C's punishment and that likely the worst he would have got would be taken down to the rank of Cpl. At ~~that~~ that the conversation concerned the time the accused had been before the O/C.

X Exam This came up in a conversation where he was telling about different things.

A.P. 83 (B) complied with.

Sw. Def. MN5063 ~~Sgt~~ Sgt Schecter V. Ho Sqn
Kl Can Armd Div Sworn.

On occasions I have been bawled out — at least 5-6 times by the accused. He uses profane and abusive language to me on these occasions. So far as I am concerned he is not an inspiration. I have felt like answering him back several times.

X Exam.

I am capt Sgt and have

worked ~~with him~~ like for 2 months. I was formerly a crew commander for Lt. Brij. I left because of an argument with Lt. Brij over an instance. I left as a result an all black developed on the way to the Installation area. I reported this. Prior to this there was also trouble.

Lt Rice ww:

W/W Pots BJS10 d/Sgt Martin D.N. 1st Sgt # can have his own crew commander with 1st Sgt tanks.

I took it during a parade ~~not~~ on our guns and a Sgt and Lt. Brij said "I don't give a damn whether your salute me or not." I took it that we were to act informally and could offer suggestions as to assignments by Lt. Brij.

I took heard Lt. Brij curse his men at times

L Cpl ww: when Lt Brij spoke about saluting he also said something else about I don't remember.

There is always a certain amount of informality in Court cases.

RPP 53(B) complied with.

S.W. Def. Answers Sgt Deakers. H. He spoke to me and discussed our duties. I recall he being on one occasion speaking to the accused concerning unit parade. ~~The accused asked for permission for the guard to go & Brig and but to Brig report to us then go~~ ~~unbeaten~~ I heard to Brig tell the accused that he (accused) was not at breakfast, meaning that he had slept in while guard mounted. Sgt Deakers replied that he had been at breakfast and to Brig. Brig he was a Sgt Deakers ~~Brig~~ I saw Sgt Deakers at breakfast the morning ~~Brig~~ I heard to Brig was absent to the unit before.

No X Exam.

RPP 53 B complied with

1. No proof that order was transmitted to Sjt Barrand. Evidence of Sjt Godin.
2. Having noted proper authority – Custom of the service in all Unit units – viz General Washington order and evidence of Lieut Clarke.
3. No Hon natives to alleged use of abominable language – Natives cannot be accused unless not facing him when alleged remark was made. In any case unfamiliar and improper expression by omission of any order viz evidence of own commander Sjt Martin.
4. Provocation if offence actually was committed viz evidence of both witnesses – Early morning 4 o'c roll call!!!
5. Order was given to formed fire – which under cover – If natives was aware of the order might interpret this as viz offering a bribe from Sjt Martin was no more favourable to future use
6. Lack of notes in transmission of orders. Lieut Daly did not state whether accused was to fire or not. It was shown that he was in fact not fired.
7. Men were ordered then not to fire in no action – Taken in reference to viz evidence Sgt Major Shufot.
∴ Total fire in action viz evidence of Sjt Davison.
8. Attitude toward crew of trade store then how seen – viz evidence of Sjt Skerton re employer dress.
9. Good record to date. Lack of supervision by O.C. This Lieut given apparently a carefully free hand.
10. Grand lack of leadership. whilst Admitted that man is a marked failing ~~[illegible]~~ of restraint in accepting this fact as a [illegible] Credibility

11. Officer of S/t always has a strong case in favor of officer.

12. Interview of accused by Lieut Colonel with assent of accused indicates that officer laying charge really considered his allegations and laying of charge were petty, and probably felt he should have handled the whole affair himself.

16/

Notes by Prosecutor re Summing up the evidence given against K 37684 Sgt Querrand W.D.

1. Sgt Querrand was a crew comdr, has stated to Lt Reay that he knew of the order. He replied to Lt Reay that the order was all wrong and that he was "beat" without the wireless extension.

2. The order was a lawful command in every sense of the term and there is definite proof that it was disobeyed by Sgt Querrand. If the disobedience was immediate, and ~~it~~ appears that it was immediate disobedience, he is certainly guilty of the offence under the alternative charge Sec 40 AA.

3. The evidence of Lt Colombo & Sgt Houghton has no immediate relation to the charges as laid and is merely conversation between two Brother Officers. Don't know how the O.C. Apt could deal with this case.

4. Lt Sgt Scheder's evidence would appear to be slightly biased as he had been formerly relieved of his comd in the tk troop by Lt Reay as incapable.

5. The evidence given by Tpr Conkus, to my mind, is of no consequence and is only proof that Lt Reay is not a perfect human being.

6. No evidence has been produced by two witnesses to the effect that Lt Reay did tell the tk tp that he didn't care if they obeyed or not. Quite likely this is a fact but he wouldn't make such an utterance without qualifying it further & there could be every reason to believe that there was more said at the parade than is revealed in the evidence.

7. It has also appeared in the evidence that the Lt Tk in question does enjoy a state of informality. To my mind and the instruction I have received as an Armoured Corps Officer, this is ~~to be kept~~ a desirous ~~state~~ condition for an armoured troop. However it is hard to draw the line, as to just how far this informal state is allowed to be carried. For I have observed that in the case of the majority of OR's they will take advantage of an Officer and when he ~~does~~ is forced to discipline one or more of this number they find it a bitter pill to swallow and claim that he is being unfair.

8. Lt Dery has a fine record of service ~~out~~ on this H.Q. Lyn and has shown himself as a ~~well~~ capable & well qualified Tk Officer & leader of men. In fact not long ago the crews in action with Lt Dery were high in their praise for his bravery & leadership.

In Summation

In first charge must be shown that a command was given by the Duty or by another for him; that the order was disobeyed and the disobedience was proximate and immediate.

In part of the second charge must show improper conduct prejudicial to good order and military discipline

In this charge must not in accordance with for the A.A.F. - particularly for J.

Presumption defined and discussed.

Benefit of reasonable doubt.

Credibility of prosecution witnesses has been challenged Court has heard the witness and will draw its own conclusions.

RJM "A"

M.F.B. 355
22M—5-41 (1772-33)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E-37684	Sjt	William Daniel DURRAND	HQ Sqn 4 Cdn Armd Div

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets or Company~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment		
For	NIL	times	AWL 1000 15(1)	2	times
For	"	times	AA 1000 40	1	times
For	"	times			times
For	"	times			times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~,

~~There are no entries in the conduct sheets of the accused~~.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act Army Act and dispensations with trial under A.F.A. 72 A.A. 72 are set out in the Schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time~~

~~or~~,

~~The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 2 hrs days in military ~~Air Force~~ custody, making a total of 2 hrs days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper to~~

6. The date of his ~~enrolment~~ specified in his record of service is 19 Jun 40 ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. ~~The accused is entitled to reckon [illegible] service for the purpose of determining his pension, viz.~~

9. The accused ~~is in possession of or entitled to no air force decoration, no air force reward nor~~ is in possession of ~~or entitled to~~). State any ~~air force~~ military decoration or reward. CVSM and Clasp

10. ~~If the accused is a warrant officer, state whether he has held a previous commission and if so the regimental rank of~~

11. (In the case of an officer.) ~~The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit ~~dated~~ ....., ~~and in his regiment (or corps), the rank of~~ ~~dated~~ .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

1 Feb 43 Date of promotion.

In the rank of Sgt 7 months years.

In the rank of ~~.....~~ 11 months years.

In the rank of ~~.....~~ 7 months years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating those convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of November 44 Commanding Officer

Capt & Adjt 42nd Lond Div

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

No. R37684 Name DURRAND William Daniel | Sqn, Battery, or Company | CDN ARMOURED CORPS Corps | Date of enlistment 19 Jun 40 GC | Badges | Service or Proficiency Pay | R3M MFM 6 (AFB 122) 40/PAM/106 (3438) B

Date of last entry in Company Conduct Sheet | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine N/A | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Sheet 2 destroyed on being promoted to Sjt wef 10 Sep 44 - ENTRIES 3 - DRUNKENNESS - NIL								

CERTIFIED TRUE COPY. [signature] Major
A C Campbell
OC HQ Sqn 4 Cdn Armd Div

(PTO)

Charlotte.

P 38153 cmc/thurston Ga Ko Lyn
W Cau Kenn Div -
Known accused 16 mos.
No trouble with him. -
and School. Deems found
him insubordinate.
No witness.
RP 83(B) complied with

Plea in Mitigation

Accused has a clear
conduct sheet for an
insubordinate - medic.
There was some provocation
The accused is white
disgust as much as
insubordination -

SUMMARY OF EVIDENCE IN THE CASE OF R-37684 Sjt William Daniel DURKLAND, HQ Sqn 4 Cdn Armd Div, a soldier of the Canadian Army Overseas, whilst on Active Service charged with:

FIRST CHARGE
AA SEC 9(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

- in that he -

In the Field having been ordered on or about 17 Oct 44 by Lieut J Derij to turn in all tk wireless extension eqpt to the Tp Signals Instrument Mechanic, did not do so.

SECOND CHARGE
AA SEC 9(2)

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER

- in that he -

In the Field on 25 Oct 44, when warned by Lieut J Derij that he should moderate his language, turned his back on that officer and said, "Oh Verpeckit".

THE COMMANDING OFFICER DIRECTS THAT ALL EVIDENCE BE TAKEN ON OATH.

First Witness: Lieut James DERIJ, HQ Sqn 4 Cdn Armd Div, after being duly sworn states:

"I am Lieut James DERIJ, OIC Tk Tp HQ Sqn 4 Cdn Armd Div. On or about 17 Oct 44 I issued an order to the tk tp, incl the accused, that all tk wireless extension eqpts would be turned in to the tp sigs instrument mechanic and would only be drawn and used on my orders. The basis of this order was the conservation of batteries and the reduction of fire hazard to the tks. This order was given at an 'O' Gp at which the accused was present. This order was also passed on by Sjt Godin, my 2 i/c, who was directed by me to see that all this eqpt was turned in. This eqpt is not part of tk eqpt and is not issued with the tk. On the morning of 25 Oct 44 I went around to the various tks at 0600 hrs to check the "Stand to" which I had ordered as we were then in an eqpt role. On coming to the tk occupied by the accused, I ran into an extension running from his tk into his billets. When I asked the accused why he had not turned in this extension eqpt he stated that he was "bogit" without it. I asked him if he remembered the order given by me that this eqpt was to be turned in. He replied that he did remember. I then ordered him to turn in the eqpt immediately. He told me that my order was all wrong as there was no risk of fire. I told him that regardless of his opinion that my order stood and I was still in charge. He passed some sarcastic remark which I cannot now recall. I also told him that I considered his language was very sarcastic. I reminded him that he was speaking to an officer and that he would stand at attention. He then turned his back on me and started to walk away, and as he did so, he said, "Oh Verpeckit". I called him back and ordered him into close arrest.

/To page 2

First Witness: (Cont'd)

The witness is cross examined by the accused.

Q-1 When and where was the order given about the extension eqpt being turned in?

A-1 I cannot be absolutely sure about the time but to my recollection it was given sometime between 1500 & 1700 hrs on 17 Oct 44, at CUDDEBACHT CHATEAU, when we were harboured. I remember that the five in the tent took place around 1500 hrs and I knew that we moved off from the harbour about 1700 hrs. The order was given sometime between these two events.

Q-2 Was the order given at the 'O' Gp?

A-2 I cannot remember for sure whether it was given at the 'O' Gp or not, but it was given about that time.

(J Duff) Lieut

Second Witness: C-58264 S/t GODIN EV, HQ Sqn 4 Cdn Armd Div, after being duly sworn states:

"I am and have been at all times material to this enquiry, senior NCO of the tk tp of HQ Sqn 4 Cdn Armd Div. On 17 Oct 44 Lieut Duff came to my bivouac and told me to pass an order to the tk tp that no wires of any type (incl trouble lamps and wireless extensions would be used from sleeping quarters to any of the tks. I went around to each tk crew's bivouac, incl the accused, and notified them of this order. I also told all the crews, incl the accused, that wireless extensions must be turned in to the sigs instrument mechanic.

The accused declined to cross examine the witness.

(C-58264 S/t Godin EV)

The accused was warned as follows:

"Do you wish to make any statement or to give any evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused "I have nothing to say at this time".

(C-37564 S/t Durrand W)

The accused declined to call witnesses in his own behalf.

I certify that RP 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 2nd day of November 1944.

(G S Campbell) Major

To K57664 Sgt William Daniel Durrand
HQ Sqn 4 Cdn Armd Div

Take Notice that I intend to call as a witness at your trial

B106605 Sigmn Shupak R

In the field
6 Nov 44

Prosecuting Offr

Abstract of evidence of

B106605 Sigmn Shupak R att to HQ Sqn 4 Cdn Armd Div after being duly sworn states

I am the instrument mechanic attached to the Tk Tp of HQ Sqn 4 Cdn Armd Div. During the period from 17 Oct 44 to 28 Oct 44 the accused did not turn in to me any tk wireless extension equipment.

The accused declined to cross examine the witness.

In the field
6 Nov 44

HP 130

Pte Dusang J R R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : H-104078 Pte John Robert Ray WYNNE (INT of C) 44 Ind Bde Coy 22 Cdn Inf Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 16(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for [illegible] beginning on (date).(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EZ.)

Sentence Awarded by the Court :

To undergo detention for a period of eighteen months.

(Sgd) [illegible] 8 Jun 45 (Sgd) John P Bertram Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 90.)

(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 754-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Brigadier
Date 8 Jun 45 Commanding 4th Cdn Inf Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-104078 Pte John Robert Ray WYNNE	10 Jun 45	(Sgd) [illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4P-130

FIELD GENERAL COURT-MARTIAL

CFA88 (In lieu of AFA81) 40/P & R/1088 (40/08) 4/38B

Convened by Order of [illegible] Comd dated

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H-104078	Pte	John Robert Ray	WYNNE	44 Ind Bde Coy 22 Cdn Inf Bn

CERTIFIED TRUE COPY
D. J. K.

Can. Sec. G.H.Q. 2 Echelon 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 6 Jun 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to [illegible] as interpreter ? Ans [illegible]
The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer ? Ans [illegible]
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	T.A. WYNNE	2 Cdn A/Tk Regt RCA
Member	Capt	T.A. WYNNE	4th Cdn Inf Bde Coy RCASC
Member	Lieut	T.A. WYNNE	4th Cdn Inf Bde Coy RCASC
Judge-Advocate			
Prosecutor	Capt	T.W. WYNNE	44 Ind Bde Coy 22 Cdn Bn
Defending Offr	Lieut	T.W. WYNNE	44 Ind Bde Coy 22 Cdn Bn

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (3) and fn 2 were not followed. See Dir p 2.)

A8. The accused H-104078 Pte John Robert Ray WYNNE before arraignment make(s) (no) (3) plea [illegible] (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly as to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to 1 if cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form G A 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court decides the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A* , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 37(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 53 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D4.*

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 145.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 46 *fn* 10. 4. *RP* 46 *fns* 2, 4.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* 493. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*i*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(1. *If evidence has already been given for accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (ii), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *A* and Ex ..... respectively.(3)

(1. *AFB* 255 *or AFB* 296. 2. *Method a.* 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*E*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences to the law of England see AA* 41(5), *MML p* 120. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused R-104072 Pte John Robert Ray DUGAN, 46 Fwd Aft Coy 13 CBRUm., a soldier of the Canad. Overseas is charged with:

ABSENTING HIMSELF WITHOUT LEAVE

Army Act Sec 15(1)

in that he

In the field, did absent himself without leave from 46 Fwd Aft Coy 13 CBR Bn from 1100 hr 11 Nov 44 until apprehended by the Military Police at 2005 hrs 18 Dec 1944.

In the Field

21 Dec 44

(Sgd) H.E. Mills Capt
O.C. 46 Fwd Aft Coy 13CBR Bn

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(Sgd) H.D. Cattle Brig
CRA 3 Cdn Inf Div

In the Field
3 Jan 45

CHARGE SHEET

The accused R-104072 Pte John Robert Roy EVSANG, (HLI of C) 46 Fwd Rft Coy 13 CHUM., a soldier of the Canadian Army Overseas is charged with:

ABSENTING HIMSELF WITHOUT LEAVE

Army Act Sec 15(1)

in that he

In the field, did absent himself without leave from 46 Fwd Rft Coy 13 CHUM Bn from 1100 hr 11 Nov 44 until apprehended by the Military Police at 2005 hrs 18 Dec 1944.

In the Field
20 Dec 44

(Sgd) M.P. Mills Capt
O.C. 46 Fwd Rft Coy 13 CHUM

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
21 Dec 44

(Sgd) E.L. Cattle Brig
CRA 5 Cdn Inf Div

JD5

FIELD GENERAL COURT-MARTIAL

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trials on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/B or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M104071	Pte		John Abbott Roy	DUSANG	(HLY of C) 4C Fuel Sft Coy 13 CASBn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 Jan 45 endorsed by me, (or by some offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate to try the Offr mentioned hereunder.~~

(RP 106(C). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.A. DUVAL	3 Cdn A Tk Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	P.F. WILLIS	QL of C (INF)
Lieut	J.A. GUNN	7 Cdn Inf Bde Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	J.A. ANDERSON	4 Cdn Lt.A. Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
Holland	(Sgd) J.A. Duval		Brigadier

Dat 3 Jan 45 Commanding 3 Cdn Inf Bde Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 96 (In lieu of AFA 3) 60-9 at H/1607 (61-43)

(See overleaf for oaths and notes for use at trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 92, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarised and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 127.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 88(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence unless so provided by RP 40(E), KR Can 562(a).*)

(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy as item of original see KR Can 560. As to certified copies of regimental books see AA 143 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence recorded. (*AA 52(6), RP 114(C), MML p 759.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

JDS

TO WHOM IT MAY CONCERN

THIS IS TO CERTIFY THAT I HAVE MEDICALLY EXAMINED H-104072 PTE DURAND, J.P.R.(HLX of C) AND I FIND HIM FIT TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL ON THIS 6th DAY OF JAN 1945.

(Sgd) [illegible] Capt
Medical Officer

JDS

Plea in Mitigation of Sentence.

6 Jun 45

W-104078 Pte BUSANG, J.H.E. (1OF of 6)

1. The Court is asked in view of Pte. Busang's previous military record, that he be accorded leniency in sentence.

2. During his period of training in England Pte. Busang showed himself to be capable of good soldierly conduct, and I believe that given an opportunity of returning to his Bn as he is genuinely anxious to do, he may discharge his military responsibilities in a manner to his credit and assist in the completion of the task for which he enlisted two years ago.

(Sgd) L.E. Shaffer Lieut
Defending Officer

EXHIBIT "A" JDS

SUMMARY OF EVIDENCE
in the case of

H-104072 Pte John Robert Ray DUSANG, (WLI of C) charged with

(1) Absenting himself without leave

The CO directs that the Summary of Evidence will be taken upon oath.

FIRST WITNESS: K-422845 Sgt JACKSON, R.L.C. 46 Fwd Rft Coy 13 CHR Bn having been duly sworn states: I am K.422845 Sgt JACKSON, R.L.C. 46 Fwd Rft Coy 13 C.H.R.Bn. On calling the roll at 46 Fwd Rft Coy 13 CHRBn. at 1100 hrs 11 Nov 44 Pte DUSANG, J.R.R. did not answer his name or number and to my knowledge has not been present at this Coy until arriving from 10 CHRBn at approximately 1700 hrs 21 Dec 44 under close arrest.

(Sgd) R.L.C. Jackson Sgt
K.422845 Sgt JACKSON, R.L.C.

The accused defined to cross examine the witness.

SECOND WITNESS: Lieut William Harold McKELVEY, Records Officer 46 Fwd Rft Coy 13 CHRBn having been duly sworn states: I am Lieut William Harold McKELVEY, Records Officer of 46 Fwd Rft Coy 13 CHRBn. I herewith produce documentary evidence (certificate of Apprehension) in the case of H-104072 Pte DUSANG, J.R.R. (Marked as Exhibit "A")

(Sgd) W.H. McKelvey Lieut

The accused declined to cross examine the witness.

QUESTION TO THE ACCUSED:

Do you wish to make any statement or to give any evidence upon oath?

Answer. No.

(Sgd) J.R.R. Dusang
H-104072 Pte DUSANG, J.R.R.

I certify that the above Summary of Evidence was taken down by me in the presence of the accused on the 28th day of Dec, 1944, and that Rules of Procedure 4 (C.R.P.F. and G.) were complied with.

(Sgd) W.R. Shelton Lieut
Officer Detailed to take
Summary of Evidence.

EXHIBIT "A" JDG

CERTIFICATE UNDER ARMY ACT SECTION 162 (4)(1)

I certify that No H-104072 Rank Pte Name DUGGAN, J.H.R.

of the 10 Bn R C.H.A.C. 21 Army Group Regt was apprehended by No L-3319

Rank L/Cpl Name Olsen, L.B. of the 2 Cdn L of C Prov Coy

Ghent Detach at Ghent Belgium at 2005 hrs, on the 15

day of Dec 44 as an absentee without leave.

He was wearing Military Uniform at the time of his Arrest.

Place Ghent Belgium

Date 15 Dec 44

(Sgd) R.A.McDonald Lieut
Ghent Detach
2 Cdn L of C Prov Coy 21 Army Gp.

ARMY FORM B.296 (WAR).

EXHIBIT "A" JDS

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-104072	Pte	DUSANG, John Robert Roy	H.K. of C.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, punishments being given in the most serious offence in each entry. If the charge is for drunkenness or disorder without leave, the entries for commencement should, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For He left 6 available for u/s. ____ times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet ____

Date of last entry in Field Conduct Sheet ____

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for He

beginning on the N/A day of ____

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for eighteen(18) days in military custody, *i.e.*, ____ days in open arrest, ____ days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 19 yrs

6. The date of his attestation is 29 Dec 1942

7. The service which the accused is allowed to reckon is 2 yrs

8. The accused is in possession of CVSM and Clasp.

†Here the military conduct (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of ____

In the war substantive rank of ____

In the acting rank of ____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(75967) W1,30711/3765 35,000 3/43 A.&E.Z.,W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N.A.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6 day of Jun 45 (Sgt)IH Dickson Capt

5V-103

Ste Dusome, J.G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B41515 Pte Joseph Garfield Dusome Linc & Welld Regt

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 12(1)(a)	Not Guilty	Guilty	
2nd AA 2 + (2)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 43 days, of which 9 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of two (2) years

(Sgd) "LE Wesson" Major — Judge-Advocate, if any. 2 Nov 45 — Date awarded. (Sgd) "DJ McCordie" Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be duly committed to prison or detention barracks until further orders.~~ (1) B/PT(L.)
(1. AA 57A. Delete if not used.)

(Sgd) "HF Bell-Irving"

Date 3 Nov 45 — Commanding 10 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B41515 Pte Dusome JG	5 Nov 45	"??????????" Capt Adjt Linc & Welld Regt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA98 (to [illegible] of AFA21)
40-P-W (5) [illegible] (4930)

5V-105
4/388

Convened by Order of Brig HF Bell-Irving Comd 10 CIB dated 28 Oct 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B41515	Pte	Joseph Garfield	Dusome	Linc & Welld Regt

Certified True Copy

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 2 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 38/777

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) "FEW"
The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences. "FEW"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to~~ as interpreter ? Ans ~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer ? Ans ~~The shorthand writer is sworn.(1)~~ "FEW"
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No Sir (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	DJ McCordie	A & SH of C
Member	Capt	JH Ackerman	Alg Regt
Member	Capt	HJR Thornton	25 Cdn Armd Del Regt
Judge-Advocate	Maj	LE Wesson	HQ 4 CAD
Prosecutor	Lt	LA Wichener	Linc & Welld Regt
Defending Offr	Lt	AN Baybould	Linc & Welld Regt

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans NO(*)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros or Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea. (1) "FEW"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (AA 58(A), 113), or on bars of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or to a joint trial of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; where several accused to be tried separately see RP 71(C), and use separate copies of CF A65 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued in Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and then on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO SIR.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 25(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 25(E). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ____, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 172 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 80(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans MAKE AN UNSWORN STATEMENT. Do you intend to call witnesses on your behalf? Ans YES. Are they witnesses as to character only? Ans NO.
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2) ~~are pleas of Guilty outstanding and dealt with under Record Form B or C.~~) This alternative announcement is not applicable when there
(1. *AA 54(3) (5), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? Ans YES SIR.(1)
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(1. *MFB 255 or AFB 294.* 2. *MML p 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment.(1) Ans Yes Sir I have been in the army for 8 years I have been in Korea for 1 year I have been in Malaya for 1 year I have been in Germany for 1 year I have been in Hong Kong for 1 year I have been in Cyprus for 1 year I have been in Aden for 1 year I have been in Libya for 1 year I have been in Egypt for 1 year I have been in Jordan for 1 year I have been in Iraq for 1 year I have been in Iran for 1 year I have been in Afghanistan for 1 year I have been in Pakistan for 1 year I have been in India for 1 year I have been in Nepal for 1 year I have been in Bhutan for 1 year I have been in Sikkim for 1 year I have been in Tibet for 1 year I have been in China for 1 year I have been in Mongolia for 1 year I have been in Russia for 1 year I have been in Siberia for 1 year I have been in Alaska for 1 year I have been in Canada for 1 year I have been in the United States for 1 year I have been in Mexico for 1 year I have been in Central America for 1 year I have been in South America for 1 year I have been in Antarctica for 1 year I have been in Australia for 1 year I have been in New Zealand for 1 year I have been in Fiji for 1 year I have been in Tonga for 1 year I have been in Samoa for 1 year I have been in Hawaii for 1 year I have been in Japan for 1 year I have been in Korea for 1 year I have been in Malaya for 1 year I have been in Germany for 1 year I have been in Hong Kong for 1 year I have been in Cyprus for 1 year I have been in Aden for 1 year I have been in Libya for 1 year I have been in Egypt for 1 year I have been in Jordan for 1 year I have been in Iraq for 1 year I have been in Iran for 1 year I have been in Afghanistan for 1 year I have been in Pakistan for 1 year I have been in India for 1 year I have been in Nepal for 1 year I have been in Bhutan for 1 year I have been in Sikkim for 1 year I have been in Tibet for 1 year I have been in China for 1 year I have been in Mongolia for 1 year I have been in Russia for 1 year I have been in Siberia for 1 year I have been in Alaska for 1 year I have been in Canada for 1 year I have been in the United States for 1 year I have been in Mexico for 1 year I have been in Central America for 1 year I have been in South America for 1 year I have been in Antarctica for 1 year I have been in Australia for 1 year I have been in New Zealand for 1 year I have been in Fiji for 1 year I have been in Tonga for 1 year I have been in Samoa for 1 year I have been in Hawaii for 1 year I have been in Japan for 1 year
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused to call witnesses to prove on oath anything here or previously stated which would affect the amount of punishment.* *RP 37(F) fn 9.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 46 and its genesis, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 45. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 209, 2123, MML p 80, 737-739. As to sentences assigned for civil offences to the law of England see AA 41(5), MML p 126. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MED OFFR CERTIFICATE
KR (Can) para 557

I certify that I have this day examined No 41515 Pte DUSOME JG of Lincoln & Welland Regt and in my opinion is fit to undergo trial by court-martial.

"CA Sands" Capt
MO

Sta: Field

Date 2.11.45

"DJMC"
Pres

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-41515	Pte	Joseph Garfield	DUSOME	Linc & Welld Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Oct 45 endorsed by me, [illegible] "To be tried by Field General Court-Martial". *HPBI*

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible] *HPBI*

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible] *HPBI*

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	DJ McCordic (Must be named. RP 106.)	A & SH of C (Unit.)

MEMBERS.

Capt	JH Ackerman	Alq R
Capt (Rank.)	HJR Thornton (Named or detailed. RP 106.)	25 Cdn Armd Del Regt (Unit.)

WAITING MEMBER.

Lieut (Rank.)	FF Bowick (Named or detailed, if any. RP 106.)	29 Cdn Armd Recce Regt (Unit.)

JUDGE-ADVOCATE.

Maj (Rank.)	EE Wa[illegible] (Must be named, if any. RP 106.)	4 Cdn Armd Div (Unit.)

On Active Service in the Fd

in Holland (Country.)

Date 28 Oct 45

*HP Bell-Irving * Brig (Rank.)

Commanding 10 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

4/38A (Page 1 to Sec of AFAI 40 of F A & S 1947 (401))

DJMC Pres

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (*AA 52, KR Can 562, RP 26, 29, 111.*)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (*AA 52, MML 762, RP 27, 111.*)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (*AA 52, MML 762, RP 82, 111.*)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (*RO (Can) 2693.*)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 765.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 96 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addressee of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)
(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of evidence except as provided by RP 40(E), KR Can 562(a).*)
(vii) Summing up by *JA*, if any. (*RP 82.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA*, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA*, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:
(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 567.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides where both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 569. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 759.*)

4. The President or *JA*, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

CHARGE SHEET

The accused, B41 515 Private Joseph Garfield DUSOME, Lincoln & Welland Regt, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
12(1)(a) AA

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he
in the field at 2200 hr 5 Sep 44 with intent to avoid furthe service, absented himself without leave from the Lincoln & Welland Regiment until apprehended by the Military Police at Brussels, Belgium, at 2200 hr 21 Sep 45, dressed in civilian clothes.
(Total absence 381 days)

SECOND CHARGE
24(2) AA

WHEN ON ACTIVE SERVICE LOSING BY NEGLECT HIS ARMS, CLOTHING AND EQUIPMENT.

in that he
in the field on 27 Sep 44 was deficient, and is still deficient, articles of arms, clothing and equipment to the value of $66.36.

In the Field
25 Oct 45

(RC COLEMAN) Lt-col
Officer Commanding
Lincoln & Welland Regt

To be tried by Field General Court-Martial

In the Field
27 Oct 45

"HP Bell-Irving" Brig
(HP Bell-Irving) Brig
Comd 10 Can Inf Bde

"DJMC"
Free

"LEW"

FGCM

B-41515 Pte Joseph Garfield DUSOME, Lincoln & Welland Regt

Opening Address

The charges against the accused are (1) When on Active Service ~~Enlisted~~ Deserting His Majesty's Service (2) ~~When on Active Service Losing by Neglect his Arms, Clothing and Equipment.~~ I propose to support the 1st charge (Desertion) with the witness for the prosecution, who will show that the accused was absent from the Lincoln and Welland Regt, from 5 Sep 44 until 10 Oct 45, when he was returned in custody of the provost.
Also with a certificate of Apprehension marked Ex "B" showing that the accused was arrested at Brussels Belgium at 2200 hrs 21 Sep 45 and was wearing civilian clothes at the time of his arrest.

X I propose to support the second charge (Losing by Neglect His Arms Clothing and Equipment) with a certified True Copy of the Declaration of a Court of Enquiry held 27 Sep 44, which I marked exhibit "A".

As the accused pleads guilty of the second charge I submit a Cert True Copy of Dec of a Court of Inquiry held 27 Sep 44 marked exhibit "A" showing the amount of deficiency.

"J. Michenen" Lt
Prosecuting Officer.

"EEW"

First Witness for Prosecution

Capt RL Rogers, Adjt, Linc & Welld R, having been duly sworn states:

4 Sep 44 the Linc & Welld Regt moved into a rest area - the next day as a result of information received, I reported the accused whom I identify as Pte Dusome as being AWL from 2200 hrs 5 Sep 44.
I did not see the accused until the afternoon of the 10th of Oct 45 when he was brought to me under escort.
During that time I was Adjt of the Regt continuously and on the Regt centre line so that anyone coming up to the Regt would have to come thru me.
With the exception of four short periods the Regt was engaged in action with the enemy from 5 Sep 44 until 5 May 45.

I have in my custody as Adjt, the following documents relating to the accused-

(a)Certified copy of declaration of Court of Inquiry MFB 375 (Marked Ex "A" by President, initialled and attached to proceedings)

(b)Certificate of Apprehension in accordance with Sec 163 AA (Marked Ex B By the President, initialled and attached to the proceedings.

X-examination:

Accused joined Regt in action 8 Aug 44. So he was in action for about 4 weeks. There was one heavy period between 8 & 11 Aug 44 and on 27 Aug 44. remainder of period was mainly pursuit.

The fighting at the time was between Caen and Falaise and on the 27 Aug it was ontne Seine. There were two heavy battles in that period. I believe the accused was in Baker Coy throughout. 27 Aug F Coy suffered heavy casualties particularly from battle exhaustion, everyone was fairly tired.

By the Court:

The accused was continuously absent from the Linc and Welld Regt from the 5 Sep 44 until the 10 Oct 45.

(RP 83 B complied with)

Exhibit "A"
"DJ McCordic" Major
Pres

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at Field on the 27 day of Sep 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-41515 Pre Dusome JG

DECLARATION

The Court declare that No. B-41515 Pte Dusome JG - Lincoln & Welland Regt

illegally absented himself without leave from 2200 hr at Field on the 5th day of Sep 44, that he is still so absent, and that on the 27 day of Sep 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	
Vocabulary Price			Value of Unexpired wear		
Belts Waist 1		67	Belts Waist 1		50
Pouches Basic 2	2	38	Pouches basic 2	1	78
Boots Ankle 1 pr	5	64	Boots ankle, one pair 1pr	4	09
Trousers BD 1	2	39	Trousers battle dress 1	2	03
Blouses BD 1	5	25	Blouses battle dress 1	3	88
Helmets Steel 1	1	50	Helmets Steel 1	1	12
Rifle Mk 1V 1	45	48	Rifle Mk 1V 1	45	48
Bayonet 1	2	46	Bayonet 1	2	46
Scabbard 1		61	Scabbard 1		61
Drawers Wollen 1	1	20	Drawers Woollen 1		90
Shirts Angora drab 1	2	03	Shirts angora drab 1	1	51
Total	$ 72	43	Total	66	36

"CV High" Capt — President

Capt CV High
Linc & Welld Regt — Member

Signed at Field

Lt PB Maddox - Linc & Welld R — Member

this 27th day of Sep 1944

MKM Mitchell
B-41388 RQMS Mitchell MKM
Linc & Welld Regt — Member

?????????Lt-col
Signature of Commanding Officer

Certified true copy ????????? Capt
Adjt Lincoln & Welland Regt

Signature of Officer having custody of original record

Exhibit "B"
"JA Michenen" Lt

CERTIFICATE IN ACCORDANCE WITH P.C. 8797 of 10 Apr 44

I CERTIFY THAT No B-41515 Rank Pte Name Dusome GJ

Unit "B" Coy Line & Weld Regt
4 Can Inf Div

was arrested at Brussels Belgium (Place)

at 2200 (hour) on 21 Sep 45 (date) and that at the time of his arrest he was wearing xxxxxxxxxxxxxxxx (civilian clothes)

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

"PP Brosseau" Lt
(PP Brosseau) Lieut
2 Can L of C Provost Coy

Field
22 Sep 45

Exhibit "B"
"DJ McCordic" Major Pres

"ZEW"

Statement by Pte JG DUSOME, B-41515

of the Lincoln & Welland Regt

I joined the Linc & Welland Regt on 6 Aug 1944 at Grainville-Langammerie in France. I was with B Coy and we were in heavy action continuously for the next month. There were a lot of fellows killed and my best friend Pte Jackson was wounded as well. My nerves started to go and on 5 Sept, 1944 I wandered off to a nearby village about two miles away where I stayed for a few days. About four days after I walked back to where the Regt. was, but it had gone on. I hitch hiked for a couple of days to catch up with it, but it had gone a hundred miles or so by this time. I was afraid of the C.M.P.s catching me, because of the consequences, and as I was near Brussels at the time, I stayed there. I intended coming back to the Regt., but kept putting it off because I was afraid of getting Court-martialed. I had my Service Book in my possession when the Provosts picked me up in Brussels and they kept it.

" J.G. Dusome "

Defence Witness

B-116047 L/Cpl Cheel SC, Linc & Welland Regt, having been duly sworn states:-

I joined this Regt 1 May 44. I knew the accused during period 8 Aug to 5 Sep 44. We were in the same Coy "B" Coy.
To my knowledge the accused did not shirk his duty at any time.
He never failed to obey an order.
The action was very severe during this period.
Everyone in the accused Pl with exception of accused were wounded. His good friends Jackson was wounded.
I remember one time a shell landed on a slit trench and the accused was dug out.
You could see the accused was getting a little nervous.

X-examination declined.

(RF 83B complied with)

"EEW"

Closing Address by Defending Officer:

From the foregoing evidence, the court will see that Pte Dusome the accused, was with the Regt during a period when some of the Regiment's fiercest battles were fought, between Caen and Falaise. The young lad saw many of his comrades fall, including his best friend, Pte Jackson, and underwent many grueling experiences. The battle exhaustion from his continuous fighting and his nervous condition, caused him to drop out while the Regiment was at rest on the Somme. The accused did not intend to desert, for several obvious reasons. One--- he had his rifle and kit with him when he left, which he would have not taken if he had intended to desert. Two --- If he had intended deserting the army, he would have done so in the first few days of battle, but instead he fought through four weeks of some of the toughest fighting of the war, around Caen, and as you have heard, carried himself in a proper manner. However, his nerves were bad, and he wandered into a nearby village to steady himself. The court can see that he did not intend to desert, and would have returned, had not the Regiment moved off in the meantime. Failing to catch up with the Regiment, because of the speed of advance, he was afraid to give himself up to the Provosts, because of the consequences. Now a victim of circumstances, he did not know what to do, and taking the line of least resistence, let things slide, and did nothing, probably hoping that he would get caught, to get it over with, but just put it off, to avoid facing the music. I assure the court that Pte Dusome would never have left the Regt, even in his exhausted state, had he known the difficulties in getting back again, and realized the consequences involved.

"AM Raybould" Lt

The Court will bear in mind that the accused is innocent until proven guilty and that onnus is on the prosecultion throughout.

The Court will also bear in mind that the accused is entitled to the benefit of every reasonable doubt. A reasonable doubt is not any doubt is such a doubt as would affect a reasonable man in making decisions affecting his own affairs.

With respect to this Charge, intent is an element. Before the accused can be found guilty the Court must be satisfied in the evidence that the accused went absent with the intent to avoid further service. If the Court does not find this intent proven the Court will then consider if a charge of absence without leave has been made out. It is laid down that length of absence in itself is not proof of intent to desert.

In adition to the evidence before the Court the Court is entitled by virtue of RP 74 to take judicial notice of matters known to the members by reson of their service as Army Officers.

Character Witness

B41551 Pte Morocco J Linc & Welld Regt having been duly sworn states:-

I have known accused since 3 May 41. Dusome was a good soldier to my knowledge. I was in same Coy with him.

Accused has not been in trouble to my knowledge. He was about 17 years old when he joined the Army. He joined about same time I did.
He is married in Canada - was married in 43, ther is one child of the marriage. I think Dusome just got in with the wrong bunch. As far as I know him he has been pretty good.(RP 83(b) complied with)

STATEMENT AS TO CLASSIFICATION AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B41515	Pte	Dsusome JG	Lic & Weld Regt

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For Sec.9(2) AA ..... 1 time

For Sec 15(1) AA 11
Sec 15(2) AA 1 times

For Sec 15(3) AA 1
Sec 10 " 2 times

For Sec 24(2) AA 1
Sec 40 " 3 times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

2.* ~~The accused is undergoing the present term of imprisonment~~ ~~and has to undergo .....~~ "D J Mc"
~~beginning on the ..... day of .....~~

4. The accused has been in military trial on the present charges for ..Nil days in civil custody, and for .43.. days in military custody, making a total of .43.... days of which ...9.. days were spent in hospital.

5. The present age of the accused is .21.....

6. The date of his attestation is .29 Aug 41.

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of † CVSM & Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present rank - "D J Mc"

	Date of Promotion
In the substantive rank	.....
In the war substantive rank	.....
In the acting rank of	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the available records the par.graph must be struck through.

* Strike out if not applicable

† State the military decorations (if any) held by accused.

Exhibit X
"DJ DJ McCordie"
President

Army Form B.206 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
District Court Martial	12 Oct 42 Place not Known Either Canada or Newfoundland	Sec 15(1) WACS AWL from 0600 hrs 16 Jan 42 until 0945 hrs 16 Sep 42 (TTA 243 days 3 hrs 15 Min)	8 Mos Det	None Known

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd Day Nov 45 day of .....

"RL Rogers" Capt & Adjt
(RL Rogers) .....
Officer having custody of Regt Books

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
District Court Martial	12 Oct 42 Place not Known Either Canada or Newfoundland	Sec 15(1) WAOS AWL from 0600 hrs 16 Jan 42 until 0945 hrs 16 Sep 42 (TIA 243 days 3 hrs 15 Min)	8 Mos Det	None Known

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd Day Nov 45 day of .....

"KL Rogers" Capt & Adjt
[illegible]
Officer having custody of Regt Books

No. B41515 Name Dusome JG | Sqn, Battery, or Company A | Corps Lic & Welld | Date of enlistment 29-4-41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/150(5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc HH Usher Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo Hks	16-5-41			Failure to appear at parade	Cpl O'Hagan	Admonished	16-5-41	Major HH Usher	
Nanaimo City	30-6-41		1	Drunkenness	L/Cpl Gillett	Admonished	2-7-41	Major HH Usher	
Naigara Camp	16-8-41			AWL 2359 - 16-8-41 to 0200 -18-8-41	Sgt Moore	7 Days CB 2 Days pay 3.60 Transport	26-8-41	Capt Fordham	
Gander	6-9-41			Failure to obey an Order given by his Superior Officer at 1830 hrs 5-9-41		5 days CB	6-9-41	Capt Fordham	
Gander	3-11-41			Unfit to go on duty because of drunkenness	Lt GT Galbraith	7 days CB	4-11-41	Lt GR Reid	
Airport Nfld	1-12-41			AWL 25-11-41 to 1-12-41	Sgt Anderson	7 days CB 6 days pay	3-12-41	Lt GR Reid	
Airport Nfld	4-12-41			Did appear at place of parade with unpolished brass	Sgt Anderson	2 days CB	5-12-41	Lt DA Hadfield	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Airport Nfld	4-12-41			Did appear at place of parade with dirty brass	CSM Wing RE	Admonished	23-12-41	Lt CR Reid	
Airport Nfld	5-1-42			AWL 0600 hrs 29-12-41 till 0930 hrs 5-1-42 (7 days 3 hrs 30 min).	Sgt Campbell G	14 days CB	5-1-42	Lt-Col Muir	
Airport Nfld	16-1-42			AWL from 0600 hrs 16-1-42 to 0945 hrs 16 Sep 42,	Sgt Campbell G	24 days pay 8 Mos Det	12-10-42	(TE Nixon) Lt	
Toronto	23-2-43			AWL from 0800 hrs 23-2-43 to 0800 hrs 1-3-43 (6 days) Sec 15(1) AA	Sgt Hodgins AM	7 days CB	1-3-43	Lt TE Nixon	For 6 days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
Field	16-11-43	Pte		Sec 15(1) AWL from 2230 hrs 13-11-43 to 2300 hrs 14-1143 (1dy 30 min)	A/CSM Hill AE	14 days CB 5 Dys Pay	17-11-43	Lt Col Muir	For 1 dy Pay
Field	28-1-44			Sec 40 Cond Prej Good Order and Mil Discp Imp dressed at breakfast	A/Cpl Brannigan	7 days CB	29-1-44	LT KB MacPherson	
Field	26-2-44			AWL from 2359 hrs until 2330 hrs 27-2-44 (23 hrs 31 Min)	Cpl Holliday	14 days CB 3 days pay FR&I 149(1)a	28-2-44	Lt Col McQueen	
Field	19-3-44			AWL from 2359 hrs 19-3-44 Until 0700 hrs 20-3-44 (7 Hrs 1 Min)	L/C Monaghan	14 days CB for 9 days pay FR& I 149(2)	21-3-44	Lt Col McQueen	
Field	19-5-44			AWL from 2359 hrs 19-5-44 until 2030 hrs 26-5-44 AWL from 2100 hrs 26-5-44 until 0200 hrs 31-5-44	CSM GRAM	28 days FP 28 days Pay FR&I 149(2)	3 Jul 44	Lt Col JG McQueen For 12 Days pay FR&I 149-(1)a	

Certified true copy of original
Officer having custody of Regt Books

No. B41515 Name Dsuoma JG | Sqn, Battery, or Company | Corps Linc & Welld | Date of enlistment 29-4-41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40(PAS)136 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Toronto	31-3-43			AWL from 1400 hrs 31-3-43 to 1100 hrs 5-4-43(TTA 4 days 21 hrs Sec 15(1) AA	Sgt Wagg Bd r Murphy	7 days CB	6-4-43	Major Ramsay	For 5 days pay pay under FR& I
Toronto	5-3-41			Losing by neglect Etc Sec 24(2) AA	CQMS Farmer	Stoppage of pay 5.74 .	6-3-43	Major AR Ramsay	
Aldershot	16-6-43			Out of Camp without pass Sec 15(3)	Cpl York	7 days CB	17-6-43	CaptThomson J	
Aldershot	16-6-43			Drunkenness Sec 19	Capt Swayze	Fine $5.00	18-6-43	Capt Thomson J	
Field	3-9-43			Sec 40 Failed to report for duty	Sgt Baker E	7 days CB	4-9-43	Cpat AH Fonger	
Field	21-10-43			Sec 15(1) AWL from 1830 hrs until 2400 hrs	Lt Armstrong	10 days FP 10 days pay 149(2)	22-10-43	Lt Col Muir	

(FTO)

PLEA OF MITIGATION

"EE W"

I woul like to offer the court a plea of mitigation against the charge proved against Pte Dusome. Gentlemen, the Linc & Welld Regt is a well known regt and the fact alone that he has been charged with deserting the army will be known far and wide. Pte Dusome is only now twenty / one years of age, having enlisted one monthe after his 17th birthday. He has a wife and cheld back home in Canada depending on him for support, and a long and severe sentence would only impose further punishment on his wife and his child, a girl who will soon be going to schllo, to face the jeers of other children for years to come.

I contend that Dusome is not a bad character, but jouning at such an early age, he was irresponsible with regard to the Army rule which says that a man must not leave without permission and as a result has got himself into a jam of which he did not realize the consequences. This is a breach against army discirline, gentlemen, and not against society. As you have heard, Pte Dusome never stole or committed a crime against society. The mere fact that he has been charged as a deserter will be punishment enough as to his future life in Canada.

Give this young lad a chance to make good, for his wife and child's sake and for his, sake.

" A.N. Raybould " Lt

SH-24

Pte. Durocher, R.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D 143559 Pte Roland Joseph Dussault Rde Mais

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 463 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on~~ (date)
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :
To undergo 12 months detention

12 Feb 1945 (Sgd) Ewmadson Maj
Date awarded. President. (RP 45, 50.)

(Sgd) Judge-Advocate, if any.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 765.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 77. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence(s) set forth in Part I is :

I confirm the finding and sentence of the court but remit nine (9) months detention

I direct that the accused be released, suspended from duty, committed for trial.(1) (Sgd)
(1. AA 57A. Delete if not used.)

Date 13 Feb 45 Commanding 1 Can Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 55, KR Can 576, 577.)

Accused Signature of Offr.

D 143559 Pte Dussault R.J. 13 Feb 45 Capt Adjt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 162 SA-224

CPA86 (To Rev of AFA81) 40-P-M-8-1-1944 (6070)

FIELD GENERAL COURT-MARTIAL 4/388

Convened by Brig. W.J. Megill Comd 1 Can Inf Bde dated 12 Feb 1945

RECEIVED 13 MAR 1945 JAG BRANCH C.M.H.Q.

ACCUSED.

(Number of trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed Rank, (b) Apptmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Permanent R. (b) Apptmt, A/R or A/Apptmt. Full Christian Names. Surname. Unit.

D 143559 Pte Roland Joseph Dussault Rde Mais

PROCEEDINGS REVIEWED 14/Mar/45 Maj Legal Staff Offr

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q. Ottawa on (date) 12 Feb 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 22186

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include qlfs relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 749.) A brief record of such variation will be made and given a number bearing reference to appropriate or preceding para number thereon. See back of Convening Order. Cf AFs, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereinafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 34.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. As 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial on a charge laid with indictable offence.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~Accused to be sworn. Do you object to~~ as interpreter ? Ans

~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer ? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 31, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	E.W. HUDSON	R.H.C
Member	CAPT	J.J. KENNEDY	HQ 3 Can Inf Bde
Member	LT	~~W.A.G~~ HONE NYE.	R.H.C
Judge-Advocate			
Prosecutor	CAPT.	F.R. BOURCIER	R de MAIS
Defending Offr	LIEUT.	P.E. BRIEN	R de MAIS

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (2) and fn 2 were not followed. See DI p 31.)

A8. The accused D 143559 Dussault Roland Joseph before arraignment makes(a) (no) plea(s) to ~~the~~ (2)

(1. If a special plea in bar for separate trial on one or more charges (RP 42(E), 108E), or as to the jurisdiction of the Court (RP 36, 35(A), 113), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the ad. rebuts evde in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fn 2. RP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. B, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*b*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof as a separate matter.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. .....

Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*2*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CS* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*3*) (*ii*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(2), and certified true copy (copies) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. D and Ex. E respectively.(4)

(1. *MFB* 355 *or AFB* 256. 2. *MFM* 6. 3. *RP* 46, *KR Can* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans. NO (PLEA of By DEFENDING OFFICER already made)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*5*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detn, trial see AA* 44(1)(*b*), 98(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Convening Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused D-143559 Pte Dussault, Roland Joseph "Le Regiment de Maisonneuve" a soldier of the Cdn Army (O) is charged with:

Sec 15 (1) Army Act.

WHILE ON ACTIVE SERVICE "ABSENTING HIMSELF WITHOUT LEAVE"

In that he,

In the field, absented himself without leave from 0920 hrs 13 Dec 44 till he surrendered himself to the Military Police at BRUSSELS, BELGIUM at 1700 hrs on the 23rd of January 1945.

Time absent: 41 days 7 hours 40 mins.

G.H. de Grandpré .....Major
(J.G.A.D. de Grandpre) A/Commanding
Officer "Regt de Mais" C.A. (O).

Dated in the field,
3 Feb 45.

To be tried by F.G.C.M.

10 Feb 45. Cmdg 4 Cdn Inf Bde

13 Feb 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/Rk or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-143589	Pte	Roland Joseph	DUSSAULT	R de Meds

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [have] committed the offence(s) set forth in the charge sheet(s) attached and on (date) 10 Feb 45 endorsed by me, [or by an offr of superior rank to me], "To be tried by a Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not practicable to delay the trial for reference to a superior qualified offr.]
(Delete part in brackets where not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have recorded hereon.
(AA 49, RP 104(2), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate to attend the Court the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Unit.)
Major	E. V. Hudson	R.E.C.

(Must be named. RP 106.)

MEMBERS.

(Rank.)		(Unit.)
Capt	T.J. Kennedy	No 5 Can Inf Bde
Lt	W.A.G. Home	R.H.C.

(Named or detailed. RP 106.)

WAITING MEMBER.

(Rank.)		(Unit.)

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

(Rank.)		(Unit.)

(Must be named, if any. RP 106.)

On Active Service in the Fd

in NORTH WEST EUROPE (Country.)

Date 10 Feb 45

[W.J. (Signed personally RP 102 fn 2.)] Lieutenant (Rank.)

Commanding 4th Armd Bde Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

10 Feb 45

(See overleaf for oaths and notes for use on trial.)

4/3BA (CFAES 11b (Mdl of AFAS) 42-7 & 8/1067 (4601))

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentences to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(*Referred to throughout CF A 98 as "Notes".*)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(D)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Upl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to *RP 95(A)*, be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 98, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RF 116 provides that for procedure on defence RF 40-42 will apply so far as practicable, having due regard to the public service. (*RF 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accusrd, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 88(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), K.R Can 563(a).*)

(vii) Summing up by J.A., *if any*. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written *record* MUST BE INITIALLED by President or J.A. *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. *if any*, and then pinned by top left corner to p 3 of CF A 98 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*K.R Can 507.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see K.R Can 560. As to certified copies of registered books see A.A 152 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 98 as part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*A.A 53(9), RP 118(C), M.M.L p 758.*)

4. The President or J.A, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

(C)

MEDICAL OFFICERS CERTIFICATE

I certify that No. D-143554 Pte Dussault, R. Regiment, is fit to undergo trial by Court-Martial.

R. de Mais.

J. Labourin Capt

STATION: in the Field.

DATE: 12 February 1945.

(GA Labourin) Capt
RCAMC
Medical Officer
Le Regiment de Maisonneuve CA(S)

(F)

Mr President, members of the court,

Pte Dussault pleaded guilty to the charge of A.W.O.L. I would like the Court to take into consideration those few points:

1) Pte Dussault is only 20 years old
2) He have been in the army for 2 years
3) He started to fight with his regiment in the battle of Boulogne as a rifle pl and he never miss an attack since.
4) He surrended himself.

If the court consider the age, the length of time the accuse was on the battle front I am positive that you will be element in your judgment.

Exhibit "B"

SUMMARY OF EVIDENCE

IN THE CASE OF:

D-143559 Pte Dussault, Roland Joseph "Le Regiment de Maisonneuve" a soldier of the Cdn Army (O) while on active service is charged with:

Short Statement of the charge:

"ABSENTING HIMSELF WITHOUT LEAVE" Sec 15 (1) A.A.

The Commanding Officer has directed that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION:

D-80338 Sgt. Lafranchise, R. "Le Regiment de Maisonneuve" Cdn Army (O) states:

At MOOK, HOLLAND on the 18 Dec 44 I have to detailed a fatigue party for 0830 hrs, to work with the Company C.Q.M.S. At about 0920 hrs I went to the Company Quarter Master Stores and asked C.Q.M.S. Landriault if the accused had reported to him. He told me no, that he had'nt seen him. I searched the area for him and I could not find him. I reported him A.W.L. and never seen him since.

THE ACCUSED DOES NOT WISH TO CROSS-EXAMINED THE WITNESS.

R. Lafranchise
(D-80338 Sgt. Lafranchise, R)
Regt de Mais. C.A. (O).

The Certificate of surrender under Army Act Section 1c3 (i) (j), produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

.....Capt
(F.D. Bourcier) Regt de Mais.
Officer detailed to take the Summary.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

Q.1 Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A.1 I do not wish to make a statement.

R.J. Dussault
(D-143559 Pte Dussault, R.J.
Regt de Mais. C.A. (O).

THE ACCUSED DOES NOT CALL ANY WITNESSES.

I CERTIFY that the foregoing Summary of evidence, consisting of one page, was taken down by me in the presence of the accused and that RP 4 (c) (d) (e) (f) have been complied with:

.....Capt
(F.D. Bourcier) Regt de Mais.
Officer detailed to take the Summary.

Dated in the field,
3 Feb 45.

3 Feb 45

CERTIFICATE OF SURRENDER UNDER ARMY ACT
SECTION 163 (i) (j)

Exhibit 7

I, ...certify that No. D.143509 Rank PTE

Name DUSSAULT R.J. of (Unit) DE MAIS REGIMENT of CANADA

surrendered himself to No. 13089769 Rank L/Cpl Name SMITH H.

of (Unit) 120 Provost Company, C.M.Police at BRUSSELS

at 17.00 hrs on 23rd JANUARY 1945 as a deserter (or absentee without leave).

He was dressed in Uniform

Signature J. Blenkham Lt

Officer Commanding

COMMANDING 120 PROVOST COY G.H.Q.

Date 23rd JAN 45

Unit

CORPS OF MILITARY POLICE

NOTES

1. If the surrender was made to an OR, this certificate MUST be signed personally by His Commanding Officer.

2. If the surrender was made to an officer, this certificate may be signed either by that officer or by his Commanding officer.

3. In no circumstances may it be signed by one officer 'for' another, or by anyone who does not hold commissioned rank.

4. In no circumstances should the place of surrender be described as 'In the Field'. The actual place of surrender should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

THIS IS EXHIBIT "A" REFERRED TO IN THE SUMMARY OF EVIDENCE IN THE CASE OF D-143659 Pte Dussault, R.J. "Le Regiment de Maisonneuve" C.A. (O) TAKEN BEFORE ME THIS 3rd of February 1945.

.....Capt
(F.D. Bourcier) Regt de Mais.
Officer detailed to take the
Summary.

1" 10"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or at the case may be).*
D-143509	Pte.	Dussault, R.J.	"Regt de Mais. C.A. (O)"

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For .... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for nil

beginning on the n-a day of n-a

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for ..... days in military custody, *i.e.*, ... days in open arrest, 20 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 20

6. The date of his attestation is 11 Nov 43

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of† n-a

†State the military decoration (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of n-a .....

In the war substantive rank of n-a .....

In the acting rank of n-a .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 51905/1851 20,000 3/44 51-4715. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 3rd February 1945. day of

(G. Leclerc) Capt.
O. i/c Records. Regt de Mais.
Cdn Army (O)

Exhibit "3"

No. B-143559 Name Dussault, R.J. Sqn, Battery, or Company — Corps C.I.C. Date of enlistment 11 Nov 43 GC Badges — Service or Proficiency Pay — MFM 6 (AFB 132)

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary copie. Original not available.					

.....Capt.
(G. Leclerc) O. i/c Records.
Regt de Mais. C.A. (O).

(TTO)

STATEMENT OF THE ACCUSED

I WISH THAT MY COMMANDING OFFICER WILL APPOINT
ME A DEFENDING OFFICER FOR MY FORTHCOMING TRIAL
BY FIELD GENERAL COURT MARTIAL.

.....
(D-143559 Pte Dussault, R.J)
Regt de Mais. C.A. (O)

Dated in the Field,
3 Feb 45.

VVV-111

PTE DUSSEAULT J.B.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-61143 Pte Dussault J.B. 13 CBRB.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ——— beginning on (date) ——— (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on NF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 32 days, of which 18 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on NF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of 9 months & be placed under stoppages in the amount of £2-9-8 cost of apprehension.

(Sgd) ——— 26 Jul 44 (Sgd) R.A. Perry Lt Col. DJAG

Judge-Advocate, if any. Date awarded. President.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision to Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

I am of opinion that the finding(s) and sentence set forth in Part I is/are ~~not~~ legal.

My decision on the finding(s) and sentence is: I confirm the finding & sentence

I direct that the accused be ~~not~~ committed to prison or detention barracks to undergo the sentence. (1)

(1. AA 57A. Delete if not used.)

(Sgd) W.H. Eisenhower Lt Gen GOC-in-C

Date Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 572, 577.)

Accused. Date. Signature of Officer.

D-61143 Pte DUSSEAULT J.B. 9 AUG 44 [signature] Lt 13 CBRB

D.O. No 191 13 CBRB 9 Aug 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 169

FIELD GENERAL COURT-MARTIAL

(AFB96 (to line of AFB91) 40/W & S/1868 (6000))

4/38B

RECEIVED 16 SEP 1944 JAG BRANCH C.M.H.Q.

Convened by Order of Lt Col W.J. Stewart Comd 2 CBRD dated 25 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D 61143	Pte	JEAN BERNARD	DUSSEAULT	13 CBRB

PROCEEDINGS REVIEWED

W.H. Eisenhower Lt Col 16 Sep 44

Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 26 Jul 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (9/43)

A1. The President, Members, waiting Member, ~~JAs, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 11.15 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lieut A.B. DROUET as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans ~~The shorthand writer is sworn.~~(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JAs, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	R.A. Perry	1 CTM
Member	Capt	G.A. McManus RCE	13 CBR Bn
Member	Capt	G.B. Brooks RCASC	13 CBR Bn
Judge-Advocate	———	———	———
Prosecutor	Lt	G.E. Henderson	13 CBR Bn
Defending Offr	Lt	R. Lepage	13 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 3.)

A8. The accused D 61143 Pte Dussault J.B. before arraignment makes(s) (no) plea

(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, MML 113), or as to accused's mental fitness to stand trial (AA 130, RP 27), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposal, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B-E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A39

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 50, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ——— charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ——— charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 1 initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and marking on appropriate record sheet(s) on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90. 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*). 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and allowed on the ..... charge(s), and disallowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 41. 4. *Delete part not used. If accused acquitted on all charges, use record alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*). *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*E*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*3*) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. YES

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Part(s) of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 140(i) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 2 and Ex 3 respectively.(3)

(1. *MFB* 255 *or MFB* 256. 2. *MSM* 6. 3. *RP* 46, *KR Can* 232. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to say so with anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*3*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 48, 118, 119(*A*), *KR Can* 308, 336, 363-366. *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*1*)(*b*), 68(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

FIRST CHARGE
AA SEC. 15(1)

The accused D.61143 Pte Jean Bernard DUSSEAULT, Les Fusiliers Mont Royal, 13 Bn, 2 CBNG, a soldier of the Canadian Army Overseas, is charged with, WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2245 hrs 23 Mar 44 until apprehended at 2035 hrs 12 Jun 44 by the civilian police at MANCHESTER.

Total time absent (80 days 21 hrs 50 min).

Costs of apprehension (£2.9.8.).

(W.J. Stewart) Lt.Col.
Commanding 13 Bn 2 CBNG

In the field
24 Jul 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(W.J. Stewart) Lt.Col.
Commanding 13 Bn 2 CBNG

In the field

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see NDHQ Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.49688	Piper		Alexander	COOPER	13 CHR Bn
B.98975	Pte		William Leonard	WOOD	RHR 13 CHR Bn
A.10886	Pte		Wm Albert	WOLSONCROFT	LI 13 CHR Bn
B.61143	Pte		Jean Bernard	MERSAIR	Fus RR 13 CHR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on which I have endorsed my signature this 25 Jul 44 (date), and whereas it appears to me that the offence(s) is (are) of such a nature that he (they) is (are) not fit to be tried by a Field General Court-Martial, but ought to be tried by a General Court-Martial;

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; and that it is not practicable to delay the trial for reasons to be specified hereafter.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint the Offr to form the Court, (b) a Pd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate Lt-Col the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

	R H Perry	1 Cdn Town Major Unit
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Major	To be detailed by OC	13 CHR Bn
A Capt	To be detailed by OC	13 CHR Bn
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

A Capt	To be detailed by OC	13 CHR Bn
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

Judge Advocate

		(Unit.)
(Rank.)	(Must be named, if any. RP 106.)	

On Active Service in the Fd

		Lt-Col
	(Signed personally. RP 105 fn 2.)	(Rank.)
in England	G.J. Stewart	13 Bn 2 Cdn Base Rft Gp
(Country.)	Commanding	Convening Officer.
Date 25 Jul 44		

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use at trial.)

4/38A (Originals to be sent to AFJD RP 87 & 87(A)(b))

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. *(or, None.)*

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. *(RP 66(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused *(not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10))*, or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See CF 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).)*

(vii) Summing up by JA, *if any*. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 561.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 142 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 15(9), RP 114(C), MML p 748.)*

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

(KR(Can) Para 557)
(CANO CL 173)

I certify that I have this day examined D-61143 (No.)

PTE. (Rank) DUSSEAULT. J.E. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station Petawawa

Date July 26/44

R. Rains Capt (Sgd),
Medical Officer

(Unit) 2 Bn 2 C.B.G.

CHARACTER WITNESS

R.M.P.

STATEMENT BY THE ACCUSED

I enlisted on the 7th of September 1939 at the Mount Royal Armouries with the Fusiliers Mount Royal to which I still belong. While in Canada I went to Iceland with this unit, and all the time I had a good conduct shit.

I left Iceland for the United Kingdom on the 1st of Nov 1940 and up to now I had a very good conduct shit. I also want to tell you that I took part in the Blitz raid. I also have been awarded a good conduct badge.

I was a corporal stretcher bearer with my unit until a sergeant came back and took my place in the section and voluntarily reverted to private.

When I enlisted I was the only ~~[illegible]~~ child. On the 18th of Sept. 1940 my father died, three years later on the 5th of July 1943 my mother died. I have no brothers or sisters.

Taken down by me this
26 day of Jan 1944
G.A. McNamara Capt.

Ref.

CHARACTER WITNESS

2nd Witness for Defence

F-13151 - L/Cpl R. McPherson. of the
regt police and in charge of a shift
at the guard room where the accused was
being duly sworn
detained, states:

The accused, since he has been in
the guard room (15 Jul) has behaved
himself 100 per cent.

sgd for L/Cpl McPherson.
by. G.H. McManus Capt.

I wish to state that I telephoned to CMHQ Records Office this afternoon, July 25th, to inquire concerning Pte Dussault, J.B., D61143, P.M.R. Regt., and was advised that from documents in their possession it was learned that this man was at DIEPPE in August 1942 and that a statement to this effect would be sent down to the court, if required.

I am Lt. B. Shapiro, of 13 Bn Residue, 2 CBRG.

25 July 44.

B. Shapiro, Lt.
13 Bn. 2 CBRG

R.T.P.

Plea in mitigation of sentence

Gentlemen:- You have just heard a statement of the army life and character of the man I am defending. This statement proves that this man has been a good soldier since he enlisted. His conduct sheet proves it and I am sure his Offrs would say the same thing if they were available. To prove this fact he was awarded a good conduct badge with his unit. There are a few points I beg you to consider before you pass sentence on this man. He has been in the army for nearly 5 years and his record has been good during that period. He has been a useful soldier. He has been in action with his unit at DIEPPE with his comrades. Since he left home his father and mother have died and he was their only son. His only relations and friends are those with his unit. He wants to go back there as soon as he is able to be in action with them.

To conclude, please remember these facts, his past long and good service to the army, that he has been in action, that he is an orphan, that he has no friends or anyone to write to outside his unit, and that we can still get very good service from him if he is returned to his unit and if we give him this chance. I am sure that the sentence that you are going to pass is going to be as light as it

Ex.1 A.G.P.

SUMMARY OF EVIDENCE IN THE CASE OF

D.61143 Pte Jean Bernard DUSSEAULT, Les Fusiliers Mont Royal, 13 Bn, 2 CBRG, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, all evidence is given on oath.

FIRST WITNESS FOR THE PROSECUTION

Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG, having been duly sworn, states:

"I am Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG, and present the following document pertaining to the accused D.61143 Pte Dusseault, J.B."

Exh."A". Copy of Part II Order, Les Fusiliers Mont Royal, No. 24 dated 28 Apr 44, issued by Cdn. Section GHQ, 2nd Echelon, 21 Army Group, showing D61143 Pte Dusseault, J.B., as A.W.L. from 2245 hrs 23 Mar 44.

Exh."B". Army Form C.1618 Certificate of apprehension showing D.61143 Pte Dusseault, J.B., as apprehended at 2035 hrs 12 Jun 44 by the civilian police at Manchester.

Exh."C". CMHQ 1000:55 Statement of expenses showing part of cost of returning D.61143 Pte. Dusseault, J.B. to unit as £1.17.6.

Exh."D". CMHQ 1000:55 Statement of expenses showing part of cost of returning D.61143 Pte. Dusseault, J.B. to unit as £0.12.6.

Total cost of apprehension £2.9.6.

W.A. Murray

(W.A. Murray) Lt.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

The accused was cautioned in accordance with Rules of Procedure 4(e) of the Army Act.

THE ACCUSED DECLINES TO MAKE A STATEMENT AT THIS TIME.

"I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) and (e) have been complied with."

J.E. Miller Lt

(J.E. Miller) Lt.
Officer Taking Summary of Evidence
13 Bn, 2 CBRG.

Exhibit 'A'

Last Order No. 23 7 Apr 44

LDS FUSILIERS MONT ROYAL
Part II Order issued by
GDN. SEC. G.H.Q., 2ND ECHELON 21 ARMY GROUP

No. 24
28 Apr 44

"A" OFFICERS

1. STRENGTH INCREASE
(a) T.O.S. from REINFORCEMENT ENCREMENT w.e.f. 17 Apr 44. Auth- POSTING ORDER NO. 1230 d/ 15 Apr 44
Capt J.O.A. LEFEBVRE

2. STRENGTH DECREASE
(a) S.O.S. to TY/ 3 LIST (Pte H R) w.e.f. 11 apr 44 on adm to 9 CDN G.H. HOSP
Capt M. CHEVALIER

3. HOSPITAL
(a) Adm to 9 CDN GEN HOSP w.e.f. 11 Apr 44
Capt M. CHEVALIER

4. APPOINTMENTS & PROMOTIONS
(a) To be A/Capt w.e.f. 6 Mar 44. Auth- Overseas R.O. 4425
Lieut M. GRAVEL

"B" OTHER RANKS

5. STRENGTH INCREASE
(a) T.O.S. from REINFORCEMENT INCREMENT w.e.f. 17 apr 44. Auth- POSTING ORDER NO. 1230 d/ 15 Apr 44
D163131 Pte ALLARD, J.W. E130865 Pte ANDERSON, J.
D101762 Pte BOUDREAU, R. J97775 Pte DESLANDES, L.
E100677 Pte DUFOUR, A.P. D115040 Pte FILLIONEAU, E.A.
B42567 Pte LANE, D.P. J96940 Pte PAPAS, C.
D29460 Pte THERRIAULT, L.P.

(b) T.O.S. from REINFORCEMENT INCREMENT w.e.f. 10 Apr 44 Auth- POSTING ORDER NO. 000670 d/ 9 apr 44
D42889 Pte GLADDERLAND, W.
D100476 Pte FLOLLY, J.F.G.
D42860 Pte GAUTHIER, G.E. Cook 1c

(c) T.O.S. from 4 C.I.A.U. w.e.f. 14 Apr 44 Auth- Z42/6538 d/ 12 Apr 44
F3327 Cpl FLETCHER, I.L.

(d) T.O.S. from 6 C.I.A.U. w.e.f. 12 Apr 44. Auth- Z42/2668 d/30 Dec 43 (Disciplinary Action)
D150069 Sgt MANTEL, C.

(e) T.O.S. from NO. 1 CDN N.R.T.U. w.e.f. 12 Apr 44. Auth- AT/ d/ 8 Apr 44 (Disciplinary Action)
D63502 Pte VERNON, J.

(f) AMENDMENT: Part II Order No. 18 of 6 Mar 44 insofar as it refers to the w/m is amended to read: " Dr. Mech 1c " (Obs GPM No. 4836 d/ 7 apr 44)
D62196 Pte RIVARD, A.

6. STRENGTH DECREASE
(a) S.O.S. to 6 C.I.A. WKSHOP w.e.f. 5 apr 44. Auth- CMHQ MOVEMENT ORDER NO. 500 d/ 1 Apr 44
B149355 Pte AUSTIN-BROWN, H. Fitter 1c

6. ST. MOTH ORDNANCE - Contd

(b) S.O.S. to 5 CDN FD EDUC SEC w.e.f. 2 Apr 44. Auth- CA7/2968 d/ 3 Apr 44
D62073 A/Cpl [illegible], A. Educ Asst

(c) S.O.S. to 1 C.A.S.C.H.U. w.e.f. 7 Apr 44 pending transfer to RCAMC. Auth- 95/20/MLC/1 d/ 1 Apr 44
G4541 Pte LEBLANC, J.J.

(d) S.O.S. to 6 C.I.A.U. w.e.f. 13 Apr 44. Auth- CA7/2997 d/1 Apr 44
D62033 Pte MARTEL, J.M.

(e) S.O.S. to 6 C.I.A.U. w.e.f. 15 Apr 44. Auth- CA7/3338 d/15 Apr 44 (Reallocation)
D124737 Cpl BRIMM'AMOUR, M.
G4347 Pte PELCHAT, R.

(f) S.O.S. to 6 C.I.A.U. w.e.f. 20 Apr 44. Auth- CA7/3347 d/17 Apr 44
D61810 Pte PROULX, J.L.

(g) S.O.S. to 'A' 2 LIST (Fus M R) w.e.f. 4 Apr 44 on ccmm to H.M. PRISON LINES (Civil conviction 3 months imp with H.L. on 4 Apr 44)
D63138 Pte PETERS, M.

(h) S.O.S. to 'X' 2 LIST (Fus M R) w.e.f. 4 Apr 44 on ccmm to WINCHESTER PRISON (Civil conviction 3 years penal servitude on 4 Apr 44)
D62271 Pte ST-G[illegible]S, H.

(i) S.O.S. to 'X' 2 LIST (Fus M R) w.e.f. dates shown on ccmm to NO. 1 CDN DETN BKS awarded as shown
D133646 Pte DUFOUR, J.J.M. 31 Mar 44 awarded 9 mos detn (FGCM) on 27 Mar 44
D62638 Pte GAGNON, C. 29 Mar 44 awarded 1 year 11 mos detn (FGCM) on 21 Mar 44

(j) S.O.S. to NO. 1 CDN N.S.T.D. w.e.f. 17 apr 44. Auth- AI/8958 d/ 8 apr 44
D63502 Pte VEZINA, J.

(k) S.O.S. to 'X' 3 LIST (Fus M R) w.e.f. dates shown on ccmm to hosp shown

D46993	Pte CAYER, C.G.	9	CDN GEN HOSP	11 Apr 44
D150071	Pte LAJOIE-OLIER, A.	13	CDN GEN HOSP	2 Apr 44
D61895	Pte LAVOIE, B.	9	CDN GEN HOSP	12 Apr 44
D101200	Pte LECLERC, H.	15	CDN GEN HOSP	4 Apr 44
G75215	Pte MORIN, F.	13	CDN GEN HOSP	4 Apr 44
G97858	Cpl VACHON, L.	15	CDN GEN HOSP	10 Apr 44
D100032	L/Cpl GAUVIN, E.	9	CDN GEN HOSP	14 Apr 44

(l) AMENDMENT: Part II Ord r No. 22 p ra 2(a) of 5 apr 44 insofar as it pertains to the a/n is amended to read: " D150097 Pte THIBEAULT, J.A.G. "
D150097 Pte THIBEAULT, J.A.G.

7. ATTACHED
(a) Att from 5 GUN FD EQUIP SEC f. o.d. except regimental duties w.e.f. 3 Apr 44. South- Ea7/2938 dd/ 3 Apr 44
B62075 A/Cpl BOURDEAU, R. Equip. Asst.

8. HOSPITAL
(a) AWL to hosp shown w.e.f. date shown
B46992 Pte DAVIES, J.G. 9 DAY GEN HOSP 11 Apr 44
B125071 Pte LAURENDEAU, A. 18 DAY FD AMB 2 Apr 44
B78315 Pte LAUZON, L.R. 10 DAY FD AMB 2 Apr 44
B81795 Pte LAVOIE, E. 9 DAY GEN HOSP 12 Apr 44
E101200 Pte LEBLANC, H. 13 DAY FD AMB 4 Apr 44
B78215 Pte McCAIN, F. 10 DAY FD AMB 4 Apr 44
B157199 A/L/Sgt McQUIN, H. 15 DAY FD AMB 2 Apr 44
B100752 L/Cpl McVEIGH, R. 9 DAY GEN HOSP 12 Apr 44
B57252 Cpl VaCHON, L. 15 DAY FD AMB 10 Apr 44

(b) Hosp to hosp shown w.e.f. dates shown
B125071 Pte LAURENDEAU, A. 18 DAY FD AMB to 130 DAY GEN HOSP 2 Apr 44
E101200 Pte LEBLANC, H. 13 DAY FD AMB to 13 DAY GEN HOSP 4 Apr 44
B78215 Pte McCAIN, F. 10 DAY FD AMB to 130 DAY GEN HOSP 4 Apr 44
B57252 Cpl VACHON, L. 15 DAY FD AMB to 130 DAY GEN HOSP 10 Apr 44

9. ABSENT WITH OUT LEAVE
(a) AWL from 2245 hrs 31 Mar 44. Still absent 2245 hrs 5 Apr 44 (5th day)
B62590 Pte DELORIMIER, A.

(b) AWL from 1300 hrs 23 Mar 44. Still absent 1300 hrs 31 Mar 44 (8th day) Still absent 1300 hrs 14 Apr 44 (22nd day)
B62736 Pte DESJARDINS, A.

(c) AWL from 2245 hrs 23 Mar 44. Still absent 2245 hrs 31 Mar 44 (8th day) Still absent 2245 hrs 14 Apr 44 (22nd day)
B81143 Pte JOHNSTON, J.B.

(d) AWL from 2245 hrs 29 Mar 44. Still absent 2245 hrs 5 Apr 44 (8th day)
B51690 A/L/Cpl SAWYER, W.

(e) AWL from 0715 hrs 5 Apr 44. Still absent 0715 hrs 13 Apr 44 (9th day)
B62792 Pte LAVOIE, A.

(f) AWL from 1500 hrs 29 Mar 44. Still absent 1500 hrs 5 Apr 44 (8th day) Rst 1030 hrs 10 Apr 44
B81795 Pte LAVOIE, E.

(g) AWL from 0700 hrs 2 Apr 44. Still absent 0700 hrs 10 Apr 44 (9th day) Rst 1100 hrs 10 Apr 44
B47707 Pte MALLAIS, P.A.

(h) AWL from 0930 hrs 1 Apr 44. Still absent 0930 hrs 5 Apr 44 (5th day) Rst 2100 hrs 13 Apr 44
B62067 L/Cpl PHILIPPAULT, R.

10. APPOINTMENTS

(a) To be L/Sgt w.e.f. dates shown

J42093 A/L/Sgt [illegible], E. 24 Mar 44
J27 71 A/L/Sgt L[illegible] H, L. 1 Dec 43
J[illegible] A/L/Sgt T[illegible]IN, [illegible]. 17 Nov 43

(b) Appt'd A/L/Sgt w.e.f. 20 Mar 44

J[illegible] Cpl L[illegible], J.A.
J[illegible]3537 L/Cpl (A/Cpl) [illegible]ER, N.F.

(c) Appt'd A/Cpl w.e.f. dates shown

J[illegible]1350 L/Cpl [illegible], J.L.E. 30 Mar 44
J[illegible] Pte [illegible], J. 27 Mar 44
J[illegible]3055 L/Cpl F[illegible]IN, A. 20 Mar 44
J[illegible]1471 Pte H[illegible], L. 20 Mar 44
H[illegible]232 L/Cpl [illegible], E. 30 Mar 44
J[illegible] Pte [illegible], H. 30 Mar 44

(d) To be L/Cpl w.e.f. dates shown

D[illegible]793 A/L/Cpl BAILEY, A.H.A. 19 Mar 44
D[illegible]938 A/L/Cpl [illegible], A. 19 Mar 44
H17[illegible]10 A/L/Cpl FORTIN, A. 13 Apr 44
J[illegible]484 A/L/Cpl FRANCIS, W.H. 2 Mar 44
D[illegible]089 A/L/Cpl HARRIS, J.P.E. 20 Jan 44
B[illegible]64 A/L/Cpl [illegible], P.E. 20 Jan 44
D[illegible]86 A/L/Cpl ROY, P. 20 Jan 44
B[illegible]6 A/L/Cpl ST-LOUIS, A.D. 1 Mar 44
D[illegible]905 A/L/Cpl TAILLEFER, E. 12 Mar 44
19 Mar 44

(e) Appt'd A/L/Cpl w.e.f. dates shown

J[illegible] Pte [illegible], A. 1 Apr 44
D[illegible]05 Pte [illegible], [illegible]. 30 Mar 44
J[illegible]64 Pte L[illegible], G. 19 Mar 44
D163011 Pte LAVOIE, J.E.E. 30 Mar 44
D[illegible]120 Pte LEVESQUE, J. 16 Mar 44
D[illegible]32 Pte MORRAU, J.[illegible]. 20 Mar 44
D[illegible]003 Pte MORIN, R. 20 Mar 44
D167199 Pte P[illegible]UIN, H. 30 Mar 44
D[illegible] Pte RIOUX, R. 19 Mar 44
D[illegible]93 Pte [illegible], N. 20 Mar 44

11. PROMOTIONS

(a) Cont'd in the rank of Sgt w.e.f. 1 Dec 43

J[illegible]556 A/Sgt TAYLOR, [illegible]

(b) Cont'd in the rank of Cpl w.e.f. dates shown

J[illegible]54 A/Cpl [illegible], C.A. 12 Mar 44
D[illegible]49 A/Cpl [illegible], R. 4 Feb 44
B[illegible]77 A/Cpl [illegible], J.J.E. 20 Jan 44
J[illegible]40 A/Cpl [illegible], P. 20 Jan 44
D[illegible]43 A/Cpl FORTIN, H. 20 Jan 44
D137[illegible]7 A/Cpl [illegible], J.A.R. 8 Mar 44
D[illegible]336 A/Cpl [illegible], E. 20 Jan 44
D[illegible]613 A/Cpl [illegible], J. 19 Mar 44

12. Pay & ALLOWANCES

(c) AMENDMENT: Part II Order No. 60 para 11(c) of 19 Nov 43 insofar as it refers to the u/n is cancelled. (Obs CMF No. 4952 d/ 12 Apr 44)

B130[illegible]90 Pte [illegible]OIN, G.

12. PAY & ALLOWANCES-Cont'd
(b) AMENDMENT: Part II Order No. 13 para 7(b) of 10 Mar 44 insofar as it refers to the u/n is amended to read: " w.e.f. . . 30 Jun 43 " (Obs CPM No. 4393 d/ 5 Apr 44)
E100641 Pte LACROIX, V.

13. REVERSIONS
(a) Reverts to the permanent grade of pte at their own request w.e.f. dates shown to draw regimental rate of pay of $ 1.50 per diem
D61831 Cpl SCILY, L. 3 Apr 44
D135641 A/L/Cpl BOULIN, J.L.N. 3 Apr 44
D63313 L/Cpl RENAUD, M. 3 Apr 44

(b) Reverts to the rank of L/Cpl w.e.f. 14 Apr 44 on adm to 9 CDN GEN HOSP
E100232 L/Cpl (a/Cpl) SAVOIE, E.

14. TRADESMEN'S RATES OF PAY
(a) AMENDMENT: Part II Order No. 50 of 18 Sep 43 insofar as it refers to the u/n is cancelled. (Obs CPM no. 4838 d/ 7 Apr 44)
D61296 Cpl RIVEST, A.

15. PUNISHMENTS
(a) On 13 Apr 44 awarded a forf of 5 days pay for an off under AA 40. Forf 5 days pay under FR&I 149(2)
D63502 Pte VERDON, J.

(b) On 13 Apr 44 reduced to the permanent grade of pte for an off under AA 40. to draw $ 1.50 per diem
D62900 L/Cpl COLLIN, F.

(c) On 4 Apr 44 sentenced to 3 months imp with H.L. by BRIGHTON COURT of QUARTERS SESSIONS for an off under CRIMINAL LAW Sec 11 as am'd by Act 1865. Forf 91 days pay under FR&I 149(1)(b) No close arrest.
D63136 Pte FRYERS, M.

(d) On 27 Mar 44 awarded a forf of 14 days pay for an off under AA 16(1) AWL from 2359 hrs 22 Mar 44 to 0100 hrs 25 Mar 44 (Absent 2 days, 1 hrs, 1 min) Forf 3 days pay under FR&I 149(1)(a) Forf 14 days pay under FR&I 149(2) Total forf 17 days pay
D61410 Pte PROULX, J.L.

(e) AMENDMENT: Part II Order No. 50 para 16 of 18 Sep 43 insofar as it refers to the u/n is amended by "deleting" All references to concurrency and "Adding" Total forf 14 days pay under FR&I 149(2) (Obs CPM No. 4889 d/5 Apr 44)
D61324 Pte DERREMIGNY, L.

(f) AMENDMENT: Part II Order No. 8 para 15(a) of 10 Feb 44 insofar as it refers to the u/n is amended to read: " Forf 10 days pay under FR&I 149(1)(c)(i) (Completely concurrent with award of 6 months detn (FSCM) on 22 Sep 43 vide D.O. 55 of 23 Oct 43) Forf 182 days pay under FR&I 149(1)(b) (134 days concurrent with award of 6 months detn (FSCM) on 22 Sep 43 vide D.O. 55 of 27 Oct 43) total net forf 44 days pay. (Obs CPM No. 5067 d/ 14 Apr 44)
D61834 Pte MINARD, R.

15. PUNISHMENTS-Cont'd

(g) AMENDMENT: Part II Order No. 50 para 16 of 18 Sep 43 insofar as it refers to the u/n is amended to read: " Forf 1 days pay under FR&I 149(1)(a) (Concurrent with award of 14 days forf or pay on 20 Aug 43 vide D.O. 48 of 5 Sep 43) Forf 14 days pay under FR&I 149(2) (8 days concurrent with award of 14 days forf or pay on 20 Aug 43 vide D.O. 48 of 5 Sep 43) Total forf 6 days pay. (Obs CPM 4591 A/ 5 Apr 44)

D61693 Pte PERRON, R.

(h) AMENDMENT: Part II Order No.23 para 7 of 14 May 43 insofar as it refers to the u/n is amended to read: " Forf 21 days pay under FR&I 149(1)(a) (1 days concurrent with award of 3 days forf or pay on 30 Mar 43 vide D.O. 20 of23 Apr 43) Forf 7 days pay under FR&I 149(1)(c)(i) Forf 275 days pay under FR&I 149 (1)(b) Total not forf 302 days pay (Obs CPM No. 4417 A/ 5 Apr 44

D61692 Pte SAURIOL, E.

(i) AMENDMENT: Part II Order No. 63 para 18(j) of 30 May 43 insofar as it refers to the u/n is amended to read: " Forf 14 days pay under FR&I 149(1)(c)(i) (Completely concurrent with award of 9 months deth (FGCM) on 29 Apr 43 vide D.O. 23 of 14 May 43) Forf 458 days pay under FR&I 149(1)(a) (73 days concurrent with award of 9 months deth (FGCM) on 29 Apr 43 vide D.O. 23 of 14 May 43) Total not forf 385 days pay. (Obs CPM No. 4417 of 5 Apr 44)

D61692 Pte SAURIOL, E.

(j) On 4 Apr 44 sentenced to 3 years penal servitude by HAMPSHIRE QUARTERS SESSIONS for 3 cases of LARCENY. In close arrest from 1545 hrs 21 Jan 44 to 1000 hrs 4 Apr 44. Forf 1,095 days pay under FR&I 149(1)(b) Forf 74 days pay under FR&I 149(1)(c)(i) Total forf 1,169 days pay

D62271 Pte ST-GEORGES, H.

16. CHANGE OF NAME

(a) AMENDMENT: Part II Order No. 17 para 17(d) of 23 Mar 44 insofar as it refers to the u/n is amended to read: " B55765 Pte KENE, H. "

B55765 Pte KENE, H.

"C" REINFORCEMENT INCREMENT

"A" OFFICERS

17. STRENGTH INCREASE

(a) T.O.S. from 6 C.I.R.U. w.e.f. 7 Apr 44. Auth- DEMAND NO. R.I. 299 A/ 2 Apr 44

Capt J.O.A. LEFEBVRE

18. STRENGTH DECREASE

(a) S.O.S. to Fus M.R. w.e.f. 16 Apr 44. Auth- POSTING ORDER No. 1230 A/ 16 Apr 44

Capt J.O.A. Lefebvre

(b) S.O.S. to NO.1 CDN N.E.T.D. w.e.f. 5 Apr 44 Auth- CMHQ MS 1137 A/ 3 Apr 44

Lieut J.P. MORIN

"B" OTHER RANKS

19. STRENGTH INCREASE

(a) T.O.S. from 6 C.I.R.U. w.e.f. 7 Apr 44. Auth: DEMAND NO. R.I. 299 A/ 2 Apr 44

D59054 Pte BRUNET, J.C.R. Dr. Mech
B4829 Pte LABILLE, P. Dr. Mech 'G'
G690 Pte SAVOIE, J. Carpenter 'G'

(b) T.O.S. from 1 C.I.R.U. w.e.f. 7 Apr 44. Auth- DEMAND NO. R.I. 300 A/ 2 Apr 44

C102966 Pte GAUTHIER, J.W.
D116766 Pte GIRARD, J.E.R.
E100083 Pte LEBLANC, J.Y.
B146438 Pte TURNER, J.E.

(c) T.O.S. from HQ CMU w.e.f. 14 Apr 44. Auth- EAR/6538 A/ 12 Apr 44

G17211 CSM REILLY, W.P.

20. STRENGTH DECREASE

(a) S.O.S. to Fus M R w.e.f. 16 Apr 44. Auth- POSTING ORDER NO. 1830 A/ 16 Apr 44

D163131 Pte ALLARD, J.W.
C101762 Pte BOUDREAU, R.
E100477 Pte DUFOUR, J.P.
B43497 Pte HAMEL, D.F.
E19460 Pte THERRIAULT, L.P.
E13085 Pte ANDERSON, J.
E97775 Pte DESJARDINS, L.
D116040 Pte FILIPPELLI, E.A.
D66646 Pte PAPASADORO, A.

(b) S.O.S. to Fus M R w.e.f. 9 Apr 44. Auth- POSTING ORDER NO.000 578 A/ 9 Apr 44

S42582 Pte CHAMBERLAND, M.
D140465 Pte FLEURY, J.F.G.
C42860 Pte GAFFNEY, C.J. Cook 'C'

(c) S.O.S. to 'X' 3 LIST (Fus M R) w.e.f. 10 Apr 44 on adm to 13 CDN GEN HOSP
E13162 Pte THERIAULT, R.

21. HOSPITAL

(a) Adm to 18 CDN FD AMB w.e.f. 10 apr 44
E13162 Pte THERIAULT, R.

(b) Adm'n from 18 CDN FD AMB to 13 CDN GEN HOSP w.e.f. 10 Apr 44
E13162 Pte THERIAULT, R.

(C.R. IRWIN) LIEUT
for OFFICER IC
CDN. SEC. G.H.Q., 2ND ECHELON 21 ARMY GROUP

/GV.

533

DESCRIPTIVE RETURN OF [1] D 61143 Pte Jean Bernard Dussault

apprehended at 8.55 p.m. (hour) on the 12 day of June 1940 and was committed to confinement at Manchester on the 23rd day of June 1940 as an ~~Deserter~~ Absentee without leave) from the Bn. of the Montreal Regiment "Canadian Army Regiment of Worthing

Age	23 Yrs	Height	5 feet 8 inches
Complexion	Fresh	Hair	Dk Brown Eyes Blue
Marks		In uniform or plain clothes	Plain Clothes
Probable date and place of attestation		9th September 1939 Montreal Canada	
Probable date of desertion or beginning of absence and from what place		23rd March 1940 Worthing	
Name, occupation and address of the person by whom or through whom means the Deserter (or Absentee without leave) was apprehended and secured		B 30 Joseph Griffiths Manchester City Police	
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.		Arrested on a charge of Stealing	

I do HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and he declared in my presence that he [2] the above-mentioned Corps.

[illegible] Signature
City Police Court Residence
Manchester Post Town
23rd June 1940 Date of Signature
} of Committing Magistrate.

Jean Bernard Dussault Signature of Prisoner
Joseph Griffiths B30 Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming:

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature
Residence
Post Town
} of Magistrate.
Date of Signature

[1] Care should be taken to insert Army No. and Rank.
[2] Insert "was apprehended" or "was absent," as the case may be.
It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs" or "does not belong to," as the case may be.

Army Form O.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. of

Regiment at on by

who was committed as a Deserter (or Absentee without leave) on the

RECOMMENDATION FOR REWARD.

I RECOMMEND*

Address

for a reward of

Signature of Committing Magistrate.

Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the case and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

Exhibit

Army Form G.1618

IMMEDIATE. PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(P1736) W.L13183/3234 10,000 5/41 A.A.E.W.Ltd. Gp.426 Forms/G.1618/32

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in carrying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses will be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed £6/-.

I CERTIFY that the following expenses were incurred by the Police in connection with the apprehension of _____ and are payable from Army funds.

Date _____

(Superintendent or Officer i/c Police Station at _____)

AUTHORITY for the PAYMENT of a REWARD.

(For Army use only.)

The Command Paymaster _____ is hereby authorised to pay to _____ being the person recommended by the Committing Magistrate, a reward of _____ for the apprehension of _____

Date _____ _____ (O.C. Unit)

Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below :—

Expense Voucher Re—

Ref: K.R. & O. (Can) 539

Reg. No. H 61143 Rank Pte Name Hussault, J.B. Unit F M R

The following expenses were incurred in apprehending and returning the M/N Soldier to his ~~Unit From~~ London from Manchester

Date	Particulars (⅓ portion)	Amount		
25 June 44	Escorts return fare from LONDON To Manchester		18	10
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		4	7
	Total £	1	17	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W O Rush LIEUT

Officer Issuing Railway Warrant and Expenses R. E. BIRCH Capt.
No. 6 Provost Company, Canadian Provost Corps, London. ADJUTANT OFFICER—D.P.M's BR. C.M.H.Q.

CMHQ 1000-55
CM/P & S 483

Exhibit 2 D

Expense Voucher Re— Ref: K.R. & O. (Can) 539

Reg. No. D61163 Rank Pte Name D. Marrault J.B. Unit 7 C.M.R.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London.

Date	Particulars (Separation)	Amount £	s	d
25 June 44	Escorts return fare from LONDON To Shepherds Well.		6	8
	Prisoners single fare to LONDON From			
26 June 44	Prisoners fare from London. To Sly. Wells		5	6
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		12	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R. Birch
LIEUT.
R. E. BIRCH
Officer Issuing Railway Warrant and Expense Money
No. 9 Provost Company, Canadian Provost Corps, London. C. M. H. Q.

C.M.H.Q. 1000 3/5
40/F & S/480

EX 2 B

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
D.61143	Pte	DUSSEAULT, J.E.	11 Bn, 2 CBNG

* 1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For	AA SEC 15(1)	1 times
For	AA SEC 40	1 times
For		times
For		times

Date of first entry in Field Conduct Sheet 13 Sep 40

Date of last entry in Field Conduct Sheet 14 Oct 40

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

* 3. The accused at the present time is under sentence for NA beginning on the NA day of NA

4. The accused has been awaiting trial on the present charges for 12 days in civil custody; and for 32 days in military custody, i.e., NIL days in open arrest, 32 days in close arrest; of which 16 days were spent in hospital.

5. The present age of the accused is 24

6. The date of his ~~enlistment~~ attestation is 9 Sep 39

7. The service which the accused is allowed to reckon is 4 YRS 30 DAYS

8. The accused is in possession of† NA

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of	NA
In the war substantive rank of	NA
In the acting rank of	NA

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental doc'r in my custody, are correct to the best of my knowledge and belief.

Signed this 26 day of July 44

J E Miller Lt

(J.E. Miller) Lt.
13 Bn 2 CBRG

No. D61143 Name DUSSEAULT, Jean Bernard | Sqn., Battery, or Company | Corps | Date of enlistment 9 Sep 39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /8136 (2948)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1. | Signature O.C. Company, etc. | Character Ex 3 Bk P

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						7 days Detn.			
Iceland	13.9.40.	Pte		AA 40.		7 days CB			
Iceland	14.10.40.	"		AWL		Forf 3 days pay			
~~Iceland~~	~~19.8.44.~~	~~"~~		~~AWL from 23.3.44 until 22nd~~ ~~May 44 Deserted. Surrendered~~ ~~at Kiel 8.5.45.~~					

Jack E Dussault J13 Bs 2 CBRG 25 July 44

CERTIFIED TRUE COPY OF ORIGINAL IN MY POSSESSION.

(P.T.O.)

A.P.

LIST OF WITNESSES

FOR PROSECUTION: Lt. W.A. Murray, Records Officer, 13 Bn, 2 CBRG.

FOR DEFENCE: Nil.

LIST OF EXHIBITS

Exh."A". Copy of Part II Order, Les Fusiliers Mont Royal, No. 24 dated 22 Apr 44, issued by Cdn. Section GHQ, 2nd Echelon, 21 Army Group, showing D61143 Pte Dusseault, J.E., as A.W.L. from 2245 hrs 23 Mar 44.

Exh."B". Army Form C.1618 Certificate of apprehension showing D.61143 Pte Dusseault, J.E., as apprehended at 2035 hrs 12 Jun 44 by the civilian police at Manchester.

Exh."C". CMHQ 1000:55 Statement of expenses showing part of cost of returning D.61143 Pte Dusseault, J.E., to unit as £1.17.6.

Exh."D". CMHQ 1000:55 Statement of expenses showing part of cost of returning D.61143 Pte Dusseault, J.E., to unit as £0.12.2.

Total cost of apprehension £2.9.8.

REQUEST FOR A DEFENDING OFFICER

"I, D.61143, Pte. Dusseault, J.E., wish the convening authorities to appoint a competent officer to defend me at my forthcoming trial by Court Martial.

J.E. Dusseault

(D.61143, Pte. Dusseault, J.E.)

[redacted] British Courts - 20

Pte Dutcau, A.

D. 123431

Correspondence to be PINNED here.

RECEIVED
19 SEP 1945
JAG BRANCH
C.M.H.Q.

5-5-45

RECORDED AT CMHQ IN AB 168

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Twenty third day of JULY, 19 45

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of GHQ TROOPS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[~~I am unable to appoint~~:—

*(1.—~~Three Officers to form the Court.~~)

*(2.—~~A Field Officer as President.~~)

for ~~the following reasons, namely:—~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

PROCEEDINGS REVIEWED 10 Sept 45 REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

4803

36/90

President.

Rank.	Name.	Regiment.
Major	T.H. Sills	R.A., HQ 21 Army Group

Members.

Rank.	Name.	Regiment.
Capt.	T.C. [illegible]	RCASC, Chn Sec 1 Echelon.
Subaltern	K. G. Robertson. (to be detailed by O.C. 1 Ind Adm Coy.)	Royal Signals. R.Signals.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Signed

Commanding GHQ TROOPS.
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-123431 Private, Andre Duteau, 3 Cdn Increment (HQ) MT Inspection Branch RCASC att to 4 MT Inspection Branch RASC.	Charges as per Charge sheet.	1. Not Guilty 2. Not Guilty 3. Not Guilty	Guilty Not Guilty Guilty Sentence 56 days Detention	Confirmed 21. 8 45

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) —
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) — No

(*Signed*) [signature] Commanding 5 TROOPS, Convening Officer (*e*)

(*Signed*) [signature] President

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the twenty-fifth day of July 1945, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 25-th day of July 1945

[signature] President of the Court Martial.

C.

Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (*i*) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends his suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 21st day of August 1945

[signature] Confirming Officer.

Promulgated and extracts taken in the case of D/123431 Pte Duteau A [illegible]

(*a*) (Dated) 25 Aug 45 (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Thomas H. Ellis Capt. R.A.

CHARGE SHEET

The accused, D-123431 Pte Duteau, Andre, of 3 Cdn Increment (HQ) MT Inspection Branch RCASC Att to 4 MT Inspection Branch, RASC, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, at about 2315 hours 8 Jul 45 created a disturbance in a civilian residence, No. 3 Hellweg, Bad Salzuflen by brandishing a pistol, and struggling with a woman.

Second Charge
Sec 40
Army Act
(Alternative)

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, at about 2315 hours 8 Jul 45 in Germany a country recently conquered, fraternized with Helda Mealhop an inhabitant of Germany not his wife, in that he accompanied her to and entered No. 3 Hellweg, Bad Salzuflen with her.

Third Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT

in that he,

in the Field, in Germany, at approx 2330 hours 8 Jul 45 did assault 1589043 Pte Grubb, H.S. of 189 Coy Pioneer Corps by pointing at and prodding in the ribs of the said Pte Grubb, a revolver.

To be tried by FGCM

D. Ellison Major

(D.Ellison) Major
O.C., 3 Cdn Incr (HQ) MT Insp Br RCASC

D. Ellison Major

OFFICER COMMANDING
No. 3 CDN. INCR. (HQ)
M.T. INSPECTION BR.
R.C.A.S.C.

TO BE TRIED BY FGCM

Colonel.
Commander GHQ Troops.

FORM A.
Page 1.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT ON THE 25 DAY OF July 1945.

Trial of No. D123431 Private Austin DUTHEAD.

Members. Major. T. H. SILLS. R.A.
Capt. T. C. BRICKER R.C.A.S.C.
Lieut K. G. ROBERTSON, Royal Signals

Prosecutor. Capt. R. A. BRIGGS. No 2. Dept. J.A.G. Canadian Section, 1st Canadian Army

Defending Officer. Capt. G. LASH. Can Sec. 1st Canadian Army

Officers under Instruction. Capt. L. J. GENT. Can Fusiliers.

Interpreter Lieut. P. MARKSTEIN Gen List attd H.Q. G.H.Q. T.A.

1. The Order convening the Court is read in the presence of the accused.

2. The accused is asked the following question:-
Do you object to be tried by me as President or any Member of the Court whose names you have heard read over ?

ANSWER: No.

3. The President and Members, Judge Advocate, Officers under Instruction, [redacted] and Interpreter are duly sworn.

4. (a). The accused answers to his name and number, and is duly arraigned on the charge.

~~(b). The accused having pleaded guilty to the charge(s) R.P. 35(b) is complied with.~~

5. The accused is asked the question at the foot of page 2. of A.F.A3 and his answer is recorded beneath the question.

6. The Prosecutor makes (an) ~~oral (the following)~~ opening address (which is marked X. and attached to the proceedin gs) briefly outlining the facts, not recorded.

Pros's opening Address. / Incidents & Stage

Mr. Pres. & Members of the Court, the accused stands before you arraigned on 3 charges.

(1 & 2 & 3 read)

The prosecution will prove that the accused created a disturbance by entering and staying in a house against the wishes of the owners thereof. That while in the said house he did brandish a pistol. Further that the accused held in his arms a member of the household a citizen of ~~the~~ Germany. On the third charge evidence will be brought to show that the accused pointed at & prodded the pistol at the Greeks.

W.A. Judge Capt

(R.C.A.F.)
J.A.G. Can Sec / Exh. No. 21 & 2.

25 July 43
10 30 hrs

Prosecution

- The prosecutor made an opening address (copy attached)

First Witness Helga Kohlhof. 3. Hotmeg. Bad Salzuflen. states, having been sworn On 8th July 3 spoke to a few soldiers. I recognise the accused as that soldier
While walking along Hasforder Strasse at 2 o'clock the accused walked behind me and asked whether he could walk home with me. He spoke in broken german and English I told him more than once that I did not want to walk home with him He grabbed hold of my hand and walked along with me and offered me a cigarette which I did not accepted.
The soldier did not go into the house with me. He went into the garden did not see him inside the house at any time

Cross-examined
I was in the garden for a few minutes with him. I told him to go away quite often during this time.
I called for my grandmother and a certain Miss Küffer to come down which they did and while Miss Küffer who speaks english told the soldier to go away I went up stairs

First Witness.

Questioned by the Court

Part of the time I was in the front garden of No 3. Hellwig and when I tried to get away I went into the back garden and the soldier followed me.

Second Witness Hedwig Wehmeyer. 3 Hellwig Bad Salzuflen states: having been sworn; I am a german citizen. On the 8th July I saw a Canadian soldier in my house and I recognise him as the accused. The time was shortly after 2 o'clock. It might have been 2.15 hrs I did not invite him into my house He spoke English but I could not understand. I asked him to leave the house repeatedly and I pushed him as I could not make him understand. I did not strike him, he did not leave the house on my request. The soldier did not touch or strike anyone in the house but he pushed me. I think the soldier was in the house for five minutes but it might have been for as long as ten minutes. I did not accept any gifts from the accused whilst he was in the house.

Second witness

Cross-examined. Was with the soldier
the whole time he was in the house, until
the police came. At no time was
the soldier actually in the house,
he was ~~was~~ just outside
the house. This was in front of the
house. At no time while I was
there did the soldier go to the back
of the house. The soldier did not
threaten me with his pistol but
he played about with it and I
got worried. He did not make
any noise.

Third witness Josefine Kiffner 3 Hamburg.

Bad Salzuflen states:-

I am a german citizen. On the 8th July
I met a Canadian soldier between
2145 hrs and 2200 hrs. I recognise
the accused as that soldier.
I first saw the accused outside
at the back door. The soldier was with
Helga Hellop whom I also recognise
I understand very little English, I also
speak it very little
I did not see the accused in the house
but I saw him standing in the
doorway. He did not say anything
to me. I took the soldier to the
front garden and told him he was
drunk and should go home

Lord Withers (continued)

the accused did not ask me if he could see a girl. I went for help and fetched two soldiers. One told the accused to leave but he refused and drew his pistol, then the soldier ran away and said so too. I did not see anything else happen.

Cross-examined.

The accused was not making a noise. I did not see him struggle with or strike anyone.

Fourth Witness 1589043 Pte Goulds H.
189 Pioneer Coy. sworn states:-
On evening of 8th July I was on guard at 67. D.I.D. in Bad Salzuflen. I was on guard from 1900 hrs to 1300 hrs outside main gates of 67 D.I.D. About 2015 hrs a woman spoke to me and as a result I went with her and Pte Watkins to a house at the rear of 67. D.I.D. When I got there I saw the accused whom I now recognise. I went into the house when Pte Watkins remained outside. I went into one of the rooms on the left hand side and heard shuffling and said a canadian soldier called a woman. I spoke to the soldier and said "Don't you think it is time you was

Fourth Witness (continued)

on your way. He said "Who the Bloody hell are you". I told him I was detailed to get him out of the house and he said "You English bastards are always spying on Irish people" He heard me say that I had been detailed by my officer to go there before I could say any more he pulled his pistol out. When I saw the pistol I said "Don't be foolish Stunch you had better come on your way". My rifle was on my left shoulder and he made a dive for it. I managed to struggle with him and told him not to be foolish. I held on to him and got him towards the door. I managed to get him down the verandah stairs to the front gate. We walked down the lane and the accused still had the pistol sticking in my ribs. Half way down the lane the accused shouted to the Watkins and asked where he was going and pointed the pistol at him and forced the Watkins to light a cigarette for him. As we walked up the lane I told the accused that the C.M.P.'s were at the top.

Frank Wilkes (continued)

the accused said "to hell with them". When we got to the top of the lane Frank told him to put his fists away which he did. When we got to 67. D.D. Frank told the accused that he had better be on his way. I left him outside hearing said good night. I noted the incident in my office while the accused was in the house he was struggling with Hedwig Schmeyer whom I could see quite plainly.

Cross-examination

At first I could not see anything in the room, but on going inside the room saw the accused with a woman. The accused pulled out the fists while I was in the room talking to him, and afterwards made a dive for my life. He was still holding the fists when he did this. I got him out of the way with the assistance of my colleague. The accused did not appear to be drunk and had not been drinking. The fists appeared to be an

Fifth witness (continued).

automatic
The accused pulled his pistol
out while he was ~~giving his~~ ~~evidence~~
my previous statement that
the accused pulled out his
revolver in the ford is incorrect.

Fifth witness 18271/29. Private Walkins W.
169 Pioneer Coy sworn states:—
On 8th July at approx 2230 hrs I was
on guard at 67. D.I.D. As a result
of certain information brought to
a certain house I found Pte Gault
struggling with a canadian soldier
whom I was recognise. On entering
the steps to go into the ford the
accused pulled out his
revolver and was a little nervous
to ~~pass~~ down the steps and
the accused came down the
steps while Pte Gault still struggling
to get his rifle from the accused
I saw the accused take his
pistol from his holster while
in the ford. A few minutes
later the accused pulled out
his cigarettes. I saw them at
me and told me to light one
for him. After doing so I told
to get away to find ~~Gaston~~ myself
I could not find Corporal of the
guard at 67. D.I.D. me went

I knew the police had arrived and I was called to identify the accused I did not struggle with the accused He did not strike or touch me at any time. I did not see him strike anyone but he was struggling with Pte Grubb. His fist was in his right hand and he held Pte Grubb's rifle with his other. The revolver was pointed at both me and Pte Grubb. I saw it pointed at Pte Grubb but I did not see it touch Pte Grubb.

Cross-examined

I was asked by Pte Grubb to go down to the house. He ran and I walked. Grubb was then ~~about~~ not more than two minutes before me. The front door was open. I saw one german woman but she was the one who had been to the Office.
When I arrived the accused had one hand on Grubbs rifle and the other was free, and the only struggling was the holding on to the rifle by the accused. ~~Accused's~~ fist was a large black one of the automatic type. In my opinion the accused

had been drinking but not unduly
He was a little unsteady on his
feet but was capable of standing
He was dull and heavy
I was not close enough to smell
his breath.

FORM B. (To follow last page of the evidence for the prosecution).
Page.

D E F E N C E.

The accused is informed of his rights in accordance with R.P. 40(A). and Note 2 on page 644 of the Manual of Military Law 1929 Edition.

The accused is asked the following questions:-

Q.1. Do you wish to give evidence as a witness ?

A.1. Yes.

Q.2. Do you intend to call any other witnesses on your behalf ?

A.2. No. Yes.

Q.3. Are they witnesses as to character only ?

A.3. Yes.

Defence

Fmr Witness D - 123431 Private Dutoma A.
N.T. Inspection Branch. R.E.A.S.C. sworn states

8th July 1945 I went on my day off. I breakfasted about 11 o'clock in the morning with a friend who was going back to Canada and we wanted to celebrate. We found a bottle of German liquor which was strong tasting. We drank all the morning and then went down for dinner. After dinner we started celebrating again. By about three o'clock as far as I can remember we had drunk two bottles. After then I did not remember any more. The next thing I remember I was down in the Empire Club. There we finished the other bottle and after that I do not remember anything. I do not remember leaving the Empire Club.

The next thing I remember was going down to the toilet at 10 o'clock the morning. Normally I do not do much drinking. I had not drunk any for two and a half months previous to this occasion.

I joined the Army 2nd July 1941.
I proceeded overseas 22nd November 1941.
I came to this theatre 6th July 1944.
I have had no crime since joining the Army.

Defence

First Witness (continued).

Same 21. years of age.

Cross-examination by the Prosecution.

declines to cross-examine the accused.

Second Witness Major. B. Ellison.

Officer commanding 3. Edn Movement M.T. Inspection Branch. R.A.S.C. sworn states:-

I recognise the accused as Pte Andre Dubeau. I have known him since October 1941. When he was in my workshop Redcar 80. Edn Bridge Coy.

At the time I have known him he has been my batman until 20th May 1944. During that time to my certain knowledge he has been absolutely trustworthy and his character and actions at all times have been beyond reproach. During that period I have never known him drunk. I never had him get himself into any trouble whatsoever. He has always been of a quiet and pleasant temperament and always ready to carry out any order I have seen the accused from time

Second Witness (continued)

to time since 20 May 1944 and to my knowledge there has been no trouble with him

He came to his present unit in February 1945 and has been here since then and has been my batman again since May 1945 until present time, and his conduct has been first class

You have heard the evidence which in short is this: The accused arrested a young German girl on the road and despite her request for him to leave her alone he persisted in following her to her home and he did on the garden again repeatedly ask him to leave her to no avail. There the accused attempted to hold conversation with the girl. Next the accused entered the house and demanded of her mother after repeated requests to make love to her. Here the evidence ends. The very elderly lady. A little contradictory of the elderly lady now states that the accused did NOT hold her in his arms, but the evidence of Pte Grubb states he found the elderly lady & the accused in such an embrace. that in fact it was their shuffling which attracted his attention. The evidence is clear on the question of the revolver which was displayed in the house. As to the charge of common assault - (see Evid. page 113) there is no question that upon the evidence the accused did point at and prod Pte Grubb in the ribs with the revolver.

I would respectfully submit that the charges have been adequately proved and would ask that the Court find the accused guilty as charged.

M Bridges Capt

Staff JAG Can Sec Col No 4 Army Gp

Closing address of Defending officer.

Refer to charges in turn.

First Charge - no evidence that there was any disturbance. 3 Civilian Witnesses and Grubb all agree no loud noise or molesting or struggling with any woman. Three Civilian witnesses say accused never in the house. No evidence that he brandished a pistol or struggled with a woman. First charge should ~~not~~ be not guilty.

Second Charge. No evidence that fraternizing is conduct to the prejudice etc. In any event accused did not fraternize. Refer to dictionary for meaning of word. Mate friends with." Accused did not do this. Merely attempted to

Unreliability of Grubb's evidence. Inconsistencies as follows (a) Question as to when pistol drawn. Grubb inconsistent with own statement at Summary. Watkins' statement that pistol drawn outside house, where ~~other~~ Watkins was.

(b) Accused's drunkenness. Grubb says no evidence of drinking. Watkins a 3rd witness both of fact.

(c) Arrival at house. Grubb said he arrived with Watkins, who says he arrived after Grubb.

(d) Grubb says he was detailed in company with Watkins who says he came along at request of Grubb.

Hence Grubb's evidence not such as should support a conviction

Third Charge. Submit pistol drawn on arrival of Watkins. Quite consistent that accused thought 2 Soldiers were going to attack him, there for he drew pistol. Had all opportunity to assault Grubb if he had so desired. Submit no assault, but merely drunkenness.

Guilty of Lesser Offence

2 July 45
In the field
German

Finding The court being reopened :-

The Court find D.1234 31 Private André Dubeau 3rd Coy Movement H.Q. M.T. Reinforcement Branch R.C.A.S.C. is Not Guilty of the Second Charge

The court being reopened the Accused is again brought before it and the finding on the Second Charge is read in Open Court R.P. 45 (c) and R.P. 117 (b) have been complied with.

FORM C. (To follow, where appropriate, the last page of the evidence for the defence).

Page:-.....

(ON A PLEA OF GUILTY).

The summary of evidence is read marked and attached to the proceedings.

Do you wish to make any statement in mitigation of punishment ?

Answer:

The accused (Defending Officer) makes (no) (the following) statement (which is marked and attached to the proceedings).

STRIKE OUT IF NO PLEA OF GUILTY.

Do you wish to call any evidence as to character ?

Answer:

(For evidence see separate sheet).

AFTER FINDING: Capt. R.A. Briggs. Canadian section, 1st Echelon.

is sworn and states:

I produce (A.F.B.296) relating to the accused (marked and attached to the proceedings). The accused is 21½ - F. years of age, and has 4 years service. He has been 15 days in close arrest.

Question to the accused:

Do you wish to address the court, or to call evidence as to character ?

Answer:

The accused (Defending Officer) makes (no) (the following) plea in mitigation of sentence (which is marked and attached to the proceedings).

Plea in Mitigation of Punishment

Refer to evidence of Accused and Major Ellison. Excellent record, unaccustomed drink which led to stupid conduct. Nothing vicious in his actions. No malice. Completely free conduct sheet. Submit he should be punished as for drunkenness only.

Geoffrey Lockett Capt

25 Fd Hs
In the Field
9.10.44

The Court is closed to consider sentence.

No. D123431 Name DUTEAU, A | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 2 Jul 41 | GC Badges | Service or Proficiency Pay .20¢ 3/17 MFM 6 1.1-43 (AFB 122)

Date of last entry in Company Conduct Sheet: Nil | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine: Nil | Sheet No 1 | Signature OC Company, etc: Alex Paquau Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing same with Dial	By whom awarded	Remarks
Original sheet destroyed on completion of two years service: Authy Oversees R.C. 319									

Certified True Copy

(R. M. Walsh) Captain
A.C. 3 Can Inor (Hq) MT Insp Branch
RCASC.

(PTO)

THIS IS TO CERTIFY THAT I AGREE WITH THE CHARGES AGAINST D.123431 PRIVATE DUTEAU, ANDRE OF 3 CDN INCR (HQ) MT INSP BRANCH RCASC AS SHOWN ON THE ORIGINAL CHARGE SHEET ATTACHED HEREWITH.

B. Ellison Major

(B. Ellison) Major
O.C., 3 Cdn Incr (HQ) MT Insp Br RCASC

The accused was cautioned as follows:-

Do you wish to make a statement or to give evidence on Oath?

You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence and reserves his defence

Duteau A.

D,123431 Pte Duteau A.
3rd Canadian Increment (RE)
MT Inspection Branch,
MCASC

I Certify that the foregoing Summary of Evidence consisting of SEVEN (7) pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

Capt

R.M. Walsh, Capt.
3rd Canadian Increment (RE)
MT Inspection Branch,
MCASC.

I, D,123431, Pte Duteau A, desire the assignment of Capt FREEMAN, 35 Army Tps Coy, MCASC, to represent me at my forthcoming Court Martial

Duteau A

D, 123431 Pte Duteau A.
3rd Canadian Increment (RE)
MT Inspection Branch,
MCASC.

...nd girl. I told him that she was not here. Then the soldier began ... with his pistol. I got afraid and called for Miss Kupper, who talked ... in English. Then she ran away. Some minutes later, she came back with two soldiers, who took the soldier with them.

Frau Hedwig Welmeyer

Frau Hedwig Welmeyer

I Certify that the above is a true translation into English of the evidence given by Frau Hedwig Welmeyer.

Official Interpreter

The accused declines to cross examine the witness.
An Interpreter was available.

NINTH WITNESS
For the Prosecution

Josefine Kuepper
3 Hellweg
Bad Salzuflen, Germany.

Josefine Kuepper having been duly sworn states:-

I am Josefine Kuepper, residing at No. 3 Hellweg, Bad Salzuflen, Germany. On the 8th July 1945 at about 2245 hours. I was in my room as my landlady called for me. I saw a soldier who stood in front of the house with ADELA MUELLER. My landlady asked me to send the soldier away. I spoke to the soldier and told him to go away. I had the impression that he was drunk. After that I went into the house and closed the door behind me and went into my room. I heard the bell and then I was called downstairs again and saw the soldier standing there. The soldier told me that I was not the girl he wanted to see. After that I went away and fetched two English soldiers. After about 15 minutes I returned with those two English soldiers and one of these asked the soldier who stood in our house to go with him. At that moment the other soldier drew a pistol and told the soldier who had come with me to go away. One of the soldiers who had come with me run away and I went up to my room and did not see anything further.

Josefine Kuepper

Josefine Kuepper

I Certify that the above is a true translation into English of the evidence given by Josefine Kuepper.

Official Interpreter.

The accused declines to cross examine the witness.
An Interpreter was available.

I said I was only guarding the "Food Depot" and had no interest what he was doing. The Canadian looked very queer, I did'nt know quite what to do, he had hold of my rifle sling so I could'nt make a move without being shot. He did not seem convinced what I had told him and we walked further down the lane - all the time with his hand on my rifle sling and his right hand holding the revolver. I expected something, he looked queer. I talked and talked until I finally persuaded that things were O.K. as far as I was concerned. I was with him half an hour.

I identified the Canadian when he was brought into custody.

The accused declines to cross examine the witness.

.....L Dawson
5257742 Pte Dawson L.

SEVENTH WITNESS
For the prosecution

Helga Mehlop
3 Hellweg
Bad Salzuflen, Germany

Helga Mehlop having been duly sworn states:-

I am Helga Mehlop, residing at No. 3 Hellweg, Bad Salzuflen, Germany. On the 8th July 1945 at approximately 2200 hours I was just going home when a soldier came towards me asking to bring me to my house. I said "No", but the soldier accompanied me. He offered a cigaret to me which I took. When coming to our house, I called for my grandmother, who was accompanied by Miss Kupper, who then talked to the soldier. I would be able to identify the soldier.

..Helga Mehlop.....
Helga Mehlop

I Certify that the above is a true translation into English of the evidence given by Helga Mehlop

M Cullen Flt Lieut.
Official Interpreter

The accused declines to cross examine the witness.
An Interpreter was available

WITNESS
Prosecution

Frau Hedwig Wehmeyer
3 Hellweg
Bad Salzuflen, Germany

Frau Hedwig Wehmeyer having been duly sworn states:-

On the 8 July 1945 at approximately 2200 hours I stood at my window where saw my granddaughter coming along with a soldier. I went into the kitchen as my granddaughter did not come upstairs at once, I looked out of the window in and saw her trying to hinder the soldier from coming into the house. Miss Kupper who was with me came down stairs with me and I opened the door t my granddaughter in. Some minutes later I heard another noise. I went stairs and saw the same soldier who had entered the house. The people living downstairs told him to leave the house, but he always asked for

About 5 minutes later the CMPs arrived - I understand they had been phoned for when the woman first appeared - And I accompanied them up the road in the direction which the Canadian had taken. I identified him to the CMPs and they arrested him.

The accused declines to cross examine the witness.

H. Grubb
158[illegible] Grubb H.S. (Pte)

WITN NUMBER
For the Prosecution

1827129 Pte Watkins W.
189 Coy Pioneer Corps

1827129 Pte Watkins W. having been duly sworn states:-

I am 1827129 Pte Watkins W. of 189 Coy Pioneer Corps. I was on guard at 67 D.I.D., on the night of the 8th of July 1945 when I was asked by Pte H.S. Grubb to help him evict a Canadian soldier from a house at the side of the Depot.

I accompanied Pte H.S. Grubb to the house and when we arrived at the house Pte Grubb went inside and I stood outside, just inside the porch.

After a few minutes I saw Pte Grubb coming out of the house towards me struggling with a Canadian soldier, who on seeing me produced a revolver and kept pointing it at both Pte Grubb and myself. At that time he had hold of Pte Grubb's rifle and in this manner they started walking slowly up the lane.

The Canadian produced a packet of cigarettes and forced me to light a cigarette for him.

Pte Grubb was still trying to get his rifle away from the Canadian and seeing my chance I slipped away to try and obtain further help.

I was not present when the Canadian soldier was arrested but I identified him to the CMPs later on in the 67 D.I.D. Office.

The accused declines to cross examine the witness.

W. Watkins
1827129 Watkins W. (Pte)

WITN NUMBER
For the Prosecution

257742 Pte Dawson L.
189 Coy Pioneer Corps

257742 Pte Dawson L. having been duly sworn states:-

I am 257742 Pte Dawson L. of 189 Coy Pioneer Corps. At approximately 2245 hours on the 8th July 1945 I was walking at the back of the "Food Depot" when a Canadian asked me if I could tell him the way to his company. I said "Just round the corner" and proceeded with him down the lane. When I got half way down he stopped and pulled his revolver out - he accused me of spying on him and said he would'nt stand for it.

/I, said.....
Sheet 5

FOURTH WITNESS
For the Prosecution

1589043 Pte Grubb H.S.
189 Coy Pioneer Corps

1589043 Pte Grubb H.S. having been duly sworn states:-

I am 1589043 Pte Grubb H.S. of 189 Coy Pioneer Corps. I was on guard at 67 D.I.D., RASC, Bad Salzuflen, on the night of 8th July 1945.

At approximately 2315 hours I noticed a woman running towards the D.I.D. office crying and trembling. I stopped her and she said to me in broken English "I want to see the Officer"

I accompanied her into the office and heard her say to the Corporal who was on duty - a RASC Cpl - that a soldier was in her house causing a disturbance and would not leave.

The Corporal telephoned upstairs to the Officer in charge D.I.D., who told him to send two of the guards to the house.

The Cpl detailed myself and No. 1627129 Pte Watkins W, and we proceeded to the house to see what was happening.

When we arrived there the door of the house was open, and I walked in while Pte Watkins waited outside.

I entered the first room on the left leading off the hall, and at first glance the room appeared empty, but looking behind the door I saw a Canadian soldier holding a woman who was crying and struggling with him.

I intervened and said to the soldier "Don't you think it was time you were on your way, soldier". Thereupon he left the woman and made a dive for me. He started struggling with me and tried to wrest my rifle from me, saying, "English bastard spying on me, what do you think you are on here?".

I said to him, "I have been sent to fetch you out of the house".

I managed to lever him out of the house into the porch with my rifle, and motioned to the woman to close the door on us.

Outside in the porch we again struggled, moving down the three steps, and he said to me "I'll blow your brains out if you try anything here", and with that he pulled his revolver out and jammed it into my ribs.

I said "Don't be silly man, you are very foolish".

He quietened down a bit and moved towards the lane with me, but he still had hold of my rifle and his revolver was still in my ribs.

Pte Watkins was a few yards away, and the Canadian soldier shouted to him, "Hey you, what are you doing" and took his revolver from my ribs and pointed it at Pte Watkins.

Pte Watkins came up and the soldier threw a packet of cigarettes on the ground and said "Light one for me and take one for yourself". Pte Watkins did so.

Then the three of us moved up the lane, with Pte Watkins leading. All this time the Canadian soldier still had hold of my rifle.

When we came abreast of the D.I.D. Office, the Canadian let go of my rifle, as I told him that the MPs were up at the top, and I slipped into the Office while he was outside.

I reported to the Officer i/c D.I.D., and the Officer, apparently thinking that the Canadian soldier had gone away, said, "that's all right", and before I had time to explain I turned round and found that the soldier had gone off.

/About.....
Sheet 4.

3191662 L/Cpl COATES C. 120 Provost Coy

SECOND WITNESS
For the prosecution

3191662 L/Cpl Coates C. having been duly sworn states:-

I am 3191662 L/Cpl Coates C. of 120 Provost Coy CMP.

At about 2310 hours on the 8th July 1945 I accompanied Cpl Bates J. of 120 Provost Coy to 67 D.I.D. to investigate a disturbance which had been reported to Cpl Bates J.

After Cpl Bates had ascertained that a disturbance had taken place we searched the area and detained two soldiers namely

No. D.12343 Pte Duteau A.
and
No. L.110086 Pte Lillico A.B.

both of

3 Canadian Increment (RW)
M.T. Inspection Branch
RCASC

We conveyed them to 67 D.I.D. where Pte Duteau was identified by Ptes Watkins W, Dawson L and Grupp H, all of No. 2 Section 169 Coy Pioneer Corps as the soldiers concerned in the disturbance.

Pte Duteau, when pointed out as the soldier causing the disturbance, stated "I did it, but I had been drinking and I did not know what I was doing".

Cpl Bates J of 120 Provost Coy disarmed Pte Duteau A by removing his pistel, and placed him under arrest.

Cpl Bates and I then conducted him to his Unit where he was handed over to the Duty Officer

The accused declines to cross examine the witness.

Signed C. Coates
3191662 L/Cpl Coates. C.

S/128833 Cpl Curtis L.A.
67 D.I.D., RASC

THIRD WITNESS
For the Prosecution

S/128833 Cpl Curtis L.A., having been duly sworn states:-

I am S/128833 Cpl Curtis L.A. of 67 D.I.D., RASC. On the 8th July 1945 I was Duty NCO in the office of 67 D.I.D., RASC, Bad Salzuflen when at about 2300 hours a German woman came into the office and stated that a soldier was in her house and would not leave. I detailed two men of the Depot Guard supplied by 169 Pioneer Corps Coy along to the house. They returned stating that they could not deal with the matter. I was then instructed by my OC, Capt W.H. D'Anson to telephone the 120 Provost Coy CMP and report the incident to them and ask for assistance as soon as possible.

The accused declines to cross examine the witness

L.A. Curtis
S/128833 Cpl Curtis L.A.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D. 123431 Pte DUTEAU A, 3rd Canadian Increment (HQ) M.T. Inspection Branch, RCASC, a soldier of the Canadian Army Overseas.

FIRST WITNESS
For the Prosecution

6.78342 Cpl BATES J. 120 Provost Coy

6.78342 Cpl BATES J. of 120 Provost Coy CMP having been duly sworn states:-

I am Cpl Bates J. of 120 Provost Coy. On the 6th July 1945 at about 2310 hours I was on duty at 120 Provost Coy HQ at Bad Salzuflen, Germany, when, acting on information received I proceeded accompanied by L/Cpl Coates J. of 120 Provost Coy to 67 D.I.D. RASC where I saw

No. S/128833 Cpl Curtis L.A.
67 D.I.D.
RASC

who informed me that he had ordered

No. 1627129 Pte Watkins W.
and
No. 1589043 Pte Grubb H.S.

both of No. 2 Section 185 Pioneer Corps to a civilian house located at

No. 3 Hellweg
Bad Salzuflen

occupied by

Frau Hedwig Helmeyer,
Helga Mahlop and
Josephine Kupper

where a Canadian soldier had caused a disturbance.

I proceeded to the above mentioned address and ascertained that a disturbance had taken place. I then searched the area and detained two soldiers namely

No. D.123431 Pte Duteau A
and
No. L.110086 Pte Lillico A.R.

both of

3 Canadian Increment (HQ)
M.T. Inspection Branch,
RCASC

I conveyed them to 67 D.I.D. RASC where Pte Duteau A. was identified by Pte's Watkins W. Lawson L and Grubb H, all of No. 2 Section 185 Coy Pioneer Corps as the soldier concerned in the disturbance.

Pte Duteau A, when pointed out as the soldier causing the disturbance, stated "I did it but I had been drinking and I did not know what I was doing"

I disarmed him by removing his pistol which he was carrying in his holster.

I arrested him and conducted him to his Unit where I handed him over to the Duty Officer to be detained

The accused declines to cross examine the witness.

.....
6.78342 Cpl Bates J.

5/A(92). F

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
D.12343	Pte	HATHAM, A.	3 Cdn Inor (HQ) MT Insp Branch RCASC

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For	.....	times
For	.....	times
For	.....	times
For	.....	times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* ~~The accused was entitled to the following decorations~~

~~and/or~~ ..... ~~and/or~~ .....

~~having been awarded~~ ..... ~~and/or~~ .....

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and

~~Nil~~ 16
~~Nil~~
for ~~Nil~~ days in military custody, making a total of

~~Nil~~ 16
~~Nil~~
... days of which ..... Nil days were spent in hosp.

5. The present age of the accused is 21 yrs 11 months

6. The date of his attestation is 8 July 1941

7. The service which the accused is allowed to reckon is 1 yrs 11 days

8. The accused is in possession of # C.V.S.M. & Clasp

9. ~~(If the accused is a warrant officer or non-commissioned officer, the accused is served continuously, without reduction, in the undermentioned ranks -~~

	Date of Promotion
In the substantive rank of ...N/A...	.....N/A...
In the war substantive rank of N/A...	.....N/A...
In the acting rank of .....N/A...	.....N/A...

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

State the military decorations (if any) held by accused.

Army Form B.296 (Usr)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 26th day of July 1945

[signature]
Capt

[illegible] O. 3rd Can Bn (H&S)
M T Mob Br. R.C.A.S.C.

47-69

Pl. Duthie J. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-30362 Pte Mathis, J.H. 9 Cdn Armd Bde Tpty + B.U. RCOC

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 713, and in lieu of kit see RP 44 fn 8.)

~~At present under sentence for~~ ~~5/-~~ beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer field punishment for 60 days and to forfeit all ordinary pay for a period of 60 days.

(Sgd) Gordon H Jermyn 17 Jan 45 (Sgd) A Lucas (1)
Judge-Advocate, if ~~any~~ Capt Date awarded. President. (AA 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) (JRR Gough) Brig

Date 23 Jan 45 Commanding A Tps Area, First Cdn Army
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C-30362 Pte. DYMIE, James, Hubert	In the Field 26 January 1945	W.E. Leach Capt (W.E. Leach) Capt. Officer Commanding.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 100, 42-69

FIELD GENERAL COURT-MARTIAL

CP486 (In lieu of AFA21 46/P.W.B./1606) (46/10) 4/38B

Convened by Order of Brig. J.R.R. Gough Cond A Tps Area dated 13 Jan 45
Brig Cdn Army

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 306, 328, 330.)

Number. (a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-30362 Pte	James Hubert	Dymie	9 Cdn Armd Bde Tpty + B.U. RCOC

RECEIVED 27 FEB 45 BRANDON ARMY

PROCEEDINGS REVIEWED [illegible] MILITARY OFFICE, C.M.H.Q.

PROCEEDINGS REVIEWED [illegible] Gen. Sec. G.H.Q. 2 Echelon A.D.J.S.

PROCEEDINGS OF TRIAL.

Held in the Fd at (country) Belgium on (date(s)) 17 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting JAs~~ JA, ~~if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RCs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A45, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~5/-~~ attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~5/-~~ amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 22, 24.)

A3. The Court is opened. The accused is ~~5/-~~ brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~5/-~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete if not applicable.)

A5. President to accused: Do you object to ~~5/-~~ as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. PP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W. A. Lucas	66 Cdn Gen Tpt Coy RCASC
Member	Capt	J. H. Mathis	10 Cdn Gen Hosp RCAMC
Member	Capt	F. S. Babb	10 Cdn Gen Hosp RCAMC
Judge-Advocate	Capt	G. N. Jermyn	HQ A Tps Area 2nd Cdn Army
Prosecutor	Lt	C.G. Smith	9 Cdn Armd Bde Tpty + B.U. RCOC
Defending Offr	Lt	J.A.D. Ligman	9 Cdn Armd Bde Tpty + B.U. RCOC

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pris a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~5/-~~ plea.(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 36, 39(A), 113), or in bar of trial (RP 38), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), each plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~5/-~~ arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does ~~5/-~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A8s to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is ordered to~~ ~~5/-~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President/JA, ~~Hon~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(3), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(4), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No S/R (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
~~(1. Court may be cleared to consider the statement. Delete whole or part not used.)~~

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by vir of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using para D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*i*).)

C2. The charge on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 335. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No S/R
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Services(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Presiding Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFR* 315 *or MFR* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. You can be my defending Officer. (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried sepatately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheet(s) on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 108, 130, 340-344. *Overseas AO* 109, 1103, 3000, *p* 662, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), 140(*b*), *MML p* 182. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 347. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

b-a-h

CHARGE SHEET

The accused: C-30382 Pte. James Hubert DUTHIE of No. 9 Cdn. Mobile Laundry and Bath Unit (Type "A") R.C.O.C. a soldier of the Cdn. Army Overseas is charged with:

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from his unit from 2130 hrs 25 Dec 44 until 1700 hrs 29 Dec 44 (Absent: 3 days 19 hrs 30 minutes)

In the Field
30 Dec 44

(F.W. Swinburne) Capt.
Officer Commanding,
No. 9 Cdn. Mobile Laundry and
Bath Unit (Type "A") R.C.O.C.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
13 Jan 45

(JRR Gough) Brig
Comd A Tps Area
First Cdn Army

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&R/1097 (D662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.30382	Pte	Pte	James Hubert	DUTHIE	No.9 Cdn Mob Lndy & BU (Type "A") RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Pd Offr or President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(C). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.A. LUCAS	66 Cdn Gen Tpt Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by OC 10 Cdn General Hospital RCAMC	
Captain	To be detailed by OC 10 Cdn General Hospital RCAMC	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Captain	G.H. JENKIN, ADJA	HQ A Tps Area.

On Active Service in the Fd

in Belgium (Country.)

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 13 Jan 45

(JRR Gough)
Commanding A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RQ (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 86(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 13345 Cpl H. Jones, RWR, sworn, states :

I am a sgt of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. [or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. *(RP 86(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused *(not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10))*, or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 48 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address *(on matters other than in mitigation of punishment)* by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).)*

(vii) Summing up by JA, if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 557.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (k).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in part 3 of Schedule on p 4 after minute of sentence awarded. *(AA 53(3), RP 118(C), MML p 759.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

17 Jan 1945.

This is to certify that I have medically examined C-30382 Pte. DUMAIS, James, Hubert, No. 9 Cdn. Mobile Laundry and Bath Unit, (Type "A") R.C.O.C., and find him Fit (Fit or Unfit) to undergo trail by Field General Court Martial.

F. A. Downing Capt R.M.O.

No. 9 Cdn. F.D.S.

Plea for Lineancy

in the case of C-30382 Pte. Duthie, J.H.

Sir:

The accused, C-30382 Pte. Duthie, J.H., has been on Active Service in the Canadian Army since 27 June 1940. He arrived in England on the 2 March 1941. On the 27 June 1942 Pte. Duthie was awarded a good Conduct stripe. On 9 Sep 1943, he had a letter from his mother stating that his wife was misbehaving and living with another man. Pte. Duthie immediately asked his O.C. for compassionate leave. The application for leave was rejected but promise was made of an investigation being carried out as to his wife's conduct.

On 10 March 1944, Pte Duthie received a letter from C.M.H.Q. informing him that an investigation had been made, that his wife had been misbehaving and that her allowances had been cut.

On 11 Apr 1944, Pte Duthie requested Divorce proceedings to be started.

On 18 Jul 1944 a letter from the D.J.A.G., C.M.H.Q. informed Pte. Duthie that developments on the Divorce had been asked from the accused's solicitor.

All that time Pte. Duthie was not getting any news regarding his children except that they were being moved from place to place and at the present time he does not even know where they are.

On 18 Oct 1944 the O.C. of No. 9 Can. Mobile Laundry and Bath Unit wrote to the D.J.A.G. to get further developments on Pte. Duthie's divorce as the delay was affecting the latter's morale badly.

Later On, on 29 Nov 1944 information came that Pte Duthie's case was being delayed further because the man to whom the accused's wife was in relation had gone to Saskatchewan. Sir, the accused begs to infrom the Court that all that series of events. A wife which he loved had left him, his children being deprived of a home, a divorce which after months of waiting is still not granted, a compassionate leave home which would have fixed everything refused, all those events contributed to Pte. Duthie becoming an absentee. Pte. Duthie begs the Court for lineancy in judging his case.

J.H. Duthie

EXHIBIT A.

L.A.C.

Summary of Evidence

in the case of C-30382 Pte Dunthie, J.H., No 9 Type A Canadian Mobile Laundry and Bath Unit, RCOC.

The Commanding Officer directs that the evidence shall be taken on oath.

1st Witness, C-41208 Sgt Doucet, D.R., No 9 Canadian Mobile Laundry and Bath Unit (Type "A") RCOC. (having been duly sworn) states:

"As Orderly Room Sgt., I was notified on the morning of 23 December, 1944 that Pte Dunthie, J.H. was absent at roll call at 2130 hours the 22nd December 1944. After 24 hours of absence I rendered the necessary casualty return to Officer i/c Canadian Section G.H.Q. 2 Echelon, 21 Army Group. Each morning thereafter up to and including 27 December 1944 Pte Dunthie's absence was confirmed and reported to the O.C. At approximately 1710 hours 27 December, 1944, I was summoned from the Sgt. Mess by the Orderly Room Clerk. I immediately went to the Orderly Room and upon seeing Pte Dunthie there, placed him under arrest and gave him copy of two charges

Signed D.R. Doucet

The accused declines to cross examine the witness

2nd Witness.

F. 5195 Cpl Lawrence, L.W. No 9 Coy Mobile Laundry and Bath Unit (Type "A") RCOC having been duly sworn) states:-

"On the night of 25 December 1944 I was Orderly N.C.O. I called the roll at 0130 hours and C-30382 Pte. Duthie, J.H. did not answer his name. After checking thoroughly, and being unable to locate Pte. Duthie I reported him absent on the Daily Unit Report (AAF.B. 213). I produce the absentee report which is marked "A" and attached to the summary.

signed L.W. Lawrence

The accused declines to cross-examine this witness.

3rd Witness

B-2421 L/Cpl Gunn J.E. No 9 Coy Mobile Laundry and Bath Unit (Type "A") RCOC. Having been duly sworn) states:-

C-30382 Pte Duthie J.H. reported to me in the Unit Orderly Room, in a drunken condition, at 1700 hours 24 Dec 1944.

signed J.E. Gunn

The accused declines to cross-examine this witness.

Summary of Evidence.

In the case of C20332CR Kirkhill J.M.S.T. No 9 Canadian Mobile Laundry and Bath Unit Type "A" R.C.A.S.C.

The accused having been duly cautioned as per rule 7 procedure of (2) declines to make any statement, or give evidence on oath

I certify that the foregoing summary of evidence consisting of two (2) pages, was taken down by me or in writing, in the presence of the accused, and rule of procedure 41 (2), (3), (5), and (7) have been complied with

Date December 20th 1944

Signed D.D. Smith Lt

Place No 9 Canadian Mobile Laundry and Bath Unit (Type "A") R.C.A.S.C.

EXHIBIT B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
C-30380	Pte.	Duthie, James, Hubert, and Both Unit, R.C.C.C.	No. 9 Cdn. Mobile Laundry (Type "A")

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be read to the prisoner. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Absence without leave — 8 times.

For Conduct to the prejudice of good order and military discipline — 3 times.

For Disobeying a lawful command — 1 times.

Date of first entry in Field Conduct Sheet 2 Jan 41

Date of last entry in Field Conduct Sheet 8 Dec 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~Particulars of the character of the accused~~ None

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 20 days in military custody, *i.e.*, 9 days in open arrest, 11 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 24 Years 11 Months

6. The date of his ~~enlistment~~ attestation is 27 June 40

7. The service which the accused is allowed to reckon is 4 Years 6 Months.

8. The accused is in possession of C.V.S.M. & Clasp

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date— N/A

†Here the military decorations (if any) held by accused.

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 86936/5692 35,000 3/44 (1-4731). Forms/B.296/War/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17th day of January 1945

W.E. Leach Capt.

(W.E. Leach) Capt.
O.C., No. 3 Cdn. Mobile Laundry and Bath Unit, (Type "A") R.C.O.C.

Exhibit "C"

C-30382 DUTHIE, J.H. — CERTIFIED TRUE COPY — Sgn, Battery, or Company — Corps R.C.O.C. — Date of enlistment 8 Jul 40 — GC Badges 1 — Service or Proficiency Pay $ 1.75 MFM 6 (AFB 122) 40/PAY/136 (3438)

No — Name

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 2 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (agreeing with title)	By whom awarded	Remarks
Field 22	May 44	Pte		AA Sec 15 (1) AWL from 2300 hrs 22 May 44 to 2359 hrs 22 May 44. (Total absence 59 mins)	K-83811 S/Sgt. Damstrom AT	5 days CB	23 May 44	(F.W. Swinburne) Lieut.	
Field 5	Oct 44	Pte		(1) AA Sec 15(1) AWL from 1500 hrs 5 Oct 44 to 2255 hrs 5 Oct44 (2) AA Sec 11 Neglecting to obey Camp standing orders	K-83811 S/Sgt Damstrom AT C-33431 Cpl. McGarvey SW M-67265 L/C Derr S.J.	Forf 7 days pay FR&I 149 (2)	6 Oct 44	(F.W. Swinburne) Capt.	Forf 1 days pay FR&I 149 (1)(a)
Field 18	Oct 44	Pte		(1) AA Sec 15 (1) AWL from duty from 1500 hrs 18 Oct 44 to 2000 19 Oct 44 (total absence from duty 2 days 5 hrs) (Necessitating replacement)	K-83811 S/Sgt Damstrom AT	5 days C.B.	20 Oct 44	(F.W. Swinburne) Capt.	Forf 2 days pay FR&I 149 (1)(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
continued	18 Oct 44	Pte		(2) AA Sec 11 Neglecting to obey Camp standing orders	B-40262 L/C Scott G.M.				
Field	11 Nov 44	Pte		(1) AA Sec 15(1) AWL from 2230 hrs 11 Nov 44 to 2320 hrs 11 Nov 44 (Total absence 50 mins)	D-122618 Sgt Bourgeois,C B-110828 Cpl Ingram W.C.	5 days C.B.	13 Nov 44	A.W. Dervis) Lieut.	
				(2) AA Sec 11 Neglecting to obey Camp standing orders					
Field	8 Dec	Pte		AA Sec 15(1) AWL from 2230 hrs 8 Dec 44 to 1600 hrs 12 Dec 44 (Total absence 3 days 19 hrs 30 mins)	D-108019 Cpl Engel S. A-29015 S/Sgt Taylor, S.C.	Forf 21 days pay FR&I 149 (2)	13 Dec 44	(F.W. Swinburne) Capt.	Forf 4 days pay FR&I 149 (1)(a).

CERTIFIED TRUE COPY OF THE DOCUMENTS IN MY CUSTODY

(F.W. Swinburne) Capt.
Officer Commanding.

CERTIFIED TRUE COPY

No C-30382 Name DUTHIE, J.H. Sqn, Battery, or Company Corps R.C.C.C. Date of enlistment 8 Jul 40 GC Badges 1 Service or Proficiency Pay $ 1.75

MFM 6 (AFB 122) 40/PAM/150 (3449)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Montreal PQ	1 Jan 41	Pte		AWL from 0100 hrs 1 Jan 41 until 0800 hrs 2 Jan 41 (Total 1 day 7 hrs)		Forf 2 days pay AA Sec 46 Forf 2 days pay FR&I (Total 4 days pay	13 Jan 41	C.R. Lee Lieut.	
Montreal PQ	20 Jan 41	Pte		Conduct to the prejudice of good order and Military discipline		7 days C.B.	20 Jan 41	CR Lee Lt.	
Troops Ship	1 Mar 41	Pte		Charged with the conduct to the prejudice of good order and military discipline in that he at 2200 hrs 1 Mar 41 refused to comply with ship's orders by retiring and turning out the lights when ordered to do so by the Orderly Officer		24 hrs detention and fined one (1) days pay	2 Mar 41	J.A. Bonnel Capt.	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	2 Feb 44	L/Cpl.		WOAS AWL from 0100 hrs 2 Feb 44 to 1000 hrs 2 Feb 44 (Absent 9 hrs) AA Sec 15 (1)	Cpl. C.A. Bruce	Reprimanded	2 Feb 44	JA MacKene Capt.	Forf 1 days pay FR&I 149 (1)(a)
Bordon	12 Feb 44	L/Cpl		WOAS Disobeying a lawful command given by a superior officer	CSM Berry	Reduced to the Ranks	14 Feb 44	JA MacKenzie Capt.	
Field	9 Mar 44	Pte.		AA Sec 40 WOAS Conduct to the prejudice of good order and military discipline - Improperly dressed	Documentary	Forf 3 days pay	27 Mar44	FM Hearn Lt-Col.	
Field	30 Apr	Pte.		AA Sec 15 (1) WOAS Absenting himself without leave in that he at 2300 hrs 30 Apr 44 absented himself without leave until 1000 hrs 1 May 44 (Total absence 11 hrs)	C-33431 Cpl. S.W. McGarvey Documentary	Forf 14 days pay under FR& I 149 (2)	1 May 44	Lieut F.W Swinburne	Forf 1 days pay under FR&I 149 (1)(a)

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

4M-45

Rfn. Desticaum L.L.A.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-41627 Rfn Louis Laurient Augustine DUTIAUME, 10 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 40	Not Guilty	Guilty	
3rd AA Sec 40	Not Guilty	Not Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 46; special findings see RP 44 and MML p 753, and as loss of kit see RP 44 fn 6.)

~~As~~ present under sentence for ..... beginning on (date) ..... (1)

(1. Insert "service being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which ..... days were spent in hospital. (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR A PERIOD OF TWO (2) YEARS

(Sgd) ..... Judge-Advocate, if any. 21 Nov 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1. AA 57A. Delete if not used.)

(Sgd) G Francoeur

Date 29 Nov 44 Commanding 2 CBRG Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H-41627 Rfn Louis Laurient Augustine DUTIAUME (R W R) 10 CBR Bn.	30 NOV 44	for Maj Gen i/c 10 CBR Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4M-45.

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 22 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-41627	Rfn	Louis Laurient Augustine	DUTIAUME	10 CBR Bn

PROCEEDINGS REVIEWED 26 Jan 45 REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 21/28 NOV 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 15/6

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 885, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP (1-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (or).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 363(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Judge Advocate is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1).

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N/A (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(5). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	K F GAREN	CAC	9 Bn 2 CBRG
Member	CAPT	J LAMY	RCA	12 Bn 2 CBRG
Member	CAPT	P V B GRIEVE	CAC	9 Bn 2 CBRG
Judge-Advocate	—			
Prosecutor	LT	J W VARTY	CIC	10 Bn 2 CBRG
Defending Offr	LT	L J HACHEY	CIC	10 Bn 2 CBRG

Questions by President: Is the Prosecutor a lawyer? Ans N/A Is the Defending Offr a lawyer? Ans N/A (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1, p 3.)

A8. The accused H-41627 Rfn DUTIAUME L L A. before arraignment make(s) (no) plea(s). (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court, (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references at fns to Rof cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 885 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 3. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CBRG Vol 2 p 70

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court ~~considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) plea(s) of ~~Guilty to Not Guilty on~~ ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is (~~is~~) allowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (~~are~~) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 865. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*B*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(1) as to Character and Particulars of Service(2), and certified true copy (~~copies~~) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 160(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ....., respectively.(4)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges or all charges shown on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 131, *RP* 44-50, 69, 118, 119(*A*), *KR Con* 208, 330, 563-566. *Overseas RO* 809, 1123, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused N.41627 Rfn DUTIAUME, L.L.A. on the strength of 10 Cdn Base Rft Bn, a soldier of the Canadian Army Overseas

is charged with

FIRST CHARGE
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field absented himself without leave from 0730 hrs 6 Oct 44 until apprehended at approximately 2215 hrs 30 Oct 44 by 217 Pioneer Coy.

Total absences--24 days 14 hrs 45 mins.

SECOND CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field on the 30 Oct 44 impersonated an Officer.

THIRD CHARGE
A.A. Sec 40

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field on the 30 Oct 44 had in his possession a document purporting to be a genuine leave pass knowing it not to be genuine.

(F.M. MITCHELL) Lt.-Col
C.O., 10 C.B.R. Bn

In the Field
6 Nov 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
22 NOV 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H-41627	Rfn	Louis Laurient Augustine	DUTIAUME	10 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 NOV 44 endorsed by me, ~~for by an offr of my regt (or unit),~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial (or reference to a superior qualified offr)~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court (b) a Fd Offr as President for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate (hereat the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major K F CAREN CAC, 9 CBR Bn
(Rank.) (Must be named. RP 106.) (Unit.)

MEMBERS.

Capt To be detailed by OC 12 CBR Bn 12 CBR Bn
(Rank.)

Lieut To be detailed by OC 12 CBR Bn 12 CBR Bn
(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

Capt To be detailed by OC 9 CBR Bn 9 CBR Bn
(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

~~JUDGE ADVOCATE.~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in BELGIUM (G Francoeur) Brigadier
(Country.) (Signed personally. RP 105 fn 2.) (Rank.)

Date 22 NOV 44 Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

4/38A CFAMS (Gp Dets of AFAS) 60-P & G/1067 (4001)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 92, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 89(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (*or*, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*RP 90(C), 87(C), 92(C) (D).*)
(ii) As option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 89(C).*)
(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)
(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)
(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 2 of CF A 96 in following order:
(i) Charge sheet. (On Acpc.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Can 507.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(2), RP 118(C), MML p 759.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

10 CANADIAN BASE REINFORCEMENT BATTALION

I HEREBY CERTIFY THAT I HAVE THIS MORNING EXAMINED

1141627 Pte DUTIAUME L.L.A. 100 BRB

(number) (rank) (name) (unit)

AND IN MY OPINION HE IS FIT/~~UNFIT~~ TO UNDERGO TRIAL BY COURT MARTIAL.

DATE 27 Nov 44

STATION Field

(MEDICAL OFFICER)

N. Scratch Capt

10 CBRB

10 CANADIAN BASE REINFORCEMENT BATTALION

I HEREBY CERTIFY THAT I HAVE THIS MORNING EXAMINED

H 41627 RFN DUTIAUME J.A. R.W.R.
(Number) (rank) (Name) (Unit)

AND IN MY OPINION HE IS FIT/UNFIT TO UNDERGOT TRIAL BY COURT MARTIAL

DATE 28 NOV 44

(MEDICAL OFFICER)

10 C.A.B. Bn
28 NOV 44

ST W. Field

Proceedings.

D3

First Witness for Prosecution: 13069132 Cpl Haynes L. 217 Pioneer Coy 25 Air Field Const Gp. Br Army sworn states:

On 30 Oct 44 I was acting as gd comd at the village of Knesselle at 2120 hrs the accused, whom I recognize was stopped into the gd run by a Pte from the R.E.s and asked him his business and whom he wanted. He stated he was a Canadian Officer and a Sgt with that he wished to speak to an officer with regards obtaining some food and petrol for a party of men whom he had left outside the village. I noticed that the accused had civilian clothes on and no head dress. I told him he must wait until the arrival of an officer to whom I sent. The Officer being Lt Alderson R.E.s who on arrival Lt Alderson arrived at 2215 hrs. I spoke to him about the accused. Lt Alderson questioned the accused in my presence. The accused was placed under close arrest at 2215 hrs 30 Oct 44. The accused handed to me his pass which I in turn handed over to the Lt Sgt. The pass produced as Exhibit 'A' is one of the passes that was handed to me by the accused. The accused stated I am a Canadian Officer and wish to see an officer so as I can get some food and petrol for my men. I took to that effect. The accused could not produce papers of an Officer in my presence.

Cross-Examined The accused did not in any way show signs of an officer. I would not say the accused had been drinking. He certainly was not drunk. He did not appear normal as he kept repeating himself in his speech. From about the first hour the accused spoke was not intelligent in any way.

cont'd

I was in charge of the accused all night and I spoke to him in the morning. In the morning he did not insist he was an officer. The accused knew his surroundings in the morning as he knew he was in a guard room.

Capt. He ~~disagreed~~ insisted he was an officer during our conversation at approx 2120 hrs and a couple of times checked me for not addressing him as "Sir". The accused was dressed in Battle Dress blouse and trousers and wore a short macintosh. The accused appeared very tired RP 93 (B) Complied With.

Paper as here Pro Produced By Execution as Ex "A".

Second Witness for Execution: Capt. R. Alderson. 8th Fd Coast Coy. 25 Air Field Coast Gp. att First Canadian Army. sworn states.

On the 30 Oct 44 at approx 2200 hrs I had the occasion to visit the guard room of 217 Pioneer Coy ~~Det~~ det. While I was there it was reported to me that the accused purported to be an officer. I asked the accused ~~to~~ what identification papers he had but all he could produce was his AB 64. This book produced as Ex "B" is the book that the accused produced. I checked the document and also I pointed out to him that the rank he should be holding was that of Lt Col. He still asserted that he was an officer saying he was a one pipper. He declared that he expected to be promoted to Lt Col on 1 Nov. I asked him where he was at the time of the Arnhem ~~school~~ and he replied 1942. I then placed him under close arrest and had his papers and personal effects brought to me. Amongst these personal belongings was a piece of paper crudely written which I assumed from the wording thereon to be some sort of a pass. He admitted his true rank at approx 0900 hrs 31 Oct 44 and gave me the name of his unit which was 10 CBR Bn.

D.J. cont'd

I informed him that he was held on a charge of impersonating an Officer and also for attempting to obtain food and petrol under false pretences. On the evening of the 30th during the time I was questioning the accused he asked for food and petrol which I refused to supply. I recognize the stated pass shown as "Ex H" it was produced with his A.B. 64. I also recognize the workshop report marked as "Ex C" it was also produced by the accused in an envelope addressed to H.B. CREME. The accused stated the food and petrol was for his convoy which he had left on the road to Maseru. The accused also stated he had a MP which he had left on the roadside about 300 yds away. The accused made the statement about "Ex H" saying "that is just a pass". The accused seemed tired but sober on the night of the 30th.

Cross Examined. I would not say that the accused spoke clearly but his conversation was sober and intelligible. The accused kept repeating himself. The accused said nothing about the pass "Ex H" being genuine or not.

The Court. I greeted the accused with Good Evening, and he responded with Good Evening. Shortly after our conversation started he addressed me as Sir. At no time did he say my name is It seemed as if there was an exchange of names between the accused and myself. Accused insisted he was an Officer.

RP 83(3) Complied With.

Third Witness for Prosecution Capt E.J. Ferguson. I am a CMF officer stationed at Maseru and I have been employed as records Officer since 25 Apr 46. According to my records we have never had a Major Norman at Maseru.

Cross Examined. My records only show personnel as strength and SCs at Maseru. I could not know if there is a Major Norman in the Basuto Army or not.

RP 83 (3) Complied with.

D4

The Prosecution is closed.

D4 (i) The Defending Offr submits that the Prosecution does not est a prima facie case against the accused on the 3rd Charge.

Submission allowed.

D6 Summary By the Prosecution att.
~~Summary By the Defence Nil~~ No address.

E3. Statement in mitigation of punishment att.

Recommended Sharon Hayes

(D6)

Prosecutor sums up as follows.

The fact that the accused impersonated an officer has been established by the witnesses Cpl Harper & Lt Anderson. It is admitted by the accused stated he was an officer in the presence & associated on declaring himself as such until he was ascertained from papers in his possession that he was not an officer. In addition to this the accused was attempting to obtain food & petrol for a fictitious number of ~~motorists~~ vehicles by declaring ~~he~~ he was an officer. Therefore the accused is guilty of the crime as charged

Lt Wharton JE
Town Major
10 C BAOR

E 3.

Mr. President and Members of the Court.

It is not my wish even to attempt to contradict the evidence brought fourth in the case of L/Cpl. Dutium, the accused, rather I am emphasizing on the truthfulness of the facts brought fourth both by the prosecution and the defence.

I will start by giving you a brief summary of different circumstances and events surrounding this man's army life. L/Cpl Dutium joined the army in April 41 and proceeded overseas in September of the same year. From the time of joining to this present date the accused has a clean record, the proof of which is his good conduct stripe he still wears. He went into action on "D" Day or about and it only took one and one half days of battle to convince the M.O. that the accused was definitely a nervous and mental case so he was evacuated to England for one month's rest. He was then brought back into battle and after an hour or so of battle a different M.O. once more saw his mental incapacity to withstand the strain of battle and re-ordered the accused to be evacuated, and this time, along with battle exhaustion he suffered with a temporary loss of memory. These strung along with the thought of his three brothers, one a P.O.W. and the two others seriously wounded drove out of him the bit of sence he had left and led him to commit his first army offence.

I am presenting herew a psychiatrist report on the present condition of the accused and I must state that , although it conforms with my statements, the accused mentally state was worst a few weeks ago , having since then the quietness and restfulness of our detention quarters.

Now, let us take the evidence of the prosecution's first witness, Cpl Haynes stated that the first hour's conversation with the accused was anything but a normal one and that he raved and constantly repeated himself. He talked about the accused demanding a supply of petrol and rations, preferably corned beef. Now I ask the court, being in a tired state as he was reported to be in xx and having no transport, if this is sane reasoning. Cpl. Haynes also afirms that the accused had absolutely nothing in his dress that indicated he was an officer. He also states that the accused demanded to see an officer instead of staying away from such, no doubt his mental condition prompting him of his superiority of rank.

Lt. Alderson , the second witness states that when he asked the accused for his identity card he answered that he hadn't any but produced his soldier pay book, a fact which would be obvious proof recognized by any sane soldier as a complete give away. Both witness stressed the fact that the accused was not drunk.

In conclusion I am stating the fact that the accused, prior to going into action was made a L/Cpl. and therefore a section leader, proving his leadership qualities and initiative and that his battle experiences and other troubles I have mentioned have been contributary factors to his mental and physical deficiencies which have been confirmed in the psychiatrist's report. I therefore request the court to consider and weigh the evidence as given , proving temporary insanity.

F. Hooker, Capt.

Department of Neuropsychiatry — I.M.P. 01/46

No. 14414227 Rank Pte Name DUTTUM E. L. A. Unit R.W.R.
Date 27.11.44

Age 23 Enl Apr. 41 U.K Sept 41 B.L.A D'day In action 1½ days
F.H- F is a heavy drinker M is very nervous - 1 bro.
in army has a lowered 3' rating
Home life unhappy - as a child was timid + shy
nervous fears + enuretic He reached grade VII
at age 14 - fair sociability but little activity in
sports - he had periodic headaches and
missed a fair amount of school
work record was inadequate he would work
for a while + then loaf until he needed more
money ran around c a tough crowd and
drank fairly heavily
He apparently adjusted fairly well to army life
he was always apprehensive of fire arms + after
battle inoculation c live ammunition he became
very nervous
He landed on D day + was evac on D+1 as
amnesia - he was treated in BN + P.S hosp +
returned to Unit about Aug 15 he went in
for about an hour had an acute panic reaction
and was sent to 195 C.C. He claims while
there he was unfed at nights.
At present he is on charge for 24 days awl +
impersonating an officer he admits drinking
heavily but doesnt claim amnesia.
He is not psychotic - no evidence he was
unable to appreciate the nature + quality of
his acts and is fit to stand trial + punishment
Psychologically this man is a basic
inadequate with poor volition useless for
front line service
Boarded M 2 3 - mental Retardation
Psychopathic Personality Invalid

after fee of charges should be sent to R allocation
centre for allocation

Exhibit "A"

40 P/B/S/274 (3806.)

CANADIAN ARMY

BRITISH LEBERATION ARMY

SIR:

This is To CERTIFRAd THAT. H41627

L/Cpl. DUTIAUME, LOUIS, LAWRANCE,

HAS PERMISSION To BE ABSENT

FROM HIS COMPANY FROM. 1200 HRS.

SAT. OCT 28-10-44. TILL 29-10-44

AT 1200 hrs. SUNDAY

SIGN.

MAJOR

NORMAN.

Militia Book M.1 (Part I)
40; P.&S.)1893 (5050)

SOLDIER'S SERVICE BOOK

(Soldier's Pay Book, Militia Book M. 1 (Part II) will be issued for active service.)

Every entry in this book (other than those on page 24 of this part of Militia Book M. 1, connected with the making of a Soldier's short form of Will) is to be made under the superintendence of the Officer Commanding the Squadron, battery or company to which the man belongs or is attached, **unit will not be indicated by name, serial or orderly room stamp.**

Alterations in any of the entries will be initialled by an officer.

INSTRUCTIONS TO SOLDIER

1. You will be held **personally responsible** for the custody of this book.

2. You will **always carry this book** on your person when on duty, and on active service.

3. You must produce this book whenever called upon to do so by a competent authority, viz: Officer, Warrant Officer, N.C.O., Military Policeman or Civilian Police.

4. You must not alter or make any entry in this book (except as regards short form of Will on page 24, see instructions on pages 20 to 23), and disobedience of this order will be treated as a serious offence.

5. Should you consider that any entry is lacking or incorrect, or should you lose the book, you will report the matter to your immediate military superior.

6. You will be permitted to retain this book after discharge as a record of your services, but should you lose the book after discharge it cannot be replaced.

(I) SOLDIER'S NAME AND DESCRIPTION ON ATTESTATION

Regtl No. H 41627

Surname (in capitals) DUTIAUME

Christian Names (in full) LOUIS LAURIENT AUGUSTINE

Date of Birth 7 MARCH 1921

Place of Birth ST CLAUDE MANITOBA CAN

Citizenship

Trade on Enlistment LABOURER

Nationality of Father at birth CANADIAN

Nationality of Mother at birth CANADIAN

Religion ROMAN CATHOLIC

Enlisted at WINNIPEG MANITOBA CAN

Date 18 APR 41

Particulars of former service (if any) i.e. Regtl No., Corps and period. NIL

Signature of Soldier L L A DUTIAUME

Signature of Officer R F HENDERSON CAPT

Place IN THE FIELD Date 24-2-43

(II) NEXT OF KIN

Any change becoming known is to be duly noted with date of

NOTE—No entry in these pages has any legal

Nearest degree of relationship		Names	Date
1st	Wife		
	Children		
2nd	Father	HARRY DUTIAUME	15-4-41
	Mother	CHRISTINA DUTIAUME	15-4-41
3rd	*Brothers and Sisters	GEORGE DUTIAUME	15-4-41
4th	Other Relations (stating relationship)		

*State whether brothers are older or younger.

NOW LIVING

such change and reported by OC Unit to the Officer i/c Records.

effect as a Will (see pages 20 to 23)

Latest known Address in full
ST CLAUDE MANITOBA CAN
361 McDERMOTT AVE MANITOBA CAN
ST CLAUDE MANITOBA CAN

(III) RANK and APPOINTMENT

Date	Rank and Appointment	Temporary, Acting or Local (with or without Pay)	Authority for Part II Orders	Signature of Officer
15-4-41	RFM	WITH PAY	93	CAPT. H. JOHNSTON

(IV) Certificate Applicable to all Arms, to be completed and signed by the CO Rt. Hf. before a Soldier proceeds Overseas

TRAINED (Listed, Recruit's, Course as laid down for his arm of the Service except that he requires further training in: —

Jamaica Regiment RWR
??? Pl.

Qualified in addition as under —

Date 3-1-41

* If no further training required, strike out words in Italic and Initial.

8

(V) PARTICULARS OF TRAINING

Courses and Schools. Specialist Qualifications. Swimming, etc. show's result'	Date	Signature of Officer

9

(VI) SMALL ARMS RANGE COURSES

Year	Classification	If Table not completed, state parts fired	Signature of Officer
1943	2nd Rifle	6/4/41	
1943	2nd Bren	6/4/41	
31/12/42	60 Q	RIFLE	
5/4/43	94 (S)	"	
16-3-43	48 (S)	"	
17-9-43	29 (S)	"	
31-12-42	23 (S)	BREN	
16-3-43	104 (S)	BREN	
1944	FAIR	RIFLE	
1944	2nd	BREN	

(VII) EDUCATIONAL QUALIFICATIONS

Highest Grade attained (Degrees, Diplomas etc.)	Place	Date	Signature of Officer
GRADE 7	MANITOBA	1933	G.F. HENDERSON CAPT

(VIII) TRADE RECORD

Trade	Group	Authority School or T.T. Board and Date	Signature of Officer

(IX) EMPLOYMENT WHILST SERVING

Period		Nature of Employment	Remarks and Signature of OC Coy, etc.
From	To		
15/4/41		Bushman	

To include (1) Regimental, (2) as Skilled Tradesman, (3) as Specialist, e.g., Signaller or M Gunner.

(X) MEDICAL CLASSIFICATION

Pulhems Profile or Category	Date of Exam or Entry	Signature of Medical Officer
'A'	15/4/41	
'A'	9/5/41	
A	14/5/41	

(XIV) PROTECTIVE INOCULATIONS

Nature of Vaccine, "T.A.B." Cholera, Plague, etc.	Date	Signature of Medical Officer
TABT	23/4/41	
3	14/1/41	
	24/5/41	
TET TOX 1 CC	6/6/41	
TABT ½ CC	17/7/42	
TABT ½ CC	9/6/43	
TYPHUS ¼ CC	28-12-43	
TYPHUS ½ CC	5-1-44	
TYPHUS 1 CC	12-1-44	
TABT ½ CC	25-2-44	
Recall TYPHUS 1 CC	26-4-44	
TYPHUS BOOSTER	18-8-44	
VACCINATIONS		
23-4-41		
14-1-44		

(XIV) PARTICULARS OF DENTAL TREATMENT

Date	Required	Completed	SPECIFICATION Use authorised Abbreviations and Symbols	Signature of Dental Officer

Sec (XVI) Bank Accounts and Personal Effects

The information requested below although not compulsory will greatly facilitate recovery and disposition of service estate in case of casualty. To be entered and signed by an officer.

Name of Bank or GPO in which account is kept

Branch Address

Account Number

Personal Effects stored with:

Name

Address

Signature and rank of Officer

Sec (XVII) Miscellaneous Entries

Particulars	Date	Signature of Officer
X-RAY CHEST	18/4/41	
1 P LEAVE FM	7/12/41	
DM CHAMBER	1/6/42	
2 P LEAVE FM	30/6/42	
3 "	5/10/42	
4 "	5/1/43	
5 "	13/4/43	
FINGERPRINTED C.B. 153		
6 P LEAVE	26/3/43	

(XVII) MISCELLANEOUS ENTRIES (cont'd)

Particulars	Date	Signature of Officer
7 P LEAVE	22-10-43	
8 P LEAVE	15-1-44	
CV SM 4 CLASP	15-1-44	
On 18 Sept 44 [illegible] to 3rd Service Chevron 23/5/44		
MSM 1 Pt III [illegible]	27-6-44	
9 P LEAVE	18-7-44 to 27-7-44	

(XVIII) SOLDIER'S WILLS

1. Particulars of next-of-kin should always be set out in the form on pages 4 and 5 of this book but the soldier must understand that these entries have no legal effect as a Will.

2. The making of a Will is not compulsory. It is, however, desirable in the interests of next-of-kin that all military personnel should have made Wills, even though they may leave nothing more than a balance of pay and allowances and personal effects. It is immaterial whether the Will was made before enlistment (a civilian Will) or after enlistment (an army Will).

3. Personnel who have made civilian Wills which they wish to keep in force should not make army Wills.

4. An army Will, unless specifically stating the contrary, completely cancels any previous Will. In some cases, individuals have made army Wills as a result of a misunderstanding of their effect. In any such cases, where an individual wishes the provisions of his civilian Will to remain in effect, he should make a new Will for the purpose of reviving it. Advice and instructions in this regard should be obtained from the Legal Aid Bureau of the formation.

5. Under the laws of most of the provinces of Canada, a Will made prior to marriage is revoked by marriage, except when it is stated expressly in the Will that it is made with the intention of such marriage. Accordingly, personnel who have married after making a Will should make a new Will.

6. A "soldier's Will" (made on the Short Form of Will at pp 23 and 24 of this book) is valid for the disposal of all property, both real and personal, in any of the provinces of Canada, except New Brunswick and Prince Edward Island where it disposes of personal property only.

7. In making a "soldier's Will" on the Short Form at pp 23 and 24 of this book, the instructions thereon are out as to manner of completing the Will should be followed. The Will need not be in the handwriting of the soldier, although it must be signed by the soldier in his own handwriting.

8. Where it is desired to dispose by Will of real property (i.e., land) situated in the provinces of New Brunswick or Prince Edward Island, the Will must be in writing (not necessary to be handwriting) signed by the person making the Will in the presence of two witnesses who must sign in his presence and in the presence of each other. Such a Will may be made on the Form of Will, MFM 10 or 10a or in similar form.

9. If a soldier cannot write, or read and sign his name, advice and instructions as to completing any form of Will should be obtained from the Legal Aid Bureau of the formation or from an officer with legal knowledge.

10. In order to ensure that the information may be available in the event of personnel becoming casualties, it is desirable that either the Will, or the name and address of the person holding the Will, should be on file with the O i/c Records at either NDHQ or CMHQ. Thus, if a soldier's Will is in private custody he will inform his Company or equivalent Commander or the Paymaster of his unit who will complete and sign the following memorandum and *forward two copies thereof to the Officer i/c Records CMHQ.*

Memorandum

Number..... Rank.....

Name.....

reports that a Will made by him is in the custody of

Name.....

Address.....

Date..... Signature and Rank of Officer.

11. As a safeguard against the possibility of the loss in transit of original Wills despatched to Canada, all Wills, whether in the Short Form, on MFM 10 or 10a, or otherwise, should be made in duplicate. In the case of a Will in the Short Form, the duplicate may be on an ordinary sheet of paper. The duplicate must be signed by the soldier and, if not made on the Short Form, by both witnesses in the same way as the original. Both copies will be forwarded to the Officer i/c Records CMHQ and the following memorandum will be completed and signed by an officer:

Memorandum

*MFM 10 ~~or 10A~~
*short form of Will } dated.....

forwarded to Officer i/c Records, CMHQ.

Date..... Signature and Rank of Officer.

*Delete part not applicable.

DO NOT DETACH EITHER OF THE ABOVE MEMORANDA.

Solely for use on Active Service. The Will, on page 24, must **NOT** be used until you have been placed under orders for Active Service.

SHORT FORM OF WILL

(Write Will on next page)

If a soldier on active service, or under orders for active service, wishes to make a short Will, he may do so on next page. **It must be signed by him and dated.** The full names and addresses of the persons whom he desires to benefit, and the sum of money or the articles of property which he desires to leave to them, must be clearly stated. **The mere entry of the name of an intended legatee on the next page without any mention of what the legatee is to receive is of no legal value.**

The following is a specimen of a Will leaving all to one person:—

In the event of my death I give the whole of my property and effects to my mother, Mrs Mary Bull, 999 High Street, Toronto.

(Signature) GEORGE BULL,
Private No. 30000,

Date 5th August, 1936.

The following is a specimen of a Will leaving legacies to more than one person:—

In the event of my death, I give $10.00 to my friend, Miss Rose Smith, of No. 1, High Street, London, and I give $5.00 to my sister, Miss Maud Bull, 999 High Street, Toronto, and I give the remaining part of my property to my mother, Mrs Mary Bull, 999 High Street, Toronto.

(Signature) GEORGE BULL,
Private No. 30000,

Date 5th August, 1936.

Solely for use on Active Service. This Will page must **NOT** be used until you have been placed under orders for Active Service.

WILL

(For use if the soldier has not already made a Will or wishes to alter one already made. See instructions on page 23).

Signature .....

Rank, Regt'l Number .....

Date .....

WRITING MUST NOT APPEAR BEYOND THIS LINE

Exhibit C 2.7

WORKSHOP ACTIVITY REPORT — Form ME.38

Workshop 32 L.A.A. Workshop R.E.M.E.
Week ending 26 October 44
Situation as at 1600 hrs
Formation 107 A.A. Brigade
Location MR 408710

	EQUIPMENT	Completed	Stock
A VEHS	Churchill		
	Cromwell		
	Challenger		
	Sherman		
	Other tracked A Vehs excl Carriers		
	Carriers		
	Wh 'A' Vehs		
B VEHS	Cars	6	
	15 cwt & similar	2	
	3 ton and above	5	
	Ambulances		
	Transporters		
	Recovery Vehs		
	Other 'B' Vehs		
	Charging Sets	1	
	Cookers Portable	2	
RE	Bulldozers etc		
	Others		
Motorcycles		2	
SIGS	Wireless Sets		
	Radar Eqpts		
	L of C Eqpts WT		
	Line Eqpts		

	EQUIPMENT	Completed	Stock
ARTY	Trailers		
	AA 40 mm Wh	3	
	40 mm SP		
	3.7 in		
	Others		
	A/Tk 6 Pdr		
	17 Pdr		
	Others		
	Fd 25 Pdr		
	Others		
	SP Mtgs other than 40 mm		
	Med 4.5 in		
	5.5 in		
	Hy 7.2 in		
	155 mm		
	Others		
INSTS	Predictors		
	Others	8	
SAMD	Mortars		
	MGs	1	
	Others	3	

(Signature) [signature]
(Rank) Lt Col
O.C. 32 L.A.A. Workshop R.E.M.E.

WORKSHOP ACTIVITY REPORT — Form ME.38

Workshop 32 L.A.A. WORKSHOP R.E.M.E. — Week ending 26 OCTOBER 44
Situation as at 1600 hrs

Formation 107 A.A. BRIGADE.

Location MR 408710

	EQUIPMENT	Completed	Stock
A VEHS	Churchill		
	Cromwell		
	Challenger		
	Sherman		
	Other tracked A Vehs excl Carriers		
	Carriers		
	Wh 'A' Vehs		
B VEHS	Cars	6	
	15 cwt & similar	2	
	3 ton and above	5	
	Ambulances		
	Transporters		
	Recovery Vehs		
	Other 'B' Vehs		
	Charging Sets	1	
	Cookers Portable	2	
RE	Bulldozers etc		
	Others		
Motorcycles		2	
TELS	Wireless Sets		
	Radar Eqpts		
	L of C Eqpts WT		
	Line Eqpts		

	EQUIPMENT	Completed	Stock
ARTY	Trailers		
	AA 40 mm Wh	3	
	40 mm SP		
	3.7 in		
	Others		
	A/Tk 6 Pdr		
	17 Pdr		
	Others		
	Fd 25 Pdr		
	Others		
	SP Mtgs other than 40 mm		
	Med 4.5 in		
	5.5 in		
	Hy 7.2 in		
	155 mm		
	Others		
INSTS	Predictors		
	Others	8	
SMALL	Mortars		
	MGs	1	
	Others	3	

(Signature)

OC 32 L.A.A. Workshop, R.E.M.E.

EXHIBIT "D"

SUMMARY OF EVIDENCE

In the case of H.41627 Rfn DUTIAUME L.L.A. (R. Wpns. Rif) on the strength of 41 Coy, 10 C.B.R. Bn. A soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this evidence is taken on oath.

FIRST WITNESS PROSECUTION

K.52761 CSM McBRIDE, J.C. (Seaforth Highrs) of 51 Coy on the strength of 11 C.B.R. Bn having been duly sworn states:

I am K.52761 CSM McBRIDE, J.C. of 51 Coy 11 CBR Bn at approx 1500 hrs on the 5th of Oct 44 I called 51 Coy on parade to tell of a draft. I called the roll and H.41627 Rfn DUTIAUME, L.L.A. answered to his name with his Regt'l number. On that parade I warned the draft and told him that they would be proceeding the following morning early the exact hour of which they would be told of later. On the morning of the 6 Oct 44 I called the draft on parade at 0715 hrs, and called the roll. Rfn DUTIAUME failed to answer to his name. I detailed Sgt McKENZIE to search the Company lines for Rfn DUTIAUME. Rfn DUTIAUME was not found. When the draft proceeded at 0730 hrs. Rfn DUTIAUME did not leave with it. I placed Rfn DUTIAUME's name on an absentee report from 0730 hrs 6 Oct 44. I repeated Rfn DUTIAUME's name and number on *every* company parade held from the 6 of Oct 44 until the 12 of Oct 44, when Rfn DUTIAUME was posted to 43 Coy 10 C.B.R. Bn. He did not answer at any time, on his name and number being called.

R.P. 83(B) complied with.

J.C. McBride C.S.M.
(J.C. McBRIDE) CSM, K.52761

Cross Examined by the accused.

QUESTION

On the afternoon of 5 Oct 44 on which you say you held the parade for draft warning did I answer with my number when my name was called.

ANSWER

When the name Rfn DUTIAUME, L.L.A. was called, the Regt'l number H.41627 was answered. I had directed the parade previously that all personnel in answer to their names being called on parade would give their Regt'l number.

SECOND WITNESS PROSECUTION

F.80731 Sgt McKENZIE, R.D. on the strength of 51 Coy, 11 C.B.R. Bn having been duly sworn states:

I am F.80731 Sgt McKENZIE, R.D. of 51 Coy, 11 C.B.R. Bn. On the 5 Oct 44 at approximately 1500 hrs I was present at a parade which was held by 51 Coy for the purpose of warning a number of personnel for a draft. The accused was present at this parade and answered to his name with his Regt'l number. The draft was then officially warned that they would be proceeding the following day. On the 6 of Oct 44 at approx 0730 hrs the draft was called on parade and mustered by C.S.M. McBRIDE. The accused failed to answer to his name on this parade the C.S.M. then called the accused's name and number 2 times which the accused failed to answer. A search of the barrack room was carried out by myself and I failed to find the accused. As I was draft Sgt the draft was turned over to me and I conducted them to the assembly area. The accused was not with the draft.

R.P. 83 (B) complied with

A. D. MacKenzie Sgt
(R.D. McKENZIE) Sgt, F.80731

The accused declined to cross examine the witness.

WITNESS WITNESS
PROSECUTION

/Lieut ALDERSON, R. on the strength of 681 Rd Construction Coy, 25 Air-field Construction Group, 1st Canadian Army, having been duly sworn states:

I am Lieut ALDERSON, R. 681 Rd Construction Coy, 25 Air-field Construction Group. On the 30 Oct 44 at approx 2200 hrs I visited the guard room of 217 Pioneer Coy detachment there I was shown a soldier whom I now recognise as the accused. He had presented himself to the guard as an officer and was asking for food and petrol. I asked him for his AB 2606, but he was unable to produce one. On checking through his AB 64 I realised that the accused was a L/Cpl. However the accused still persisted in his story that he was of commissioned rank. I asked the accused why he did not wear the badges of rank of an officer, the accused replied that it was because he was only a one pipper and expected his second pip on the 1st of November. I asked the accused when he went at Officers school and he said 1942. I asked him why he wanted food and petrol and he answered that he had a convoy of 5--15 Cwt vehicles waiting in the road to Wemmin. The accused said this Major was in Wemmin and had instructed him to report to there before going to Ghent the accused stated that he had a motorcycle about 300 yards away from our camp, but the search parties which I sent out for a quarter of a mile along all the roads from the guard room, were unable to find one motorcycle. I detained the accused on the charge of impersonating an officer and attempting to obtain food and petrol under false pretenses. The accused was handed over to his unit the following day. During the period that the accused was under arrest in 217 Coy Pioneer guard room I had all his personal effects removed from his possession. Amongst these was his AB 64 Pts I and II, personal photos, a pass for 24 hrs which expired on the 29th Oct 44 at 1228 hrs, and an envelope addressed to O.R.E.E.E. First Can Army, which the accused stated had been given him by a O.R.E.E.E. (U.K.) whose machine had broken down and had asked the accused to deliver the envelope for him. This envelope contained a workshop activity report and duplicate of 32 L.A.A. workshop R.E.E.E., 107 A.A. Bde dated 26 Oct 44 and signed by Capt C.C. 32 L.A.A. Workshop R.E.E.E.I Herewith submit as evidence the pass and workshop activity report.

R.P. 83 (B) complied with

(R. ALDERSON) Lieut

The accused declined to cross examine the witness. Pass and workshop activity report accepted as evidence, and marked Exhibits A & B.

WITNESS WITNESS
PROSECUTION

/13069132 Cpl RAYNES, L. on the strength of 217 Pioneer Coy detach. 25th Air-field Construction Gp. having been duly sworn states.

I am 13069132 Cpl RAYNES, L. of 217 Pioneer Coy detach. 25th Air-field Construction Gp. On 30 Oct at approx 2120 hrs the accused whom I now recognise, entered the guard room in the company of a Cpr of the R.A. The Cpr told me that the accused wished to see an officer. I asked him his business and he told me he was trying to obtain some food and petrol for a party of men who were in the vicinity of this village. I told him it was impossible to get food without the permission of an officer and he must wait until an officer came in. I sent for an officer Lt ALDERSON who arrived at approx 2215 hrs. This officer having been on duty at the air-field and left word that he would return at approx 2300 hrs to the guard room. I noticed the accused had no badges of rank, no helmet or hood so I kept him in conversation until the arrival of Lt ALDERSON. On the arrival of Lt ALDERSON I informed him of the accused stating he was an officer and wished to speak to an officer with regards to obtaining some food and petrol. After this Lt ALDERSON interrogated the

EXAMINATION WITNESSES (Cont'd) PROSECUTION

accused and not being satisfied that the accused was an officer, and that his story sounded fictitious placed the accused under close arrest.

S.P. 83 (B) complied with

(I. BAYNES) Cpl, 13069132

Cross examined by the accused

QUESTION Did I have anything to drink that night?

ANSWER Not that I know if although the accused did have the appearance of being very tired.

The accused having been cautioned as follows: "Do you wish to make a statement or give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatsoever you may say or any evidence you may give will be taken down in writing and may be used in evidence," declines to give any evidence and reserves his defence.

I certify that the foregoing summary of evidence consisting of (3) pages was taken down by me in writing in the presence and hearing of the accused.

I certify that Rules of Procedure 4(6)(b)(x) & (f) have been complied with.

(J H VARTY) Lieut
Lorne Scots, 10 CBR Bn
Officer Detailed To Take
Summary of EVIDENCE.

LIST OF WITNESSES

For Prosecution

First Witness: K.52761 GSM McBRIDE J.C. 51 Coy 11 CBR Bn

Second Witness: F.60731 Sgt McKENZIE, R.D. 51 Coy 11 CBR Bn

Third Witness: Lieut ALDERSON, R, 621 Rd Construction Coy, 25 airfield Construction Grp. 1st Can Army.

Fourth Witness: 13069132 Cpl HAYNES, L. 217 Pioneer Coy, detach, 25 airfield Construction Grp.

For Defence

N I L

LIST OF EXHIBITS

Exhibit "A" -- Document purporting to be Leave Pass

Exhibit "B" -- Workshop Activity Report.

I CERTIFY THAT I HAVE RECEIVED FREE OF CHARGE A COPY OF THE SUMMARY OF EVIDENCE, THE CHARGE SHEET, THE LIST OF WITNESSES AND A LIST OF EXHIBITS.

I DO DESIRE THE SERVICES OF AN OFFICER TO REPRESENT ME AT MY TRIAL BY COURT MARTIAL.

Dutaunc, L.E.A

(L.E.A. DUTAUNC) Rfn R41627

Lt Alderson R on the strength of 681 Rd Construction Coy 25 Airfield Construction Troops. 1st Canadian Army, having been duly sworn states.

am Lt Alderson R 681 Rd Construction Coy. 25 Airfield Construction Troops. On the 25 of Oct at approx 2200 hrs I visited the guard room of 217 Pioneer Coy detachment there I was shown a soldier whom I now recognize as the accused. He had presented himself to the guard as an officer and was asking for food and petrol. I asked him for his AB 2606, but he was unable to produce one. On checking through his AB 64 I realized that the accused was a L/Cpl however the accused still persisted in his story that he was of commissioned rank. I asked the accused why he did not wear the badges of rank of an officer, the accused replied that it was because he was not a pip pipper and expected the second pip on the 1st of November. I asked the accused when he was an officer when and he said 1942. I asked him why he wanted food & petrol and he answered that he had a convoy of 5 - 15 cwt trucks waiting on the Rd to Ameron. The accused said major was in Ameron and had instructed him to report to this there before going to Ashent the accused stated that he had a motorcycle about 200 yards away from our camp & that

the search parties which I sent out for a quarter of a mile along all the Rds from the guard room, were unable to find any motorcycle I determined the accused on the charge of impersonating an officer and attempting to obtain food & petrol under false pretences. The accused was handed over to his unit the following day.
During the period that the accused was under arrest in 217 Coy Pioneer guard room I had all his personal effects removed from his possession. Amongst these was his A B 64 Pt. I & II, personal photos, a pass for 24 hrs which expired on the 29th Oct at 1200 hrs. and an envelope addressed to ~~Lt Col~~ CREME First Cdn Army, which the accused stated had been given him by a C REME (U.K.) authorities had broken down and had asked the accused to deliver the envelope for him. The envelope contained ~~one sheet of paper~~ a workshop activity report and duplicate of 32 LAA Workshop REME, 107 AA Bde dated 28 Oct 44 and signed by Capt O.C. 32 LAA Workshop REME. I submit as evidence the pass & workshop activity report
RP 12 (b) complied with

signed. R Alderson Lt R.E.
LT. ALDERSON R.E.

The accused declined to cross examine the witness.
Pass & workshop activity report accepted as evidence & marked

Ref Robinson Conviction

13069132 Cpl HAYNES L. – on the morning 7th of 217 Pioneer Coy detached 2nd Th Airfield Construction Coy. Thursday being duly sworn states:

I am 13069132 Cpl Haynes. L. of 217 Pioneer Coy detached, 2nd Airfield Const Coy. On 30 Oct at approx 2120 hrs the accused whom I ~~the~~ now recognise, entered the guard room in the company of a Spr of the R.E.s. The Spr told me that ~~the accused~~ wished to see an officer. I asked him his business and he told me he was trying to obtain some food & petrol for a party of men who were in the vicinity of the village. I told him it was impossible to get food without the permission of an officer and he must wait until an officer came in. I sent for an officer Lt Anderson who arrived at approx 2215 hrs. The officer having been out at the airfield had left and that he would return at approx 2305 hrs to the guard room. I noticed the accused had no badges of rank, no helmet or hat, so I ~~kept~~ kept him in conversation until the arrival of Lt Anderson. On the arrival of Lt Anderson. I informed him of the accused status, he was an officer and wished to speak to an officer with regards to obtaining some food & petrol. after

this he (Alderson) interrogated the accused and not being satisfied that the accused was an officer, and that his story somewhat fictitious placed the accused under close arrest.

R.P. 13 (b) complied with

L Haynes

signed. Cpl HAYNES L.

Cross examined by the accused

Q1. Did I have anything to drink that night.

Ans. Not that I know of although the accused did have the appearance of being very tired.

EXHIBIT E

Army Form B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
14,41627	Rfn	DUTHAUME, L.I.A.	(R. Wpg. Rif.)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For Temporary Ghost	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

Note.—If a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct therein mentioned should be produced in court with this statement but not counted in the proceedings.

† See para. 471, K.R., 1940.

* The numbers to be stated should correspond with the number of entries in the respective sheets, the difference being given for the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the character is to be drawn down the Army for demobilization must be stated separately and dated.

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 27 ~~27~~ days days in military custody, making a total of 27 ~~33~~ days days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service ~~enlistment paper~~ is 23 yrs 8 mths 3 days

6. The date of his ~~enlistment~~ attestation specified in his record of service ~~attestation paper~~ is 18 Apr 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3yrs 6mths 23 days

8. The accused is entitled to deferred pay or gratuity in respect of 3yrs 6mths 23dys service.

9. The accused is entitled to reckon 3 yrs 6 mths 23 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____ dated _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____ and in his regiment (*or* corps *or* department) the rank of _____ dated _____

(*21505) W1.24886/1730 20,000 12/42 A.& E.W.,Ltd. Gp.565
(28808) W.12284/1429 18,000 2/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ____ Rank ____ Name ____ of ____ Regiment (*or as the case may be*).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27 day of November 1944

W.W. Arthurs Capt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of	
In the rank of	
In the rank of	

(INSTRUCTION—If any entries in any of the above four columns cannot be copied from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court martial the information may be obtained from such sources as are available and the paragraph completed accordingly.)

EXHIBIT F

MFM 6
(AFB 122)
40/PAM/126 (3438)

No H41627 Name DUTIAUME L.L.A. Sqn, Battery, or Company Corps CIC Date of enlistment GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary Sheet 2 Nov 44					
				CERTIFIED TRUE COPY (C.M.B.A. Arthurs) Capt Officer with Custody of Regimental Books					

(PTO)

EXHIBIT F

No. 41627 Name LUTIMME L.L. Regt, Battery, or Company Corps C.I.C. Date of enlistment GC Badges Service or Proficiency Pay 3/17 MFM 6776

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under disposal with Unit	By whom awarded	Remarks
				Temporary Sheet 2 Nov 44					

CERTIFIED TRUE COPY

(C.E.C.A. Arthurs) Capt
Officer with Custody of Regimental Books

(PTO)

WW 50

GDSM DUTOT W-G

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused A116608 Gdsm William Golden Butot 22 Cdn Armd Regt (C&G)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	guilty	
2nd	Not Guilty	guilty	
3rd	Not Guilty	guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 083 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~imprisonment~~ ~~detention~~ ~~imprisonment with hard labour~~ ~~detention with hard labour~~ ~~imprisonment in default of fine~~ ~~detention in default of fine~~ ~~imprisonment in default of distress~~ ~~detention in default of distress~~ ~~imprisonment in default of security~~ ~~detention in default of security~~ ~~imprisonment in default of recognizance~~ ~~detention in default of recognizance~~ ~~imprisonment in default of maintenance~~ ~~detention in default of maintenance~~ ~~imprisonment in default of costs~~ ~~detention in default of costs~~ ~~imprisonment in default of compensation~~ ~~detention in default of compensation~~ ~~imprisonment in default of restitution~~ ~~detention in default of restitution~~ ~~imprisonment in default of forfeiture~~ ~~detention in default of forfeiture~~ ~~imprisonment in default of penalty~~ ~~detention in default of penalty~~ ~~imprisonment in default of payment~~ ~~detention in default of payment~~ ~~imprisonment in default of satisfaction~~ ~~detention in default of satisfaction~~ ~~imprisonment in default of execution~~ ~~detention in default of execution~~ ~~imprisonment in default of appearance~~ ~~detention in default of appearance~~ ~~imprisonment in default of attendance~~ ~~detention in default of attendance~~ ~~imprisonment in default of production~~ ~~detention in default of production~~ ~~imprisonment in default of delivery~~ ~~detention in default of delivery~~ ~~imprisonment in default of surrender~~ ~~detention in default of surrender~~ ~~imprisonment in default of removal~~ ~~detention in default of removal~~ ~~imprisonment in default of seizure~~ ~~detention in default of seizure~~ ~~imprisonment in default of sale~~ ~~detention in default of sale~~ ~~imprisonment in default of disposal~~ ~~detention in default of disposal~~ ~~imprisonment in default of destruction~~ ~~detention in default of destruction~~ ~~imprisonment in default of delivery to custody~~ ~~detention in default of delivery to custody~~ ~~imprisonment in default of delivery to prison~~ ~~detention in default of delivery to prison~~ ~~imprisonment in default of delivery to detention barracks~~ ~~detention in default of delivery to detention barracks~~ ~~imprisonment in default of delivery to military custody~~ ~~detention in default of delivery to military custody~~ ~~imprisonment in default of delivery to civil custody~~ ~~detention in default of delivery to civil custody~~ ~~imprisonment in default of delivery to civil prison~~ ~~detention in default of delivery to civil prison~~ ~~imprisonment in default of delivery to civil detention barracks~~ ~~detention in default of delivery to civil detention barracks~~ ~~imprisonment in default of delivery to civil military custody~~ ~~detention in default of delivery to civil military custody~~ ~~imprisonment in default of delivery to civil civil custody~~ ~~detention in default of delivery to civil civil custody~~ 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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of J A see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or J A, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 2.* *2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(*1. RP 37(B).* *2. RP 37(D) fn 6.* *3. RP 37(D) fn 5 para 3, MML p 54 para 47.* *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... initialled and read aloud by the President.(1) If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by using paras D1 to D8 inclusive of Record Form D on p 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (b).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fit into Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1) Waived

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4).~~ Waived

(*1. Delete remainder of this para, if submission not made.* *2. Arguments on submission, answer and reply are recorded per Notes.* *3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes Sir on oath. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans N/A

(*1. RP 155.* *2. RP 40(A), see 80(D).* *3. RP 40 fn 10.* *4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened. Waived

(*1. RP 42, 117(A). See Notes in Part I of Schedule.* *2. RP 44(A).*)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the three charge(s), being subject to confirmation, will be promulgated later.(1) Waived

Or. ~~The President announces that the accused is found Not Guilty on all charges and as to the sentence further trial proceedings are accordingly terminated. Part I of the Schedule is declared duly signed.~~(2)

(*1. AA 54(3) (4), RP 45, 120(A).* *2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans Yes Sir

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 162(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)

(*1. MFB 353 or MFB 296.* *2. MFM 5.* *3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans By Defending Offr

(*1. RP 27(C), 46(D).* *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or rebut anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(*1. When several accused tried separately see RP 75(D). One sentence only, comprised of the punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-52, 86, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 309, 2323, MML p 82, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(1), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564.* *2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

JAG BRANCH - REVIEW RECORD

Accused
A-116608 Gdsm. Duffy W.H.
22 Edn. Armd Regt (CGG)

Remarks	Date
Trial in (Country) England	18 Nov 43
Charges AA 8(c) etc	
Sentence 90 days det	18 Nov 43
Rec'd from CR at JAG Branch	10 Dec 43
To Smelt for (pre)(post) rev	10 Dec
Recommendations by Smelt	
(1) Pass and record.	
(2) ~~Ltr on irregularities~~	
(3) Quash charge(s).	
(4)	
Ret'd to JAG Rev 1 by Smelt	13 Dec 43
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record to file	
	13 Dec
Instrs completed by	

CHARGE SHEET

The accused A116608 Gdsm William Golden Dutot 22 Cdn Armd Regt(C&G) a soldier of the Canadian Army Overseas is charged with when on Active Service:-

First Charge
Sec 8(2)
Army Act

Using Insubordinate Language To His Superior Officer

in that he

In the field on 16 Oct 43 accosted A68195 Cpl N. Piroski B Cdn Pro Coy his superior officer a corporal in charge of the Newmarket patrol and told him to "Fuck off".

Second Charge
Sec 8(2)
Army Act

Using Threatening Language To His Superior Officer

in that he

In the field on 16 Oct 43 after having been placed under arrest by A68195 Cpl N. Piroski B Cdn Pro Coy his superior officer, a corporal in charge of the Newmarket patrol said to Cpl N. Piroski and L/Cpl Wilson "that he would remember our faces and finally get us" or words to that effect.

Third Charge
Sec 8(2)
Army Act

Striking His Superior Officer

in that he

In the field on 16 Oct 43 after having been placed under Arrest by A68195 Cpl N. Piroski B Cdn Pro Coy his superior officer, a corporal in charge of the Newmarket patrol struck with his fist on the forehead said Cpl N. Piroski.

In the Field
12 Nov 43

(W.W. Halpenny) Lt-Col
Officer Commanding
22 Cdn Armd Regt

To be tried by Field General Court-Martial

In the Field
15 Nov 43

J.B. Smart Brig
1st Cdn Armd Bde

Major

Lieut

Judge Advocate

MEDICAL OFFICER'S REPORT

I certify that No. A-116608 Gdsm. Dutot W.C.
of 22 C.A.R.(CCG) is in a good state of health,
and fit to undergo Trial by Court martial.

Medical Officer

Station In the Field

Date 18 Nov 43

President
Judge Advocate

M. F. B. 246

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFA 53)
40/PAM/1697 (2nd/A)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-116800	Gdsm		William Golden	DUPUY	22 CdnArmdRegt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Nov 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that~~ it is not practicable to delay the trial for reference to a superior qualified offr.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto. X

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	J Dawson	Lake Sup R (M)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W R Rogers	Lake Sup R (M)
Capt	A B French	22 Cdn Armd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	A J Richardson	22 Cdn Armd Regt

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	W A D Gunn	4 Cdn Armd Div

On Active Service in the Fd

in England (Country.)

Date 16 Nov 45

G. B. Smith Brig (Rank.)
(Signed personally. RP 105 fn 2.)

Commanding 4 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

W.A.D. Gunn Maj Judge Advocate

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of the court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing *see* AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 94 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl R. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refusecl and did not go on parade.

Cross-exam: He did not say he was sick. *(or,* None.*)*

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in *CF A 96*, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. *(RP 60(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused *(not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10))*, or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 86(C).)*

(v) Closing address *(on matters other than in mitigation of punishment)* by Defending Offr or accused. *(See RP 40 fns 6-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 81.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).)*

(vii) Summing up by JA, if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Can 557.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting on evidence a certified copy in lieu of original see KR Can 559. As to certified copies of registered books see CEA 163 (1) (g) (h).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 85(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 52(9), RP 118(C), MML p 750.)*

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Opening address by the Prosecution

The prosecution will prove that the accused did in fact use threatening language and insubordinate language and did in fact strike Cpl Piroski, his superior officer.

First Witness for the Prosecution

A 68195 Cpl Piroski, N., 8 Cdn Pro Coy having been duly sworn is examined by the Prosecution.

Q.1 Will you give your number, rank, name and unit to the court?
A.1 A 68195 Cpl Piroski, N. 8 Cdn Pro Coy 4 Cdn Armd Div.
Q.2 Will you give the court all the evidence you have against the accused Gdsm Dutot?
A.2 Sir, at 2130 hrs 16 Oct 43 I was i/c Newmarket patrols. At this time I was leaving the NAFFI and walking downstairs and Pte Dutot accompanied by Pte Riendeau were standing at the bottom of the stairs as myself and L/Cpl Wilson started to walk by Gdsm Dutot asked me what in the hell I was following him for and told me to "Fuck off". I immediately took Gdsm Dutot in charge and asked him to accompany L/Cpl Wilson and myself to the Civil Police station. Gdsm Riendeau insisted on coming along. I then ordered Gdsm Riendsau to leave us alone and proceed on his way but he refused to do so. I then placed him on charge and asked him to accompany us also. Once out in the street both the accused were using profanity examples of which are, you dirty son of a whore, you son of a bitch, you no good bastard, fuck you and everything imaginable. They were directed at us some of it, and the rest at anybody in general. I ordered them to stop this kind of talk on the street and just come along. Pte Dutot stated he would remember our faces and would eventually get us. I then told him to stop this foolish talk and to just come along. At this Gdsm Dutot struck I was hit on the forehead. I immediately struck back and Dutot fell to the ground. Sir, to continue my evidence I have to bring in Riendeau. We then contacted another patrol who helped us escort Dutot and his accomplice to the police station. We arrived at the police station at approximately 2200 hrs. There they were placed in a cell.
Q.3 You stated that the accused told you to fuck off, was that said as a joke in a laughing manner?
A.3 No sir, he was not laughing when he said it.
Q.4 What was the state of darkness at the bottom of these stairs?
A.4 Sir, at the bottom of the stairs there is a light in the ceiling you could read a newspaper.
Q.5 Were you wearing your chevrons at that time?
A.5 Yes sir.
Q.6 Would you say it was possible for the accused to see your chevrons?
A.6 Definitely sir.
Q.7 Was the accused drunk at the time?
A.7 No sir, he was not drunk.

Cross examined by the Defence

Q.8 On the night in question was there a crowd coming out of the NAFFI at that time?
A.8 Sir, at the time there was no one whatsoever behind us we were alone and the two accused at the bottom.
Q.9 Did they come out by themselves?
A.9 They were down at the bottom when we came out.
Q.10 On these stairs were there other tps?
A.10 No sir.
Q.11 You stated in your evidence that at the time of the arrest both the accused had been drinking?
A.11 Yes sir.

Questioned by the court

Q.12 Did you have a military police arm band on?
A.12 Yes sir.
Q.13 As well as Cpl Chevrons?
A.13 Yes sir.
In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS.

Second Witness for the Prosecution

G 19492 L/Cpl Wilson, L.C. 8 Cdn Pro Coy being duly sworn is examined by the Prosecution

Q.1 Will you give your number, rank, name and unit to the court?
A.1 I am G 19492 L/Cpl Wilson, L.C. 8 Cdn Pro Coy.
Q.2 Will you tell the court all you know about the case of Gdsm Dutot?
A.2 Sir, at approximately 2130 hrs 16 Oct 43 while on patrol in Newmarket with Cpl Piroski we came out of the NAFFI and these two soldiers asked us what the hell we were following them for and they told the Cpl to "Fuck off". He told them they would be placed under arrest and to accompany us to the police station. We started on towards the police station with these two soldiers and this soldier struck Cpl Piroski. They had a tussle in the street then we contacted two more Provosts and excorted them to thecivil police station sir.

Cross examined by the Defence

Q.3 On the night in question was it a dark night?
A.3 No sir.
Q.4 Was there a moon shining?
A.4 Yes sir, it was not shining very bright it was showing through clouds.
Q.5 Were there any other tps coming out of the NAFFI at the same time as you and the Cpl?
A.5 Yes sir.
Q.6 Were there tps coming in and out?
A.6 Yes sir, there were tps coming in and out.
Q.7 Had the accused been drinking when you first saw him?
A.7 I would say he had, you could smell it on his breath.
Q.8 How do you know it was the accused that struck Piroski?
A.8 He was walking with Cpl Piroski sir.
Q.9 Are you sure it was the same man?
A.9 Yes sir.
Q.10 Were there any other tps around just then?
A.10 No sir.
Q.11 Was it a deserted street?
A.11 Yes sir.
Q.12 There were no other tps around at all?
A.12 Not right at the time he struck him sir.

Questioned by the court

Q.13 Do you see Gdsm Dutot here?
A.13 Yes sir,(Identifies the accused)

Q.14 Did the accused say anything to you?
A.14 Yes, they said they would remember us and get us later.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS

Third Witness for the Prosecution

Lieut R.A. McDonald, 8 Cdn Pro Coy being duly sworn is examined by the prosecution.

Q.1 Will you give your name, rank, unit to the court?
A.1 Lieut R.A. McDonald, No. 1 C.G.R.U.
Q.2 Will you give the court any evidence you have in the case of Gdsm Dutot?
A.2 Sir, on the 16 Oct I was officer i/c of town patrols at Newmarket and at approximately 2220 hrs Cpl Piroski who was NCO i/c patrols, informed me that he had placed two Gdsm under arrest after considerable trouble. As the result of the information I immediately went to the Newmarket Police station where these two men were detained in custody. I entered the cell accompanied by Chief Insp Butcher and saw the two Gdsm in the cell. One was lying on the floor and one on the bench. The one on the bench I went over to and shook him he appeared to be sleeping and he woke up and sat up and I started to question him but he only laughed and would not answer any of my questions.
Q.3 Do you recognize Gdsm Dutot in this room?
A.3 I recognize him as the man who was sleeping on the floor.

Q.4 Will you keep any evidence in this case to the man concerned?
A.4 I attempted to wake the man on the floor but he only mumbled a few words which were of a profane nature so I did not bother him just walked out and waited for the escort.
Q.5 Was the accused drunk at the time?
A.5 I could not say, he had only said a few words to me which were disgusting and I did not bother with him any further.

Cross examined by the Defence

Q.6 Was there any evidence in the cell that the accused had been sick?
A.6 There was some vomit at the bench but at the other end of the cell where this Gdsm was lying someone had urinated.
Q.7 When you woke him up and asked him some questions did he give you an intelligble answer?
A.7 He said "Oh Fuck Off I don't want to do anything".
Q.8 Did he give the answer clearly and distinctly?
A.8 As I came in the cell he was the first man, I reached down and shook him and said what is the trouble and he said Fuck off I am tired I don't want to have anything to do with you, or words to that effect. After he said that I was not interested.
Q.9 You said someone had urinated in the cell was that in the corner where the accused was?
A.9 Yes he was lying across it.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. (83 (h)

THE WITNESS WITHDRAWS

Fourth Witness for the Prosecution

Inspector D.G. Butcher, Newmarket Police, being duly sworn is examined by the Prosecution.

Q.1 Will you give your name to the court?
A.1 Dudley George Butcher, Inspector, West Suffolk Police in charge of the Police Station atNewmarket.
Q.2 Do you see Gdsm Dutot who was one of the Gdsm who was brought into your station on the 16 Oct, in this room?
A.2 Yes sir (Identifies the accused)
Q.3 Will you tell the court all you knw about what happened on that night?
A.3 Shortly before ten or just about ten on that evening I was on duty in the charge room when Gdsm Dutot was carried into the station by members of the Provosts. He wastaken and placed in a cell. Shortly after Mr. McDonald came in and with him I went to the cell and he saw the two men in the cell and spoke to them. After he had left I heard a commotion in the cell and went to see what the trouble was. I dropped the flap over the door and these two men were arguing in the cell. The man who came in first who I think was Riendeau said to the other, you are fucking drunk and with that he gave him a push back on the cell bed and as he did so he struck his head on the cell wall. When I went to the cell with Mr. McDonald I saw there was vomit all over the cell and it smelt very much as if these men had been drinking. They were later handed over to an escort from their unit.
Q.4 When the accused was brought in would you say he was drunk?
A.4 When Dutot came in he was actually carried in, he was either drunk or out.
Q.5 Can you say he was drunk?
A.5 I cannot answer that question.

Cross examined by the Defence

Q.6 You said there was a great deal of vomit on the floor of thecell did it smell of liquor?
A.6 It certainly did the smell was still there three days later.

Questioned by thecourt.

Q.7 When you went in the cell with Mr McDonald was there evidence of someone having ~~xxxxxxxx~~ urinated in the cell?
A.7 I did not notice any urinating sir.

WOSI

Q.8 You stated that the other Gdsm made a remark to Gdsm Dutot in the cell did he reply or say anything?
A.8 No sir, I never heard Gdsm Dutot say a word.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b).

THE WITNESS WITHDRAWS

First Witness for the Defence

The accused, A 116608 Gdsm Dutot, W.G., 22 Can Armd Regt being duly sworn is examined by the Defence

Q.1 Will you identify yourself to the court?
A.1 A 116608 Gdsm Dutot, W.G. 22 Can Armd Regt.
Q.2 Will you tell the court what happened on the night of 16 Oct 43?
A.2 On this evening Gdsm Riendeau and myself went into Newmarket and got in a little too early for the hotels and pubs to be open. When they opened we went from pub to pub continually drinking and became very drunk. The last thing I can definitely remember that night sir, is leaving a pub, I don't even know the name of it, everything from then on until the next morning is a total blank to me sir.

The Prosecution declines to cross examine.

In the opinion of the court and the judge advocate it is not necessary to comply with the provisions of R.P. 83(b)

THE WITNESS WITHDRAWS.

Closing address of the Prosecution

The Prosecution has through witnesses brought out the points in the charges, first that the accused did use insubordinate language to his superior officer that he fully realized it was his superior officer as the conditions were such that he could see his rank and at the time he was wearing the badge of his rank. It has been proved that he used threatening language to them on the street and it was stated that it was the accused who struck Cpl Piroski.

Closing address of the Defence

Sir, the first two charges using insubordinate and threatening language both come under Sec 6 and I drew to the attention of the court the foot note on page 434 MML, the words must be used with an insubordinate intent, that is to say, they must be, either in themselves, or in the manner of circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably be clear that they were intended to be heard by a superior officer. The essence of the first two charges is intent. MML is quite definite, there must be intention. We have the evidence of the witnesses that the accused had been drinking, in fact the evidence of the Insp was that the cell after admission did smell very very strongly of liquor. The accused in his own statement

states quite frankly he went out with Gdsm Riendeau and they started on a drinking bout. It is quite possible illness resulted after an evenings drinking, it did in this case. I would also like to draw the attention of court to page 25 of MML para 47 half way down the para. "mere abusive etc. (this is read). The defence submits, by the accused's own statement and that of witnesses that the accused was drunk. The accused himself frankly admits that he cannot remember anything at all that evening after he started on this bout. On the same grounds the defence submits that the third charge be dismissed although there is evidence that there was a fight a man in a high state of intoxication does hit back in self defence. The Defence submits that the first and second charges should be dismissed as there was no intention. He was obviously so much under the influence of liquor that he cannot be accused of striking his superior officer.

Summing up by the Judge Advocate.

Mr. President and Gentlemen, I just want to draw to your attention the law dealing with intoxication. This is found on MML p 106 para 9 (this is read). I don't think there is anything else I can say, the evidence is entirely within your perrogative.

Is there anything further you wish me to say Mr. Defending Officer
No sir.
And you Mr. Prosecutor
No sir.

Statement by accused in Mitigation

I enlisted in the army a year ago this month and this is my first crime.

Mitigation by the Defence

I have known the accused for some time myself and although he is not in my particular Sqn I have discussed his record with his Sqn Comd and I am convinced that the accused is not a bad soldier, is in fact a good soldier and on the night in question he went out to celebrate. We had just come back from a spell in the field. The conduct sheet of the accused is clear and the Sqn Comd tells me he is one of his most reliable men. I am convinced that he is a good soldier and as stated it is his first offence.

MINUTES OF EVIDENCE in the case of

No. A111008 Gdsm BUTOT, WILLIAM GOLDEN

No. C81601 Gdsm RICHARDEAU, PIERRE PAUL MARIE

on one count each (GGG) a soldier in the Canadian Army is charged with
(1) DRUNKENNESS AA sec 9
(2) Failing to obey an order given to him by an NCO of the Canadian Provost Corps. AA sec 8
(3) Threatening an NCO of the Canadian Provost Corps. AA sec 8
(4) Resisting arrest. AA sec 12
(5) Striking an NCO of the Canadian Provost Corps. AA sec 8

Plead Guilty

Lieut R.A. McDonald (Interpreter) 8th Provost Coy, Canadian Provost Corps, having been duly sworn states:

I identify these two Gdsm as the two Gdsm I put in custody in Neuwied the night Oct 15th, 1945. I was officer in charge of the picquet in Neuwied the night of Oct 15, 1945. Cpl Picard reported to me that he had placed two Gdsm under [illegible] close arrest and that they were in custody in the civilian police station. Approximately one hour later I went to the police station to interview these two Gdsm. I was admitted to the cell by the civilian police and I saw these two Gdsm there. They were both asleep when I entered. I had them awakened and attempted to question a Gdsm whom I now recognize as Gdsm Richardeau. When I questioned him he refused to make any statement as to what took place in that he did not say a word. Then attempted to question Gdsm Butot and received no answer to my question. There was vomit on the floor which smelled strongly of intoxicating beverage. I then contacted the Canadian Orderly Room Corporal and requested transport and escort and also a fatigue to remove the mess in the civilian police station. The escort arrived at approximately 0200 hours 16 Oct 1945.

Question by Lieut Macdonald

Q Cpl Picard. The only person to report to you?

Answer by Lieut McDonald

A.

Both the accused declined to question the witness, Lieut R.A. McDonald.

(sgd) Lieut. R.A. McDonald

General Witness

No 135 Cpl Picard, R. having been duly sworn states.

At 2130 hours 15 Oct 1945 I was accompanied by L/Cpl Wilson at the bottom of the stairs leaving the MAAFI. The two accused were standing there, as I started walking by Gdsm B tot a yelled to me and asked me why in the hell I was following them and told me to fuck off. I immediately placed him under arrest and proceeded to take him to the civilian police station in Neuwied. The soldier named Gdsm Richardeau insisted on coming along, I ordered him to leave but he refused to do so. I then placed him under close arrest and the two accused turned the police station. On the street both the were using unbelievable profanity as specimen of which is - you dumb - fuck you - dirty son of a bitch - son of a whore. I ordered both soldiers to stop using such language but they refused to do so. They then stopped on the street and told me and L/Cpl Wilson that they would remember us these and finally put us. I then told them to cut out such foolish talk and come along, at this Gdsm Butot struck me on the left side of my forehead. I immediately struck back in self defence and Gdsm Butot fell to the ground. Upon turning around and looking for the other accused and escort I saw the escort on the ground with the other accused over him. I grabbed the other accused receiving a few blows and forced him to sit down until he cooled off. We then contacted another patrol who also acted as escorts for the two accused to the police station. Upon arrival there at approximately 0.45 hrs. the two accused were placed in a cell to await escort [illegible]. After being there for approximately 1 to 1½ hours the accused Gdsm Butot became sick and vomited on the floor. Gdsm Richardeau had vomited previously. At the time of arrest both had been drinking but were definitely sober, Sir.

Read over in my presence by Judge Advocate

Signature
Lieutenant

Question by Lieut Shaughnessy.
Was L/Cpl Wilson with you from the time you left the NAAFI until the two accused were placed in jail?
Answer by Cpl Piroski
Yes.
Lieut Shaughnessy.
Who was the bad language directed at?
Cpl. Piroski
Some at us and the rest at no one in particular.
Lieut Shaughnessy.
You say after Gdsm Dutot struck you you struck back. In just which way did you strike back?
Cpl Piroski
With my fist.
Lieut Shaughnessy
How many blows?
Cpl Piroski
Until he hit the ground.
Lieut Shaughnessy
What was/were the other accused doing to L/Cpl Wilson?
Cpl Piroski
When I turned around L/Cpl Wilson was sitting on the ground and the other accused seemed to have his hands on L/Cpl Wils ons shoulders.
Lieut Shaughnessy
How many people were in the other patrol?
Cpl Piroski
Two men.
Lieut Shaughnessy
Were the accused soldiers in your sight during the entire time you were at the police station?
Cpl Piroski
No, they were locked in a cell and I could not see them unless the door was open.
Lieut Shaughnessy to Gdsm Riendeau.
Have you any questions to ask the witness?
Gdsm Riendeau
Yes.
Are you sure that I was not drunk?
Cpl Piroski
I am positive that he was not drunk.
Gdsm Riendeau
Did you say that I had previously vomitted?
Cpl Piroski
Yes.
Gdsm Riendeau
Do you know the cause for having vomitted like that?
Cpl Piroski
I don't.
Gdsm Riendeau
How do you know I was not drunk?
Cpl Piroski
Reasons for my belief are - He spoke with a clear voice- His eyes were not bloodshot - He did not stagger-
Gdsm Dutot
The Cpl States he saw Gdsm Riendeau on top of L/Cpl Wilson. How was he able to see in the darkness?
Cpl Piroski
By means of a flashlight.
Gdsm Dutot
Do you know how I got a scar on my right temple?
Cpl Piroski
When I struck Gdsm Dutot in self defence he received a bump above his right eye upon impact with the sidewalk, but until the time his unit escorts picked him up at the police station I did not see any cut on Gdsm Dutot's face whatsoever.
Lieut. Shaughnessy

Lieut Shaughnessy
Can you tell me exactly how you hit back after Adam Dubot struck you?

Cpl Pivoski
I hit Adam Dubot with my right fist, and he hit the ground.

Third Witness (sgd) M. Pivoski

Dudley George Butcher Inspector Port Stanley Police, Sworn, having been duly sworn states.

Question by Lieut Shaughnessy
Do you remember those two men?

Inspector Butcher
Yes, I recognize them having seen them in the Police Station the evening of Oct 31, 1945. The first when I returning with the best of my ability as Adam R endeau was brought into the cell by members of the Provost Corps. He was using bad language the "fuckin" being used frequently. He was placed in the cell and shortly the second man was brought in whom I now recognize as Adam Dubot and placed in a cell also. Shortly afterwards Lieut Holmes RC of the Provost Corps arrived and I went to the cells with him. Both men were lying down and there was a great deal of vomit on the floor. They were ordered up by Lieut McDonald RCPC and spoke to them in turn. The cell was extremely heavy & noisy. From it I could not understand the first word and saw the two men standing in the cell. One of them I took the other back on the bed and said, "Keep quiet Grumpy". In pushing him back the one who fell on the bed I think struck his head on the cell wall. When the escort arrived there was a great deal of vomit on the cell floor.

Lieut Shaughnessy
How many members of the Canadian were concerned in bringing these men in?

Insp. Butcher
To the best of my knowledge there were four.

Lieut Shaughnessy
Was the second man acting when he was brought in?

Insp. Butcher
The second man was more or less carried and seemed to be drunk or sick.

Lieut Shaughnessy
Did you smell alcohol in the vomit in the cell?

Insp Butcher
Yes, it was very noticeable.

Lieut Shaughnessy
Was there any resistance between the two Messrs of and the Canadian Provost Corps?

Insp Butcher
No.

Lieut Shaughnessy
In your opinion was either or both of the men drunk when they were brought in?

Insp Butcher
I should term the first man "fighting drunk".

Lieut Shaughnessy
Was any marks on the accused found when they were brought in?

Insp Butcher
Not that I noticed.

Lieut Shaughnessy
Can you remember which one of these two was the one that was pushed back on the bed?

Insp Butcher
I think it was Adam Dubot who was pushed on the bed by

Adam Riendeau

Lieut Shaughnessy to Adam Riendeau
Have you any question to ask the witness?

Adam Riendeau
No.

Adam Dubot
Were we having a fight among ourselves in the cell?

Insp Butcher
No, they were standing.

Adam Dubot
Were there just four Provost us of in bringing us in?

Inspector Butcher

Four brought the first man in and wether or not they were the the same ones who brought the second man in I am not sure.

Question to the accused Gdsm Riendeau (sgt) D.C. Butcher, Insp.

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or what evidence give will be taken down in writing and may be given in evidence.

The accused C21651 Gdsm Riendeau, F.P.E. having been duly sworn states:

On the evening 16 Oct 1945 on my way back to the trucks in Newmarket, I was in company with Gdsm Dutot. As far as I remember, I remember having a fight with someone on the street. I do not remember anything else until someone woke us up in the cell and asked for our paybooks. I remember giving my pay book and I think Gdsm Dutot was just getting out of bed and there was an arguement about paybooks in front of the persons who were standing in the cell. Then I remember pushing Gdsm Dutot on the bed and he fell on the bed in a sitting position close to me. I took his paybook out of his pocket and gave it to the persons in the cell. I then went back to sleep on the floor. Later I was awakened by Sgt Kingston and escorted to a vehicle and taken back to the regiment here. I also remember while I was in the truck Gdsm Dutot being carried in by someone and he looked to be unconscious.

Q. Do you remember who was in the cell when you pushed Gdsm Dutot?
A. I think there were two persons in the cell.

Q Do you remember ~~XXXXXXX~~ having an arguement with Gdsm Dutot at any time other than that?
A. No

Q Had you been drinking?
A. I had been drinking heavily.

Question to the accused Gdsm Dutot (sgt) Fred Riedeau

Do you wish to make any statement or to give evidence upon oath? You are not obliged to give evidence or to say anything unless you wish do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused A11600 Gdsm Dutot, W.G. having been duly sworn states:

We had been drinking fry heavily and had gone to get something to eat and starting back to the trucks due to the fact that we had both had too much to drink to continue on the streets, when this trouble took place. I remember someone grabbing me by the arm and I struck back in self defence not knowing who they were. From then on things were a haze and I remember nothing more until the next morning.

I certify that the Rules of Procedure (a)(c), (D), (E) and (F) have been complied with.

Taken down by me in the Field in the presence of both accused soldiers this 28th day of October 1945.

Certified true copy.

2I Gdn Armd Regt (GSO)

C O P Y

Offr Comdg
8 Cdn Pro Coy

STATEMENT OF EVIDENCE IN THE CASE OF:

Re- C21631 Gdsm Riendeau, F.P.E.
A116608 Gdsm Dutot W.G.
22 Cdn Armoured Regiment (CGG)

Sir,

1. On 16 Oct 43, I was IC of Newmarket Patrol, at a pproximately 2130 hrs I was in company with L/Cpl. Wilson on my tour of checking patrols. At this outside the VICTORIA DANCE HALL, the m/n soldiers asked me why I was following them, and told me to "FUCK OFF". This being an insubordinate remark I placed them both under CLOSE ARREST and proceeded with them towards the POLICE STN.

2. They then began using profane language stating that they will remember our faces and finally get us. Then they attacked us. We both received blows.

3. Previous to them attackig us I ordered them to watch their language, because they were out in the street with women around, but this did not make them stop in the least. They were at all times very resistent to L/Cpl. Wilson and myself.

4. We finally got them to the POLICE STN, and looked them up. All this time they were very insulting to the CDN PROVOST CORPS.

5. Through our Coy Hq we contacted their unit and has escorts report to the POLICE STN, and return them to their billets.

6. At the time of the arrest the m/n soldiers were not DRUNK, but had been drinking.

7. For your infm, please. Sir,

(sgd) A68195 Cpl Piroski, M.
8 Cdn Pro Coy.

Sir, I corroborate the above s tatement;

(sgd) C19492 L/Cpl. Wilson, S.
8 Cdn Pro Coy.

Certified True Copy

Capt & Adjt
22 Cdn Armd Regt(CGG)

M.F.M. 6
(A.F. B.122)
40/P & /5136 (2963)

No. A116608 Name Dutot Wm Golden | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 16-11-42 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Fine	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NIL					

CERTIFIED TRUE COPY

Chas Harris Capt & Adjt
23 Cdn Armd Regt(CGG)

18 Nov 43

Cadet 4

C Anderson Major

Warned that any further offence will be severely dealt with

(PTO)

M.F.B. 155
RSM—11-41 (8175)
H.Q. 1773-59-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A116608	Gdsm	William Golden DUTOT	22 Cdn Armd Regt(CGG)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	N/A times	N/A times
For	times	times
For	times	times
For	times	times

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

or,

The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 33 days in military custody, making a total of 33 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 years and 3 months

6. The date of his attestation specified in his attestation paper is 16 Nov 42

9. The accused is in possession of or entitled to no military decoration, or military reward (or is in

Cockfoot "X"
W. Jamieson
Witness
H. Anderson Major
Commanding

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
unit
dated , and in his regiment (or corps), the rank of
dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.
In the rank of years.
In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank
Unit
Regiment
Name of

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Particulars Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial are true extract from the regimental books in my custody.

Signed this 21st day of October 1943 Capt/Adjt
22 Can Armd Regt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

MM-131
SGMN. DUTTON E.R.

MM-131

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 6 th day of August, 19 . 43

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 3 Cdn Infantry Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.F. Kibler	14 Cdn Fd Regt RCA

Members

Rank.	Name.	Regiment.
Capt	J.S. Dunmore	3 Cdn ATk Regt RCA
Lieut	R.M. Sketch	4 Cdn LAA Regt RCA
Waiting Member Lieut	J.H. Archer	8 Corps Svy Bty RCA

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (H.S. Griffin) A/Col.,
Commanding A/C.R.A. 3 Cdn Inf Div
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L26007 Sigmn Eldon Roland DUTTON 13 Cdn Fd Regt RCA	A.A. Sec. 11	GUILTY	GUILTY 90 DAYS DETENTION J.T. Kibbler Major President 7 Aug 43	Confirmed Major C.R.A. 3 Cdn Inf Div. 10 Aug 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] (Signed) J.T. Kibbler Major
(H.B. Griffin) Lt.Col
Commanding 1/CaRA, 3 Cdn Inf Div 14 Can Fd Regt RCA
Convening Officer (s) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the SEVENTH day of AUGUST 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) JTK
*(4. ~~The officers under instruction~~) JTK

*Omit if not applicable.

were duly sworn.

Signed this SEVENTH day of AUGUST 1943.

J.T. Kibbler Major
President of the Court Martial.

C. Certificate in case of death sentences

*See footnote (b) on page 382 M.M.L., 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ JTK

~~Signed this day of 19~~ JTK

~~*President of the Court Martial.*~~ JTK

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~If there is that the soldier should undergo be not committed to a military prison or detention barrack and for what period.~~ P.J.

Signed this 10 day of Aug. 1943

[signature]
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 11 August 1943 (Signed) R.H. Wilson Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No.L26007 Signalman Eldon Roland Dutton, "F" Section R.C.C.S., Attached 13 Canadian Field Regiment,,R.C.A. (A.F.) a soldier of the Canadian Army Overseas.

Sec. 11
Army Act

NEGLECTED TO OBEY OVERSEAS
ROUTINE ORDERS

in that he

In the field on 10th July 1943 did attempt to disclose by letter to a civilian, Military information contrary to Overseas Routine Order No. 1089 as republished in 13 Canadian Field Regiment, R.C.A. daily Part I Orders No. 1577 dated 19 Feb 1943

By Major J. Kelly Adjutant 13 Can Fd Regt

(W.S. Ziegler) Lieut. Col.
Comd 13 Can Fd Regt R.C.A.

In the Field
4 Aug 1943

To be tried by Field General Court Martial

(W.S. Griffin) Lt.Col.
A/C.R.A. 3 Can Inf Div.

In the field
6 Aug 43

MEDICAL OFFICER'S CERTIFICATE
K.R.(Can) Para 567.

I certify that I have this day examined

L26007 Sigmn DUTTON E.R. and in my opinion he
Number Rank Name
is fit to undergo trial by court martial

Medical Officer's Unit R.C.A.M.C.

Date Aug 7/42

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a FIELD GENERAL Court-Martial held at IN FIELD

on the SEVENTH day of AUGUST 1943 by order of

LT COL HS GRIFFIN

Commanding A/CRA 3 CDN INF DIV

dated the 6th day of AUGUST 1943

President.

MAJOR J.F. KIBLER
14 CDN FD REGT RCA

Members.

CAPT J.W. DUDMORE
3 CDN A/TK REGT RCA

LT R.M. SKETCH
4 CDN AA REGT RCA

WAITING MEMBER LT J.H. ARCHER
BCSNP SVY BTY RCA

~~, Judge Advocate~~

Trial of* L 26057 SIGMN ELDON ROLAND DUTTON
13 CDN FD REGT RCA

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that LT R.M. SKETCH is not available to serve owing to RECONSTRATION

LT J.H. ARCHER, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† LT R.M. RANSBERRY 13 CDN FD REGT RCA

Counsel‡ or defending officer† CAPT R PATTERSON 3 DIV REGT

At 0940 o'clock the Trial commences.

The order convening the Court is read, and is marked P signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ ~~J. M.~~ *Question*

~~Answer~~ J. M.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ J. M. *Question*

~~Answer~~ J. M.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ J. M. *Question*

~~Answer~~ J. M.

~~The accused having pleaded Guilty~~ O.K. J.M. to FIRST CHARGE charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case any plea of "Not Guilty" has been recorded with.

*~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~ — SDA

The accused 2260U SGMN FALDEN ROLAND DUTTON is found guilty of FIRST CHARGE AA II

†The summary (or abstract) of evidence is read, marked G signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

YES

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked R, signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character

YES

L 26007 Sgnr E R Dutton 1st Bn RCCS aet 13 yrs 8 mths being duly sworn ~~states~~ as witness by the presiding officer

Q - In regard to S.P mentioned in your letter had you been told by anyone about matter

A- No, I was never told, all we heard were rumours

Q Where did you hear the information

A All around camp

Q - Had you heard it from your section officer

A- No sir

Q - Did you warned this was a dirt dirt matter

A- No, I was not told about it at all

Q- In your letter to your wife did you think it would be censored

A- Yes sir

Q What did you expect to happen

A- I expected that anything that shouldn't be there warned be deleted

Cross Examination

Q How long had you been in army

A- 3yrs 3mths

Q- Had you had any recruit lectures

A- no sir

Q- And you ever hear your army personal duty

A- no sir, just take drums like boys

Q- Had you received from your own knowledge around that there was a great stink in Brisbane

A- yes

777

Evidence of Accused Continued

Q- And was that charge something new in addition to propelled as before
A Yes something new
Q What have you been told about discussing anything new
A- I have been told nothing
Q You are quite sure of that
A Yes

Motion Granted

Have you read the order understood the charge as read
A Yes

Lt R.B. Murchison O.C. 7 Sec 3 Can Div Sigs affd 13 Can Fd Regt being duly sworn as questioned by defence under R.P. 37(f)

Q - How long have you commanded 7 Sec
A Since 1 March
Q- During that time have you given Sapper Sutton any lectures or training
A- Yes I have
Q Are you sure Sutton attended the lectures
A Yes
Q - When were the training lectures given
A- They were given on various occasions. I cannot recall the exact dates
Q- And you told one of these lectures at time the last was Sapper G Sp
A Yes I had one but only recently
Q Was the lecture before or after the date of Sutton's letter
A- After the letter was written

Cross Examination

Q approximately how many lectures have you given

A- I can't state a definite number but I should say two or three to Section

Q did Section attend Security lectures given by Regiment

A I don't know that he did

Q did you give a lecture to your section or to Section during last week in June or first week in July

A I don't believe I did

Q- when was your lecture given which you referred to as having given recently

A It was last week

Q- would you say your section is securely rounded

A- Yes they are very much so as their work

It increases your character evidence

Q- by degree How long have you known Sgt Section

A I have known him and Sgt's conduct below

Q- what would you say as to his character

A- He has conducted himself always as a good soldier and has never done anything to lead me believe otherwise. He has only been ordered on one minor offense that might cause condemnation in the latter as far as his work is concerned I have no fault to find

Witness excused

STATEMENT IN MITIGATION

The accused did not intend to write in his letter anything which would be of use to the enemy. He had not been warned that the information he had was in any way secret. He was carried away by enthusiasm over the new equipment. The enthusiasm of a gunner for his guns is unique in the army and always permeates the signal section attached to a regiment. The accused heard the big news from the gunners of his regiment where it was common knowledge in spite of its secret nature. He did not hear it from his own officer who could have warned him of the secrecy of the information. He was not to know that this was one of the

first appearances of a Party and
the matter was not to be discussed.
The letter was to his wife & he has
not seen for two years & was the
letter of a soldier who joined with
the idea of getting at the enemy,
who has waited a long time & who
has been given a big boost by
the knowledge that new & special
equipment is coming & that it
may not be long before he
gets his chance. The statement
was also made with the knowledge
that the letter would be censored &
that any part of it which offended
the censor could easily be deleted.
It was not the drunken talk
so dangerous in pubs nor the
bragging in a public place. It was
the enthusiastic letter of a soldier to
his wife and he knew anything

he said was subject to censorship.
The accused has pleaded guilty although
a large part of the evidence in the
summary is inadmissible as
opinion evidence of persons not
expert witnesses. He has not asked
for an adjournment in spite of
the fact that R.R. 14 B has not
been complied with. His
attitude throughout is not that of
a criminal or obstructionist but the
attitude of a soldier who because of
misguided enthusiasm has committed
an offence which he admits & for
which he puts himself at the
mercy of the court.

R
Sentence
passed
Taught

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~ N/A

~~The Court find that the accused~~ N/A

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

CAPT W J WILSON 13 CDN FD FIELD REG is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked S, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* YES

[Evidence as to nature of the service of the accused in a disciplinary unit, or otherwise, to which Court wishes any value to any exceptional punishment to be given, is that to be accorded to the Court by prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of the additional punishment.]

Cross-examined by the accused.

NO

Question to the accused.

Do you wish to address the Court? *Answer.* NO

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

90 DAYS DETENTION

J. Kitchener Major
14th Army Tk Regt RCA
President
7 Aug 43

C.A.S.F.



Mrs. E.R. Dutton
1538 Albert St.,
Regina
Sask.,
Canada.



Canadian Army Overseas

L26007 Sigmn Dutton E.R.
103rd Ill Regt.
Am. Army Corps

THE SALVATION ARMY

"Keep in touch with the folks at home"

ON ACTIVE SERVICE
with the
CANADIAN FORCES

EXHIBIT "A"

July 10 1943

Dear Home Folks

Just a few lines to let you know I am still not doing anything in the way of action like the boys are doing in Sicily but Jim is doing the work down there, and us, we are still scheming and waiting around but our time is coming up & across sooner than we figure on. That rumor about going to Iran seems to have flopped by a new one that has just come up. We are supposed to become a self propelled unit twenty five pounders mounted on the chasis of a ram tank. A self propelled unit and with the men today so we have been made to understand, so that means we will be on the

Think

Any reference to shipping or troop movements will result in the delay or mutilation of this letter.

vade France from this side.
See what happens in the
next couple of weeks kinda
think things will really
boom now that it has
started.

Dont do any undue
worrying darling tell you
dear from me that we are
going into action & kinda
think we will be here
a few more months yet
if this comes to a head

Not very long my
dear but it is all I
have to say beside I
love you and need you
more than anything on
earth.

So long my dear
your loving husband
Eldon

XXXXXXX

"Keep in touch with the folks at home"

ON ACTIVE SERVICE
with the
CANADIAN FORCES

July 11 1943

Dear Mother

How are you these days working hard & repent and the garden is starting a profit how about Gammie some lettuce yellow ones and giving me a hoot.

This is just a few lines to let you know we are still in dear old England and the boys that are doing the fighting are die and we are still sitting on our fannies. We are the Vets of a hundred salmes and more coming up Rumors are flying thick and fast around here and I am not saying a word tell I know more definite what we are going to do. Hope the boys put up a good

Now as the bad cancer we have been treating the dirt so long it takes hours what we can do and will do when we get a chance and now all has come I sure hope the boys don't let us down. Just heard a little news not much but they seem to be okay.

The weather has been the last few days just cloudy but up till now we sure have been very lucky this year. Last month long waits mail for a while slipping but somebody this year and about 2 days for 3 months now I

Well there isn't much more I can think of this time just a note to let you know we are NOT in that yet.

Your loving Son
Elden

Exhibit "B"

13th FIELD REGIMENT R.C.A.
ORDERS BY
LIEUT. COL. H.A. SPARLING,
OFFICER COMMANDING

Last Order No. 1568 Part I 19 February 43

No. 1569 ROUTINE for Saturday 20 Feb 43 as per Regt'l Part I Order No. 1389 (a) d/4 Jan 43.
BLACKOUT from 1851 hrs 19 Feb 43 until 0736 hrs 20 Feb 43.

No. 1570 REGIMENTAL DUTY OFFICER from 1600 hrs 19 Feb 43 until 1600 hrs 20 Feb 43.

1. Lieut. J.C. Lafferty

2. Next for Duty: Lieut. J.C. Lafferty

REGIMENTAL ORDERLY SERGEANT to report to R.S.M. at 0830 hrs 20

1. L/Sgt. Gautier, B.

2. Next for Duty: L/Sgt. Burkosky, J.

No. 1571 VOLUNTARY PROTESTANT COMMUNION SERVICE

1. Voluntary Protestant Communion Service will be held in the Concert Hall at 0930 hrs Sunday February 21st.

No. 1572 DUTY BATTERY from 1600 hrs 20 Feb 43 until 1600 hrs 27 Feb 43

1. 44th Field Battery RCA

2. Next for Duty: 22 Field Battery RCA.

No. 1573 INTERNAL POSTINGS

1. Lieut. W.M. Dirks - Posted from 78 Fd Bty to 44 Fd Bty eff. 19 Feb 43.

2. Lieut. G.H. Owen - Posted from 44 Fd Bty to 78 Fd Bty eff. 19 Feb 43.

3. Having been T.O.S. the u/m O.R.s are posted to the Batteries as shown opposite their names eff. 19 Feb 43.

B58881	Gnr.	Cochrane,	W.)	Posted to 22 Fd Bty RCA
M3420	Gnr.	Gordon,	W.D.)	
K45347	Gnr.	Doorkson,	J.J.)	Posted to 44 Fd Bty RCA
B111677	Gnr.	Besew,	L.)	Posted to 44 Fd Bty RCA
D86052	Gnr.	Sorffer,	A.)	
L26286	L/Bdr.	Green,	C.H.)	
L13433	Gnr.	Watt,	J.E.)	

No. 1574 SHOWERS AND WASHROOMS

1. Showers and washrooms are alloted as follows:-

22 Bty	Showers & Washrooms	- Near Salvation Army Hut
44 Bty	" "	- in lines
78 Bty	" "	- in lines
R.H.Q.	" "	- opposite R.A.P.

2. Personnel will only use their own Showers & Washrooms.

No. 1575 MAIL SERVICE (3 Cdn Div R.O. No. 57)

1. To ensure the most speedy tpt possible and to expedite delivery of Canadian mail on arrival, the following arrangements are in force:-

(a) allocation of space on fast troopships for tpt of letter mail is procured.

No. 1575 Continued

(b) Cdn Movement Control offrs are located at the larger ports. One of their duties is to make certain that no delay in unloading or despatch of Canadian mail place.

2. Arrangements are being made to establish a Trans-Atlantic air mail service between Canada and the U.K. This will facilitate the air mail situation considerably.

3. There is no automatic refund in the case of airmail addressed to British troops which of necessity has been transported by surface vessels. The only automatic refund of this kind occurs when a letter stamped "AIRMAIL" is addressed to a destination for which there is no airmail service. The automatic refund is made to the sender. This concession is applicable to both Canadian and British troops.

4. In the case of ordinary airmail letters, for which postage has to be paid at the rate of 1/3 per ½ ounce, a refund to the sender may be made on application by either the addressor or the addressee, when a letter in this category has, of necessity, to be despatched by surface craft. In this case, the stamped envelope must be forwarded, with the application for refund, to the G.P.O. A refund to the sender is made for the difference between the airmail rate and the ordinary postage rate. This concession applies to both Canadian and British troops.

5. In the case of the Armed Forces Air Letters, this is a special service at reduced rates for troops. No refund is made in cases where necessity demands that these letters be despatched by surface ships. This applies to both British and Canadian Troops.

6. As previously advised, the Airgraph service is fairly certain and dependant only on flying conditions for bombers. The Canadian Public have been advised of the advantages in sending airgraph in preference to the Armed Forces Air Letter.

7. Every possible means of delivering mail to Canadian Troops both speedily and safely have been investigated and adopted where feasible. Such delays as do occur are the direct result of prevailing wartime conditions.

No. 1576 SECURITY -- POSTAL REGULATIONS
C.M.F.(O)R.O. No. 847

1. Attention is directed to Routine Order (Overseas) 659, dated 29 Mar 41. In order to ensure security with regard to the location of units and to facilitate the working of both civil and Military Post Offices, the following instructions concerning the addressing and dispatching of mail are issued.

2. No indication will be given on envelopes or labels of mail or in the bodies of letters, whether addressed to Canada or elsewhere of any detail disclosing the location of any unit or formation. No reference will be made to villages, towns, counties, areas, districts, Commands or other local geographical designations. While serving in the United Kingdom, names of countries(i.e., Scotland) may be used.

3. All mail will despatched through an Army Post Office where facilities exist.

4. Military personnel will not disclose address of billets or other civilian address to correspondents as no incoming mail should be marked with both unit and place names.

5. These instructions are equally applicable to Canadian units serving with British formations and refer to both official

No. 1576 Continued

and personal correspondence.

6. All mail is subject to censorship. Incorrectly addressed m
mail is liable to be returned to the sender.

No. 1577 SECURITY MEASURES - PRIVATE CORRESPONDENCE Exhibit "B"
C.A.(O)R.O. No. 1089

Routine Order (Overseas) No. 222 dated 1 Aug 40 is hereby cancelled. The following regulations for the contents and transmission of correspondence shall apply to the private correspondence of personnel of the Canadian Army (overseas)

1. Allusions to any of the following matters are forbidden at all times in private correspondence during a war, whether relating to naval, military, or air forces or operations:

(i) Strength, moral or physical state, or organization of any of His Majesty's or Allied forces, including any comment on the absence or presence in the United Kingdom or any theatre of war of a unit or formation towhich any unit is attached or belongs.

(ii) Location or movement of any naval, military, or air force units or detachments, arrival or lack of reinforcements.

(iii) Armament or equipment of any kind.

(iv) Distinguishing signs used for the identification of formations, units, and their transport.

(v) Communications - such as the use, condition or probable extensions of roads, railways, or other transportation facilities, bridging operations, etc.

(vi) Plans and forecasts or orders for future operations, whether known or merely rumoured or surmised.

(vii) State of the maintenance services, including any reference to reserves.

(viii) Position or description of barracks, billets, bivouacs camps, training areas or schools.

(ix) Casualties before official publication.

(x) Effect of any action by the enemy. Any remarks which might tend, if published, to encourage the enemy, to cause despondency in our own forces of people, or to incite feeling of hostility among the people, in the theatre of war or in neutral coutries.

(xi) Criticisms and statements calculated to bring into disrepute our forces or those of our allies.

2. Private correspondence will be in plain language. Codes, ciphers and shorthand are forbidden. It is forbidden either in the address or text of correspondence to connect the name of a place with that of a unit, or the name of a unit with the designation of an army post office.

3. Picture post-cards of the following categories will not be used:-

(i) Those disclosing the writer's present or past location, or the route by which movements of the writer's unit have been taken place.

(ii Any aircraft of which photographs have not been published in the press.

.....4

No. 1577 Continued

(iii) Any coast lines or silhouettes which might be easily indentifiable and reveal the positions of aerodromes, defences and factories.

(iv) Any factories (aircraft or otherwise) which have been built since 1 Sept 39.

4. It is forbidden to send, or to attempt to send, to unauthorized persons:

(i) Official documents, including intelligence summaries, orders, reports, maps, etc., or to disclose their contents except in the course of duty.

(ii) Any documents captured from the enemy, or found in places occupied by the enemy, and any documents containing information about the enemy.

(iii) Any coast lines or silhouettes which might be easily identifiable and reveal the positions of aerodromes, defences and factories.

(iv) Any official documents belonging to the civil authorities in allied or enemy territory.

5. It is forbidden to communicate to the Press except through the duly channels authorized.

It is forbidden to send through the post photographs or films except those permitted by proper authority R.O. (O) No. 95. It is forbidden to despatch to neutral or enemy countries photographs or pictorial matter of any kind, from whatever source they may have been obtained.

7. It is forbidden to insert advertisements or letters in any publication inviting correspondence with strangers, or to enter into correspondence with any stranger in response to such advertisements or invitations. The greatest caution and reserve are necessary in acknowledging presents from unknown donors, or in replying to trade circulars from unknown merchants and dealers, especially those in neutral countries.

8. It is forbidden to make use of the civil postal service outside of the United Kingdom, or therein when the Army Postal Service is available, or to transmit correspondence by the hand of an officer, soldier, or civilian, proceeding outside the United Kingdom or a theatre of operation, except by a recognized military messenger service. Attention is directed to R.O.(O) No. 847.

No. 1578 APPOINTMENTS AND PROMOTIONS

P7500	Sgt.	Harmston,	M.J.	To be A/R.Q.M.S.	eff 19-1-43.
M43938	Sgt.	Hillman,	L.H.	To be A/B.S.M.	eff 5-2-43
M43549	Sgt.	Hiner,	J.T.		
L26269	Bdr.	Brakewell,	R.	To be A/BQMS	eff 5-2-43
M43971	Sgt.	Morton,	R.W.		
L26323	L/Sgt.	Henderson,	C.F.	To be A/Sgt.	eff 5-2-43.
M43422	Bdr.	Kingsmith,	E.S.	To be A/L/Sgt.	eff 5-2-43.
M43418	Bdr.	Clennell,	J.P.		
M43532	Bdr.	Miller,	E.		
L26227	Bdr.	Sinkler,	E.G.		
M43996	L/Bdr.	Lane,	R.P.	To be A/Bdr.	eff 10-2-43.

...../5

No. 1578 APPOINTMENTS AND PROMOTIONS (Continued

L18437 Gnr. Doun, F.S.) To be A/L/Bdr. eff 16-2-43.
M43905 Gnr. Smith, L.W.) To be A/L/Bdr. eff 10-2-43.

(W.T. Wilson) Capt.
Adjt 13 Field Regiment R.C.A.

N/O/I/I/O/E/S

L26324 Gnr. McLeod, R.S. 16-2-43 Awarded 28 days Field Punishment for:/
(1) Sec 40 AA. Did cause a disturbance in that he did threaten a civilian.
(2) Sec 19 AA Drunkeness.
(3) Sec 40 AA Was improperly dressed.
(4)Sec 40 AA. Did urinate in a public place.
Automatic forfeiture of 28 days pay under FR&I 149 (1)(b)

L6287 Gnr. Murray, J.T. 18-2-43 Awarded 14 days C.B. and 7 days Forfeiture of pay under Sec 40 AA. Did violate Security Regulations with corresponding with a strange person.

L26308 Gnr. Robertson, C.F. 18-2-43 Awarded 14 days C.B. and 7 days Forfeiture of pay under Sec 40 AA. Did violate Security Regulations by personal correspondence.

MURDER OF WAAF AT CHICHESTER ON 30 Jan 43.

The Civil Police are desirous of interviewing the dvr of an army lorry which was proceeding along the Waterbeach Rd from HALNAKER X rds, Map Ref 342278, to Waterbeach X rds, Map Ref 329279, and Goodwood Pk, Map Ref 323281, between 1530 and 1700 hrs on Sat the 30 Jan 43, and while doing so stopped on the road near Redvins Wood, Map Ref 335277.

Will the dvr of this lorry or any other man who may have seen a lorry stationary, report at once to his C.O.

SINGING COMPETITION - The finals of the Div Community Singing Competition will be held at the Pier Pavillion, Worthing at 1945 hrs 24 Feb 43.

Dismissing with the whip.

If an officer is on parade, on the command "Dis - Miss", the squad will turn to the right, place the whip under the left arm, loop to the rear, cut the right hand to the side, salute as in Sec. 18, 16, and break off in quick time. Movements will be carried out at the same pace as in quick time, the hand being cut away on the sixth pace.

If no officer is on parade, the squad will, on the command "Dismiss", turn to the right, keeping the whip in position of "attention."

SQUAD MOVEMENTS

In slow time the hands must be kept steady by the sides. In quick time the arms must not be stiffened, but should swing freely and naturally from the shoulder; the right arm swings forward with the left leg and vice versa. The arms must not be bent at the elbows and the hands must be kept closed, not clenched.

Length of pace. In slow and quick time the length of pace is 30 inches. In stepping out it is 33 inches, in double time 40, in stepping short 21, and in the side pace 12 inches.

Time. In slow time 70 paces are taken in one minute. In quick time 120 paces, equal to 100 yards in a minute, or 3 miles, 720yards in an hour, are taken. Except during the first weeks of recruit training, recruits, when not in marching order, will take 130 paces a minute in quick time at drill. In double time 180 paces, equal to 200 yards a minute, are taken. The time of the side pace is the same as for quick time.

DRILL WITH THE WHIP (OR CANE)

Position of whip at attention. The whip will be held firmly in the right hand, in a perpendicular position close to the right side of the body, first joint of the fore finger of the right hand underneath the knob of the whip and pointing towards the thigh, thumb across the front of the whip. The remaining three fingers grasping the whip.

Position of whip when standing at ease. The back of the hand in palm of the left. Whip to be between the right arm and the body, loop pointing obliquely upwards and to the right front.

Position of the whip on the march. On the command "Quick March," step off as described in Sec. 19, 7. As the left foot comes to the ground the first time bring both hands smartly to the centre of the whip (one movement), whip to be kept perpendicular in the right side. As the left foot comes to the ground the second time, cut the left hand to the side, and carry the whip to the right side, whip to be carried parallel to the ground, balanced between the thumb and the first two fingers, loop to the front. The arms to be swung as in marching without whips, but the whip must be kept parallel to the ground.

The whip is now at the trail.

Halting. On receiving the command "Halt," whips will be kept at the trail. After a slight pause, whips will then be brought to the position of "attention" in two movements:-

1. Seize the whip with left hand at the centre and bring it to perpendicular position at the right side, and at the same time move the right hand to the knob of the whip as in the position of "attention."

2. Cut the left hand smartly away to the left side.

"C"

DAILY MAINTENANCE REPORT

F Sec Sig 2M Bty Tactical Sign 43

PART "A"

	Set No	Operator	Driver	Time Completed	I certify maintenance done and set O.K. less remarks	Remarks, deficiencies and action taken
1.		DUFFAN HAVE		0925	R. Nutton	
2.		WELLS		0932	A. Rae.	
3.		RANEY		0930	[illegible]	
4.						
5.						
6.						
7.						
8.						
Spare						

I certify that I WAS PRESENT TO SUPERVISE THE MAINTENANCE, and the ABOVE IS THE STATE OF EQUIPMENT.

....
Tp. N.C.O. Tp. N.C.O. Bty Sig N.C.O.

Time Rec'd [illegible] Office 0940 hrs

Date 31 July 1943

Noted [illegible] Major
Bty Comd.

PART "B"

I certify that all signal equipment other than wireless, has been tested and maintained by myself or such personnel as I have designated whose names are on record in my possession. Details requiring action are appended.

Time _____ hrs

Date _____ 1943

Signed .....
Bty N.C.O.

Noted .....
Major
Bty Comd.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of L26007 Sigmn Eldon Roland Dutton, "F" Section Sigs. Attached 13 Canadian Field Regiment, Royal Canadian Artillery.

Lieut. Colonel W.S.Ziegler, Officer Commanding, 13 Canadian Field Regiment, R.C.A. (A.F.), directs that all evidence be taken on oath;-

1st Witness; Capt. W.T.Wilson, Adujant, 13 Canadian Field Regiment, R.C.A. (A.F.). having been duly sworn states;-

I am introducing into the evidence 13 Canadian Field Regiment Daily Part I Order No. 1577 dated 19 Feb. 1943, which quotes C.A.R.O. No. 1089. I certify as Adujant of this regiment at the time this order was published that this order was posted in places that were accessible to all ranks of the regiment.

The accused declines to cross examine this witness.

Signature of witness W.T.Wilson
(W.T.Wilson) Capt

2nd Witness; G49402 L/Cpl. Ross, V.E. having been duly sworn states;-

I am wireless N.C.O. of Sig. Section, R.C.C.S. Sigmn. Dutton is a wireless operator in the section of which I am N.C.O. The signature of Sigmn Dutton contained in the daily maintenance report dated 31 July, 1943 (Attached hereto) is in Sigmn Duttons own hand writing. In my opinion the writing contained in exhibit "A" (Attached) is that of Sigmn Dutton.

The accused declines to cross examine this witness.

Signature of Witness V.E.Ross.
V.E.Ross

3rd Witness; L26008 Cpl. Deck, J.S., "F" Section R.C.S. Attached 13 Canadian Field Regiment, R.C.A.(A.F.) states;-

I have seen Sigmn Dutton's hand-writing on occasions in the past and it is my opinion that the writing in exhibit "A" is that of Sigmn Dutton, E.R.

Signature of Witness J.S.Deck
J.S.Deck

L26007 Signalman Eldon Roland Dutton, "F" Section R.C.C.S. Attached 13 Canadian Field Regiment, R.C.A. (A.F.) was asked:-

> "Do you wish to make a statement or to give any evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or evidence you give will be taken down in writing and may be used in evidence."

The accused declined to make a statement.

I hereby certify that Rules of Procedure 4 (c) (d) (e) (f) (g) have been complied with.

Taken before me in the Field, this 6 day of August 1943.

(F. J. Davis) Lieut.
A/Adjt. 13 Cdn Fd Regt. R.C.A.

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. L26007 Name Dutton, E.R. Sqn., Battery, or Company — Corps R.C.C.S. — Date of enlistment 28-5-40 — G.C. Badges — Service or Proficiency Pay

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order suspending with 43rd	By whom awarded	Remarks
No entries from previous sheet destroyed 28 Nov. 40 on completion of 6 months service.									
Field	6-1-42	Sigmn		Sec 11 A.A. failing to appear at a place ~~xx~~ at time specified in Section Orders.	Sigmn Darjes Sgt Cobb	3 days penal forf of pay.	6-1-42	Lt. Col. Thompson	
Field	14-1-42	Sigmn		Sec 40 A.A. improperly dressed while on leave.	L/Cpl. Bagg Documentary	3 Days C.B.	14-1-42	Lieut. Holmes	
Field	27-9-42	Sigmn		Sec 11 A.A. failed to camouflage W.D. vehicle contrary to Section orders.	L/Cpl Jackson	3 Days C.B.	28-9-42	Lieut. Eckenfelder	

Certified true Copy
(W.T. Wilson) Capt.
Adj 13 Cdn Fd Regt R.C.A.

(P.T.O.)

M.F.H. 955
40/F de 8/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L26007	Sigmn	Eldon Roland Dutton	"F" Sec, Sigs R.C.C.S. att. 13 Can Fd Regt RC

1. The following is a fair and true summary of the entries in the Regimental and Service Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For Sec 11 A.A.	one	times	Sec. 11 A.A.	twice times
For		times	Sec. 40 A.A.	one times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct Nil

or,

Nore:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for Nil / days in civil custody, and 6 days in military custody, making a total of 7 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 26 yrs 8 months

6. The date of his attestation specified in his attestation paper 28 May 40

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon 3 yrs 2 mons. service for the purpose of determining his pension, etc.

9.

10.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Seventh day of August 1943 A.S. Dickson Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked 5 signed by the president, and annexed to the proceedings.

J. Kirker Major
President

150 V (case #2)

Pte. DUTTON, J.A.

See 11 R for 1st case

F.G.C.M. C-6271 Pte. Dutton, J.A.
1 C.A.S.C.R.U.
BGHQ 5-6-2/108

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this fifteenth day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "B" Group Canadian Reinforcement units, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial: *[and that it is not practicable to delay the trial for reference to a superior qualified officer];

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable

*[I am unable to appoint—
*[the persons named in the Schedule]
*[a Field General Court]
to the following persons, namely:—]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be stated. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	Major J.D. Middleton	1 Cdn. Engr. R.U.

Members.

Rank.	Name.	Regiment.
A Captain	CAPT R.L. PAUL from	1 C.O.R.U.
A Lieutenant	LIEUT S.L. PATERSON from	1 C.A.S.C.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (P.R. SHIELDS) COLONEL
Commanding "B" GROUP CDN. REINF. UNITS
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-6271 Pte. DUTTON, James, A. 1 C.A.S.C.R.U.	First Charge Sec 15(1)	Guilty	Guilty To undergo detention for a period of 90 days (ninety days)	I confirm the finding and Sentence of the Court J.D.M. 19 Jan 43. 18 Jan 1943.
	See attached Charge Sheet			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) (P.R.SHIELDS) COLONEL. (Signed) J.D.Middleton Major
Commanding "B" GROUT C.R.U. *Convening Officer* (*d*) *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of JANUARY 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) J.D.M.
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 18th day of January 19 43.

J.D.Middleton Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 782 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. J.D.M.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 19 day of Jan 1943.

P.R.Shields Col
Confirming Officer.

Promulgated and extracts taken in the case of C.6271 Pte. Dutton, J.A.

(*a*) (Dated) 20th Jan. 1943 (Signed) P.R.Shields Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. 39045/1234 750m 1/41 W. & Co., Ltd. Gp. 748/2

CHARGE SHEET

The accused c 6271 Pte. JAMES A. DUTTON of 12th Baty. Cdn. Army Tank Regt. now of 1 Cdn. A.S.C. Reinf. Unit. is charged with when on active service:-

ABSENTING HIMSELF WITHOUT LEAVE.

Sec. 15 (1) A.A.

in that he at Farnborough, Hampshire, absented himself without leave from 2200 hrs., 15 Dec. 1942 until 0030 hrs 9 Jan. 1943 when he voluntarily surrendered to the Hammersmith Police Station.

Farnborough, Hants.
12 January 1943

(O.H. Barrett) Colonel,
Commanding,
1 Cdn. A.S.C. Reinf. Unit.

To be tried by Field General Court Martial.

(P.R.SMILDS) COLONEL
COMMANDER "B" GROUP
CANADIAN REINFORCEMENT UNITS
CONVENING OFFICER.

15 Jan 43

To Middlesex Hospital

Medical Officers' Certificate.
A.F.B. (Gnl.) Para 557

I certify that I have this morning examined No. S.42711 Gunner J. A.
of H.J. Batt. R.A. R.A. and in my opinion he is fit to undergo
trial by court martial.
station.

Date. Jan 18 1943

Sgd. [signature]
(Medical Officer)

SUMMARY OF PROCEEDINGS AT THE TRIAL
BY FIELD GENERAL COURT MARTIAL OF
C 6271 Pte DUTTON J A 1 CASC RU
HELD IN THE FIELD ON 18 JANUARY 1943

– Sick medical certificate &
The order convening the Court, charge sheet, summary of evidence are laid before the Court.
The Court satisfy themselves that RR 22-23 are complied with
The accused C 6271 Pte DUTTON J A is brought before the Court.
Prosecutor Capt C S Jowett 1 CASC RU
Defending officer Capt R D Yates 1 CASC RU.
At 1035 hrs the trial commences.
The order convening the Court is read signed by the President & attached to the Proceedings
The names of the President & Members of the Court are read out in the hearing of the accused & they severally answer to their names.
Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over?
A1 No Sir
The President & Members of the Court are duly sworn.
The following constitute the Court:
President Maj J D Middleton 1 CERU
Member Capt R L Paul 1 CG RU
Member Lieut S T Peterson 1 CASC RU.
The accused is arraigned on the single charge on the charge sheet which is read to him & the following question asked
Are you guilty or not guilty of the charge against you which you have heard read?
Answer Guilty Sir
The effect of the plea is explained to the accused under RR 35 (b) & the plea is then recorded.
The Summary of Evidence is then read, signed by the President & attached to the proceedings
The Court is then closed to consider the finding & then re-opened

Capt C S Jowett 1 CASC RU having been duly sworn produces certified copies of AFB 296 & AFM 6 relating to the accused C 6271 Pte DUTTON J A. These documents are read, signed by the President & attached to the Proceedings
Capt C S Jowett 1 CASC RU further submits AFO 1617 (Certificate of Surrender to Civil Police) which is read, signed by the President & attached to the proceedings

The accused is asked if he has any statement to make & if he has witnesses to produce. He states that he has no witnesses to produce but desires to submit a written statement to the court under oath.

The accused is then sworn & takes the witness stand & submits this written statement to the court which is read, signed by the President & attached to the proceedings.

Capt R D Yates makes a brief plea for mitigation of sentence based on the facts contained in the statement.

The court is closed for the consideration of the sentence

J A Middleton Major
President

J.C. Middlemiss Mss
Box

Statement of C6271 Pte. Duttan, J.A.

In my previous statement I only gave a brief outline of my case. I wish to take this opportunity to place before the court my whole case.

In the first place I haven't a friend in the army. But I found one in civilian life. She is a girl and a real friend in my estimation. She has treated me better than anyone I know in this country. I've known her for quite some time.

My real reason for going to London was to see if this girl had sent Capt. Wills uniform to me or not. I had left it there sometime ago and had wondered if she had sent it to me. She had but I haven't received it yet. I never intended to go A.W.L. but had intended going up and back the same night.

Previous to being attached to this Unit I was with No 2 C.A.C., R.A. at Aldershot. I had just been released from Kedley on the 12th Dec. and had asked for a 24 hr. pass from the C.O. on 14th Dec. I waited all day and later that evening I was informed by the Orderly Room clerk that I was going to the R.C.A.S.C. on the morning of the 15th Dec. I had seen Capt Wills on the same day and he gave me a week to get his uniform back or else he would take steps to have me punished. When I arrived at this Unit I immediately went to London to find out about the uniform as I have stated before.

When I was in Kedley I met a chap who went to London quite regularly as his father lived there. This chap was a Canadian

and I had asked him to phone this girl for me and give her a message. He said he would and I thought no more of it. When I got to London and met this girl, she told me that this fellow had called her up, quite often in fact and had made a date with her. Now knowing this girl as I do, she told me every thing of what had happened. I knew for a fact that this chap had had V.D. before, but this girl didnt, so I told her what I knew. She just went to pieces; not having a Mother since she was 10 years old and her father in the civil service, she had only myself to help her. She worried so much that she lost her job and finally went and stayed at her girl friends apartment. We decided to see a Doctor. This Doctor lives in Kensington and is quite expensive. We took tests for both Syphilis and Gonnorhea and told us he would let us know the results in about 10 days time. So I waited and we found that she had not contracted any disease.

We then decided that I should return and tell the truth about it all. I gave myself up to the Hammersmith Police on 8th Jan.

I hope the court will understand my case, as I figured I was doing the best I could, after all I was really to blame if this girl had contracted a disease. It would have worried me all the time as it was through me she met this chap. I'm not a bad soldier as I like the Army. I've been in and out of it for a number of years since I was 17 years old.

I haven't heard from my wife for at least 5 months, she may have written but I haven't received any letter, parcels or cigarettes for at least that time.

After all I ask in this army is to have friends as I get feeling quite low at times.

I plead guilty to being A.W.L. but make the above statement in my defence and ask that the court deal leniently with me and make the sentence as short as possible.

J A Dutton

SUMMARY OF EVIDENCE

In the case of C-6271 Pte. Dutton, J.A. of 12th Battery Cdn. Army Tank Regt. now at 1 Cdn. A.S.C. Reinf. Unit, Blenheim Barracks, Farnborough, Hampshire.

The Commanding Officer No. 2 Trng. Wing (AT), Lt-col. W.P. Bonnick, 1 Cdn. A.S.C. Reinf. Unit, Blenheim Barracks, Farnborough, Hampshire, directs that evidence be taken on oath.

1st Witness K-65246 Pte. Gagnon, J.A. having been duly sworn states:-

I am K.65246 Pte. Gagnon, J.A. 1 Cdn. A.S.C. R.U., Blenheim Barracks, Farnborough, Hampshire.

On 15 Dec 42 I was Orderly Corporal. At 2200 hours I called the Roll in the Barrack blocks and C.6271 Pte. Dutton, J.A. was absent. I reported his absence to Sgt. File. I have not seen Pte. Dutton since that time until to-day.

The accused declined to examine the witness.

J.A. Gagnon
K.65246 Pte. Gagnon, J.A.

2nd Witness D.93747 Sgt. File, J.C. having been duly sworn states:

I am D.93747 Sgt. File, J.C. of 1 C.A.S.C. R.U., Blenheim Barracks, Farnborough, Hampshire.

On 15 Dec, 42 I was Duty Sergeant. On receiving Tattoo Roll Call at 2200 hours, 15 Dec 42 C.6271 Pte. Dutton, J.A. whom I now recognize was reported absent from his quarters. In turn reported this to C.S.M. Bennett who typed out an Absentee slip for him. I have not seen the accused, C.6271 Pte. Dutton until he appeared for Orderly Room at 1045 hours 11 Jan 43.

The accused declined to examine the witness.

J.C. File
D.93747 Sgt. File, J.C.

3rd Witness C.12230 Corporal Bonnah, W.J. having been duly sworn states:

I am C.12230 Cpl. Bonnah, W.J. , 1 Cdn. A.S.C. R.U., Bleinheim Barracks, Farnborough, Hampshire.

On 9 Jan 43 at 1200 hours I was on duty in No.1 Guard Room when the accused C.6271 Pte. Dutton, J.A. whom I now recognize was brought in by a L/Cpl. from No.6 Coy Cdn. Provost Corps. I placed C.6271 Pte. Dutton J.A. under close arrest where he has been since that time.

The accused declined to cross-examine the witness.

W.J. Bonnah
C.12230 Cpl. Bonnah, W.J.

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SUMMARY OF EVIDENCE

The accused soldier was thereupon warned in accordance with R.P. 4(e).

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so; but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

Statement of the accused C-6271 Pte. Dutton, J.A. having been duly sworn states:

I am C-6271 Pte Dutton, J.A. 12th Battery, Canadian Army Tank Regiment posted to 1 Cdn. A.S.C. Reinf. unit, Blenheim Barracks, Farnborough, Hampshire on course, pending transfer.

On 15 Dec 42 I left Barracks and went to London on business. When I got there I found that there had been some trouble between a girl I knew and a chap to whom I had introduced her. She thought she had contracted venereal disease so I stayed in London until I was sure that both she and I were free from it.

My original intention was to go to London and get a uniform which I had taken up there for Capt. Mills of No. 2 C.A.C. R/U. It had been left at this girl's place.

I had asked for a pass from the Commanding Officer No. 2 C.A.C. R/U. on the 14th Dec and he had given me no satisfaction. I was ordered to No. 1 C.A.S.C. R/U. the next day.

I gave myself up at 2330 hrs, 6 Jan 43.

J.A. Dutton

(C-6271 Pte. Dutton, J.A.)

SUMMARY OF EVIDENCE IN THE CASE OF C-6271 PTE. DUTTON, J.A.

I certify that the foregoing Summary of Evidence was taken down by me in writing in the presence and hearing of the accused at Blenheim Barracks, Farnborough, Hampshire this 11th day of January 1943.

C.F. Juvet

(C.F. Juvet) Capt
Officer detailed to take Summary

I C-6271 Pte. Dutton, J.A. desire the assignment of an Officer to represent me at my Court-Martial.

J.A. Dutton

(C-6271 Pte Dutton, J.A.)

List of Witnesses

K-[illegible] Pte Gagnon, J.A.
D-[illegible] Sgt Filn, J.C.
C-12 30 Cpl Bonnah, W.J.

List of Exhibits

Exhibit: "A" A.F.C. 1617
"B" Consignment slip 16/41 No. 6 Provost Coy.
"C" Guard Detention Slip
"D" Tattoo Report
"E" M.F.M. 6 certified copy
"F" Charge Sheet.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(58973) W.L.16674/169 12,000 6/41 A.S.S.W.,Ltd. Gp.698 Forms/O.1617/12

I CERTIFY that the man whose personal description is given below surrendered himself to* H4234 Steward at Hamm Inuck Police Station at (hour) 12 30 am on the 9th day of January 43 as being No. C6241 (Rank and Name) Trooper J. A. Dutton a deserter (or absentee without leave) from 1st Batt Canadian Army Tank Regt and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 31 Height 5 Feet 8 Inches

Complexion fresh Hair dk brown Eyes hazel

Marks None

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	Picton, Ontario 31/7/40
Probable Date of Desertion or beginning of absence, and from what place	Aldershot 17/12/42

Signature of Officer of Police in charge of Edgar H.S.M. Hamm Inuck Station.

9/1/43 Date of Signature.

Exhibit A. for Identification

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

Nil

CERTIFIED that this statement of expenses is correct.

Edgar H.S.M. Superintendent or Officer in charge of Police Station at Hamm Inuck

9/1/43 Date of Signature.

Exhibit A.

No. C.6271 Name DUTTON, J.A. Sqn., Battery, or Company 2 I Cdn Regt

Corps R.C.A.S.C. Date of enlistment 3 Jul 40 G.C. Badges

Date of last entry in Company Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc. J.M. Snowball, Lieut.

Service or Proficiency Pay

M.F.M. 6 A.F.B. 117

(11M—7-41 (1218-20) H.Q. 1772-20-162

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13-7-41	Tpr		AA 15(1) AWL 1 day 21 hrs 15 min.	Cpl.Marchand	3 days pay	16-7-41	Lt.col. Vining	FRI149(2)Forf 2 days pay
Field	27-7-41	Tpr		AA 15(1) AWL 4 days 6 hrs 30 min	Cpl.Charette Cpl.Desilets	14 days detn.	1-8-41	Lt.col. Vining	FRI149(1)(a) Forft.5 days pay FRI149(1a
Field	22-12-41	Tpr		AA 15(1) AWL 10 days 22 hrs.	Sgt. A.F. Bouthillier	28 days F.P.	3-1-42	Capt.Phelan	Forft.14 days pay FRI149(1b Forft.11 days pay FRI149(1a)
Field	10-2-42	Tpr		AA 15(1) AWL 8 hrs	Cpl.Desilets	3 days C.B.	11-2-42	Capt. Phelan	Forft.28 days pay FRI 149(1b) Forft 2 days pay FRI149(1a)

Exhibit "E"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19-6 42	Tpr		AA 15(1) AWL 2 days 20 hrs 15min	Sgt.Bouthillier Sgt.FleurdeLis	3 days pay	23-6-42	Major Van Starubenzee	FRI149(2) Forft 3 days pay FRI 149(1)(a) Costs of apprehension 5-7
Field	13-3 42	Tpr		AA 15(1) AWL 9 hrs	Cpl. Darrington	3 days C.B.	14-3-42	Lieut.F.L. Caron	Forft.1days pay FRI 149(1)(a)
Field	11-8 42	Tpr		AA 15(1) AWL 33 days 1 hr 40 min. In arrest 10 days. Costs of app. 0-11-11 AA 24(2) Losing by neglect his equipment, etc. amount £5-1-0.	Cpl.Rexford Tpr. Hood RQMS Raine	120 days detn.	23 Mar 42	FGCM	Forft.120 days pay FRI 149(1)(b) Forft 10 days pay FRI 149 (1)(c)(1) Forft 33 days pay FRI 149 (1)(a) Cost. of app. £0-11-11. Costs kit. £5-1-0.

Certified true copy

Adj. & Trng. Wing.
1 Cdn. A.S.C. R.U.

M.F.D. 355
40/F & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-6271	Pte.	James, A. DUTTON	1 Cdn. ASC Reinforcement Unit.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.A. Sec. 15(1) AWL	3 times	6 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil.

or,

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

[redacted]

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under [redacted] Section 47 of the Army Act Air Force Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charge, for Nil days in civil custody, and days in military custody, making a total of days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 21

6. The date of his [redacted] attestation specified in his [redacted] attestation paper 3 July 1940.

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is military military in possession of or entitled to). State any air force decoration or reward. military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of

11. (In the case of an officer.) The accused holds in the ~~Royal Canadian~~ Air Force the rank of
Permanent Force
unit
dated, and in his regiment (or corps), the rank of
dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number C-6271 Rank Pte

Name DUTTON, J.A. of 1 Cdn. ASC Reinforcement Unit. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 23 March 42	A.A. Sec 15(1) A.A. Sec 24(2)	120 days det.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

RCASC
1 Cdn. A.S.C. Reinf. Unit.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

11 R.

Tpr. Dutton, J A

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here

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Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 2nd day of SEPTEMBER, 19 42

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN ARMY TANK BDE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

[redacted]

* Omit if not applicable.

JUDGE ADVOCATE

CAPT. W. B. BATE A.D.J.A 1 CDN CORPS

President.

Rank.	Name.	Regiment.
Major	R. L. Purves	14 Cdn Army Tk Regt

Members.

Rank.	Name.	Regiment.
Capt	H. L. Higginbottom	11 Cdn Army Tk Regt
Capt	D. Wallace	59 L.A.D. Att. 11 Cdn Army Tk Regt.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed R. L. Purves
Commanding 1 Cdn Army Tank Bde (R. A. Wynn) Brigadier,
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

PROCEEDINGS REVIEWED

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-6271 Tpr Dutton, J.A. H.Q. Squadron, 1 Cdn Army Tank Bde.	1st Charge, Sec 15(1) Army Act. is charged with:- absenting himself without leave, in that he at 2215 hours 11 August 1942, absented himself without leave until 2235 hours 13 September 1942 at which time he surrendered himself to the Metropolitan Police (F. Div) Hammersmith. (Total Absence 33 days, 1 hour and 40 minutes.) (Expenses incurred in returning him to his unit under escort, eleven shillings and elevenpence).	GUILTY	GUILTY	Confirmed T/Cond, 1 Cdn Army Tank Bde.
	2nd Charge, Sec 24(2) Army Act. is charged with:- losing by neglect property issued to him for his use, in that he, in the Field, on the 16 September, 1942 was deficient of the following items of public clothing and equipment issued to him for his use:-	NOT GUILTY	GUILTY EXCEPT THAT HE WAS DEFICIENT ON 13 SEP 42 OF KIT AMOUNTING TO £5-0-0. TO UNDERGO DETENTION FOR 120 DAYS & TO BE PUT UNDER STOPPAGES OF PAY OF £0-11-11 AS COSTS OF APPREHENSION & £5-10 AS LOSS OF KIT 23 Sept 42.	Confirmed

Voc Price 75% 22-17 3

t. crab

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— NO SIR.

(Signed) (H.H.Wyman) Brigadier — *Commanding* 1 Cdn Army Tk Bde.
(Signed) (H.L.Purves) Major — 14 Cdn Army Tank Regt. — *Convening Officer* (*e*) — *President*
D. R. Keate Capt — *Judge Advocate*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of September 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Judge Advocate
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 23rd day of September 1942.

D. R. Keate Capt
Judge Advocate

R. Purves Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~I direct that the soldier named in the margin be sent under escort to prison or detention barrack until further ordered~~

" To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 24th day of Sept. 1942.

Confirming Officer.
T/Cond, 1 Cdn Army Tank Bde

Promulgated and extracts taken in the case of C-6271 Tpr Dutton, J.A. 1 CDN ARMY TANK BDE

(*a*) (Dated) 29 September, 1942 (Signed) R Purves Maj

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

2 Drawers, [illegible]	6-9	6-
1 Jacket, sweater	18-4	13-9
2 shirts, Angola	5-0	3-9
3 Socks, worsted, prs	1-6	1-1½
1 Vest, gymnasium	1-11	1-5
1 Shorts, gymnasium	3-3	3-11
1 Bag, kit	-5	-4
1 Fork, table	-4½	-3½
1 Spoon, dessert	10-0½	7-6
1 Helmet, steel	10-9	8-1
1 Sheet, ground		
	£7-1-5½	£5-6-1

CHARGE SHEET

The accused, C-6271, Tpr Dutton, J.A., H.Q. Sqn, 1 Cdn Army Tank Bde, a soldier of the Canadian Army on Active Service is charged with:-

1st Charge
Sec 15 (1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

at 2215 hours 11 August, 1942 absented himself without leave until 2355 hours 13 September, 1942 at which time he surrendered himself to the Metropolitan Police (F. Div.) Hammersmith. Total absence 33 days, 1 hour and 40 minutes. Expenses incurred in returning him to his unit under escort, eleven shillings and elevenpence.

2nd Charge
Sec 24 (2)
Army Act

LOSING BY NEGLECT PUBLIC PROPERTY ISSUED TO HIM FOR HIS USE

in that he

in the Field, on the 16th September, 1942 was deficient of the following items of public clothing and equipment issued to him for his use:-

	Voc Price			75%		
1 Greatcoat, drab	£3	17	0½	£2	17	9
2 Drawers, cellular short		4	1		3	1
1 Jacket, sweater		6	9		5	1
2 Shirts, Angola		18	4		13	9
3 Socks, worsted, prs		5	0		3	9
1 Vest, gymnasium		1	6		1	1½
1 Shorts, gymnasium		1	11		1	5
1 Bag, kit		5	3		3	11
1 Fork, table		-	5		-	4
1 Spoon, dessert		-	4½		-	3½
1 Helmet, steel		10	0½		7	6
1 Sheet, ground		10	9		8	1
	£7-1-5½				£5-6-1	

Field

17 September, 1942

(R.J.R. Donahie)
Major
O.C., H.Q. Sqn, 1 Cdn Army Tank Bde.

To be tried by F.G.C.M.

21 SEP 1942

BRIGADIER
COMD'G 1st CDN. ARMY TANK BDE.

23 September 1942

C 6271 Tpr Dutton, J.A.

Certified that I have on this date examined the above-mentioned soldier and find him fit to stand trial by Court-Martial

J.P. Brewlaan
Capt R.C.A.M.C.

Trans. F.G.C.M.

W. L. Scott Capt
Judge Advocate

Proceedings of a Field General Court Martial held at Field on the 23rd day of September 1942

President
Major R.L. Purves 14th Can Army Tank Regt.

Members
Capt. H.L. Higginbottom 11th Can Army Tank Regt.
Capt. J.D. Wallace 59th L.A.D attchd to 11th CAT. Regt.

For the purpose of this trial Judge advocate
Capt. W.B. Bates A.D.J.A. I Can Corps.

Trial of C-6271 Spr Dutton J.A. HQ Sqn 1st Can Army Tank Bde.

Prosecuting officer Lieut G.J. Gray
HQ Sqn 1 Can Army Tank Bde.

Defending officer Lieut D.S. Clapperton
14 Can Army Tank Regt.

The Court swtisfys themselves as provided by R.P 22 & 23
The Court opens at 1015 hrs.
The accused is brought before the Court
The Convening ~~off~~ order is read, signed by the President and attached to the Proceedings.
The accused does not object to being tried by the President and members of the Court.
The President, members, and Judge advocate have been sworn and the following officer under instruction is duly sworn.-
Lieut R.T. Major 12th Can Army Tank Regt. (T.R.R)
The accused is arraigned upon each charge and pleads guilty to the first charge and not guilty to the second charge.
R.P 95 (B) complied with.
The accused did not desire an adjournment.

1st witness for the Prosecution K-85233 Spr E.W. Scott. McWilliams
HQ Sqn 1st Can A.T Bde.
Being duly sworn states,-
Ques. On the 17th Sept were you ordered to take an inventory of Spr Dutton J.A.
Ans yes sir
Ques. What did this inventory disclose.
Ans ~~They were~~ This inventory was a shipment of certain clothing & equipt.
Ques. I will now read out list of which the accused is charged
Ques will you explain that list to Court. (produces list of equipt)
Ans. Exhibit "H" is produced

Ques: Can you give me the value of clothing & equipt of the accused that was deficient (PAGE 2)

Ans: £7/1/5½

Ques. Was this inventory made in presence of accused.

Ans. Yes sir

Defence.

Ques. Did the accused admit he was deficient of these articles

Ans He signed the inventory sheet (Exhibit "H")

Ques by Mr. D.A.

Ques. Do the £7/1/5½ the full vocabulary price.

Ans. Yes. I have the C.A.R.O. which shows these prices.

Ques. What is your job in the unit.

Ans. Acting R.Q.M.

Ques Have you read the charge sheet.

Ans no

Ques Do you know if the vocabulary price of the article is correct

Ans. Yes.

Ques Was inventory taken on 16th or Sept 17th.

Ans. The date on inventory sheet will show.

Ques. Do you recognize the accused.

Ans. Yes sir.

R.P. 83(B) complied with.

The Pros., Lieut D.J. Gray, was duly sworn and produces.

Police Statement dated 14 Sept 42 (Exhibit "I")

Cert of Arrest " ("J")

Cert. of Costs of apprehension ("K")

Certified true copy of the record of declaration of Court of Inquiry (Exhibit "L")

Ques by D.A.

Do these concern the accused.

Ans Yes sir.

R.P. 84 complied with.

~~Ques to accused.~~

The accused stated that he wished to give evidence himself but did not intend to call any other witnesses

Accused being duly ~~evidence~~ sworn states —

1st Ques. When did you last have your kit.

Ans. I had it last on the day I left to go to Haywards Heath. on 11 Aug 1942.

Ques Where was your kit at this time.
Ans. It was packed in my room in my billet.
Ques What do you mean by packed.
Ans It was already to move & every thing was complete.
Ques Was it customary to leave your kit in this place.
Ans. I always leave it there when on duty or on pass.
Ques. Did you return there
Ans No sir.
Ques Did other people live in this room.
Ans Yes sir.
Ques How many.
Ans Three.
Ques Were their kits in the room.
Ans. Yes sir.

Ques by prosecutor

Ques was your equipt in the proper place in the room in which you were sleeping prior to Aug 11/42
Ans Every thing except my steel helmet & greatcoat.
Ques They were in a cupboard next to your quarters
Ans was your steel helmet & greatcoat in an authorized place
Ques No Sir.
Ques What do you mean when you say you kept steel helmet & greatcoat in an unauthorized place.
Ans I left it in this cupboard because I had no room in my pack.
Ques Up to the time of this move where did you keep helmet & greatcoat.
Ans Right on my bed with my other equipt.

Ques by court

Ques Had you any knowledge of a move by your unit.
Ans. Yes sir I did. I packed my equipt ready to move.
Ques You mention in your evidence about 3 other boys in same room. Did you ask any of them to take care of your equipt on this move.
Ans No I didn't.
Ques When you were first issued with equipt were you aware that on loss of your equipt you would be liable to repay the cost of loss.
Ans Not at first joining, but I found that out later on.

Ques by D.A.C. I.A.

Ques What length of pass did you have when you left on 11/Aug
Ans It wasn't a pass but more of a authorization to go away with Mr Wills.
Ques Did you not make any arrangements beforehand to store your

hit any where. Ans. No sir.

Ques What did you expect to happen to your kit while you were away for a month.

Ans It was customary for the other fellows to look after your equipt if you were not there at the time.

R.P 93 (B) complied with.

The Prosecutor addressed the Court.

The Defending Officer addressed the Court.

The Court is closed for finding.

The Prosecutor, already sworn, produces A.F.B. 296 (Exhibit "N") & a Cert. True Copy of M.F.M 6. of the accused (Exhibit "O")

The accused did not wish to address the Court.

The Court is closed to consider sentence.

Jerome
Major
Commdt.
D.A. Bath Capt.
Judge Advocate

Summary of evidence in the case of

C-8271 Tpr Dutton, J.A., H.Q. Sqn, 1 Cdn Army Tank Bde

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution B-60557 Tpr Hood, J.H., H.Q. Sqn, 1 Cdn Army Tank Bde, having been duly sworn states:-

I am B-60557 Tpr Hood, J.H. I was in charge of the batmen of H.Q. Sqn, 1 Cdn Army Tank Bde on the 11th August, 1942 and, that night of the 11th August, 1942 Tpr Dutton was absent from tatoo at 2215 hours. I then reported him absent to the Squadron Orderly Sergeant. He has not been on duty since that date.

The accused declines to cross-examine the witness.

Certified true statement of B-60557 Tpr. Hood, J.H.
Gilfray Lieut.

B-60557 Tpr Hood, J.H.
H.Q. Sqn, 1 Cdn Army Tank Bde

Second Witness for Prosecution B-69866 Cpl Reford, A., H.Q. Sqn, 1 Cdn Army Tank Bde, having been duly sworn states:-

I am B-69866 Cpl Reford, A., H.Q. Sqn, 1 Cdn Army Tank Bde and on the 11th August, 1942 I was Orderly Sergeant. On the morning of the 12th August, 1942 at 0800 hours Tpr Hood, J.H. reported to me that Tpr Dutton was absent from his quarters from 2215 hours, 11th August, 1942. I checked up on the absentee and he was not in the Squadron area, and I did not see him until September 14th, 1942 around 1500 hrs at which time he was under close arrest.

The accused declines to cross-examine the witness.

A. Reford

B-69866 Cpl Reford, A.
H.Q. Sqn, 1 Cdn Army Tank Bde

Third Witness for Prosecution B-74191 Sgt Sherman, R.B., H.Q. Sqn, 1 Cdn Army Tank Bde having been duly sworn states:-

I am B-74191 Sgt Sherman, R.B., H.Q. Sqn, 1 Cdn Army Tank Bde. At 1345 hours on the 14th September, 1942, Tpr Dutton was given into my custody by No. 6 Provost Company. He was under close arrest. At the same time I received from them the following documents which I submit as evidence:-

Police Statement
Certificate 163 (I) (J)
Expense voucher for Rail fare.

The accused declines to cross-examine the witness.

R. B. Sherman

B-74191 Sgt Sherman, R.B.
H.Q. Sqn, 1 Cdn Army Tank Bde

Summary of evidence (continued).

Fourth Witness for Prosecution

K-85233 Tpr A/R.Q.M.S. Scott-McWilliams, E.W., H.Q. Sqn, 1 Cdn Army Tank Bde, having been duly sworn states:

I am K-85233 Tpr A/R.Q.M.S. Scott-McWilliams, E.W. On the 17th September, 1942 I made and inventory of the clothing and equipment of C-6271 Tpr Dutton, J.A. and I found him deficient of public clothing and equipment to the value of £7-1-5½ and he is still so deficient.

The accused declines to cross-examine the witness.

E.W. Scott-McWilliams

K-85233 Tpr A/RQMS Scott-McWilliams, E.W.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the Accused elected to give evidence as follows;

My equipment was packed ready to move knowing that the Squadron was moving to new billets. Everything, except my greatcoat and steel helmet, that is missing was in one kit bag laying beside my other equipment that I still have. My greatcoat and steel helmet were in a cupboard in the same room.

J.A. Dutton

C-6271 Tpr Dutton, J.A.

The accused does not call any witness for the defence.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the Accused, and that the Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

B.J. Gray Lieut

(B.J. Gray)
Lieut
H.Q. Sqn, 1 Cdn Army Tank Bde.

In the Field
England
17 September, 1942

List of witnesses for the Prosecution and Defense.

PROSECUTION

B-60557	Tpr	Hood, J.H.	H.Q. Sqn, 1 Cdn Army Tank Bde
B-69866	Cpl	Reford, A.	H.Q. Sqn, 1 Cdn Army Tank Bde
B-74191	Sgt	Sherman, R.B.	H.Q. Sqn, 1 Cdn Army Tank Bde
K-85233	Tpr (A/RQMS)	Scott-McWilliams, E.W.	H.Q. Sqn, 1 Cdn Army Tank Bde

DEFENSE

None

LIST OF EXHIBITS

Exhibit "A"	Police Statement.
Exhibit "B"	Certificate 163 (I) (J).
Exhibit "C"	Expense voucher for rail fare.

I desire to have an officer assigned to me by the Convening officer to represent me.

C-6271 Pvt Dutton, J.A.

M.F.C.800

H.Q. Sqn, 1 Cdn Army Tank Bde.

W. R. Lake Capt
Adjt Signals

INDIVIDUAL'S CLOTHING AND EQUIPMENT STATE

Regtl No. C4271 Rank Tpr Name Dutton Date 19/9/42

Articles of Clothing	A	B	C	Equipment, Necessaries	A	B	C
Anklets, web, prs.	1			Bags, kit	X	✓	
Boots, Brown, Pigskin	2			Blanket, wire	1		
Braces, Trousers	2			Brush, tin	1		
Buckle, web, leather brown	2			Cardigan, pr.	1		
Cap, field,	2			Clothes, suit	1		
Cap, field, Tombstone's, pr.	1			Eating, set	1		
Clothes, W.D., pcs	1			Flask, pint	1		
Coat,	1			Gloves, pr.	1		
Drawers, pr.	X			Groundsheet	1		
Drawers, woollen, pr.	X			Haversack	1		
Gloves, leather, pr.				Housewife	1		
Gloves, woollen, pr.				Knife, jungle, web, pr.	1		
Handkerchiefs				Lanyard	1		
Jacket, battle				Mess tin	1		
Jacket, field				Mitts, leather, pr.	1		
Jerkin, leather				Pack, small	1		
Mitts, woollen, pr.				Pouches, ammunition	2		
Pullover				Rifle	1		
Puttees, pr.	X			Scarf	1		
Shirts	X			Sleeping bag	1		
Shoes, pr.	2			Socks, pr.	3		
Socks, pr.	1			Spoon	1		
Trousers, battle				Stockings, pr.	1		
Trousers, field				Suspenders, pr.	1		
Vest, woollen				Towel	1		
Waistcoat	X			Trousers, battle	1		
Waterproof, suit	1			Trousers, field	1		
Waterproof, cape	X			Vest, woollen	1		
Waterproof, hood				Waistcoat	1		
Waterproof, leggings	X			Waterproof, suit	1		
Waterproof, trousers	X			Waterproof, cape	1		
				Waterproof, hood	1		
				Waterproof, leggings	1		
				Waterproof, trousers	1		
				Whistle	1		
				Wire, barbed	X		

Signature of soldier [signature]

A - Number
B - Date of Issue Signature of Quartermaster [signature] Capt & Quartermaster
C - Soldier's Initials

METROPOLITAN POLICE.

STATEMENT OF WITNESS.

No. 992.

Station. Hammersmith 'P' Division.
Brock Green Road, London, W.6.
14th September 19 40.

Name James ROXBURGH.

Address Police Station, Hammersmith, W.6.

Age Occupation Police Constable No. 131 'P'.

Statement At 11-55 p.m. on the 13th September 1940, Driver Corporal James Arthur DUTTON, of 1st Canadian Army Tank Brigade, H.Q. Squadron, Rottingdean, Brighton, entered Hammersmith police Station and surrendred to me as being a deserter since 11th August 1940 from his Unit. He said:- "Will you ring the Provost Marshall for me. I am absent without leave."

Signature James Roxburgh P.C.131'P'.

Signature witnessed by

CERTIFICATE UNDER THE ARMY ACT, SECTION 168 (1) (a)

I, Lieut. A.J. Davies ..... certify that

Reg. No. [illegible] Rank Tpr. Name Paxton, J.A.

RECOUNTT 1st. Con. A/T. Bde. H.Q. Sqd.

UNIT .....

ATTACHED AT .....

Surrendered himself to No.[illegible] Rank Tpr. Name James Roxburgh.

of the Metropolitan Police (T. Div.) Hammersmith.

on the 14th. day of Sept. 1942, at 2355 hours

.....AT AN ASSEMBLY WITHOUT LEAVE

At the time of his surrender he was wearing (Military Uniform) or ~~Civilian Clothes~~

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender.
(Strike out parts inapplicable)

A Davies Lieut.

Officer i/c Detention Room,
No. 6 Can. Provost Coy.

London.
14-9-42

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. C 6271 Rank Pte Name Hutton, J. A. Unit 1st Bde. Depot Coy HQ Sqdn

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
14 Sept 42	Escorts return fare from LONDON To Brighton		7	11
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Brighton		4	0
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

..... Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/7 & S/483

Copy of Mil Bk 68

RECORD of the Declaration of a Court of Inquiry assembled In the Field on the 2nd day of September, 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or clothing of C-6271 Tpr DUTTON, J.A.

D E C L A R A T I O N

The Court declare that No. C-6271 Tpr DUTTON, J.A. of H.Q. Sqn, 1 Cdn Army Tank Bde illegally absented himself without leave from H.Q. Squadron, 1 Canadian Army Tank Brigade at 2215 hours on the 11th day of August, 1942, and that he is still so absent, and that on the 2nd September, 1942 he was deficient, and that he is still deficient of the following articles:-

Articles	No.	Voc Price £	S	D	Unit Price £	S	D
Blouses, battle dress	1	1	7	8		7	8
Trousers, battle dress	1	1	7	11		8	-
Bags, kit	1		5	3		2	6
Braces, pair	1		1	3½		-	6
Brasses, button	1			2		-	1
Brushes, tooth	1			4½		-	1
Caps, comforter	1		1	1½		-	6
Drawers, cotton	2		4	1		1	-
Fork	1			5		-	2
Gloves, M.T.	1		9	6		2	5
Dressings, F.F.	1		1	1		-	6
Housewife	1		2	3		1	-
Shirts, angola, drab	2		18	4		6	-
Socks, worsted, prs	3		5	-		1	8
Spoon	1			4½		-	2
Caps, mechanic	1			9		-	3
Great coat	1	3	17	½	1	5	-
Jacket, sweater	1		6	9		2	-
Vests, gymnasium	2		3	-		1	-
Shorts, gymnasium	2		3	10		1	6
Carriers, water bottle	1		3	3		2	-
Nets, camouflage	1			8		-	4
Helmets, steel	1		10	½		6	-
Straps, web supporting	2		2	2		1	-
Sheets, ground	1		10	9		5	-
TOTAL		£ 11	3	1	£ 3	16	4

Capt A. Woodhouse — President
H.Q. Sqn, 1 Cdn Army Tank Bde

Lieut C.J. Grey — Member
H.Q. Sqn, 1 Cdn Army Tank Bde

Signed In the Field
this 2nd day of Sept, 1942

Lieut F.G. Swanson — Member
RCASC, 1 Cdn Army Tank Brigade.

Signature of Commanding Officer
H.Q. Sqn, 1 Cdn Army Tank Bde.

Certified true copy
(R.J.H. Bonable)
Major
O.C., H.Q. Sqn, 1 Cdn Army Tank Brigade

No. 6271 Name DUTTON, J.A. Sqn. Battery or Company H.Q. Corps 1 Cdn Army Tank Bde Date of enlistment Sheet No. 2

Service or Proficiency Pay — G.C. Badges — Character

Date of last entry in Company Conduct Sheet 13-5-41 — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine

Signature O.C. Company, etc. D.B. vanStraubenzee

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				First sheet destroyed 16-6-41					
Field	13-7-41	Tpr		AWL from 2245 hrs 13-7-41 to 2000 hrs 15-7-41 Total 1 day 21 hrs 15 min	Cpl Merchand	Forf 3 days pay	16-7-41	Lt-Col Vining	Forf 2 days pay
Field	31-7-41	Tpr		AWL from 0900 hrs 27-7-41 until 1530 hrs 31-7-41 Total 4 days 6 hrs 30 min	Cpl Charette Cpl Desilets	14 days Det'n	1-8-41	Lt-Col Vining	Forf 5 days pay
Field	22-12-41	Tpr		AWL from 2200 hrs 22-12-41 to 2000 hrs 2-1-42. Total 10 days 22 hours. FRAI 149 (1) (b)	Sgt Boutilier	28 days F.P.	3-1-42	Lt-Col Vining	Forf 19 days pay
Field	8-2-42	Tpr		AWL from 2330 hrs10-2-42 until 0630 hrs 11-2-42. Total 8 hrs	Cpl Desilets	3 days C.B.	11-2-42	Capt Phelan	Forf 1 days pay
Field	19-6-42	Tpr		A.W.L. Sec 15 (1) AWL from 1800 hrs 19-6-42 until 22-6-42. 2 days 2½ hrs Close arrest 1415 hrs 22-6-42	Sgt Boutilier Cpl Fleur de Lys	Forf 3 days/23-6-42 pay plus 10-5-7 escort expenses		Maj C.B. van Straubenzee	

(P.T.O.)

Rank	Date of offence	Rank	Cause of punishment	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Pte									
Field	13-3-42	Tpr		until 1630 hrs 23-6-42. A.A. Sec 15 (1) AWL from 2230 hrs 13-3-42 until 0730 hrs 14-3-42. Absent 9 hrs	Documentary Cpl Darrington	Forf 1 days pay & 3 days C.B.	14-3-42	Lt Caron	

Certified true copy

W Murray Lieut

(Mrs. M.M.)
Lieut
2 i/c H.Q. Sqn, 1 Cdn Army Tank Bde.

ARMY FORM B 200.

Statement as to Character and Particulars of Service of Accused

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be)*
C-6271	Tpr	DUTTON, J.A.	H.Q. Sqn, 1 Gdn Army Tank Bde

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be completed from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not asserted to the prosecution.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.W.L. Dec 15 A.A.	Four times	Six times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct. Nil

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 23 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence of~~

~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~days~~ in civil custody, and seven days in military custody, making a total of seven days, of which. Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is thirty years.

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 3 July, 1940

7. ~~The service which the accused is allowed to take into account, counting as service in the corps is~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of service.~~

9. ~~The accused is entitled to reckon service for the purpose of~~

10. The accused is in possession of, or entitled to, no military decoration or military award ~~but is in possession of, or entitled to [state any military decoration or reward].~~

11. ~~[If the accused is a warrant officer.] The accused before he was made a warrant officer was last (the appointment) rank of~~

12. ~~[In the case of an officer.] The accused held in the Army the rank of~~ ~~and in the Regiment (or corps or department) the rank of~~

(*34440) Wt. 8370/4/3972 75,000 12/40 A & E W Ltd. Gp.678

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under **Section 47 of the Army Act** and of cases in which trial has been dispensed with of accused.

No. 0-6271 Rank Tpr Name [illegible] of [illegible] Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these particulars in the case of each person dealt with, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 st day of September, 1942

[illegible]
[illegible] H.Q.
1 CDN. ARMY TANK BDE.

Note.—If any matter in any of the above particulars cannot be stated from the regimental books the paragraph must be struck out and the particulars inserted in red ink. Should any alteration be required after the information has been collected from such source as above mentioned, it must be made by the officer responsible for the regimental books, who must attest the alteration.

Strike out the words which do not apply.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

To the rank of ..... years .....

To the rank of ..... years .....

To the rank of ..... years .....

PP-88 (case #2)
PTE DUVAL A.C.
See L-51 for 1st case

(23)

24

PP88

Correspondence to be PINNED here

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this Twenty-second day of July, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Div Rear Party, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer];‡

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:—

*(1.) Three Officers to form the Court;

*(2.) A Field Officer as President;

for the following reasons, namely:—];‡

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (*if any*) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.W. Embury	1 Cdn Div Sp Bn(Sask LI)

Members.

Rank.	Name.	Regiment.
Major	J.A. LePetvre	Royal 22n Regt
Major	C.S. Fraser	1 Cdn Scottish Regt

*Signed [W.H. Adams]Lt-Col
Commanding 1 Cdn Div Rear Party
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the superscription of the Form to be initialled by him.

SCHEDULE.

Number, Rank (a) Name and Unit o. Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A3391 Pte DUVAL, Archie, Charles Royal Canadian Regiment	First Charge A.A. Sec 15(1)	Guilty	Guilty To undergo detention for a period of six (6) months To be put under stoppages of pay until he has made good the sum of $21/7/11 in respect of costs of apprehension	Finding & Sentence Confirmed J.D. Adams Lt-Col 11 Aug 43

(See Charge Sheet attached)

10 August 1943.
A.W. Lambert

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— Not Applicable

(Signed) J.D. Adams Lt-Col (Signed) A.W. Lambert Major
Commanding 1 Cdn Div Rear Party — President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 22nd day of July 1943 and the 10th day of Aug 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
~~(3. The interpreter)~~
~~(4. The officers under instruction)~~

* Omit if not applicable. are

were duly sworn.

Signed this 10th day of August 1943.

A.W. Lambert Major
President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1920. ~~I certify that the terms of A.C.I. 570 of 1918 have been~~ complied with. C. Certificate in case of death sentences.

Signed this day of 19 .

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. D. Confirmation.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to ~~prison~~ or detention barrack until further orders.)

Signed this 11th day of August 1943.

J.D. Adams Lt-Col
Confirming Officer.
Comd 1 Cdn Div Rear Details

Promulgated and extracts taken in the case of A3391 Pte DUVAL A.C.

(a) (Dated) 11 August 43 (Signed) J.M. Borrett Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused A-3391 Pte. Archie Charles Duval, The Royal Canadian Regiment, a soldier of the Canadian Army Overseas is charged with While on Active Service :

FIRST CHARGE
A.A. Sec 15 (I)

ABSENTING HIMSELF WITHOUT LEAVE

in that he "In the Field" absented himself without leave from 2359 hrs 11 June 43 until apprehended by the Civil Police at Hammersmith, London at about 0720 hrs. 9 July 43. Incurring expences to the amount of £1-7-11 for his return to Unit under escort.

TOTAL ABSENCE- 27 days, 7 hrs., 40 Min.

"In the Field"
14 July 43

D.R. Ladore Capt.

(D.R.Ladore)Capt
O.C. Rear Party
The Royal Cdn. Reg't.

To be tried by Field General Court Martial

In the Field
dated 22 Jul 43

(E.L. Adams)Lt-Col
Comd 1 Cdn Div Rear Party

B-1

Authority
Pamela

22 July 43

MEDICAL OFFICER'S CERTIFICATE

I certify that No. A 5391 DUVAL AC Pte R.C.A. Regiment

is.....fit to undergo trial by Court Martial.

H.B. Mendelson Capt.
Signature of Medical Officer

MEDICAL REPORT 10 AUG 43

Certified that A 339/ Pte Naval A.C. Regiment (P C R.)

is fit to undergo trial by Court Martial.

C B Caswell Capt & M.O.

Trial of A 3391 Pte Duval. Archie Charles.
Royal Canadian Regiment. Canadian Army.

Prosecutor Lieut C.T. Stewart 1 C18 Hy Hy (S.C.)
Defending officer Lieut J. S. Woods Edmonton Regt

The members of the Court as named in the convening order were present and the Court satisfied themselves as to R.P. 22 & 23 in so far as these apply to an F.G.C.M.

The accused is paraded before the Court and the convening order is read to him by the President.

The accused does not object to being tried by the president or any of the members.

President & members are sworn.

The accused is arraigned on the charge sheet which is produced and marked B2 signed by the president & attached to the proceedings.

The accused pleads Not Guilty to the charges as read to him by the president.

The Defending officer requests an adjournment for the purpose of having the accused examined at No1 Neurological Hospital accordingly to overseas R.D. 1301.

At 2200 hrs the Court adjourns until reconvened by the Convening officer.

On the 10th of August 1943 at 1330 o'clock. the Court reassembles pursuant to adjournment. present the same members as on the 22nd July 1943.-

The accused has been medically examined by Capt J. M. Gilroy RAMC. Graded Psychopathic. LOTHIAN & BORDER DISTRICT and the attached medical report is submitted, read. signed by the President and att'd to the Proceedings.

The charge is read to the accused on the re-opening of the Court.-

Q. Are you guilty or not guilty?

A. Guilty, Sir.

R.P. 35 (a) are then complied with.-

The accused maintains his plea of Guilty.

The summary of evidence is read, marked E signed by the President and attached to the proceedings.

Question to Defending Officer

Do you wish to call any evidence on behalf of the accused?

Answer.

No, Sir.-

The Prosecutor is sworn.

Q. Is the accused the person named in the record?

A. Yes Sir.

The Prosecutor produces ~~xxxx~~ marked F and statement of Character, marked G, read by the President, signed and attached to the Proceedings.-

Question to the Defending Officer?

Q. Do you wish to address the Court?

A. Yes Sir, but before could I ask for an adjournment of 10 minutes to consult the medical report.-

Request is granted at 1415 o'clock.

The Court adjourns until 1430 o'clock.-

The Court re-open at 1430 o'clock and proceeds to take over the defending officer's address on behalf of the accused:

" I address the Court in mitigation. The only evidence to which we can refer is that of the medical officer. I would like to point out from it that the accused has been at all times suffering under certain stress. The medical evidence shows that punishment will not improve behaviour and possibly is likely to increase military offences.

Court finally that the utmost leniency should come about - Therefore in all humanity the Court should sentence this man as to give him a chance with the least possible delay for the treatment he requires - It is shown in the evidence that is likely to break down under stress and therefore a severe sentence may increase the case of anxiety neurosis into something far more serious."

Question to the accused.

Do you wish to address the Court yourself?

A/C No.

The Court is closed for the consideration of the finding.

The Court finds that the accused is guilty of the first charge:-

The Court sentences the accused No-A-3381 AB Diesel Archie Charles Royal Canadian Regiment:

"To undergo detention for six (6) months and to be put under stoppage of pay in the amount of $1-7-11 until he has made good the cost of apprehension."

CHARGE

Army Form B 252
(See King's Regulations)

...n. A. M. Coy, ... Regiment

...s. R.C.R. ..... Battery / Squadron / Troop or / Company

CHARGE against No. A 3391 Rank Pte.

Name Duval. A.C.

Place London. Date of Offence 9 July 43 1359 hrs June 15 43

OFFENCE W.O.A.S. Was A.W.L. from --? until

arrested by the Civil Police at Hammersmith London

at about 07.20 hrs 9 July 43. Ex 4 3 43

AA Sec 15 (1)

27 days
Two 20"

DATE:
[illegible] D.A.P.M.
LONDON AREA

Names of Witnesses:—

P.C. 164 [illegible] Knowles. Civil Police Hammersmith.

Sgt Lomeo T #P 15317

Signature of O.C. Battery, Squadron, Troop or Company } Orderly Corporals Pad Pay Book

Punishment Awarded } remanded to C.O. 11 July 43.

By whom Awarded } I.K. Vallance Capt
Remanded under close arrest for F.G.C.M. J. Rankin Major

12 July 43

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(16671) Wt.18674/150 45,000 6/41 A.& E.W.Ltd. Gp.699 Forms O.1617/16

I CERTIFY that the man whose personal description is given below surrendered himself to* apprehended. PC 164 Knowles

at Hammersmith at (hour) 4.20 pm on the 9th day of July 1943 as being No A 3391

(Rank and Name) Pte A C Duval

~~a deserter or~~ absentee without leave) from Royal Canadian Regt.

and it appears to me from his confession that he is ~~a deserter or~~ absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 30 Height 5 Feet 4 Inches

Complexion Fresh Hair Brown Eyes Blue

Marks Small scar side of left eye

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	January 4th 1940 London Ontario.
Probable Date of ~~Desertion~~ or beginning of absence, and from what place	3rd July 1943 Combat. Scotland

London - Riverside 1113

Signature of Officer of Police in charge of A/ca 84 Hammersmith Station.

9/7/43 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent in charge of P... at

Date of Signature.

Expense Voucher Re—

Ref: K.R. & O. (Can) 539

Reg. No A 3391 Rank Pte Name Huval, A. 6 Unit R.C.R.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (½ portion)	Amount		
9 July 42	Escorts return fare from LONDON To Galashiels	1	7	11
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Galashiels	Onon ticket		
	Escorts & Prisoners Expenses for Bed, Meals, Bus fares			
	Total £	1	7	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-35
40-P & D-483

5 days leave from 7-7-43 - 12 June

File No. 20/.132. .

Officer Commanding, "A" Coy. R.C.R.

Re:- A 3391 Pte. Duval, A.C.

1. Forwarded for your information and necessary action, please, and disposal under C.A.R.O. No. 388 dated 29 Oct. 40.

London
9 July 43.

Capt.
(A/Adjt) D. A. P. M.,
London Area.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I CERTIFY that No. [illegible] Rank .Pte. Name .Duval, A.C. . . . . .

Unit . A, Coy. . R.C.E. . . . . was arrested at .London. . . .(place)

at 07.20 . .(hour) on 9 July 43. .(date) and that at the time of his arrest he was wearing (Military Uniform) ~~(Civilian clothes)~~

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
9 July 43.

. . . . . Capt.
(W. Fern) D. A. P. M.,
London Area

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42.

REPORT BY PSYCHIATRIST IN DISCIPLINARY CASES.

This report is intended as a guide for the Commanding Officer in considering disciplinary action where the question of the accused's fitness to plead, sanity and responsibility has been raised. Where in the opinion of the Psychiatrist a man is clearly fit to plead and clearly responsible for his actions at material times, a brief report to this effect may replace paragraph 3 and 4 of this report. If the accused is remanded for court-martial, this report must accompany the application for court-martial. The convening officer should submit the papers including this report to an Officer of the Judge Advocate General's branch before ordering trial.

Ref:- SM/1009/43. CONFIDENTIAL.

M.O. i/c,
Royal Canadian Regt.,
CALGARY.

Man's Number.	Surname.	Initials.	Rank.	Age.	Service.
A3391	DUVAL	A.O.	Pte	30	3½ years.

ABSENCE WITHOUT LEAVE.

A. The above mentioned who is charged with .....
has been referred for psychiatric examination.

He complains "It's my nerves, I get such a pain in my head, it's terrible. He states that he went on leave and overstayed it because he felt upset and preferred to be "on his own". He spent his time after the manner of a vagrant and sleeping out in public parks.

HISTORY:- His maternal grandfather spent his last years in a mental hospital. One maternal aunt was "very nervous"; his father also was "very nervous"; his brother is "always very sickly" and a sister suffers from "paralysis of her right leg". His father-in-law died recently and since then he has had very disturbing letters from his wife.

Duval himself has always been nervous and liable to headaches all his life but they are more pronounced and more persistent since he was exposed to a bombing raid in 1940. He spent 6 weeks in hospital at the latter end of 1940 but was not much improved. One M.O., he states, advised him to drink to relieve his symptoms but, when he drinks, he says "his heart smothers him". Although he was previously a heavy drinker he has not had a drink for 6 months. Of late he has frequently had "bad dreams" and he often feels that people are watching him although he has been told "it's imagination". He has always been of a solitary disposition for the most part.

In civil life he was a farmer and his hobby was wrestling. When 17 yrs. old he sustained an injury when wrestling but was not rendered unconscious. Was originally a driver i/c in the army but has been employed in the cookhouse for the last 6 months.

Seven previous charges of absence without leave are recorded against him in his A.F.B. 122 and he has been four times in detention including one period of 6 months.

ON EXAMINATION:- I noted that he was restless and fidgetty and belched several times. There were no signs of gross mental disorder.

IN MY OPINION:- He is a psychopathic personality with emotional abnormality.

Referred to Col Sharp
72 JAG Branch
10 Aug 43

B. Unfitness to plead due to insanity.

i) Is he able to understand the nature of the proceedings at a Court-martial?	Yes.
ii) Is he able to object to any member of the Court?	Yes.
iii) Is he able to instruct his Defending Officer?	Yes.
iv) Is he able to understand the details of evidence?	Yes.

C. Criminal responsibility.

i) Was he at the time of the alleged offence suffering from a defect of reason from disease of the mind?	No.
ii) Did such defect of reason prevent him from knowing the nature and quality of the act he was doing?	N.A.
iii) Or, if he did know, did he know that what he was doing was wrong?	He knew he was doing wrong.

D. Evidence as to character.

a) Was the accused suffering at the time of the offence from any illness which might have affected his behaviour?	Yes. Symptoms of anxiety.
b) Is punishment likely to diminish the chances that he will repeat this or similar offences?	Punishment will not improve his behaviour.
c) Is punishment likely to increase or diminish his efficiency as a soldier?	It is more likely to diminish his efficiency.

E. Medical Disposal.

a) Is any treatment required immediately, during detention or after release?	Yes - after disciplinary proceedings are completed.
b) Is any other action (e.g. transfer after sentence) recommended?	Yes. re-examination with a view to treatment as suggested above.
c) Any other relevant information?	I do not think he will ever be an efficient front line soldier because of his tendency to break down under stress. It is unlikely that he will be stabilised till he returns to Canada.

John V. Gilroy,

J.M. GILROY, Captain RAMC,
Graded Psychiatrist,
[illegible] & BORDER DISTRICT.

Military Hospital,
[illegible]
6/August/43.

SUMMARY OF EVIDENCE IN THE CASE OF: A-3891 Pte. Duval, Archie Charles, of The Royal Canadian Regiment, a soldier in the Cdn. Army (Overseas).

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

Capt. D.R.Ladore of the Royal Canadian Reg't. having been duly sworn ~~in~~ states:

I am and was at all times, material hereto, Officer in Command, (Rear Party) The Royal Canadian Regiment.

After church parade on Sun. July 11/43, I was informed that Pte. Duval had been arrested by the Provost Corps and returned to this camp. I had Pte. Duval paraded to the Coy. Orderly Room under escort. He said he was from "A" Coy., Royal Canadian Regiment, and that he had gone on seven days privelege leave from Auchinleck which expired on June 15/43. He further stated that when he returned to Auchinleck he found that the Unit had left. He did not know the date of his return to Auchinleck and claimed that his memory had been affected by air raids in Southampton in 1940 and that he spent six weeks at Bramshot Hospital.

Regarding the seven days leave, he claimed he had been granted to him, I checked his Pay Book and found that his last pay entry was on the 7 June 43. I also checked another soldier's Pay Book who went on leave on the same date. This soldier had been granted five days only, inasmuch as July 12/43 was the deadline for all leaves. Apparently Pte. Duval was granted five days leave from July 7/43, with four other R.C.R. privates.

Pte. Duval claimed that his eyes have been bothering him of late. I examined his Service Book which showed him to be a first class shot in the early part of 1943. He explained this by saying that he had had a particularily good coach when firing this practice. I tried to ascertain the approximate date of his alleged trip from Southern England to Auchinleck to rejoin his Unit as he claimed, but he said he could not rememberthe date.He said he thought it might have been about the end of June.

The Provost charge sheet shows that he was arrested by civil police. I telephoned the D.A.P.M., London Area, who confirmed that he was arrested by civil police and that he did not surrender himself. The Provost also states that there is no record of a pass being turned in and the civil police handed over all papers to them. I also called the civil police who stated that he was apprehended by P.C. Knowles, Army Form O1617 at the top shows the word "surrendered", which is explained by the fact that this is a standard form laid down by the War Office to be used by the civil authorities when apprehending military personnel. The civil police clearly state that he was apprehended. The accused on July 11/43 told me that the civil police had his pass. On July 30/43 he told me that he was picked up by the civil authorities who asked to see his pass which he could not do.

I produce the following documents and records as exhibits

A-AF B252 Charge Sheet from D.A.P.M. London Area, dated 9 July 43

B-AF O1617 Certificate of arrest dated 9 July 43.

C- Expense voucher for cost of escort amounting to £1-7-11.

D -Certified copy of M.F.M.6

E- M.B.M. 1 Part I & II property of Pte. Duval A.C.

D.R. Ladore Capt.
Capt. D.R.Ladore.
O.C. Rear Party
Thr Royal Canadian Regiment.

Accused declines to cross examine the witness.

'E'

SECOND WITNESS: A 6137 Sgt Griffiths, A.M. Royal Canadian Regiment, having been duly sworn, states:

I am, and was at all times material hereto, Sgt. (Special Increment) attached to the Royal Canadian Regiment.

On Saturday, 10 JUL 43, I spoke to Pte. Duval in the unit Orderly Room, and he informed me that he had been absent from leave terminating 15 JUL 43. He further added that on that date he had reported to "A" Coy, R.C.R. former area in Penyland Camp, AUCHINLECK, where he found no Canadian personnell but only English pionner troops. When I informed him that part of the 48th Highlanders had been there continuously to 30 JUN 43, he stated that it may have been that he did not remember

.....Sgt.

The Accused declines to cross-examine the witness.

Pte. Duval, Archie Charles, No. A-3391, Royal Canadian Regt, states the following:

I am A 3391 Pte Duval, Archie Charles, Royal Canadian Regiment. I do hereby state that I did absent myself without leave at 2359 hrs 11 JUN 43.

.....
Archie Charles Duval

This statement was given to me after R.P. 4(c) (d) (e) and (f) was read to A-3391 Pte. Duval, Archie Charles.

.....
Lieut E.T.Stewart

Certified that R.P. 4 (c)(d)(e) and (f) have been complied with.

Taken down by me in the presence and hearing of the Accused this twentieth day of JULY 1943.

.....
Lieut E. T. Stewart

Date: 20 JUL 43

Officer detailed to take summary

No. A3391 Name DUVAL, A C | Sqn., Battery, or Company R | Corps Royal Canadian Regiment | Date of enlistment 7-1-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 40/P & S/138 (9627)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed 7-7-40									
	19/1/41	Pte	-	AWL 4 hrs A.A . Sec 15 (1)	Sjt Godbehure	5 dys C.B.	21/1/41		
	26/2/41	Pte	-	AWL 7 dys 17 hrs 45 mins A.A Sec 15(1)	Cpl Green	14 dys C.B.	14/3/41		
	13/7/41	Pte	-	AWL 6 dys 7 hrs 30 min AA Sec 15(1)	L/Cpl Tozer	7 dys pay 14 dys Det.	21/7/41		
	2/4/41	Pte	-	AWL 14 dys 15 hrs 30 min AA Sec 15(1)	Doc. Sjt Collinson	28 dys Det	13/5/41		
	4/8/41	Pte	-	AWL 17 dys 14 hrs 30 min AA Sec 15(1)	Cpl Rees	Forf 15 dys pay 27 dys det.	23/9/41		
	5/3/42	Pte	-	AWL 144 dys 14 hrs A.A. Sec 15(1)	Documentary	6 months Det	6/8/42		

over

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	29/3/43	Pte	-	AWL 14 dys 9 hrs 20 min AA Sec 15(1)	L/C Foote L/C Challis	14 dys C.B. 28 dys pay	15/9/42		

CERTIFIED TRUE COPY
D R Ladore. Capt.
(D.R. Ladore) Capt
O.C. Rear Party

M.F.B. 355
2231—5-41 (572-5)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A3391	Pte	DUVAL, Archie, Charles	Royal Canadian Regiment

1. The following is a fair and true summary of the entries in the [redacted] Regimental and [redacted] Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [redacted] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	A.A. Sec 15(1) 1 times	A.A. Sec 15(1) 7 times
For	times	times
For	times	times
For	times	times

[redacted]

or,

There are [redacted] entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused Has been [redacted] been previously convicted

or,

[redacted]

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in [redacted] civil custody, and 2 days in military custody, making a total of 2 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 30 yrs

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 7 Jan 40

7. [redacted]

8. [redacted]

9. [redacted]

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated N.A., and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of N.A. years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number A3391 Rank Pte Unit Name Duval,A.C. Mik. of R.C.R. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
FG.C.M.	In the field	A.A. Sec 15(1)	6 mon. Det	58 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15 th day of July 1943 B.L. Fadore Capt RCR

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

5 S-47

Inv. Duval 7.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-128018 Gnr DUVAL, Fernand - 1 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 26 days, of which NIL days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of One Hundred and Twenty (120) days and to be put under stoppages of pay until he has made good 20-3-9 the expenses of his return to unit 15 JUL 45

(Sgd) _____ (Sgd) _____

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Dat _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~.(1) (1. AA 57A. Delete if not used.)

(Sgd) H. M. Brownfield

Date 19 Jul 45 (H.O.N. BROWNFIELD) Brigadier
Commanding "C" Gp, Cdn Rft Units
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 571, 577.)

Accused.	Date.	Signature of Offr.
D128018 Gnr ~~Duval~~ Duval F.	21/7/45	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 3 AUG 1945 JAG BRANCH CMHQ

RECEIVED AT CMHQ IN AB 160

5G-47

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFAA) 45/F & B/166b (6144) 4/38B

Convened by the Commander of Brig HON Brownfield CBE MC comd "C" Gp, CRU dated 13 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prsnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-128018	Gnr	Fernand	DUVAL	1 CARU

PROCEEDINGS REVIEWED
3 Aug 45
[illegible] Capt

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH CMHQ

Held at [illegible] Comd on (date) 18 Jul 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, if any, and~~ Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet, ~~if~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~be interpreter?~~ Ans ~~—~~ as interpreter? Ans —

The ~~interpreter is sworn~~(1) Do you object to ~~Lt~~ Capt F. E. SINCLAIR shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO SIR

(1. RP 112. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	22 CRU
Member	CAPT	G.W.G. BRINKHURST	1 C & RU
Member	LT	L. TANGUAY	1 C & RU
~~Judge-Advocate~~			
Prosecutor	LT	W.L. BROCK	1 C & RU
Defending Offr	CAPT	A.F. CHURCHILL	1 C & RU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 1 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) ~~(a)~~ plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(D), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 39, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 2. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers~~ the accused's statement (1). ~~The Court decides (not)~~ to advise accused to change ~~his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) to~~ ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. 1, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*) *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Records per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*B*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(*3*) (*b*), *RP* 43, 120(*A*). 2. *AA* 54(*3*), *RP* 43, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. NO - SIR.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. 5 and Ex. 6 respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46. *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. [illegible] CHOSE NOT TO

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if present~~.

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas MO* 309, 2223, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, D-126018 Gnr. Fernand DUVAL, Royal Canadian Artillery, on the strength of Depot Bty., No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:

WHEN ON ACTIVE SERVICE

FIRST CHARGE
A.A. Sec 15(1)

ABSENCE WITHOUT LEAVE,

in that he,

in the Field, did absent himself without leave from 2310 hrs 10 May 45 until surrendering himself to Edward White, Detective, at Leatherhead at 1615 hrs 22 Jun 45, thereby incurring costs of return to Unit in the sum of £0/3/9.
(Absent 42 days 18 hrs 06 mins)

Dated at Bordon, Hants, this 4th day of July 45.

(W.A. Townsley) Colonel,
Commanding Officer,
No. 1 Canadian Artillery Reinforcement Unit

To be tried by Field General Court Martial,

Brigadier,
Commanding 2nd Group, Can Reinforcement Units
(Convening Officer)

Bordon, Hants.
13 Jul 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50. RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-128018	Gnr		Fernand	DUVAL	1 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X) named above as the accused, being subject to military law, has (~~XXX~~) committed the offence(s) set forth in the Charge Sheet(X) attached and on (date) this date endorsed by me, (~~XXXXXXXXXXXXXXXXXXXX~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(X) should be tried by an ordinary General Court-Martial; ~~XXX XXX XXX XXXXXXXXXXXXXXXXXXX

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

FOUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to *RP* 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I saw a sqn of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 2, 42 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 42 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 96(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 95(*C*).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 565(*a*).)

(vii) *Summing up by JA, if any.* (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any *declarations* made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 162 (3) (g) (ii).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(*C*), *MML p* 752.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Medical Officers' Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No. D129018 (Rank) GNR (Name) DUVAL, F.

of No 1 CARU and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station FIELD

Date 18TH JULY, 1945

Sgd .....
(Medical Officer)

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

(Plea in Mitigation)
Case of D128018 Pte Duval, F.

Sir: The accused D128018, Pte Duval, F. came Overseas some three years ago. He found that he could not grasp the advanced part of the Artillery, so, having passed his Basic training quite easily, he quite asked for a transfer to the Infantry.

Nothing happened after the request & for some time he was a General Duties man in his Holding Unit.

Late, having been a short time in civilian life, he paraded to his C.O. & requested to be allowed to follow this

FM

4/71 CPA 170 PLEASE WRITE ON BOTH SIDES

trade. He was assured that his request would be granted immediately, but time passed & he heard nothing more, he still carried on as a General Duties Man — doing fatigues, guards, etc.

In April of this year, he was refused privilege to go. This was done at the time.

E-3
MM

SUMMARY OF EVIDENCE in the case of No. D-128018 Gnr. Fernand DUVAL, on the strength of Depot Bty., No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

WITNESS for the Prosecution

Lieut. T.R. Hart, R.C.A., Assistant Adjutant "A" Wing, No. 1 Canadian Artillery Reinforcement Unit, Canadian Army Overseas, having been duly sworn states:

I am Lieut. T.R. Hart of No. 1 Canadian Artillery Reinforcement Unit, Assistant Adjutant Administrative Wing, and as such I produce from Wing Orderly Room files the following documents, which have been shown to the Accused:

The first and marked Exhibit "A" is a certified true copy of the Declaration of a Court of Inquiry held on the 12th day of June 1945, in the case of D-128018 Gnr. DUVAL, F., which declares that D-128018 Gnr. DUVAL, F. of No. 2 C.A.R.U. and now on strength of Depot Bty., No. 1 C.A.R.U. absented himself without leave from No. 2 C.A.R.U. at 2310 hrs 10 May 45.

The second and marked Exhibit "B" is Army Form C.1617 of 22 Jun 45 relating to D-128018 Gnr. DUVAL, F. and showing that he surrendered himself to Edward White Detective at Leatherhead at 1615 hrs 22 Jun 45.

The third and marked Exhibit "C" is an expense voucher relating to D-128018 Gnr. DUVAL, F. and showing costs of his return from Leatherhead to London in the amount of £0/5/9.

.....
(T.R. Hart) Lieut., R.C.A.

The Accused declines to cross-examine this witness.

.....
D-128018 Gnr. Duval, F.

The Accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing, and may be given as evidence.

The Accused declines to make a statement and reserves his defence.

.....
D-128018 Gnr. Duval, F.

I certify that the foregoing Summary of Evidence, consisting of one (1) page, three (3) Exhibits, was taken down by me in the presence and hearing of the Accused and that Rules of Procedure 47(c)(d)(e)(f) have been complied with.

Bordon, Hants
4 Jul 45

.....
(W. Rutherford) Lieut., R.C.A.
Officer detailed to take the Summary of Evidence.

DAA
JAG

...of the Declaration of a Court of Inquiry assembled at Bordon, Hants

...day of June 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-128018 Gnr DUVAL, F.

DECLARATION

The Court declare that No. D-128018 Gnr. Duval, F. of No. 1 C.A.R.U.

illegally absented himself without leave from his unit No. 2 C.A.R.U.

at 2310 hrs on the 10 th day of May 1945,

that he is still so absent, and that on the 12th day of June 1945 he was deficient, and

that he is still deficient of the following articles :—

D-128018 Gnr. DUVAL, F.

DESCRIPTIONS	MOUNTAIN KIT	NO	VOCABULARY PRICE			UNSERVICEABLE WEAR VALUE		
			£	s	d	£	s	d
ARTICLE								
Anklets web prs		1		5			2	6
Beret khaki		1		10			1	3
Blouses battle dress		2	2	12				
Boots ankle prs		2	2	12				
Drawers cellular shorts, prs		2		2	10			
Drawers woollen prs		2		2	7		1	9
Gloves knitted drab prs		2		12				
Greatcoat drab		2		2	1		1	10
Jerseys pullover		2		2				
Overalls blouses denim		1	2	11	6			6
Overalls trousers denim		1		8				
Shirts angola drab		4			10			6
Shoes canvas prs		1		8	7			7
Socks prs		2	2	18	10			5
Ties black		2			8			4
Trousers battle dress prs		2			4½		3	1
Vests woollen		1			7		1	1
Badges cap		3		4	6			10
Badges Canada prs		1			1			7
Bags kit universal		1			2			1
Brushes		1		1	2		1	1
Brushes cleaning		1		2	2		1	3
Brushes button brass		1		1	6			11
Brushes clothes		1		1	6			4½
Brushes hair		1		1	3			4
Brushes shaving		1			6			2
Brushes shoe polishing		1			2			10
Brushes tooth		2		1	1			3
Comb hair		1			1			7½
Discs identity		1			4			9½
Dressing F.E.		1			10			10½
Fork table		1		3	10			6
Holdall		1			9		2	2
Housewife complete		1		3	10			5
Knife clasp		2			8		2	2
Knife table		1			3		2	2
Razor, safety		2		3	0		2	9
Shorts gym prs		2		3	4		2	
Spoon dessert		1		3	6		1	
Towels hand		1		1	4		1	3
Vests cotton gym		1		1	4		1	7½
Belt waist		1		1	8			
Bottle water		1			10		8	1½
Braces KM left		1					12	2
Braces KM right		1		2	2		8	
Carrier water bottle		1		16	5		4	3½
Frog web bayonet		1		8	4		2	10½
Haversack		1		5	10			1
Helmets steel	1	2		2	8		1	3
Pack		2		1	5		9	6
Pouches basic		2		1	4		1	7½
Straps shoulder haversack (left & right)		1		12			4	1½
Straps web supporting		1		2				10½
Tins mess		0		6	2		10	9½
Capes A.G.		2			6			4
Eyeshield A.G.		1		14	7		10	7
Ointment A.G.		1			9			10½
Outfit Anti dim		1		15	9		9	
Respirator AG complete with haversack		1			2			
Wallet AG		1		15	2			
Blanket 1008		1						
Mug drinking								
Sheet ground								
Total Vocabulary Price			£14	0s	0d	£10	7s	7½
Unexpired Wear Value								

RECORD of the Declaration of a Court of Inquiry assembled at Bordon, Hants on the 12th day of June 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-128018 Gnr DUVAL, F.

DECLARATION

The Court declare that No. D-128018 Gnr. Duval, F. of No. 1 C.A.R.U.

illegally absented himself without leave from his unit No. 2 C.A.R.U.

at 2310 hrs on the 10 th day of May 1945, that he is still so absent, and that on the 12th day of June 1945 he was deficient, and that he is still deficient of the following articles :—

DEFICIENCIES REGIMENTAL KIT D-128018 Gnr. DUVAL, F.

ARTICLE	NO	VOCABULARY PRICE £	s	d	UNEXPIRED WEAR VALUE £	s	d
Anklets web prs	1		4	8		4	6½
Beret khaki	1		8	8		8	6½
Blouses battle dress	2	2	10	2	2	5	
Boots ankle prs	2	2	12		1	18	
Drawers cellular shorts, prs	2		2	10		2	8
Drawers woolen prs	2		12	7		6	8
Gloves knitted drab prs	1		2	1		1	6½
Greatcoat drab	1	2	11	6	1	18	9
Jerseys pullover	1		8			6	
Overalls blouses denim	1		11	10		8	10½
Overalls trousers denim	1		11	3		9	8
Shirts angels drab	2		10	2		13	7½
Shoes canvas prs	1		10	2½		7	7½
Socks prs	4		3	2		6	1½
Ties black	1			10			7½
Trousers battle dress prs	2	2	18	7	2	3	10½
Vests woolen	2		10	10		7	1½
Badges cap	1			8			5½
Badges Canada prs	1			4½			3
Bags kit universal	1		4	7		3	4
Braces	1		1	6		1	1½
Brass cleaning	1			2			1½
Brushes button brass	1		1	2			10½
Brushes clothes	1		2	2		1	7½
Brushes hair	1		1	6		1	1½
Brushes shaving	1		1	8			11
Brushes shoe polishing	1		1	5			4½
Brushes tooth	1			6			4
Comb hair	2			2			2
Discs identity	1		1	1			10
Dressing F.E.	1		1	1			5
Forks table	1			4			7½
Holdall	1			10			6½
Housewife complete	1		3	10		2	10½
Knife clasp	1			6			2
Knife table	1			5			10½
Razor, safety	2		1	10		2	3½
Shorts gym prs	1			6			3
Spoon desert	2		3			2	9
Towels hand	2		3	8		2	6
Vests cotton gym	2		3	4		2	9
Belt waist	1		1	8		1	
Bottle water	1		1	4		1	
Braces KE left	1		1	4		1	3
Braces KE right	1		1	9			7½
Carrier water bottle	1			10		6	
Frog web bayonet	1		6			12	1½
Haversack	1		10	2		6	2
Helmets steel	1		8	3		4	
Pack	2	1	6	4		2	1½
Pouches basic	2		2	10			10½
Straps shoulder haversack (left & right)	2		1	2		1	1
Straps web supporting	1		1	5		1	5
Tins mess	1		12	4		1	6
Capes A.G.	6		2			4	7½
Eyeshield A.G.	2		6	2			1½
Ointment A.G.	1		14	2		10	10½
Outfit Anti dim	1			6			5½
Respirator AG complete with haversack	1		15	7		10	4
Wallet AG	1			9			7
Blanket 1938	1		15	2		9	10½
Mug drinking	1						
Sheet ground							
Total Vocabulary Price		£24	0s	0d	£18	7s	7½d
Unexpired Wear Value							

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

---

* Stations of Units and Depots are shown in the Monthly Army List.

† Note.—Special surrendering depots for the disposal of absentees and deserters from the Armies, who surrender to the civil police, may, with permission will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 466/1940).

(24743) W1.30209/121 25,000 10/42 A. & E. W. Ltd. Gp.696
(27656) W1.48526/1959 40,000 3/43 " " Forms/O.1617/12

I CERTIFY that the man whose personal description is given below surrendered himself to* Edward White. Det.

at Leatherhead at (hour) 6.15.p.m. on

the 22nd. day of June as being No. D.128018

(Rank and Name) Gnr. Fernand DUVAL

a deserter (or absentee without leave) from No.2. C.A.R.U.

and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22yrs Height 5', 4½" Feet Inches

Complexion Fresh Hair Dark Brown, Wavy.

Eyes Blue

Marks Scar bridge of nose and from nose to top lip on right side.

In uniform or plain clothes In uniform.

Probable Date and Place of Attestation	18th. October, 1941.
Probable Date of Desertion or beginning of absence, and from what place	10th. May, 1945.

Signature of Officer of Police in charge of: Superintendent. Leatherhead Station

23 JUN 1945 Date of Signature.

Army Form O 1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds

incurred by the Police in the case

of No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No. D/28018 Rank Gnr. Name Duval, J. Unit No. 1 C.A.R.V.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from London from Heathenhead

Date	Particulars	Amount		
23 June 45	Escorts return fare from LONDON To Heathenhead		2	6
	Prisoners single fare to LONDON From Heathenhead		1	3
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	0	3	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R.K. Harrison Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 190-35
40/7 S.O. 440 (6782)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D.128018	Gnr	DUVAL, F.	No 1 C.A.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be conveyed to the prisoner. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most recent entry. If the charge is for absence, or absence without leave, the entries for imprisonment or absence, as the case may be, should be stated separately. Any proposed special mark of exclusion or distinguishing entry recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:—

For ~~XXXX~~
For ~~XXXX~~
For ~~XXXX~~
For ~~XXXX~~

Date of last entry in Field Conduct Sheet ~~XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~12th~~ 18th day of July

J C Smith

(J. C. SMITH) Major, CAC
~~Adjutant-General's Office~~ No 1 C.A.R.U.

D.128018 DUVAL, F.

No. Name | Sqn, Battery, or Company | Corps RCA | Date of enlistment 18 Oct 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY MFM 6 - ORIGINAL NOT AVAILABLE.		Certified original not available G.C. Smith, major. Officer In charge Records 1 CARU.			

LIST OF WITNESSES

PROSECUTION

1. Lieut. T.H. Hart. — No. 1 Canadian Artillery Reinforcement Unit

DEFENCE

Nil.

LIST OF EXHIBITS

A. Certified true copy of a Declaration of a Court of Inquiry held on 12 June 46 in the case of D-128018 Gnr. Duval, P.

B. Army Form C.1617 d/22 Jun 46 relating to D-128018 Gnr. Duval, P. and showing that he surrendered himself to Edward White, Detective, at Leatherhead at 1815 hrs 22 Jun 46.

C. An expense voucher relating to D-128018 Gnr. Duval, P. and showing the cost of his return from Leatherhead to London in the amount of £0/3/0.

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P. 14(2)

I, D-128018 Gnr. Duval, P. of No. 1 Canadian Artillery Reinforcement Unit, desire to have an Officer appointed by the Convening Officer to represent me at my trial by Court-Martial.

P. Duval
.....
D-128018 Gnr. Duval, P.

4 Jul 45

Received from Lieut. W. Rutherford, Officer detailed to take the Summary of Evidence, one (1) copy of the Charge Sheet and one (1) copy of the Summary of Evidence in the case of D-128018 Gnr. Duval, F.

.....

D-128018 Gnr. Duval, F.

XXX-76

SNR DUVAL, F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-128018 Gnr. DUVAL, F. - 2 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd ~~XXX~~			
3rd ~~XXX~~			
4th ~~XXX~~			
5th ~~XXX~~			
6th ~~XXX~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~As present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which NIL days were spent in hospital.(2)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Admonition for a period of Six(6) Months

(Sgd) ~~Judge-Advocate, if any~~ 15 Sep/44 (Sgd) President. (RP 45, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567 577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the court but remit 14 days detention

~~I direct that the accused be not required to undergo the detention imposed until further ordered.~~

(1. AA 57A. Delete if not used.)

Date 19 SEP 44 (Sgd) J. C. STEWART, Brigadier, Commanding "C" Group, Con. Reinforcement Officer

Commanding

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
Pte	21 Sept 44	K L Bailey Lt. Col. A/C.O. "C" Inf. Wing 2 CARU

Published DO 706 d/21 Sep 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 XXX-76

RECEIVED 25 SEP 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA86 (To lieu of AFA81 40./P & R/1608 /R(44)) 4/38B

Convening Officer of Brig. J.C.Stewart, CBE, DSO, Comd "C" Gp, CRU dated 14 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-128018	Gnr	Fernand	DUVAL	No. 2 CARU

PROCEEDINGS REVIEWED 26 Sep 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date) 18 SEP 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6., 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ Ans ~~.....~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer?~~ Ans ~~.....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAs, if any,~~ and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D.L. REDMAN VD	HQ 5 RHA
Member	CAPT	J.C. WARREN	1 RSIRH
Member	LT	F.W. ATTFIELD	1 CERH
~~Judge Advocate~~			
Prosecutor	LT	F.R. STANLEY	2 CARH
Defending Offr	LT	R.H. BELISLE	2 CARH

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~.....~~ before arraignment makes(s) (no) (~~.....~~) plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 note and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 89A to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~as JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N O S I R (5)
(*1. RP 27(B). 2. RP 27(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider this statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (1).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans..... Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(1).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 113(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (4), RP 43, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans..... N O S I R
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFR 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES SIR BY MY DEF OFFR NIL MATT (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 326, 563-566, Overseas RO 859, 1323, MML p 66, 732-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), 58(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

LIST OF WITNESSES

in the case of DUVAL.

For the Prosecution;

1. Bdr Currie, A.W.
2. BSM Sanders, J. (All of 2 C.A.H.U.)
3. Lt G.L. Waters.

For the Defence; -------- Nil

LIST OF EXHIBITS

"A" Army form C 1617.

"B" Expense Voucher for three shillings and nine pence (3/9).

(K.S. Auer) Capt, H.C.A.

No D.128018 Name DUVAL F Sqn, Battery, or Company Corps RCA Date of enlistment 18 Oct 41 GC Badges Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/F&S/156 (34438)

Date of last entry in Company Conduct Sheet 25Mar44 No and date of last drunk N/A Period not reckoning towards free.tom from extra fine N/A Sheet No 3 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of previous conv.	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (dispensing with trial)	By whom awarded	Remarks
Field	1 May Gnr			AA Sec 15 (1) AWL from 1315 hrs 1 May 44 till 0945 hrs 4 May 44 Absent: 2 days 20 hrs 30 min.	Sgt Flourde R.	28 days detn. 28 days pay	4 May44	Lt.-Col JERDagnon	28 days pay KRAI 143(2)

Certified True Copy

K. L. Bunn, Capt

(K. L. Abez) Capt., Adjt 5th Fld Wksp No 2 C.A.R.D.

officer having custody of Original Documents.

(PTO)

No D128018 Name DUVAL F. Sqn, Battery, or Company Crew RCA Date of enlistment 18 Oct 41 GC Badges Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/P&S/126 (3428)

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	25-5-42	Gnr		A.A. Sec 15(1) RCAS, AWL from 0600 hrs 25-5-42 until 0600 hrs 27-5-42 (Absent: 2 days)	L/Sgt Lavelle	5 days CB	27-5-42	Major Archer	2 days Pay FMAI 145(1)(a)
Field	2-6-42	Gnr		A.A.Sec. 40 While on active service Conduct to the Prej. of Good Order & Mil Discipline in that he did not comply with orders.	Sgt Chevalier	3 days Pay FMAI 149(P)	2-6-42	Major Gagnon	—
Field	28-6-42	Gnr		A.A. Sec. 40 RCAS, Conduct to the Prej of Good Order & Mil Discipline in that he used improper language.	L/Bdr Desroches Gnr Martel	7 days F.P.	30-7-42	Major Gagnon	7 days Pay FMAI 149(1)(b)

E+C

PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28-3-43	Gnr		A.A. Sec. 15(1) WOAS, AWL for 1 day 9 hrs. 15 mins.	Gnr Martel	1 days pay FRAI 149(2)	31-3-43	Major Gagnon	2 days F.P. FRAI 149(1) (a)
Field	9-5-43	Gnr		A.A.Sec. 15 (1) WOAS, AWL fro 4 days 18 hrs. 30 mins.)	Bdr.Charland Documentary	14 days F.P.	18-5-43	Lt.-Col C.E.deFoncier	5 days Pay FRAI 149(1) (a) 14 days Pay FRAI 149(1)(b)
Field	20-6-43	Gnr		A.A.Sec. 15(1) WOAS, AWL from 2130 hrs 20-6-43 until 0800 hrs 23-6-43 (Absent: 2 days 9 hrs	Bdr Rounsey Documentary	10 days F.P.	23-6-43	Lt-Col. W.G.Thompson	5 days Pay. FRAI 149(1) a 10 days Pay FRAI 149 (1) (b)
Field	7-11-43	Gnr		A.A.Sec. 15(1) WOAS, AWL from 2359 hrs 7-11-43 until 1920 hrs 18-11-43 (Absent: 10 days 19 hrs 21 mins)	CSM Smith F.	7 days C.B. 14 days Pay FRAI 154(2)	17-11-43	Lt.-Col Black	9 days Pay FRAI 149(1)(a)

No D128018 Name DUVAL F | Sqn, Battery, or Company | Corps RCA | Date of enlistment 18 Oct 41 | GC Badges | Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/PAS/138 (5458)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Field	1-12-43	Gnr		A.A.Sec. 15(1) WOAS, AWL from 2200 hrs 1-12-43 until 0830 hrs 9-12-43 (Absent: 7 days, 10 hrs 30 mins)	Bdr Jobe Documentary	21 days F.P.	9-12-43	Lt.-Col. A.E. de Fencier	8 days Pay FR&I 149(1)a 21 days Pay FR&I 149(1)b
Field	10-12-43	Gnr		1. A.A. Sec. 15(1) WOAS, AWL whilst a defaulter from 1800 hrs 10 Dec 43 to 2200 hrs 10-12-43 (Absent:4 hrs)	Documentary Bdr Jobe	28 days F.P. To run concurrently with award on 9 Dec 43	13-12-43	Lt.-Col. A.E. de Fencier	For, 28 days Pay FR&I 149 (1) (b).
Field	11-12-43	Gnr		2. A.A. Sec. 15(1) WOAS, AWL whilst a defaulter from 1100 hrs 11-12-43 until 2200 hrs 11 Dec 43(Absent 9 hrs)	Bdr.McKay Bdr.Jobe				For, 7 days Pay FR&I 149 (1)(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14 Jan 44	Gnr.		Sec.15(1) A.A. WOAS AWL from 2200 hrs 14 Jan 44 to 1330 hrs 25 Jan44 (10 days 15 hrs 30 min)	Bdr. Venn. Document.	28 Days F.P.	27Jan44	Lt.Col A.O.Hood.	For 28 days Pay FRAI 149(1)b. For 11 days pay
Field	14Jan 44	Gnr		Sec. 40 A.A. Wrote an act to the pred.,etc. was in possession of a false leave pass.	Sgt.Mathews. Document.	On both charges.	27Jan44	Lt.Col. A.O.Hood.	FRAI 149(1)e. For 1 days Pay In close arrest. FRAI 149(1)(c)ii
Field	12Mar 44	Gnr		A.A.Sec. 15(1) AWL from 2359 hrs 12 Mar 44 to 1120 hrs 14 Mar 44 (Absent 1 day,11 hrs, 21 min)	Sgt Samuel R.	10 days' pay	14 Mar 44	Lt-Colonel J.H.R. Gagnon	Forf 2 days' pay under FRAI 149 (1) (a)
Field	25Mar 44	Gnr		A.A.Sec.15(1) AWL from 1800 hrs 25 Mar 44 until he surrendered at 0230 hrs, 30 Mar 44 (Abs 4 days, 8 hrs, 30 min)	Sgt Flourde Documentary evidence	27 Days F.P.	5 Apr 44	Lt-Colonel J.H.R. Gagnon	Forf 5 days' pay under FRAI 149 (1)(a)

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of Sep 44 W.S. Auer, Capt
(K.S. Auer) Capt, Adjt "Q" W ing.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

M.F.B. 155
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 396

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D.128018	Gnr	DUVAL, F.	2 C.A.R.U.

1. The following is a fair and true summary of the entries in the Conduct sheets ~~or Company [illegible] sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air [illegible]~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Regimental ~~service [illegible] unit Equipment Battery~~

Within last 12 months — Since enlistment or appointment

For A.A. Sec 15 (1) Eight (8) times — A.A. Sec 15 (1) Twelve (12) times

For A.A. Sec 40 One (1) time — A.A. Sec 40 Three (3) times

~~For [illegible] time~~ ~~times~~

~~For [illegible] time~~ ~~times~~

Number of instances of gallantry or distinguished conduct Nil

~~There are no entries in the conduct [illegible] of the accused.~~

~~Note.—If the charge is for drunkenness [illegible] entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~Previous convictions of the accused by a [illegible] Court-Martial or a civil court, of summary awards under Section 47 of the Army Act and dispensing [illegible] trial under A.A. 71 are set out on the opposite page.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is undergoing [illegible] sentence for [illegible] beginning on the [illegible] day of [illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for 1 days in civil custody, and 26 ~~Air [illegible]~~ days in military custody, making a total of 27 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 21 years 330 days

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 18 October 1941.

7. The service which the accused is allowed to reckon towards discharge is 2 years 335 days

8. The accused is entitled to reckon 2 335/365 service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~[illegible]~~ military decoration, ~~or is [illegible] entitled to~~. State any ~~[illegible]~~ military decoration or reward.

Cdn Vol Serv Medal and Clasp.

~~10. If the accused is a warrant officer [illegible] the accused before he was made a warrant officer (not held Air Force) the regimental rank of [illegible]~~

EX B
RM

EXHIBIT "B"

Expense Voucher Re—: Ref: KR & O (Ca

Reg No. 4/128018 Rank Pte. Name Duval, F Unit

The following expenses were incurred in apprehending and returning this A/N Soldier to his ~~Unit From~~ London from Leatherhead

Date	Particulars		Amount		
24 Aug 44	Escorts return fare from LONDON To	Leatherhead		2	6
	Prisoners single fare to LONDON From	Leatherhead		1	3
	Prisoners fare from	To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares				
		Total £		3	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W Birch

LIEUT
Capt
R. E. BIRCH.
ADMIN. OFFICER—D.P.M's BR.
C.M.H.Q.

Officer Issuing Railway Warrant and Expense
No. 6 Area Provost Company, Canadian Provost Corps, London

CMHQ 100055
83-7-8(7-65)3-3610

I CERTIFY that the man whose personal description is given below surrendered himself to T/Police Sergeant 208 GAYMER* at Bookham at (hour) 9.15.a.m. on the 22nd. day of August as being No. D.128018 (Rank and Name) Gunner Fernand DUVAL ~~absentee~~ (or absentee without leave) from C.A.R.U. Bramshott and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 20 years Height 5'.4½" Feet Inches

Complexion Fresh Hair Dark Eyes Blue

Marks Scar bridge of nose, scar from nose down to top lip, right side.

In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	Montreal South 18th. October, 1941.
Probable Date of Desertion or beginning of absence, and from what place	15th. June, 1944.

A.E. Garbutt D.S.69
for Superintendent.

Signature of Officer of Police in charge of

Stamp

23rd. August, 1944. Date of Signature.

Army Form C.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

(Superintendent or Officer in charge of Police Station at

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

*Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:- "Do you wish to make any statement or give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so. But anything you say or any evidence you may give will be taken down in writing and may be given in evidence."

THA ACCUSED DECLINES TO MAKE ANY STATEMENT, and RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me, in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

dated at
Bramshott, Hants,
this 9 day of Sep 44.

N.C. Malloch
(N.C. Malloch) Lieut, R.C.A.,
No 2 Cdn Arty Rft Unit,
(Officer detailed to take down Summary of Evidence).

EXA

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D.128018 Gnr DUVAL, F. "G" Bty, "Q" Wing, on the strength of No 2 Cdn Arty Rft Unit, Canadian Army (Overseas).

BY DIRECTION OF THE COMMANDING OFFICER, EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS for the Prosecution

A32005 BSM SANDERS, J. "G" Bty, "Q" Wing, 2 Cdn Arty Rft Unit, being duly sworn states :

I am Bty Sgt Major of "G" Bty. The accused was reported absent on the Tattoo Report of 15 June 44, as being absent from 2230 hrs 15 June 44. He has been marked absent from that date until he was struck off strength as an illegal absentee. I have not seen him since until his return to this Unit a few days ago.

Signed: J. Sanders.....
(A32005 BSM Sanders, J.)

The accused declines to cross examine the above witness.

SECOND WITNESS for the Prosecution

L.57652 Bdr CURRIE, A.W., "G" Bty P Wing on the strength of 2 Cdn Arty Rft Unit, being duly sworn states:-

On 15 June 44 I was on "G" Bty stength, and was Bty Orderly N.C.O on that date. At 2230 hrs 15 Jun I called the roll in Hut No 2 and the accused whom I now recognize, being a member of said hut, failed to answer his name. I reported him absent from 2230 hrs 15 Jun 44.

A.W. Currie
L 57652 Bdr Currie A.W.

The accused declines to question the above witness.

THIRD WITNESS for the Prosecution.

Lieut G.L.WATERS, R.C.A. "D" Bty Q Wing on the strength of 2 Cdn Arty Rft Unit, being duly sworn states:

I am Lieut G.L.WATERS RCA and am employed as Assistant Adjutant Q Wing 2 Cdn Arty Rft Unit. Under Army Act 163 I submit as evidence in this case:

(a) Army Form C 1617, a certificate of surrender to the Civil Police, purporting to be signed by Police Sgt A.E.Garbutt, to establish that the accused surrendered himself to the Civil Police in Bookham at 0915 hours 23 August 44. (Exhibit A).

(B) An expense voucher for cost of return of the accused purporting to be signed by Lieut R.E.Birch, O.M.H.Q. Administrative Officer, D.P.W's Branch, for the sum of three shillings and nine pence(3/9). (exhibit B)

G L Waters
Lieut G.L.Waters RCA

The accused declines to cross examine the above witness.

/2



the jury is not unlikely the accused is guilty or innocent as we do at his guilt but whether a lesser punishment under the circumstances will not make a better man of him. I doubt it very much & it is with this things that I conclude my plea.

brand as he considers that his mental
abilities is not sufficient for him to
be a good lawyer. [illegible] to the abilities of the client
that is common to [illegible]
A can not help trying to prove that
the accused is innocent but A am using
Alexis the point that boredom at job
for which he considers himself unsuited
has led him to this sad plight. A in
a moment of despair he left tramp. After
a few days he realized his mistake but
hesitated for a long while until he
received sufficient courage to report to
the previous employer. You may
think my sympathy that I took him a
long time to visit but please
remember you are dealing with a
weak character crippled by background
and dull mind.

The question which
should be uppermost in the mind of

PLEA IN MITIGATION

E 3 1117

The accused is quite aware of his guilt and as such submits to the clemency of this court. I may add briefly to the court the circumstances that have led the accused to commit this ~~act~~.

I live up in who have been over here a couple of years, ~~[illegible]~~ accused is ~~[illegible]~~ and who have met recreation and see a very slight possibility of getting into action naturally feel overpowered by a sense of futility. Most of us start and master this feeling but others are weak and weaken in other should be prosecuted but under the circumstances ~~the~~ ~~[illegible]~~ that the prosecution should be ~~[illegible]~~ duty ~~[illegible]~~.

Furthermore the accused has ~~[illegible]~~ and to be transferred to another

2 CARU Form 262

Medical Officer's Cert.
K.R.(Can)para.557

I certify that I have this morning examined No. D128016 Gnr Duval M. and in my opinion he is fit to undergo trial by Court Martial.

MO 2 CARA

Station: Bramshott, Hants.
Date: 18 Sep 44.

(Sgd) [illegible] Capt.
(Medical Officer)
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas).

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr *(RP 95(C))*, any objections *(RP 95(B))*, and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl R. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. *(or, None.)*

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. *(RP 95 fn 1.)* If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. *(RP 122.)* If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. *(RP 95(C), 87(C), 92(C) (D).)*

(ii) At option of accused, statement by accused *(not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10))*, or evidence by accused, as to facts or his character or both. *(See RP 41 fn 3, 46 fn 1, 80.)*

(iii) Evidence of witnesses for accused as to facts or his character or both. *(See RP 46 fn 1.)*

(iv) Evidence for prosecution in rebuttal or on *new matter*, if allowed by Court *(RP 86(B))*, or to prove previous convictions when accused has called witnesses as to character. *(RP 95(C).)*

(v) Closing address *(on matters other than in mitigation of punishment)* by Defending Offr or accused. *(See RP 40 fns 8-12, 87(C), 92(C) (D).)* But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. *(When accused charged jointly see RP 61.)*

(vi) Closing address by Prosecutor. *(See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 563(a).)*

(vii) Summing up by J.A., if any. *(RP 42.)*

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. *(On top.)*

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). *(KR Con 557.)*

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. *(As to admitting an evidence a certified copy in lieu of original see KR Con 566. As to certified copies of regimental books see AA 163 (1) (g) (k).)*

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. *(RP 95(D).)* A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. *(AA 53(3), RP 114(C), MML p 759.)*

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-128018	Gnr		Fernand	DUVAL	No. 2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, (~~by order of superior authority~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial by reason of the urgent public affairs~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby request (a) the Officer Commanding [illegible] to appoint the Officers detailed by me as President and Members thereof.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Officer named hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col.	D. L. REDMAN, V.D.	HQ, CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by C.O.	1 CSRU
Lieutenant	To be detailed by C.O.	1 CERU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Date 14 Sep 44

(Signed personally. RP 105 fn 2.) BRIGADIER (Rank.)

Commanding "C" GROUP, CDN RFT UNITS.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAGE 1 to DATE OF A/PAD 40-7 & 8/1067 1/45)

(See overleaf for notes and notes for use on trial.)

CHARGE SHEET

The accused, D.128018 Gunner Fernand DUVAL, "G" Bty, "Q" Wing, on the strength of No 2 Cdn Arty Rft Unit, a soldier in the Canadian Army (Overseas), is charged with:

When On Active Service,

FIRST CHARGE
ARMY ACT
SEC 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, did absent himself without leave, from 2230 hrs 15 Jun 44, until surrendering himself to Temporary Police Sergeant Gaymer of the Civil Police, in Bookham, at 0915 hrs 22 Aug 44.

(Total Absence:- 67 days, 10 hours and 45 minutes.)

dated at
Bramshott, Hants,
this 10 day of Sep 44.

(Mackenzie Waters) Colonel, RCA
Commanding Officer,
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas).

To be tried by Field General Court Martial,

BRIGADIER
Commander "Q" Group, Cdn Reinforcement Units.
(Convening Officer)

Bordon, Hants.
14 Sep 44

III-107

PTE DUVAL J H-L

CERTIFIED TRUE COPY
RECORDED AT CMHQ IN AB 166 I I I/107
Rindeau CAPT
(R. GORDEAU)

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this Thirtieth day of March, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where convening Officer is Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint as~~
*~~(a. Three Officers to form the Court.)~~
*~~(a. A Field Officer as President.)~~ "210"
*~~(a. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—~~

(151)

President.

Rank.	Name.	Regiment.
Major	D.A. Kennedy	Carlt & York R

Members.

Rank.	Name.	Regiment.
Captain	J.M Bursey	Carlt & York R
Lieut	F de St-Victor	R 22e R
Lieut	G A Fortin	R 22e R

Waiting must be signed personally by the Officer specially appointed at the top, and all alterations in the composition of the Court to be initialled by him

*Signed "T G Gibson" Brigadier

Commanding 3 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D160007 Pte Joseph Henri Lucien DUVAL, R 22e R	First charge Sec 12(1)(a)AA	Guilty	Guilty To undergo P.S. for a period of 3 years "BAR"	I reserve confirmation of the finding and sentence for superior authority. "W G Gibson Brig" 4 Apr 44 I confirm the finding and sentence and direct that part of the sentence that exceeding two years shall be served in a military prison. Lieut. P. J. Montague Maj - Gen. Major-General i/c Administration Canadian Military Headquarters 26 April 44

* Question to be asked of accused, if he pleads not guilty (R. of P. 30 (a)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) W G Gibson Brigadier (Signed) W.J. Kennedy Major

Commanding 3 Cdn Inf Bde — *Convening Officer (e)* — *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets, (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 31st day of March 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
* (3. The interpreter) "BAR"
* (4. The officers under instruction) "BAR"

were duly sworn.

* Omit if not applicable.

Signed this 31st day of March 1944.

"W J Kennedy Major"
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (i) on page 780 M.M.L. 1940.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*I direct that the subject named in the margin be not committed to prison until further orders.

Signed this 26th day of April 1944
(Sgd) P. J. Montague, Maj.-Gen.
Major-General i/c Administration
Canadian Military Headquarters
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 3 May 44 (Signed) Pte Lieutenant Colonel A.A.G. - R.P.I. - 1 - 22e R.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

LRPG V LRIZ SRL 35

FROM CANMILITRY 261530B

TO ADNAP FOR CANDEX FOR 2 ECH QVR 2

A2799 QQY BT

R E S T R I C T E D FGCM PROCEEDINGS D57470 DUFUIS A D16007 DUVAL J H L G51151 GALLANT J G E1665 SIVRET J ALL SERIAL 41/1 RECEIVED 22 APR 44 ENDORSED BY MGA 26 APR AS FOLLOWS QUOTE 1 CONFIRM THE FINDINGS AND SENTENCE AND DIRECT THAT PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE

BT 271305B VNH AR

RD 35 271306 LS K

B(2)
"B.A.F."

CHARGE SHEET

The accused D.160007 Private Joseph Henri Lucien DUVAL, a Soldier of Royal 22e Regiment, Canadian Army Overseas, CMF, On Active Service is charges with:-

Charge

A.A. Sec 12(1)(a) WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY' SERVICE

in that he

In the Field, at 0800 hours on the 7 February 1944, after having been warned by CSM Drapeau L.E. that the company was on "Stand-To" to go on the front line, did absent himself without l leave with intent of avoiding so going, until he was apprehended at the 4 Bn CCRD at 1750 hours on the 7 February 1944.

Absence:- 9 hours, 30 minutes.

"J.G. Charlebois"
(J.G.CHARLEBOIS) Major
In the Field 26 Mar 1944 O/Commanding Royal 22e Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"T G Gibson"
In the Field 30 Mar 44 (T G Gibson), Brigadier, Commanding 3 Cdn Inf Bde.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No..D.1[illegible]007..Rank Pte.....Name...Duval..A.....of...Royal Regt.....
and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station...In.Tvo.Wind.

Date 31.March.1944

"Richard S Sirks Capt"
(Medical Officer)

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 31st day of March 1944 by order of Brigadier W.J. Gibson Commanding 3 Cdn Inf Bde dated the 30th day of March 1944

President.

Major R A Kennedy Carlt & York R.

Members.

Capt J M Dursey Carlt & York R.
Lieut F de Saint Victor R 22e R
Lieut G.A. Fortin R 22e R
Waiting

Trial of* 2150007 Pte Joseph Henri Lucien Duval R 22e R, Judge Advocate.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Lieut F de St Victor is not available to serve owing to the exigencies of the service

Lieut G A Fortin, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut F S J Hogan R 22e R

Counsel‡ or defending officer† Lieut J.L. Laliberte R 22e R

At 1020 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO

N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (3) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty.

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case on plea of "Not Guilty" has been proceeded with.

*The Court having been reopened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" is read to him again.

The accused D560007 Pte Joseph Henri Lucien Duval is found guilty of the charge as laid

†The summary (or abstract) of evidence is read, marked "F" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No

The accused in mitigation of punishment says :—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty"

The Court is closed for the consideration of the finding "D.A.F."

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut F.S.J. Hogan R 22e R is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. N/A

Cross-examined by the accused.

No

[Interpolation.—If in answer to the matters of the service of the accused he is represented under any circumstances, the finding of the Court remains the same in any exceptional punishment, in addition to but to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

"B.A.K." SUMMARY OF EVIDENCE

In the case of D.160007 Private Joseph Henri Lucien DUVAL, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF. On Active Service.

By direction of the Commanding Officer this Summary of Evidence was taken under oath.

1st Witness For Prosecution — E.5257 Sgt Filion W. Royal 22e Regiment, having been duly sworn states:-

" I am E.5257 Sgt Filion W. of R. 22e R. posted to "B" Coy.

At 1145 hrs on the 5 Feb 44, D.160007 Pte Duval J.H.L. was present and did answer his name at the roll call when CSM Drapeau of our company notified us that everyone was on "STAND-TO" to go to the front line.

At 1830 hrs on the 6 Feb 44, the platoon comd Lieut J.C. Audren, came and notified the platoon to pack up the stuff because we were at 2 hours notice, probably leaving at first light on the 7 Feb 44. The accused was present.

At 0800 hrs on the 7 Feb 44, D.160007 Pte Duval J.H.L. was absent and I did not see him when we went up to the front line".

The accused declines to cross-examine the witness.

"Filion W. ....."

2nd Witness For Prosecution — E.4161 Cpl Serube C.A. Royal 22e Regiment, having been duly sworn states:-

" I am Cpl Serube C.A. of R. 22e R. posted to "B" coy D.160007 Pte Duval J.H.L. was present and answered to his name at the roll call when CSM Drapeau of our Company notified that everyone was on "STAND-TO" to go into the front line.

At 1830 hrs on the 6 Feb 44, the pl comd Lieut J.C. Audren came and notified the platoon to pack up the stuff because we were at 2 hours notice, probably leaving the first thing in the morning on the 7 Feb 44. The accused was present.

At 0800 hrs on the 7 Feb 44, D.160007 Pte Duval J.H.L. was absent and I did not see him when we went up to the front line."

The accused declines to cross-examine the witness.

This witness is in hospital

This is to certify that witness whose signature does not appear on Summary was sworn, but left the unit before typewritten copies of it could be made and are now available.

"T.S.J. Rosan" Lieut

"B.A.K."

3rd Witness For Prosecution

Capt. J.B. Rousseau, Adjutant, Royal 22e Regiment, having been duly sworn states:-

" I, Capt J.B. Rousseau of R.22eR. posted as Adjutant, hereby produce certificate of apprehension in the case of D.160807 Pte Duval J.M.L. whom I now recognize. This certificate is marked Exhibit "A" and signed by Sgt Wetherell Provost Sgt 4 BW I CBRD.

"J.B. Rousseau" Capt

In view of the loss of time and expenses involved it is not necessary in my opinion to have the presence of the Sgt Wetherell of the 4 BW CBRD.

"F.E.J. Hogan" Lieut

The accused does not request the presence of Sgt Wetherell.

"A. Duval" Pte

The accused having been duly cautioned in French in accordance with RO 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page (1) was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) were duly complied with.

"F.E.J. Hogan" Lieut
Officer taking Summary

In the Field
26 Mar 44

E

Finding.*

The Court is closed for the consideration of the finding "G. A. E."

The Court find that the accused

*To be struck out except in cases where trial has taken place on a Plea of "Not Guilty."

Proceedings on Conviction before Sentence.

*When the Court is about to open that sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it, and the Order read.

Lieut. F. S. J. Hogan, R. 22e. R. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused.

No

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

(5)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding "N.A.F."

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut F.S.J. Hogan R 22a R is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* N/A

[Instruction.—If in cases of the register of the service of the accused is a contemporary entry or otherwise, the Judge of the Court considers how much in any exceptional circumstances in addition, he may be required by the Court (the prosecutor and the admission of the Court to the fact) and the Court must impose upon the register and answer of the additional punishment.]

Cross-examined by the accused.

No

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused *Sentence*

D160007 Pte Joseph Henri Lucien Duval
To undergo P.3. for a period of 3 years.

"B A Kennedy Major"

"B.A.M." SUMMARY OF EVIDENCE F

In the case of D.160007 Private Joseph Henri Lucien DUVAL, a soldier of the Royal 22e Regiment, Canadian Army Overseas, CMF. On Active Service.

By direction of the Commanding Officer this Summary of Evidence was taken under oath.

1st Witness For Prosecution — E.5257 Sgt Filion W. Royal 22e Regiment, having been duly sworn states:-

" I am E.5257 Sgt Filion W. of R. 22e R. posted to "B" Coy.

At 1145 hrs on the 5 Feb 44, D.160007 Pte Duval J.H.L. was present and did answer his name at the roll call when CSM Drapeau of our company notified us that everyone was on "STAND-TO" to go to the front line.

At 1830 hrs on the 6 Feb 44, the platoon comd Lieut J.C. Audren, came and notified the platoon to pack up the stuff because we were at 2 hours notice, probably leaving at first light on the 7 Feb 44. The accused was present.

At 0800 hrs on the 7 Feb 44, D.160007 Pte Duval J.H.L. was absent and I did not see him when we went up to the front line".

The accused declines to cross-examine the witness.

"Filion W. 5257

2nd Witness For Prosecution — E.4161 Cpl Berube C.A. Royal 22e Regiment, having been duly sworn states:-

" I am Cpl Berube C.A. of R. 22e R. posted to "B" coy D.160007 Pte Duval J.H.L. was present and answered to his name at the roll call when CSM Drapeau of our Company notified that everyone was on "STAND-TO" to go into the front line.

At 1830 hrs on the 6 Feb 44, the pl comd Lieut J.C. Audren came and notified the platoon to pack up the stuff because we were at 2 hours notice, probably leaving the first thing in the morning on the 7 Feb 44. The accused was present.

At 0800 hrs on the 7 Feb 44, D.160007 Pte Duval J.H.L. was absent and I did not see him when we went up to the front line."

The accused declines to cross-examine the witness.

This witness is in hospital

This is to certify that witness whose signature does not appear on Summary was sworn, but left the unit before typewritten copies of it could be made and are now available.

"F.S.J. Noyan" Lieut

"D.A.K."

3rd Witness For Prosecution

Capt. J.B. Rousseau, Adjutant, Royal 22e Regiment, having been duly sworn states:-

" I, Capt J.B. Rousseau of R.22eR. posted as Adjutant, hereby produce certificate of apprehension in the case of D.160007 Pte Duval J.E.L. whom I now recognize. This Certificate is marked Exhibit "A" and signed by Sgt Wetherell Provost Sgt 4 Bde 1 CBRD.

"J.B. Rousseau" Capt

In view of the loss of time and expenses involved it is not necessary in my opinion to have the presence of the Sgt Wetherell of the 4 Bde CBRD.

"E.S.J. Hogan" Lieut

The accused does not request the presence of Sgt Wetherell.

"A. Duval" Pte

The accused having been duly cautioned in French in accordance with RC 1424 reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page (1) was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (e), (3), (c), (f) and (g) were duly complied with.

"E.S.J. Hogan" Lieut
Officer taking Summary

In the Field
26 Mar 44

SA-89

Cpl. Duval, L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-4732 Cpl (A/Sgt) Leo DUVAL - CIC - 4 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A1 Sec 40	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

At present under sentence for Not beginning on (date) (2)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be put under stoppage of pay until he has made good the sum of £2-9-6 (loss to the public)

17 Mar 45 (Sgd) E Th Mears President. (RP 45, 50.)
Date awarded.

(Sgd) Judge-Advocate, if any.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally, AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further ordered.(1)
(1. AA 57A. Delete if not used.)

(Sgd) E B Hakewill Col

Date 19 Mar 45 Commanding 2 Can Inf Sig Regt
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

E4732 Cpl (A/Sgt) Duval L 20 Mar 45 [illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 166 "5A-8"

CFA96 (To Head of AFA81) 40/P & B/1600 (D44)
4/38B

FIELD GENERAL COURT-MARTIAL

RECEIVED 9 APR 1945 CMHQ

Convened by order of Colonel C B Ware A/ Comd 13 CITB dated 14 Mar 45
DSO

ACCUSED.

(Separate trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank or appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-4732	Cpl A/Sgt	Leo	DUVAL	CIC 4 CITR

PROCEEDINGS REVIEWED 9 Apr 45 [illegible] OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at Nijmegen (country) Holland on (date(s)) 17 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Commons do NOT include all relevant fms RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instns on how to record addresses, evidence, etc, which instns are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 46, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1445 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans No
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (1)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	E Th Mears ED KC	NB Can
Member	Capt	C L Broquin	5 C J J R
Member	Lieut	J B Pelletier	4 C J J R
~~Judge-Advocate~~			
Prosecutor	Lieut	C J Bothier	4 C J J R
Defending Offr	Lieut	A Intermosia	4 C J J R

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (1)
(1. RP 26, 27, 109, 111. List of offrs and/or instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ~~stands~~ before arraignment make(s) (no) (a) plea. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AD room and retire of the accused making the plea.)

A9. The accused is ~~each~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 105; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 4. 3. *RP* 15(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* L3 *of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider this statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to that Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereupon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter~~ charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete parts not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Myself on oath. Do you intend to call witnesses on your behalf? Ans. No. Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith; and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*f*) (*g*) (*h*), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex C respectively.(3)
(1. *MFB* 255 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Same as said by Defending Offr.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused and his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A.~~ this ..... day of ..... 19..(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be pronounced to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas NO* 309, 2323. *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Accused elects Trial by FGCM

CHARGE SHEET

The accused, No E-4732 Corporal (Acting Sergeant) Leo DUVAL, of The Canadian Infantry Corps, on the strength of 4 Canadian Infantry Training Regiment, a soldier of The Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 40
ARMY ACT

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, after having been entrusted with one U.S. Watch, Serial No 2239, by RQMS Clark, neglected to take proper precautions regarding safe-keeping of said watch, which resulted in it's loss. Ordnance Vocabulary price of said watch is $3-6-0.

J. Cevan Power
(J. Cevan Power) Col
Commanding Officer
4 CDN INF TRG REGT

IN THE FIELD
10 Mar 45.

[To be tried by Field General Court Martial.]

C B Ware
(C B Ware) Col
A/Comd
12 Cdn Inf Trg Bde

IN THE FIELD
14 Mar 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 22, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E-4732	Cpl	A/Sgt	Leo	DUVAL	CIC 4 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Mar 45 endorsed by me, for try as offr of my staff for such, " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior competent offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint: (a) three offrs to form the Court, (b) a Pl Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	E M MILLER ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Cond	5 CITR
Lieutenant	to be detailed by Cond	4 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Cond	1 CITR

JUDGE-ADVOCATE. (JSA)

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

K B Mann
(Signed personally. RP 105 fn 2.)

Colonel
(Rank.)

Date 14 Mar 45

(A/C) (C B Ware)
Commanding A/Comd 13 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAO 119 (To Dec of AFAS 60-F & S/1907 (6/47))

(See overleaf for words and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 98(C)), any objections (*RP* 98(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl B. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*EP* 45 *fn* 16)), or evidence by accused, as to facts or his character or both. (*See EP* 41 *fn* 3, 46 *fn* 1, 66.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See EP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 46 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see EP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 46 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 86(*E*), *KR Can* 563(*a*).)

(vii) Summing up by J.A., if any. (*EP* 62.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex. 3, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 980. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(*b*), *RP* 118(*C*), *MML* p 759.)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Medical Offr's Certificate
K R (Can) para 557

I certify that I have this morning examined No: E 47232 (RANK)
Sgt Duval L. (NAME) of 4 C.I.T.R. and in my opinion he is
fit to undergo trial by Court Martial.

Station

Date 17 Mar 45

SGD _____ (Medical Offr)

CASE OF

D-3 E-4732 CORPORAL (ACTING SERGEANT) DUVAL, L. CIC, 4 CITR

FIRST WITNESS

B-76339, R/MS CLARK, J.F., 4 CITR, sworn, states:-

Q. Will you tell the Court what you know in connection with this watch?
A. Sgt Duval, the accused, was employed as Tech Sgt at 4 CITB and I cannot recollect actually the date that the watch came in, or rather the watches, sometime in Jan. Sgt Duval asked me if he could have the loan of a watch, as C/MS Gagne had his watch. That day the watches came in, I told him not to take one till C/MS Scatter had entered them in the Attractive Store Ledger. Actually, I cannot say that he had one; I've seen the watch hanging on his bed, if it was one of ours I cannot say. The day that the watch was missing the accused reported that the watch that he had from the unit was missing. That was about a month after he had taken it from the cupboard.

CROSS-EXAMINED

Q. What are your functions at 4 CITR?
A. R/MS.

Q. You must know what happen to your own stores?
A. Not necessarily, Sir. I have a Sgt T & D that works in the stores. The R/MS is the supervisor under the QM.

Q. Is he responsible for the watches, binoculars and compasses, wold he be responsible for them or would you be?
A. It is laid down by Ordnance that the CO is responsible.

Q. DID the accused work under you on the 25 Jan 45?
A. Yes, Sir.

Q. You were his superior officer?
A. Yes, Sir.

Q. To approve passes?
A. Yes, Sir.

Q. Leave?
A. Yes, Sir.

Q. Are you responsible to see that no one passes at the back of the counter in the stores?
A. Everyone employed there is responsible to see that this is enforced.

Q. Is there any rule laid down prohibiting unauthorized people from going behind the counter in the stores?
A. There is a sign on which it is written, "Staff Only".

Q. Do you remember passing a watch to the accused?
A. I never did.

Q. Were you informed that the accused had a watch?
A. He told me "Is it alright for me to have one?", and I said, "Yes".

Q. You knew he had one?
A. Indirectly. I said to him not to take one until they were checked.

Q. Is there not an order in the army that says that one must sign for any object taken from the Tech Stores?
A. Yes, Sir, but aman who has been employed as a Tech Sgt, trade tested, should know and see that this order is carried out.

Q. In other words, if he asked for something he must sign for it even if he works there.
A. Yes, he must.

Q. This order was not carried out in the case of the missing watch?
A. No, Sir.

Q. Are watches part of tech eqpt?
A. Yes, and he was the issuer or in charge of tech eqpt while employed at 4 CITB.

Q. Watches are only one of the items?
A. Yes, Sir.

Q. What branch of these stores was the accused in charge of?
A. He was not in charge of any particular branch; he was an assistant who had to deal with all branches.

Q. On the morning of the 25 Jan, were you present in the stores?
A. If not on leave, I would be there.

Q. Do you remember any person walking in the stores or warming up by the stove behind the counter the day that the watch was reported lost.
A. Yes, Sir.

Q. Do you remember any other person not authorised to be there and being by the stove warming up inside the counter?
A. There were three duty dvrs of the QM staff that day.

QUESTION BY THE COURT

Q. Who were these three men?
A. Two duty dvrs and our own dvr; they were employed by the QM Stores Branch that day.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 82 (B).

SWORN WITNESS

D-81436 Ste PROVOST, J.J., 4 CITB, sworn, states:-

Q. Tell us what you know about the morning of the 25 Jan when a watch was reported missing in your stores?
A. One morning, when I was working in the Tech Stores, Sgt Duval, the accused, came back from the ammn dump and asked me if I had seen the watch which was hanging against his bed. I said, "No". He asked me if the RCMS had taken the watch. I told him "No". I was busy giving some stuff away and I didn't have a chance to look if the watch was gone. There was a couple of dvrs near the stove behind the counter that morning.

Q. Did you see the watch near the accused's bed?
A. It was hanging on the right-hand side of his bed. It had been there about a month. This bed is in the building used to keep tech stores. It is in a building like a hut. When you go in the door there is a counter, behind the counter you walk about six maybe ten steps and you get to the beds; there are four there. By Sgt Duval's bed I've seen a watch hanging there which I knew belonged to the Tech Stores because we issue some of them.

Q. When did the accused ask you about the watch?
A. The same on which the watch disappeared.

Q. How did you know that?
A. I saw it was gone from where it had always been for about a month. I don't remember what day it was but it was the day the accused spoke to me about.

CROSS-EXAMINED

Q. Do you remember the 25 Jan 45?
A. I remember the morning that the watch disappeared, I don't know the date.

Q. On that certain day, do you remember any people being in the stores, people that were not allowed.
A. There were people in there that were not allowed to be in there.

Q. Were they behind the counter?
A. Yes, Sir.

Q. Who was the senior of the staff inside working there while you were there?
A. C/S Scarrel.

Q. Do you remember him telling the people that this place was out-of-bounds on that morning?
A. Not, from him.

Q. Did anybody else tell them?
A. I don't think so, Sir.

Q. Is there a notice?
A. Yes, on which is marked, "Staff Only". I made it myself the first day I came in.

Q. To pass from outside to inside the counter, what must one do?
A. You have to lift up part of the counter to get in.

Q. Did the accused ever touch that watch?
A. He used to wind it. I could see him do it as I slept in the same room.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

TURID WITNESS

B-77077, Pte BROCKLESBY, J.J., 4 CITB, sworn, states:-

Q. Where do you work?
A. In the Tech Stores at 4 CITB.

Q. How long have you been there?
A. Since Dec 44.

Q. Do you know the accused?
A. Yes, Sir.

Q. How long has he been there?
A. He was there when I first came.

Q. Do you know anything about a watch?
A. I knew that Sgt Duval had a watch hanging by his bed, an Army issue watch. It was always hanging there. On the 25 Jan 45, the accused was out with one of the trucks to the ammn dump. When he came back I heard him say that the watch had disappeared from above his bed. I took it for granted it was the watch hanging above his bed. It was a GS watch.

Q. Do you know where it came from?
A. It was from the Tech Stores.

Q. How do you know that?
A. It could not have come from no where else.

Q. Has anything been said about it being issued from the stores?
A. No, Sir.

Q. When the accused noticed that it was missing, did he say anything about it being a store watch?
A. No, Sir.

CROSS-EXAMINED

Q. On the 25 Jan 45, were you working in the store?
A. Yes.

Q. Did you notice any stranger in the store?
A. There were a few men working there, two dvrs, people coming in and out.

Q. Inside the counter?
A. Some did.

Q. Do you remember seeing any sign prohibiting people from passing inside the counter?
A. There is a kind of a board that you lift before you can get behind the counter.

Q. Was there any sign?
A. Not that I noticed myself.

Q. Do you remember if the accused was present in the stores on the 25 Jan 45?
A. He was there in the earlier part of the morning; then he went out with a truck.

Q. How do you know that?
A. I saw him when he went out.

Q. What were you doing?
A. I was just working in the store- room.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

RECALLED WITH PERMISSION OF THE COURT

R-76358 RSM Clark, J.F., 4 Offrs./Pdtes already sworn further states:-

EXAMINED

Q. Which watch is missing in the Tech Stores?
A. There is a watch missing which is listed in our Attractive Store Ledger. I don't remember the number of the watch. Sgt Duval told me that the watch he had had the same number as the one reported as missing.

Q. You gave evidence of a number of a watch in the Summary of Evidence, did you check that number at the time?
A. Yes, off the attractive store register.

Q. Did you check that number before you signed your statement in the Summary of Evidence?
A. Yes, Sir.

Q. What is that number?
A. Actually I cannot tell you without seeing the evidence myself.

Q. (The Prosecutor shows witness the Summary of Evidence) Is it the right number and what is it?
A. Yes, GSTP 2239

Q. Is this the watch that is missing?
A. Yes, Sir, GSTP 2239.

CROSS-EXAMINED

Q. If anybody in your stores would come to you and ask you for something, let us say a Bren gun, would you let him have it?
A. My staff would not need a Bren gun

Q. If he did have a need for it?
A. He would have to get the permission of the Captain.

Q. You would enter the number of the watch?
A. Yes, and have someone sign for it.

Q. Did you have the accused sign for this watch?
A. His name is not shown on the register.

Q. Whose duty was it when he took thewatch out of the attractive store curboard to see that he signed for it?
A. His own, Sir.

QUESTION BY THE COURT

Q. What is the value of the watch?
A. The vocabulary price of the watch is $3-6-0.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 85 (B).

DEF OVER

PROS WITNESS

The accused, sworn, states:-

Q. How long have you been associated with Tech Stores?
A. Two years.

Q. Tell me exactly what are your duties?
A. Ammn, Sir. In my spare time I help with something else but I am mostly employed at ammn.

Q. Do you remember signing any receipt for a watch which was said to be issued to you?
A. No, Sir.

Q. Is there a sign prohibiting all ranks from passing inside the counter?
A. Yes, the sign reads, "Staff Only".

Q. On the morning of the 25 Jan 45, do you remember if there was somebody in the stores.
A. Yes, at the time I left there were two private dvrs in the store inside the counter and they did not belong to the stores. They were not allowed in the stores at all times.

Q. Was there any one senior to you at the time in the store?
A. Yes, RQMS Clark and CQMS Scarrol.

Q. Will you tell the Court why you didn't advise these dvrs to get out?
A. Because there were two seniors in the stores.

Q. Did you consider your room as a very private place in the stores?
A. Yes, Sir, very private and for the staff only.

Q. Who sleeps in that room?
A. RQMS Clark, Pte Handlin, Pte Prevost and myself.

Q. Were you entrusted with the said watch?
A. I asked RQMS Clark when we received the watches if I could have one for my own use. He said, "Yes".

Q. Was that watch placed in such a place as to be available for the use of any one in that room?
A. No, Sir. The watch was far away from everybody except the staff who could go in there.

Q. Can anybody walk in the stores without being stopped, without any permission and just stay there by the stove and warm up?
A. I never heard of anybody being chases out of the stores.

Q. While you were there and you were senior there, did you let any one come in?
A. No, Sir, not even an officer. No one is allowed to go behind the counter.

Q. Are the attractive stores kept under lock and key?
A. Yes, Sir.

QUESTIONS BY THE COURT

Q. Do you dispute that the watch for which you are charged was one you got from the store?
A. No, Sir.

Q. How long was that watch beside your bed?
A. From the 6 Jan till the 25 Jan.

Q. Who unlocked the cupboard to give you the watch?
A. The watches were on the table. We were looking at them before we put them in the cupboard. I took one before it was placed in the cupboard. I put my initials on the container of the watch so that CQMS Scarroll could get the number of the watch I had before I took it and hung it with the permission of RQMS Clark.

Q. You say people were often behind the counter?
A. Yes, Sir.

Q. On many other days than the day the watch disappeared?
A. On many other days, Sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

THE COURT IS CLOSED TO CONSIDER THE FINDINGS
THE COURT RE-OPENS

E-1

E-4738 CORPORAL(A/SERGEANT) DUVAL, L. CIC No. 4 CITH

PLEA IN MITIGATION OF SENTENCE

I would ask the Court to be very lenient with this Sergeant who has had a very clear record for five years. He is a Sgt in a responsible position in the stores and it will look very bad for him to have this serious charge on his record. The watch is lost and you think he is responsible. I would ask the Court to be very lenient with him. I think that RQMS Clark and S/Sgt Scarrol are equally responsible, if not more responsible, than the accused and they too should be charged for the loss of this watch, and I ask the Court to remember that when they fix the punishment for this man. He was not there when the watch was taken. Theother NCOs were there. They let people go behind the counter which they should not have done and they are the people who are responsible equally, if not more so than the accused.

address of Pros. after finding -

Gentlemen of the Court.

You have heard the evidence against Sgt Duval As the one in charge of issuing technical stores he was responsible for their safe keeping The fact that he had not signed for the G S watch Changes in no way his responsibility He was using said watch for his own use and as such should have taken greater care for its safe keeping. He neglected to do what for he left it in a place where it was unguarded without anybody noticing it That Sgt Duval himself felt responsible is shown by the fact that he reported its loss If Sgt Duval had taken proper Care of the watch as he was supposed to it would not have been lost so I ask the court to find the accused guilty as charged

A Walter Light
Prosecutor

17 Mar 45

Gentlemen of the Court.

Before closing this case, I would like to point out to you the important statements brought out during the proceedings:

First of all it can not be proven that the watch was loaned to the accused for he never inquired for it

Secondly

The watch was placed on the wall in the Private Room of the accused & R.Q.M.S. Clarke. The accused knew very well that it was safe to keep it there for that room was out of Bounds to all except the staff. R.Q.M.S. Clark evidently approved of placing the watch on the wall as he saw it there every day, every moment of the day — he never mentioned to the accused that it was neglecting the safe keeping of the watch to leave it there as he knew very well himself

P7

that the place was out of Bounds to all

Finally
as you heard the accused has been in the army 3 yrs 4 mths. two years of which he spent in the Technical stores. He started storeman and was promoted to Cpl & Sgt while working in the Technical Stores. During his 3 yrs 4 mths service he kept his Conduct sheet clean.

I therefore Gentlemen due to the fact that the prosecution failed to prove that the watch was issued to the accused and also that precautions were not taken for the safekeeping of the said watch, I humbly submit that the charge be dropped and the accused acquitted. I thank you.

W/ Arthur Laterveer Jr.

SUMMARY OF EVIDENCE

In the case of No E-4732 Acting Sergeant Leo DUVAL, of The Canadian Infantry Corps, on the strength of 4 Canadian Infantry Training Regiment, a soldier of The Canadian Army Overseas.

By direction of The Commanding Officer this Summary of Evidence is taken on oath.

First Witness for the Prosecution

B-76339 RQMS Clark, J.F., of The Cdn Inf Corps, on strength of 4 C.I.T.R., having been duly sworn states as follows:

"The accused, Sgt Duval, L., whom I now recognize, has been technical storeman since Nov 44. About the first of Jan 45 he asked me if he could have a watch until he could get his own back. I told him he could have one from the Technical Stores, the issuing of which he was supervisor. He took a watch, GS, Serial No 2239, and kept it pinned to a blanket that was hanging at the head of his bed. At about 1210 hrs 25 Jan 45 Sgt Duval, L reported to me that this watch No 2239 was missing. I reported full particulars of the loss of watch to Sgt Weaver, of the Regt'l Police 4 CITR, and also to Capt Sheehan, QM of 4 CITRn." Ordnance price for said watch is £3-6-0."

The accused declines to cross-examine this witness.

.....RQMS
(J.F. Clark)

Second Witness for the Prosecution

D-81436 Pte Prevost, J.J., of The Cdn Inf Corps, on the strength of 4 C.I.T.R, having been duly sworn states as follows:

" I have been working in the Technical Stores for almost a year. I knew Sgt Duval, the accused, had a watch GS, which he had pinned to a blanket that was hanging down behind his bed. I saw that watch on many occasions pinned to his blanket all the time. Onemorning Sgt Duval came to me and asked me if I had seen this watch. He was unable to find it. He had gone out that morning to the ammunition dump and when he came back the watch had disappeared. Apart from the staff that morning there was 1 officer and 3 drivers who were allowed in the stores to get warm by the stove that was close to Sgt Duval's bed. Only the staff were supposed to be in the Tech Stores and there was a sign saying that it was out of bounds except for the staff."

The accused declines to cross-examine this witness.

.....Pte
(J.J. Prevost)

Third Witness for the Prosecution

B-77057 Pte Brocklesby, J.J., of The Cdn Inf Corps, on strength of 4 C.I.T.R., having been duly sworn states as follows:

" I have been working at the Tech Stores 4 CITRn since 24 Dec 44. On several occasions I saw a GS watch pinned to a blanket which was hanging down from a shelf behind the head of Sgt Duval's bed. I used to refer to that watch sometimes to get the correct time. Towards the end of Jan 45 Sgt Duval came in and told us that the watch had disappeared. We made a search for it around his bed, but were unable to find it. The RQMS, Sgt Duval, myself and three other storemen had access to the Tech Stores room. Besides that 2 drivers used to come in to warm up by the stove near Sgt Duval's bed. The morning the watch disappeared the two drivers were in the stores for part of the morning."

The accused declines to cross-examine this witness.

.....Pte
(J.J. Brocklesby)

The accused was then cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to make any statement or to say anything unless you wisht to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) & (f) have been duly complied with.

.....
J.K. Keeping (Lieut
officer detailed to take the summary of evidence.

9 mar 45

ARMY FORM B 256.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-4732	A/Sgt	DUVAL, L.	4 CDN INF TRG REGT

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—If a trial by field general court martial has subsequently been quashed by competent authority, the entries relating to the offence in question should be erased from the conduct sheet.

† See sec. 42(2), A.A., 1917.

* The expiration, remission or cancellation of a forfeiture of service, or of a deferred gratuity, for service forfeited by the sentence of a court martial or civil court, and the award of a fine, or of a sentence of imprisonment with hard labour, or of detention, or of a sentence of penal servitude, or of a sentence of imprisonment for a civil offence, and also recommendations for the remission of any of the above punishments, should be noted in this statement, but not appealed to the prejudice of the accused.

Instructions.—(1) The dates to be inserted are the dates of the occurrences noted in the conduct sheet.

* Within last 12 months. †Since Enlistment.

Total number of entries			
For	times	times	
For	times	times	
For	times	times	
For	times	times	
Number of gallantry or distinguished service			

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted.

3. The accused has been sentenced by a general court martial or a civil court, exclusive of awards under section 47 of the Army Act, to the following punishments, viz.:—

4. The accused is not under sentence at the present time.

5. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and nil days in military custody, making a total of nil days, of which nil days were passed in hospital.

6. The present age of the accused according to his record of service is 47 yrs old

7. The date of his attestation specified in his record of service is 11 Nov 39

8. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 6 yrs 117 days

9. The accused is entitled to deferred pay or gratuity in respect of 5 yrs 117 days service.

10. The accused is entitled to reckon 5 yrs 117 days service for the purpose of determining his pension, etc.

11. The accused is in possession of, or entitled to, CVSM & Clasp in possession of or entitled to (state any military decoration or colonial).

12. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of

13. (In the case of an officer.) The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of , dated .

Capt

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-4732 Rank A/Sgt Name Duval, L. of 4 CITR Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17th day of Mar 45

Dempsey Capt
officer having custody of regtl books.

17. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion
In the rank of Cpl	8 mos 27 Jul 44
In the rank of A/Sgt	6 mos 13 Nov 44
In the rank of	

(Insert years, months and days in each rank. If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck out, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph inserted amended accordingly.)

No. E-4732 Name DUVAL, Leo Regt, Battery or Company

- COMPILED FROM MFM 4 -
Corps C.I.C.

Date of enlistment 11 Nov 39 OC Badges

Service or Proficiency Pay

MFM 6
(AFH 172)
40/P468/198 (3488)

Character

Date of last entry in Company Conduct Sheet N/A

No and date of last drunk N/A

Period not reckoning towards freedom from extra fine N/A

Sheet No 1

Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified no entries.					

Certified true copy ..... Capt & Adjt 4 CIDBn
(A.C. Canguay) Officer having custody of original.
Dated .... Mar 45

(PTO)

MISCELLANEOUS

In the case of No E-4732 Rank A/Sgt Name DUVAL, L.
of The Cdn Inf Corps, on the strength of 4 CANADIAN INFANTRY TRAINING REGIMENT, a soldier of The Canadian Army Overseas.

WITNESSES FOR PROSECUTION

1. B-76339 WOM3 Clark, J.F., of The Cdn Inf Corps, on strength of 4 C.I.T.R.
2. D-81436 Pte Provost, J.J., of The Cdn Inf Corps, on strength of 4 C.I.T.R.
3. B-77077 " Brocklesby, J.J., of The Cdn Inf Corps, on strength of 4 C.I.T.R.
4. ....., of The Cdn Inf Corps, on strength of .....
5. ....., of The Cdn Inf Corps, on strength of .....

WITNESSES FOR DEFENCE

1. NIL, of The Cdn Inf Corps, on strength of .....
2. ....., of The Cdn Inf Corps, on strength of .....
3. ....., of The Cdn Inf Corps, on strength of .....

REQUEST FOR COUNSEL etc.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by C.M.

2. I desire the services of an officer to represent me at my trial by C.M. I request the services of:

Lieut. Sullivan (who is attached), or another officer who is available.

if he is available.

In the Field
10th day of Mar 1945.

L. Duval
(L. Duval) A/Sgt

IN THE FIELD
10 Mar 45.

KK-130

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighteenth day of July, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Div Rear Party, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~ &c.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:—~~

~~None available~~

*Omit when Convening Officer is a Commanding Officer or is of Field Rank.

*~~Not applicable~~

NOTE.—The President must be named. The numbers and ranking members (if any) may be mentioned by name, or the number and name and the unit to which they belong may alone be named. In the latter event, the name, rank, &c., of the members shall, before the Court assembles, be recorded on the proceedings.

President.

Rank	Name	Regiment
Major	A.W. Embury	2 Cdn Div Sp Bn (QLI)

Members.

Rank	Name	Regiment
~~Major~~ MAJOR	~~J.A. LEFEBVRE~~	R 22e R
~~Major~~ MAJOR.	~~C.S. FRASER.~~	~~2 Cdn Sp Bn (QLI)~~ 1 C SCOT R.
		~~4 Cdn Armd Bde~~

*Must be signed personally by the Officer actually in command at the time and all alterations in the composition of the Court to be initialled by him.

*Signed J.B. Adams Lt-Col

Commanding

A.C. 1 Cdn Armd Bde

Convening Officer.

2

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.4148 Pte [illegible], Paul R 22e B	Absent [illegible]	Guilty	Guilty [illegible]	

19 July 43

[See Charge Sheet attached.]

*Question to be asked if accused, if he pleads not guilty (R. of P. 39 (a)) —
Do you wish to apply for an adjournment on the ground that any of the rules relating to preliminaries before trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
Answer (or by counsel or advocate where so allowed) —

(Signed) [illegible] (Signed) [illegible]
Confirming Officer (d) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered in one item, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should state his name in full. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B.

I certify that the above Court assembled on the [illegible] day of July 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

Certificate of President as to proceedings.

I also certify that
1. The members of the Court
2. The witnesses
3. The interpreter
4. The officers [illegible]

[illegible]
President [illegible] Court Martial.

C.

I certify that the terms of Rule 67 of the Rules [illegible] have been complied with.

Signed this [illegible] day of [illegible] 19

D.

I have dealt with the findings and sentence in the manner stated in the last column of the Schedule and, subject to what I have there stated, I hereby confirm the above findings and sentence.

*I direct that the soldier named in the margin be sent [illegible] to prison or detention barrack until further orders.)

Signed this 22nd day of July 19 43.

[illegible]
Confirming Officer.
[illegible]

Promulgated and extracts taken in the case of [illegible]

(a) (Dated) 22 July 43 (Signed) [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

CHARGE SHEET.

The accused, H.4148 Pte. Duval Paul, Royal 22e. Regiment, a soldier of the Canadian Army Overseas, is charged with while on Active Service:

FIRST CHARGE
A.A.
Sec. 15(1)

ABSENTING HIMSELF WITHOUT LEAVE
In that he

In the field, absented himself without leave from 0300 hrs 27 June 1943 until 1850 hrs 27 June 1943. (Total absence; 15 hrs and 50 minutes.)

In the field,
2 July 1943.

(Raymond Caron) Capt.,
Commanding
R.22e.R. (Rear Party).

To be tried by Field General Court Martial.

In the Field
Dated 2 Jul 43

[W.D. ADAMS] Lt-Col.,
C.O. Int. Gdn. Div. Details.

By authority

MEDICAL CERTIFICATE OF FITNESS

This is to certify that I have to-day examined.....

.....and that he is fit to undergo trial

by Field General Court Martial.

Date.....

.....

Medical Officer

Trial of E 7148 Pte Duval Canl Royal 22e Regiment
Canadian army.

Prosecutor Capt J E Robinson 1 Can Div Sp Bn (S&D)
Defending Officer Lt & A/Capt P J Morgan 1 Can Div Sp Bn (S&D)

The members of the Court as named in the convening order were present & the Court satisfy themselves as to R P 22 & 23 & as per as they apply to a Sp C M

The accused was informed of the right of challenge but elected not to exercise it.

The accused was not asked if he had any objection to any of the members & elected to

The accused was arraigned on the charge sheet & pleaded

The accused was informed by the president & answered in the negative

R P 35 c is duly complied with & the accused thereupon admitted the charges against him & duly understood his position in pleading guilty and that he was in no way compelled to say or do anything.

The summary of evidence was then translated to the accused & marked E. signed by the president & annexed to the proceedings.

The accused does not wish to call any witness & makes any statement as to character or any other statement in his own behalf.

Prosecutor is sworn & produces evidence as to character & antecedents & Ex F & G. These are ~~him~~ not translated to the accused.

The accused declines to cross examine

Prosecutor

The accused thereupon not objecting appear addresses the Court as follows:

"I asks the Court to consider, first, the state of enlightenment of the accused. Sept 24, the contents of HFH & with the fact that he is without any [illegible] and to do with [illegible] the accused [illegible] has not easy to any court and the fact that he [illegible] should be taken with [illegible]

SUMMARY OF EVIDENCE

in the case of

M.4148 Pte. Duval P. Royal 22e. Regt., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of evidence is taken on oath.

FIRST WITNESS FOR PROSECUTION

P. 48774 Sgt. J. Martin, Royal 22e. Regiment having been duly sworn states:

When I fall in the parade on the 27 th of June 47 Lt. G. Robitaille reported to me that his batman Pte Duval was absent. I made a report to Capt Jarvan in order that this man be replace on the draft. I reported him absent to the S.O.S. Cpl. Dery J.L. Then I saw him in the evening I asked him what happened. The accused said: "I met a woman, start to drink and have stayed with her all night."

J.J. Martin Sgt.
A/C.M.P.

The accused declines to cross examine this witness.

SECOND WITNESS FOR PROSECUTION

M.4069 Cpl. Dery J.L. Royal 22e. Regt., having been duly sworn states:

I was C.Q.S. on the 26th June 47 and I had orders to awake the men at 0800 hrs on the 27th of June 47 and after the morning meal the A/Sgt J. Martin told me to go to bed that he will [illegible] of the parade and of the roll call. Later on the A/Sgt J. Martin reported me that Pte. Duval was absent. I wrote down in the duty roster that Pte Duval absent without leave since 0800 hrs. 27 Jun. 47. On the same day at 1650 hrs In was in MAIN dining room (Brief) and Pte Duval came along and told me: " I come to report to you, I am just coming in." Later on he said: "I am afraid that I will be severely punished for missing that draft. But it is not my fault, I have done my best to come back in time."
I noticed that Pte Duval was absolutely sober and properly dress. I put him under close arrest.

[signature] Cpl.

The accused declines to cross examine this witness.

THIRD WITNESS FOR PROSECUTION.

Capt. Jayand Caron Royal 22e. Regt. having been duly sworn states:
Having been advised by A/Sgt. J. Martin that the accused was absent I have been obliged to replace him on the draft. I am sure that the accused knew that he was detailed for a special duty leaving very shortly at the time he went A.W.L.

[signature] Capt.

The accused declines to cross examine this witness.

The accused having been duly cautioned in accordance with rules of Procedure 4 (e) declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence was taken down by me in presence of the accused and the rules of Procedure 4 (a) (d) (f) (g) (h) have been complied with.

G.A. Fortin, Lieut.,
Officer detailed to take the Summary.

In the field
2 July 45.

LIST OF WITNESSES.
In the case of
S. 4148 Pte Duval P. Royal R2e. Regt., a Soldier of the Canadian Army Overseas.

PROSECUTION

S.46774 Sgt. a/CSM. G. Fortin, R.C.E.C.
S.4069 Cpl. J.L. Dery "
Capt. Raymond Caron "

DEFENCE
NIL

LIST OF EXHIBITS.
NIL

STATEMENT BY THE ACCUSED.

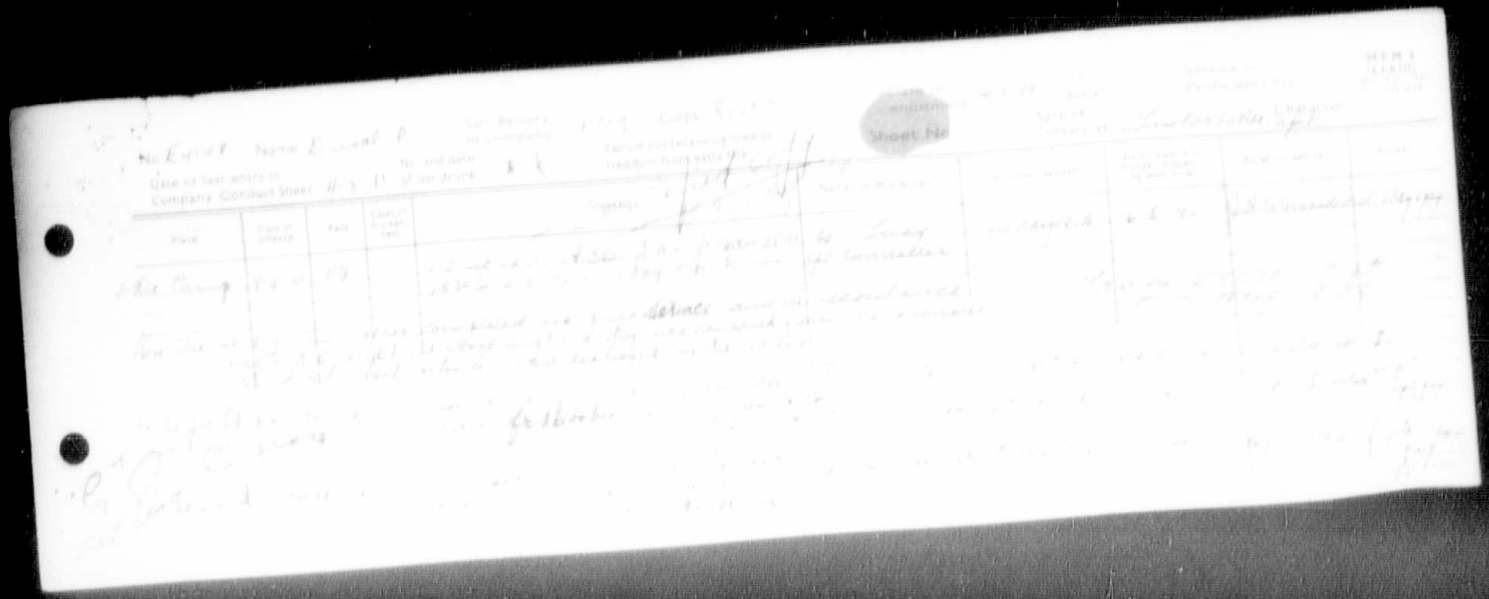
I, S.4148 Pte Duval P. Royal R2e. Regt., desires to have an Officer assigned to represent me at my trial by Field General Court Martial.

I Desire the services of.....
if he is available.

This is to certify that I have been given free of charge copy of the proceedings, documents etc., relating to my trial by Field General Court Martial.

Paul Duval, Pte.

In the field
this 2nd day of July 1945.



M.F.R. 159
2331—541 (17)(43)
H.Q. 1173-9-43
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.4148	Pte.	Duval P.	Royal Rifle Regt.

1. The following is a fair and true summary of the entries in the Regimental or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court and of summary awards under Section 47 of the Army Act / Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment
For	A.W.L.	two times	A.W.L. three times
For		times	Neglect to obey an order
For		times	
For		times	

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted nil

or,

Previous convictions of the accused by a court-martial or a civil court or summary award under Section 47 of the Army Act / Air Force Act / A.F.A. 75 and dispensations with trial under A.A. 72 are set out in the record annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for nil beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 5 days in military custody, making a total of 5 days in custody of which nil days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 30 years 11 months (as at 17.11.43)

6. The date of his commission specified in his record of service / attestation paper

7. The service which the accused is allowed to reckon towards discharge

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to an air force decoration, or air force reward (or is in military / military possession of or entitled to). State any air force decoration or reward. military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B40548 Lgt. Wilfred Alexander Lunan

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15(1) AA	Guilty	Guilty	
2nd 15(1) AA	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44. Findings in alternative: charges see MML p 44. As to special findings see RP 44 and MML p 153, and in case of acq see RP 44 (3).)

At present under sentence for N/A.
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A), information should be found on MF 8355 or AF 8296)

Time in confinement awaiting present trial—a total of Nil days, of which Nil as to same specific hospital etc.
(I. See RP 46(A) fn 2. Information should be found on MF 8355 or AF 8296 submitted in evidence under E.)

Sentence Awarded by the Court:

~~To be reduced to the ranks~~ ~~forfeiture of pay~~ ~~and~~ ~~of~~ ~~forfeit~~

To be reduced to the ranks

8 Apr 44 J. Kenneth Lunan

(Sgd) ..... Judge Advocate, if any. Date awarded ..... Signature ..... (See back of Convening Order as to assembly and adjourn of court, RP 34)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(2), AF C23, RP 1, 2)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 729-761, KR Can 361-371. Acquittals remain on confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120fn. If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be entered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 122 (4) (c).)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~(Sgd) ..... Confirming Officer~~ (Delete if not confirming) (AA 57A. Delete if not confirming)

Date 18 Apr. 44. (Sgd) J. E. Myers Lt-Col Commanding 10 Cdn. Inf. Bde. Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, 577.)

Accused. B40548, Lgt Lunan, W/A. Date: 20 APR 1944 Signature of O/C: J. E. Myers Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

Convened by Order of 5 Cdn Inf Bde dated 3 Oct 43

ACCUSED

(As to the use of this or more charges jointly see RP 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 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613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 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2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 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RECORD FORM C PROCEEDINGS ON MIXED PLEA OF GUILTY AND NOT GUILTY

FIELD GENERAL COURT-MARTIAL

ACCUSED

OATHS FOR USE IN COURTS-MARTIAL

1. PRESIDENT AND MEMBERS. *(See N.D. R.S. Can. 1952, RR 26, 29, (1).)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the law in force for the time being in the Militia of Canada, without partiality, favour or affection, and I do further swear that, except as far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not disclose or discover at any time whatsoever disclose or discover the vote or opinion of any particular member of this court martial, unless lawfully required in due course of law.

2. JUDGE ADVOCATE. *(See N.D. R.S. Can. 1952, RR 26, 27, (2).)*

I swear by Almighty God that I will not, unless it is necessary for the due administration of [illegible] divulge the sentence of this court martial until it is duly confirmed, and that I will not disclose or discover at any time whatsoever the vote or opinion of any particular member of this court martial, unless lawfully required in due course of law.

3. OFFICER UNDER INSTRUCTION. *(See N.D. R.S. Can. 1952, RR 26, 27, (3).)*

I swear by Almighty God that I will well and truly [illegible] and that I will not [illegible] member of this court martial, unless lawfully required in due course of law.

4. SHORTHAND WRITER. *(See N.D. R.S. Can. 1952, RR 26, 27, (4).)*

I swear [illegible]

5. INTERPRETER. *(See N.D. R.S. Can. 1952, RR 26, 27, (5).)*

I swear [illegible]

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Squadron / Battery / Company / Detachment — Lincoln A.A.F.Band,C.A.(A.F.) Unit or Battalion

19

MORNING SICK REPORT

Serial No.	Rank and Names (Christian Name in full)	Age	Religion	Whether for duty, a prisoner or detailer	Married or Single	Disease	Medical Officer's Remarks and Initial
B-40548	Sgt. Duval, W.A.	39	R/C	Pris. M			

The ~~r~~n men has been physically examined and found.....
and free from infectious diseases.

Medical Officer

Orderly N.C.O.

C.W.Lewin Capt.MC/AC

8 April 1944.

Lieut. J.O.Martin of Lincoln & Welland Regt
attended the Court-Martial as a reader under in-
struction and was duly sworn.

J.G. [illegible]

Exhibit "A"
Sappenfield
Manslaughter

Fourth Witness

Captain L.R. Clarke, 1 Bn Lincoln & Welland Regt having been duly sworn states:-

"I am Transport Officer of the Lincoln & Welland Regt. To my knowledge B40543 Sgt Duval, W.A., requested no transportation from our office on 30 Mar 44."

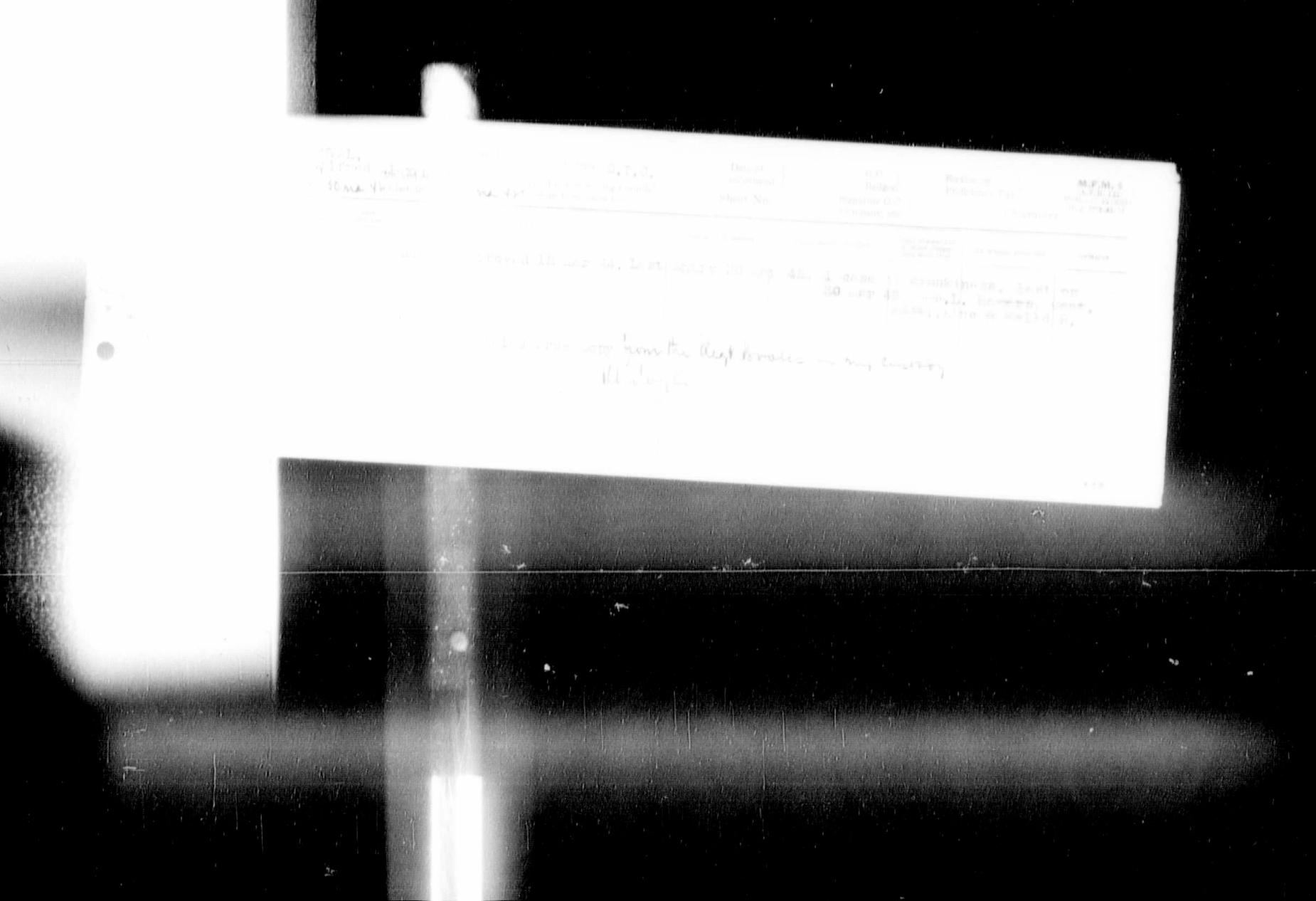
The accused declines to cross examine this witness.

Signature of Witness

Question to the Accused

Signature of A

In the Field
2 Apr 44



SCHEDULE OF CONVICTIONS BY COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried	Date and Place of Trial	Offence of which convicted	Sentence	Sentence remitted, or sentence suspended
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

I HEREBY CERTIFY that the foregoing particulars [illegible] correctly extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 3rd day of [illegible]

(J.F. Hayward) Lt-Col.
Comd 1 Cn Line S. Field R.

YYY-135

Rte Duane J.R.

RECORDED AT CMHQ IN AB 160 YYY-35

RECEIVED 3 OCT 1944 AHQ BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

Court convened at Brie A.B. Connelly Comd "E" Sp CRU dated 27 Sep44

ACCUSED.

(As to the trial of two or more charged jointly see AA 34, 37, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 43, 91 fn; KR Con 308, 328, 330.)

Number	(a) Printed R	(b) Appmt, A/R or A/Appmt	Full Christian Names	Surname	Unit.
D-71212	Pte		James Rodgers	DWANE	C Pro C 1 C/RU

PROCEEDINGS OF TRIAL.

Precise Date & Place of Trial

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-71212 Pte James Rodgers DWANE C Pro C 1 C/RU

Charge. (Insert "alternative" where applicable.)	Plea. (See Regs s 21)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 40	NOT GUILTY	NOT GUILTY	
2nd A.A. 40	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

At present under sentence for
(I. Insert sentence being served, or delete if not applicable. See AF B.103, information should be found on AFB B.1511 or AF B.2196 cancelled or sentence under s.)

Time in confinement awaiting promul. trial — to Date
(I. See AF B63(3) fn 2. Information should be found on AFB B.1511 or AF B.2196 cancelled or sentence under s.)

Sentence Awarded by the Court

PART II. MINUTE WHERE CONFIRMATION RESERVED

Date (Sgd)
Confirming Officer

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE

(For duties and powers see AA 34, 37, AF 22(2); fn 3, AA(A), 37-39, 120, MMS 28, 29-31; KR Con 347, 371. Acquittals require no confirmation and cannot be revised — AA 34(3). Sending back finding or sentence for revision by Court — AA 34(2), AF 22(2). If not confirmed, accused may be tried again — AA 137, MMS, p 64. Minute of confirmation or non-confirmation may be entered before promulgation — AF 22, MMS, p 63. Sentence after promulgation — KR Con 372. Duties and powers of reviewing offrs — AA 27, 27A, AF 22A, 34. The Confirming Offr must sign here personally. AA 172 (n 1.)

My decision on the finding(s) and sentence(s) set forth in Part I is

I direct that the accused be not restored to [illegible]

Date Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN

Accused. Date (Sgd) Regimental or Unit Offr

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part 1 of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)

(1. *RP* 35(*E*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea pleading to Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 *to* D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st and 2 nd charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2 nd charge(s), and allowed on the ~~0~~ charge(s), and that, accordingly, the trial will proceed ~~as the former, but the accused is (are) found Not Guilty on the following charge(s).~~(3)(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. TO Give evidence. Do you intend to call witnesses on your behalf? Ans. NO-SIR Are they witnesses as to character only? Ans.

(1. *RP* 39. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*A*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part 1 of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part 1 of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

(1. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 1 of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheets(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)

(1. *AFB* 253 *or AFB* 294. 2. *MFM* 5. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment.(1) Ans.(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or vary anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part 3 of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 37(*B*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and* 70, *process, or to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 343-366. *Overseas RC* 309, 327, *MML p* 85, 732-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1), 68(1), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 367. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused, D.71212 Pte James Rodgers DWANE, Canadian Provost Corps, on the strength of 1 Canadian General Reinforcement Unit, a soldier on active service with the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC. 40 A. A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 25 Nov 43 and 18 Feb 44, then S/Sgt and Treasurer of the Sgts' Mess, Canadian Detention Barracks, did improperly purchase spirits for the said Mess after having been warned by Major W. Fern, Asst Comd Canadian Detention Barracks, not to do so.

SECOND CHARGE
SEC. 40 A. A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 25 Nov 43 and 18 Feb 44, then S/Sgt and Treasurer of the Sgts' Mess, Canadian Detention Barracks, did improperly sell spirits for the said Mess after having been warned by Major W. Fern, Asst Comd Canadian Detention Barracks, not to do so.

In the Field
18 Sep 44

(B.R. Ker) Colonel
Commanding Officer
1 Cdn Gen Rft Unit

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

30
27 Sep 44

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA85) 40/FA85/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Can Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, (ns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-71212	Pte		James Rodgers	DWANE	C Pro C 1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) ~~27~~ 30 Sep 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial" so

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated being:~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed as Judge-Advocate thereof the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-Col (Rank.)	D.L. Redman V.D. (Must be named. RP 106.)	H&A CRU (Unit.)

MEMBERS.

Captain	A.M. Matheson	S.S.R. 1 CIRU
Lieutenant (Rank.)	C.S. Glew (Named or detailed. RP 106.)	R.R 1 CIRU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) A.B. Connelly (Rank.)

Dated 30 ~~27~~ Sep 44

Commanding
(A.B. Connelly) Brig Convening Officer.
Comd "B" Gp CRU

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 90(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 64.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 86(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 82.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations on printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS E, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (3) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 8 after minute of sentence awarded. (*AA 53(9), RP 113(C), MML p 758.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

Medical Officer's Certificate
K.R.(Can) para 557.

I certify that I have this day examined,

No. D.71212 Rank Pte Name Dwane J.R.

and in my opinion is Fit to undergo trial by Court Martial.

Field
Date: 2 Oct. 44

Medical Officer M.O. 1 C.G.R.U.

F.G.C.M. IN THE CASE OF

D 71212 Pte DWANE, J.R., C Pro C, 1 CGRU

2 OCT 1944

EVIDENCE FOR THE PROSECUTION NOTE D-3

1st WITNESS FOR THE PROSECUTION

Capt W FERN, on strength C Pro C, 1 CGRU, having been duly sworn states:

Q 1 During the period 25 Nov 43 to 18 Feb 44 where were you stationed?
A 1 I was Assistant Comd, Cdn Det Bks.

Q 2 Did you have any duties with regard to the Sgts Mess?
A 2 Yes I was PRI of the unit.

Q 3 Do you know Pte Dwane?
A 3 Yes I know him, I see him here as the accused, he was on the staff during that period.

Q 4 What was his position with regard to the sgts mess during the above period?
A 4 He was Secretary Treasurer with the rank of S/Sgt.

Q 5 Did you at any time give any instructions to him with regard to the sgts mess?
A 5 I gave S/Sgt Dwane some instructions immediately after I received them from the C.O. to the effect that there would be no alcohol bought or sold in the sgts mess, that would be about the 25 Nov 43 when I received the order from Col Shankland.

Q 6 What do you mean by alcohol?
A 6 Alcohol or spirits, whiskey, gin, rum etc. The order was that there would be no more spirits bought or sold in the sgts mess. I gave those orders to the RSM, President of the mess and Staff Dwane and to CSM Reistrich and several members of the mess at various times. However I gave the order to these three immediately I received it from the CO.

Q 7 I show you a document, will you identify it?
A 7 This document is one that was presented to me on the 1 Nov 43 by Staff Dwane which was an application or notification to the Wine and Spirits Department, NAAFI, Esher, Surrey, signed by myself stating the number of members in the Sgts Mess in this unit. This letter is dated 1 Nov 43.

(Document marked Exhibit "1" by the Court. The Prosecutor stated that this exhibit as well as other documents which he will tender in evidence are required for other urgent purposes as they form part of the record of a GCM which has already been held. Prosecutor then tendered a copy of the said Exhibit "1". The President compared the said copy with the original and certified the said copy and marked it exhibit "1". The Prosecutor stated that he would return the original exhibit to the Officer In Charge of the record of the said GCM).

Q 8 In dealing with the NAAFI is it necessary to forward such letters from time to time?
A 8 Yes I believe it is the custom when you are dealing with the NAAFI to keep them informed on the number of members, the supply or allotment you are allowed is based on that number.

Q 9 How often or at what times is such a letter sent to the NAAFI?
A 9 I understood from the accused that it had been customary to forward letters similar to that one at the beginning of each month.

Q 10 Was such a letter forwarded to the NAAFI at the beginning of Dec 43?
A 10 No.

Q11 Was any such letter forwarded to NAAFI subsequently during that period which I have referred to?
A11 No, no letters were ever sent subsequent to that one that was cancelled.

Q12 On or about 25 Nov did you give any instructions to then Staff Sgt Dwane with regard to forwarding such letters to the NAAFI?
A12 Subsequent to receiving the order from the Comd that there would be no spirits bought or sold in the sgts mess I told S/Sgt Dwane that the letter which I had signed on the 1 Nov 43 to the Naafi would be cancelled, and that no spirits would be bought or sold in the sgts mess and he said that he would tend to it.

Q13 I show you another document, will you describe that?
A13 This is a letter to Lloyds Bank, dated 22 Nov 43 signed by myself telling the bank that S/Sgt Dwane and myself are the signing authorities, it has samples of our signatures on it.

(Letter marked Ex "2" by the court. A copy was also dealt with in the same manner as Ex "1").

Q14 I show you a NAAFI invoice dated 1 Dec 43, do you recognize this invoice?
A14 Yes, it was shown to me at the Court of Inquiry at Cdn Det Bks sometime in May 44. I had never seen it before that time, it is dated 1 Dec 43.

(Invoice is marked Ex "3" and a copy dealt with by the Court in the same manner as Ex "1")

Q15 I show you a cheque dated 6 Dec 43, is that your signature?
A15 Yes.

(Cheque marked Ex "4" and a copy dealt with in the same manner as Ex "1" by the Court)

Q16 I show you NAAFI receipt dated 10 Dec 43, do you recognize it?
A16 I recognize this as one I first saw on the Court of Inquiry at Cdn Det Bks in May 44.

(Receipt marked Ex "5" and dealt with in the same manner as Ex "1" by the Court)

Q17 I show you another NAAFI invoice dated 1 Jan 44, do you identify that?
A17 Yes, it was first shown to me at the Court of Inquiry in May 44, that was the first time that I saw it.

(NAAFI invoice marked Ex "6" and a copy dealt with in the same manner as Ex "1" by the Court)

Q18 I show you cheque dated 6 Jan 44, is that your signature on it?
A18 Yes.

(Cheque marked Ex "7" and a copy dealt with in the same manner as Ex "1" by the Court)

Q19 To the best of your knowledge what was the payment for in the case of these two cheques?
A19 To the best of my knowledge they were for supplies from the NAAFI assumed by me to be dry canteen stuff and such items as were purchased from the NAAFI.

Q20 As far as you know at present were the payments for these particular xxxxxxxx xx invoices produced as Exs "3" and "6".
A20 Yes

Q21 Did you at any time buy spirits from the accused, then S/Sgt Dwane?
A21 Yes, I bought spirits from him on three occasions to the best of my knowledge.

Q22 To the best of your knowledge what was the nature of these transactions?
A22 It was a personal transactions between S/Sgt Dwane and myself and I had no reason to believe it was otherwise.

Q23 What made you think it was a private transaction?
A23 I had know the accused for a number of years and often during our conversations he told me that his connections were very good and it was not difficult for him to get spirits. He had people in Durham for instance from whom he had often been able to get supplies of spirits and when I was at the Det Bks we had no officers mess and it was most difficult to get spirits and when I approached the accused he said it would be quite simple to get me whatever requirements I desired.

Q24 I show you cheque dated 12 Jan 44 is that your signature?
A24 Yes, it is for the sum of £19

(Cheque marked Ex "8" and a copy dealt with in the same manner as Ex "1" by the Court)

Q25 I show you cheque dated 13 Jan 44, is that yoursignature?
A25 Yes, it is for the sum of £1-10/-

(Cheque marked Ex "9" and a copy dealt with in the same manner as Ex "1" by the Court)

Q26 I show you cheque dated 15 Feb 44, is that your signature?
A26 Yes, made out to cash for the sum of £6-5/.

(Cheque marked "Ex "10" and copy dealt with in the same manner as Ex "1" by the Court)

Q27 I show you Ex "8", do you recognize the signature of the endorser?
A27 Yes, it is that of S/Sgt Dwane, Cdn Det Bks, Sgts Mess.

Q28 I show you Ex "9" do you recognize the signature of the endorser?
A28 Yes, it is"J.R.Dwane, Cdn Det Bks".

Q29 Do you recognize the signature of Ex "10"?
A29 The signature of the endorser is that of J.R Dwane, Cdn Det Bks.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q30 Who was RSM of the Cdn Det Bks and what were his duties on the 25 Nov 43?
A30 RSM Illingsworth, he was the senior member or officer in the mess and I suppose his duties were those of a senior officer. He was the channel of communications between myself and the sgts mess.

Q31 Therefore instructions which you had to issue to the mess you would issue to him and not every one else?
A31 Not in every case, when this particular order regarding sale of spirits and re-opening of the mess on the 25 Nov came out I personally gave orders to sever members of the mess and I also gave orders to RSM Illingsworth, CSM Steele and Staff Dwane, I discussed it with them immediately.

Q32 In your evidence you gave at the summary of evidence you made a statement on page 1, which I will read to you "I believe that sometime in Nov I told the accused not to send that letter and to cancel it," you say "I believe" I issued these instructions and now you say "I did issue these instructions" what is it that you mean, is your recollection more clear now at this Court Martial or that it was at the summary which was taken over a month ago?

A32 When the summary of evidence was taken I had just arrived back from France, I was called here to give evidence without the slightest warning I had not thought of it and at that time could not be sure, later I got away by myself and reconstructed the thing and thought it out and began to recall the facts and the I got the picture and the events quite clearly in my mind, I remember quite well issuing the instructions.

Q33 You discussed this matter with other people?
A33 No, I have only discussed it with one person, that officer who defended me at my GCM. This matter was again brought up at the GCM.

Q34 In the summary on page one you say "to the best of my recollection sometime in Nove on or about the 25 I gave an order to the accused to the effect that there would be no purchases or sale of spirits for the sgts mess. And now of course you are very certain that you issued these orders?
A34 The same explanation is applicable.

Q35 You say on page two of the summary, "I gave an order to RSM Illingsworth and CSM Steele, President Sgts mess" and again " to the best of my recollection it included the accused" and now again you are positive? At that time you were clear that you gave the order to the RSM and still you were not certain about the accused, why?
A36 The same explanation applies here, it was not until I got away by myself and was going over the case that I recalled what actually happened and I then knew that I included the accused and that I told him to cancel the letter and I also remembered very well telling him that there would be no spirits bought or sold in the sgts mess.

Q37 In your evidence in chief you stated that the accused was Secretary Treasurer for the period in question is it not correct that he was the Treasurer only and that someone else was Secretary?
A37 Yes that is correct, the Secretary was Sgt Steed.

Q38 When dealing with the NAAFI is it not correct that you first find out what the NAAFI can supply you and then you place your order accompanied by a cheque? that is the invoice and cheque are returned to get the goods?
A38 Yes.

Q39 In the case of Ex "3" it is dated 1 Dec, whereas Exhibit "4" is the cheque for payment is dated 6 Dec, in both cases 1943? Is it a fair assumption from those two dates that the invoice was received first and then the cheque was made out?
A39 Yes.

Q40 And the goods were afterwards delivered?
A40 Yes.

Q41 Was it your practice to insist on knowing for what cheques were made out for the sgts mess before signing them?
A41 No as far as the sgts was concerned I did not think that I had time to check them, I was a very busy man and I depended on the mess committee to carry out any regulations.

Q42 Then the answer is "no" you did not check or ask for invoices to be shown to you before signing cheques to pay for them?
A42 No.

Q43 Ex "2" was a letter requiring your signature to be one of the signatures on all cheques on behalf of the sgts mess along with S/Sgt Dwane or CSM Steele. What did you understand was the purpose of having your signature on the cheques?
A43 Well it was according to instructions contained in the regulations it lays down that an officer will be appointed by the CO as signing officer for all cheques in the unit Institutes.

Q44 Then you felt your being appointed as signing officer merely meant you to sign checks you did not have to know what they were for or anything like that?
A44 Yes for the goods of the sgts mess and regimental institutes.

Q45 What regimental institutes are there?
A45 The sgts mess.

Q46 Did you not feel that you should see the cheques and the invoices?
A46 Well ordinarly I would but I was burdened down with duties and I had no time and I depended on the sgts to take care of their own mess.

Q47 Did the accused not voluntarily produce these invoices?
A47 No he never presented any invoices or receipts with the cheques. He siad it was for supplies required for the sgts mess and I of course ~~ex~~ accepted his word for it.

Q48 Did it seem unnatural to you that bills of £52-16/-11d should be given to the sgts mess by the NAAFI, was that not a bit high?
A48 At that time there was a large membership at the sgts mess, I knew they were pruchasing dry canteen supplies from the NAAFI, it never occured to me that the cost was excessive.

Q49 You knew that were not purchasing beer from the NAAFI?
A49 Yes, I knew that they got their beer from the brewery.

Q50 You knew that they were pruchasing dry canteen goods and not beer and £52 was not excessive?
A50 Idid not think so.

Q51 You say that you know now these cheques were for large quantities of spirits?
A51 Yes, the first I knew of it was at the Court of Inquiry.

Q52 Very convenient that you did not know this in view of the fact tht you were relying on Staff Dwane to get you a supply of spirits?
A52 I did not rely on him, I asked him if he could get it, had he not been able to get it I would have endeavoured to get it from other friends.

Q53 He said he could get it and you relied on him to get it?
A53 Yes.

Q54 And at one time he got you £19 worth?
A54 Yes, 12 bottles.

Q55 A lot of spirits to get in this country at one time is it not?
A 5 Yes

Q56 You could not have gotten that amount yourself at one time?
A56 Yes I could have, I know a chap in London that could have gotten it for me, it is not normal but I had been getting it from him for the last three or four years, but instead of going to him I went to the accused was closer at hand.

Q57 Did it never occur to you that he was getting these spirits from the NAAFI?
A57 No.

Q58 I show you the original Ex "3" dated 1 Dec 43, it is related to Ex "4" which is cheque dated 6 Dec 43, as you said you signed it, what do you suppose happened to that invoice after you had signed the cheque and spirits bought?
A58 I don't know, I saw it at the Court of Inquiry.

Q59 The echque was paid out of the sgts mess and the accounts closed on the 31 Dec and an audit was taken I suppose?
A59 Yes.

Q60 You had to sign the proceedings of the audit board?
A60 Yes.

Q61 Did you not see an entry for the cheque or invoice at that time?
A61 I did not I depended on the audit board and I accepted their signatures for their responsibility. I was very busy and had I attempted to carry out all this work myself it would have been a little too much. I do not remember the names of the members of the board but they would be officers of the unit.

Q62 Would they be Lt Cawley and Lucar?
A62 They might have been, I should not be surprised.

Q63 Did neither of them mention to you that the spirits had been sold in the sgts mess?
A63 No.

Q64 Supposing they had, what action would you have taken?
A64 I should have investigated it.

Q65 What would you have done if Staff Dwane had brought you this invoice and cheque and asked you to have signed it?
A65 I should have refused to sign it and taken action immediately.

Q66 And in the case of the second invoice and cheque, Exs "6" and "7"?
A66 I would have taken the same action.

Q67 But then you would not have gotten the 12 bottles of liquor that you got?
A67 It would not have affected me to any length as it is revealed to me no I should not have received any liquor from Staff Dwane but I had not knowledge that it was being sold in the sgts mess.

Q68 In addition to these purchases you made for which you paid for by cheque did you make any other pruchases of spirits through Staff Dwane or the sgts mess?
A68 I never purchased any liquor from the sgts mess, I may have bought a bottle or two from the accused for which I paid cash, but I do remember definitely of never buying any through the mess.

Q69 How did you get or where did you get the three bottles of spirits in Jan?
A69 They were delivered to my billets to my land lady.

Q70 Was that the occasion that Jean-Louis delivered them?
A70 I did not know who brought them, I was simply told that a soldier had left them, I have found out since that Jean-Louis did bring them. The quantity was three bottles of whiskey and two bottles of Cordial. I gave a cheque to the accused for £4-5/ sometime in Feb.

Q71 How did you order this wiskey?
A71 My birthday was coming up and I wanted some liquor and I asked Staff Dwane if he could get me some, it was delivered to my residence, at the time it was delivered I was not at home and thought that the accused had dropped them there himself.

Q72 How about the 12 bottles, when did you order that?
A72 In Dec.

Q73 What do you think was the cause of the delay in delivering them as you received them sometime later?
A73 I assumed it was because he was having difficulty in getting it. However there was actually no long delay, I paid for them early in Jan 44. That was some time after I had received them.

Q73 Had it struck you that he could finance a transaction for £19.
A73 I understood that he had his own bank account.

Q 74 You notice the endorsement on the 1st and 3rd cheque you made to him, " Cdn Det Bks, Sgts Mess", did you get these cheques back at the end of the month?
A74 I never saw them again until the Court of Inquiry in May.

Q75 When you told the accused that his letter of authority which you signed on the 1 Nov 43 was cancelled did you write to the AAFI and tell them it was cancelled?
A75 I did not, I left the accused to tend to it, I was extremely busy and the Det Bks was in the process of re-organization, and I had to depend on my staff.

Q77 When you told the Prosecutor that no similar letter was written to the 1 Dec 43 you really mean that to your knowledge no similar letter was written?
A77 That is what I mean, I did not mean to be so absolutely sure that no letter was written by anybody.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE PROSECUTION
R 6834 RSM Illingsworth, D., on strength Cdn Det Bks, having been duly sworn states:

Q78 Where were you stationed during the period 25 Nov 43 and 8 Jan 44?
A78 I was station at the Cdn Det Bks, I was the RSM there, with regard to the sgts mess I was the senior in the mess but we had a mess committee of which I was not actually a member.

Q79 During that period do you recall receiving any instructions regarding the purchase and sale of liquor in the sgts Mess?
A79 I do not remember seeing any written instructions, there were verbal instructions, I believe the OC issued them.

Q80 Were any given or issued by Capt Fern?
A80 No Sir.

Q81 Do you know Pte Dwane?
A81 Yes Sir, he used to be S/Sgt Dwane, he is the accused sitting in the Court.

Q82 What was his position in the sgts mess during the period mentioned?
A82 He was the Treasurer some of that time.

Q82 Did you buy any liquor from him?
A82 No Sir. I did ask the accused to get me a bottle of whiskey I am not sure when it was but I had asked the purchasing secretary before the accused to get me on, I paid him for it.

Q83 What did you understand to be the nature of the transaction?
A83 That Staff Swane was merely purchasing a bottle of wiskey for me as an agent, it was purely a personal transaction.

Q84 Where did you think he was getting it?
A84 I thought he was getting through his contacts that he established when he was buying for the mess.

Q85 Did you during this period inspect the sgts mess?
A85 No the bar.

Q86 Did you ever see any alcohol visible in the mess in bottles on the shelf?
A86 No Sir.

Q87 During this period was any liquor sold in the sgts mess?
A87 Not to my knowledge.

Q88 Were you in the sgts mess quite often?
A88 I had my meals in the dinning room, I often went in at noon. I seldom went in at night. We were very busy and I worked a lot of nights.

Q89 Did you ever see any liquor in the mess?
A89 No Sir.

Q90 Why was there no liquor in the sgts mess?
A90 Because an order was given that no spirits would be sold in the mess. I had been told and I passed it on to the mess committee

Q91 Did you discuss it with anyone else?
A91 No Sir.

Q92 Did any members of the sgts mess discuss with you or refer in their discussion to this particular order?
A92 No Sir I do not remember any discussion.

CROSS EXAMINATION BY THE DEFENDING OFFICER.

Q93 You purchased only one bottle of whiskey through Staff Dwane?
A93 Yes Sir. It was around Christmas sometime just before Christmas.

Q94 Where was this delivered to you?
A94 I cannot remember just where it was delivered to me now.

Q95 Did I understand you to say that you received an order from the Col regarding sale of liquor?
A95 Yes Sir.

Q96 Any order from Capt Fern?
A96 No Sir, he was present when the order was given by the Col.

Q97 You relayed it to the president of the mess committee and Staff Dwane?
A97 To the President but not Staff Dwane.

Q98 What are your responsibilities as RSM with relation to the mess?
A98 I am the senior officer of the mess, I am responsible for the discipline and conduct of the members in the mess, I do not take any actual duties as far as the mess is concerned, I do not have time and did not at the time of this matter. I never reviewed the finances of the mess. There was also a bar committee who was responsible for the running of the bar, they did the pruchasing with the approval of the CO, I believe CSM Hurrel was in charge of the bar committee at that time, S/Sgt Dwane was Treasurer he was not a member of the bar committee. I knew nothing about the purchases of the whiskey for the mess, nor of the sale of x spirits by the mess.

Q99 Where did you think Dwane got this whiskey he gave to you?
A99 I think it would be possible for him to get a bottle of whiskey when buying beer for the mess. I would have gone and gotten it except I was pretty busy and could not get away.

Q100 Were you present outside the mess when CSM Ralstrick got a bottle of whiskey through the back door of the mess?
A100 No Sir.

Q101 Was he present when you got yours?
A101 No Sir.

Q102 Where you in the mess at Christmass time and do you remember the raffle of a bottle of whiskey?
A102 I was in and out of the mess before Christmass at noon time but I do not r call the raffle of a bottle of whiskey.

Q103 Did you see the list on the outside of the bar of the names of people who had bought tickets?
A103 No Sir.

Q104 And you knew nothing about any spirits in the mess or anything like that?
A104 No Sir.

Q105 If you had known that spirits were being bought and sold in the mess what would you have done?

A105 I would have reported it.

Q106 Do you think there was any bought for the mess?
A106 I do not know about that.

Q107 Had you known that spirits were kept in the bar what would you have done?
A107 I should certainly have reported it.

Q108 And if you found that it had been bought by the mess committee and found it was kept there as stock what would you have done?
A108 I would have gone after the mess committee.

Q109 Do you take part in the deliberations of the mess committee?
A10 Some of them I attended, some I was not able to attend.

Q110 What do you know of the Christmas arrangements that were being made in your mess?
A110 Very little.

BY THE COURT

Q111 Did Capt Fern ever tell you that spirits were not to be bought or consumed by the sgts mess?
A111 No Sir.

Q112 The CO told you, did he, in the presence of Major Fern?
A112 Yes Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION

M 37251 CSM RAISBRICK W, on strength 2# Cdn Spec Employment Coy, having been duly sworn states:

Q113 Where were you stationed during the period 25 Nov 43 and 18 Feb 44?
A113 I was at Cdn Det Bks.

Q114 What was your position in regard to the Sgts Mess?
A114 From the 17 Jan onwards I was President of the Sgts Mess.

Q115 Do you know Pte, then STaff Sgt Dwane?
A115 Yes Sir, he is the accused there.

Q116 Did you, during the time referred to above, buy spirits from the accused?
A116 Yes Sir, I bought one bottle of gin which I paid him for. He gave me this bottle on the public road way outside the barracks.

A
Q117 Did you every approach Sgt Bennison, mess steward or caterer in the mess for any liquor.
A117 About the middle of Oct I asked Dwane if he could get me a bottle for Christmas, at one time I asked Bennison if he knew if Dwane had a bottle for me, he said he did not know. Bennison never handed me a bottle.

Q118 Do you remember a raffle of spirits about Christmas time?
A118 There was raffles on two occasions in the mess, I cannot say what they were for, I was approached and asked if I would buy one but I was uninterested in raffles.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q119 Before 25 Nov you had at one time been Treasurer of the sgts mess?
A119 Yes Sir.

Q120 At that time was the mess buying and selling spirits?
A120 Yes Sir.

Q121 You ceased to be treasure when?
A121 About 21 Aug 43 and held no office until 17 Jan 44.

Q122 When you bought these spirits from Dwane I understand you went to him and asked if he could get a bottle for you?
A122 Yes Sir.

Q123 Where was he when you asked him, was he in the accounts office?
A123 I donot remember exactly.

Q124 Do you remember speaking to him about spirits in his accounts office?
A124 No Sir.

Q125 Where did you pay him?
A125 In the public highway.

Q126 When was that?
A127 When he gave me the bottle. It was around Christmas, I believe the day before.

Q128 I understand you you received a bottle of spirits by the hand of Bennison, is that correct?
A128 That is correct.

Q129 Do you remenberan occasion shortly before Christmas speaking to the accused outside the door of the mess and asking him for a bottle of spirits?
A129 I do not remember the occasion, it is quite possible that I asked him if he had it.

Q130 Do you remember what going with RSM Illingsworth when a bottle of spirits was delivered to you ~~xxxxxxx~~ or him by Bennison outside the mess?
A130 No Sir, it was not delivered to me personally and the RSM met me a little later just as we were going out. And that was the only bottle I got. I cannot say just what time of the day it was.

Q131 But you are clear as to whatday and where it was handed to you?
A131 Yes.

Q132 You do not remember the time, you do remember the place, the day, you, I suppose remember the price, but you do not remember where you ordered it?
A132 No Sir, I saw him on so many occasions, I asked him on one of them It might have been in his accounts office. I do not know what he kept in his accounts office.

Q133 Do you know whether he kept a list there and do you remember going in and asking him to put your name on it?
A133 No Sir.

Q134 Do you remember going into his office and paying him there?
A134 No Sir.

Q135 Where did you understand he got the liquor?
A135 I understood he got it from a private dealer.

Q136 He did not tell you then?
A136 No, the bottle he got me was a private dealer, it was not NAAFI, it was Saegers, and I do not believe the NAAFI handle Saegers Gin.

Q137 Do you know anything about liquor being sold in the mess, or through the Mess?
A137 No Sir.

Q 138 Why did you ask the accused to get you some liquor?
A138 He had been the buyer for the mess and was still buying beer and I thought he may have made contacts where he could get it.

Q139 Why did you ask Bennison if Dwane had gotten it for you?
A139 Bennison usually accompanied Dwane on his trips and I thought he would know if the accused had got it.

Q140 You did not think S/t Bennison would have it for you in the bar?
A140 No Sir.

Q141 Did you ever go into the bar during that period?
A141 Yes Sir.

Q142 Did you ever see any spirits there?
A142 No Sir.

Q143 You were asked to buy a ticket on a raffle?
A143 Yes Sir, someone came to me and asked me if I wanted to buy a ticket, we usually had raffles for chickens and other things around Christmas, I was not much interested and I bought two tickets more to get rid of the person that was selling them than anything, I do not know what the raffles were for. I did not know that they were for two bottles of whiskey.

Q144 Did you see a list of persons who bought tickets hanging up outside the bar?
A144 No Sir.

Q145 Were you in the mess very often, at meals etc?
A145 Yes Sir, but it was very rare that I drank in the mess.

Q146 While you were president did you know what was going on in the mess?
A146 I thought I did.

Q147 Had you known that spirits were being sold what would you have done?
A147 I would have called a special meeting and had it stopped.

Q148 Did you know that officers and sgts were getting spirits from Staff Dwane?
A148 I considered it was quite possible that they were getting it the same way as I had gotten mine, as a private deal. And as long as it was a private deal it had nothing to do with the mess.

BY THE COURT

Q149 What was the price of a bottle of spirits?
A149 35 Shillings.

Q150 How many members were there in the mess?
A150 About 100 to 110.

Q151 Outside of whiskey and beer what would the usual NAAFI bill come to each month?
A151 A very difficult question, there was only about one month after Nov that we bought anything from the NAAFI, a few things such as cigarettes, choclates etc.

Q152 Would it run to £50 a month?
A152 No Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(3)

1137

4th WITNESS FOR THE PROSECUTION
Capt W.A. CLARK, RCAPC, on strength No 1 CGRU, having been duly sworn states:

Q153 Where were you stationed during the period 25 Nov 43 to 18 Feb 44?
A153 I was at Cdn Det Bks.

Q154 Do you know Pte, then S/Sgt Dwane?
A154 Yes he is there (pointing at the accused)

Q155 Would you tell the court your relations or dealings with him during that period?
A155 I bought two bottles of gin during the first week in Dec, which I had the accused get for me, I paid him in cash for it.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q156 What led you to go to the accused?
A156 I had heard that he had contacts and could quite easily get liquor so I asked him if he could get me so, I do not know where he got it. I have no reason for believing that he would be more likely to be able to get me some than I would have been except that I had heard that he had contacts. I went to him and asked him if he could get me some and he said he thought so he delivered it to me in my house. I never received any liquor from him or anyone else in the sgts mess.

Q157 Did you know that these spirits were bought through the Sgts mess?
A157 No.

Q158 You did not know where he was going to get this spirits, you don't know why he would be more likely to get them than yourself, you don't quite think they came from the sgts mess, but you thought that he had some mysterious sourse where he could procure them so you asked him to buy you some?
A158 I do not think it a mysterious source. I do not know whether he got liquor for other people or not, he got me a bottle and I did not interest myself in him further.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

5th WITNESS FOR THE PROSECUTION
D 105754 Pte JEAN-LOUIS, on strength Cdn Det Bks having been duly sworn states:

43

Q159 During the period 25 Nov/and 18 Feb 44 where were you stationed?
A159 At Cdn Det Bks. I was a driver there.

Q160 Do you know Pte Dwane?
A160 Yes Sir, he is sitting there, he was then S/Sgt Dwane. (points to the accused)

Q161 Tell the Court about any driving you did for the accused in the period we have referred to above.
A161 He told me to go to McEwen and Youngers, Aldershot and pick up a parcel, I did this and delivered it to Capt who was then Major Fern, I do not remember the date but it was after Christmas some time. I saw what the parcel contained it was bottles of spirits. I gave it to Major Fern's land lady I was given the bill for it which I gave to S/Sgt Dwane.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q162 Did I understand you to say you got a bill?
A162 Yes Sir.

Q163 What was it for?
A163 I do not know, I did not look at it, I do not know to whom it was addressed or what it was for, but I thought it was for the

whiskey and I gave it to S/Sgt Dwane.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

6th WITNESS FOR THE PROSECUTION

A 34002 CSM HURREL, P, Cdn Prov Corps, on strength 1 CGRU, having been duly sworn states:

Q164 During the period between 25 Nov 43 and 18 Feb 44 where were you stationed?
A164 I was at Cdn Det Bks.

Q165 What was your position with regard to the sgts mess? And what do you know about the case that we are trying today?
A165 I was chairman of the Bar Committee. Occasionally I inspected the bar, as a matter of fact I did about every day go into it and have a look around. Around Christmas there was some liquor there, two bottles that were raffled off. Pte, then S/Sgt Dwane, the accused, who is there, was running the raffle. I did not buy any liquor from him during that period. While I was chairman it was given out at the mess meeting that the purchases of liquor would be made only with the consent of the CO, it was not to be sold by the glass, there was no prohibition of buying it and selling it by the bottle that I knew of. The only orders we had were that there would be no whiskey sold by the glass. The purchases were for the Christmas season.
Q166 Who gave you those orders?
A166 RSM Illingsworth.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q167 In addition to the two bottles of spirits which you mention as having seen before Christmas did you see any cartons of spirits in the bar?
A167 No Sir.

Q168 I understand you to say that it was given out at a general mess meeting that spirits were to be purchased for Christmas?
A168 Yes Sir.

Q169 When was that mess meeting held?
A169 It was the Nov meeting, that would be the second Tues in Nov.

Q170 What was done about it in Dec? Were the spirits in fact bought?
A170 Yes Sir. I knew about them being bought and I was chairman of the barcommittee.

Q171 Did the mess committee know about it?
A171 No Sir.

Q172 How did that happen?
A172 It was kept somewhere else.

Q173 Who was in the chair at the time of the meeting?
A173 CSM Steele I believe, and the RSM was there.

Q174 Tell us about the raffle?
A174 I think it was arranged between the bar tender and Dwane. There was a sheet put up in the bar room where everybody could see it, it had all the names of the people with tickets on it. The bottles were raffled separately, the first one for 45 shillings, and just as it went CSM Steele came in and said that was too much and took off ten shillings from the price of the next one.

Q175 Did the President or anyone tell you that spirits were not to be sold in the Mess?
A175 No Sir. At the meeting of the mess [redacted] it was decided that the spirits would be bought and the permission of the CO asked for to sell them by the glass otherwise they would be sold by the bottle to the people who had bought the most beer.

Q176 Had the mess been closed up before this?
A176 It had been closed on a couple of occasions, then it was re-opened and we were told that we could not sell spirits by the glass, it was after this that we made the decision to buy the spirits and sell them at Christmas if we could not obtain the OC's permission to sell it by the glass in the mess. I do not know what happened to all the whiskey that was bought but none was sold by the glass.

Q177 How about the other sales of spirits to officers and members, do you know anything about that?
A 177 No Sir.

Q178 Did you consider the sale of these spirits or raffle of them contravention of the orders you received regarding the mess?
A178 No Sir.

Q179 Did you hear of other sales by the bottle?
A179 Yes Sir, but I did not pay any attention to who bought them.

Q180 How many bottles did you plan to buy at the meeting?
A180 The ration which would mean as much as they could get through the NAAFI and wherever else we could get it.

Q181 Was this to be done again at New Years?
A181 No Sir.

Q182 Do you know where the RSM was while the raffle was going on?
A182 No Sir.

Q183 But CSM Steele was there, did he forbid the raffle or handling of spirits in the mess in any way?
A183 No Sir, except to say that we could not sell or raffle the second bottle for as much as the first one.

Q184 Where was the beer stock kept?
A184 I cannot say, I enquired once and was told that it had not come in.

BY THE COURT

Q185 What happened to all of this spirits which were bought from the NAAFI as a result of your meeting in Nov?
A185 We sold them and closed up.

Q186 Did you hear of any instructions from the CO on the 25 Nov, that would be after your mess meeting?
A186 No Sir. The only instructions I got were from the RSM that spirits would not be sold by the glass in the mess, we had asked the RSM to see the Col for us and he gave me this final word after the meeting.

Q187 Did the members of the mess ever object to not having any spirits for sale?
A187 Yes Sir and the RSM said he would see the OC, the RSM then told us that the OC would not allow the sale of spirits by the glass.

Q188 Where did you understand these two bottles that were raffled to come from?
A188 From the NAAFI.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION - CSM Raistrick, recalled by the Court and questioned: (by the Court)

Q189 Will you examine Exs "3" and "4" and tell us how many bottles of whiskey and gin were bought by the mess?
A189 30 bottles of whiskey and 12 bottles of gin in Dec, and 25 bottles of whiskey and 12 bottles of gin in Jan 44.

Q190 Were you the president of the mess from 17 Jan until the mess was closed in Mar 44 and did you ascertain whether the mess received the proceeds of the sale of liquor bought by it?
A190 I was the president, I did not know that this liquor had been bought. I think the first query on the balance sheet was the first one after I had taken over.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

7th WITNESS FOR THE PROSECUTION
G 30146 Sgt BENISON, J., on strength Cdn Det Bks, having been duly sworn states:

Q191 During the period 25 Nov 43 and 18 Feb 44 where were you stationed?
A191 At Cdn Det Bks.

Q192 What was your position regarding the sgts mess?
A192 I was bar tender.

Q193 Did you make purchases for the sgts mess?
A193 Yes sir.

Q194 What did you purchase during that period?
A194 Mostly beer.

Q195 Did you purchase any liquor for the sgts mess?
A195 Yes Sir. On the instructions of S/Sgt Dwane.

Q196 Do you personally know Pte, then S/Sgt Dwane?
A196 Yes Sir, I see him here, he is the accused?

Q197 How much liquor did you personally buy for the mess?
A197 I got three bottles from the Bordon NAAFI, and seven from Aldershot, McEwen and Younger.
Q198 With regard to the seven bottles whose authority did you buy them on?
A198 The accused's authority. I got the invoices and handed them to the accused.

Q199 I show you a NAAFI invoice, is that one of them?
A199 Yes Sir, it is dated 3 Jan 44, and for two bottles of whiskey and one gin.

(invoice marked Ex 11 and dealt with in the same manner as Ex 1 by the Court)

Q200 I show you a cheque dated 3 Feb 44, do you recognize this cheque?
A200 Yes Sir, I got it from Staff Dwane, but it was left blank, I was told to see if I could purchase some liquor and to fill in the amount to pay for all I could get. I did not fill it in, S/Sgt McLean was with me and I had forgotten my glasses, so he filled it in for the amount we required.

(Cheque marked Ex 12 and dealt with in the same manner as Ex 1 by the Court)

Q201 And upon payment did you get a receipt and is this it?
A201 Yes Sir, that is the receipt.

(Receipt marked Ex 13 and dealt with in the same manner as Ex 1 by the Court)

Q202 While you were sgts mess caterer did you see any shipments of spirits arrive at the door of the sgts mess?
A202 Yes Sir, five cartons, 12 bottles in each carton. Some of them were put into the bar, some on the floor, three bottles were put and kept in the little cupboard, some put down in the store room, Staff Dwane handled these shipments, I helped, I handled five bottles myself.

Q203 What do you know of a raffle at Christmas time?
A203 The accused said he had paid 32 shillings for taxi fares, I suggested we raffle a couple of bottles off and pay for the taxi with the proceeds. We got £2-6/ for the first bottle but CSM Steele came in and stopped us the next bottle at 35/. We also raffled a third bottle for 35/. I handed the money from the raffle to S/Sgt Dwane.

Q204 Did you keep any stock acounts of this liquor?
A204 No Sir.

Q205 Did you go purchasing liquor in Jan?
A205 I went on Staff Dwane's instructions to McEwen and Younger in Aldershot to enquire for our assignment for the month, I was told that we had already drawn our ration, that it had been picked up Jean-Louis, the account showed that it had been sold to the Sgts Mess, Cdn Det Bks.

Q206 Did CSM Raistrick every approach you regarding liquor?
A206 Yes Sir, he came to the bar and said it would be alright if I gave him a bottle in the mess, I cannot remember the date, but it was about Christmas time, I said to him I was not handling it but if he got a note I would give it to him. He got a note from S/Sgt Dwane, actually it was Dwane's signature on an envelope and I gave him a bottle of whiskey.

Q207 What were the instructions regarding the sale of spirits?
A207 I understood that spirits would not be sold by the glass. I saw no written instructions, but I had verbal orders from the RSM that no liquor would be sold by the glass, he told me they were the Comd's orders. The chairman of the bar committe also told me that we could only sell spirits by the bottle. I bought a bottle myself a few days before Christmas for which I paid 30/. The only time I ever discussed spirits with the accused was when I told him I did not want to bother with it, we planned that he would take care of the spirits and I would look after the beer. I do not know who ordered the spirits for the mess unless it was Staff Dwane, it is possible that it was someone else.

CROSS EXAMINATION

Q208 Did the chairman of the bar committee know of this liquor?
A208 Yes Sir.

Q209 Did the mess president?
A209 Yes Sir he knew.

Q210 Did the RSM?
A210 Yes Sir.

Q211 What instructions did you receive from the RSM, CSM Steele or CSM Hurrel regarding the sale of liquor in the bar?
A211 None whatever Sir.

Q212 You said you did not keep track of the stock, was there a stock book kept and who by?
A212 There was one kept but I never knew it to be filled in, I never put an entry in it, I do not know whether the spirits were entered in it or not.

Q214 Who did you turn the money for the spirits over to?
A214 I turned all the money I received over to S/Sgt Dwane including the beer receipts.

BY THE COURT

Q215 What happened to the 60 bottles of spirits which you said come into the bar.
A215 The accused used to come in throughthe back door and take them away.

Q216 Did they all finally go away?
A216 Yes Sir.

Q217 Was any of this spirits left in the bar on the shelf?
A217 The three bottles that we raffled.

Q218 Was the rest exposed?
A218 No Sir.

Prosecutor said he proposed to call S/Sgt McArthur and that he had given notice to the Defending Officer on Sat. The Defending Officer stated he had no objection and did not require an adjournment.

8th WITNESS FOR THE PROSECUTION
M 49766 S/Sgt McArthur, J, on strength Cdn Det Bks, having been duly sworn states:

Q219 During the period 25 Nov 43 and 18 Feb 44 where you stationed?
A219 I was at Cdn Det Bks.

Q220 Do you know Pte, then S/Sgt Dwane?
A220 Yes Sir, he is sitting right there.

Q221 During the period we have mentioned did you buy any spirits from the accused Pte Dwane?
A221 Yes Sir, just before Christmas I bought some for which I paid him 30/.

Q222 What do you know about the sale of spirits in your mess at that time
A222 I understood at a meeting that there would be no spirits sold to us by the glass but that we might be able to buy a bottle or so, however there did not seem to be anything definitely decided on, it was merely discussion.

Q223 Did you ever see any liquor in the sgts mess?
A223 No Sir.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q224 When you bought this bottle of spirits just before Christmas from the accused did you understand it was a personal deal?
A224 Yes Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

CASE FOR THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEFENDING OFFICER: D-4

Sir

I submit that the charges against Pte Dwane be dismissed I cannot go into a number of points that I would raise at the conclusion of the trial but the substance of my motion is: In the first place it is apparent from the evidence of the CSM Hurrel who was chairman of the bar committee that what was done was done with the knowledge of himself in so far as the purchase of liquor is concerned and the sale of those spirits. It was his understanding that it was being done by the authority of the mess and therefore the responsibility for what was done was that of the RSM and the president of the mess. That is borne out by the evidence of Sgt Bennison who was the caterer or the bar tender. The accused was the treasurer of the mess and any responsibility of transactions would not be on his shoulders but on those of the various committees who sanctioned any purchases. There is no evidence that the spirits have been sold for the sgts mess so if the Court cannot dismiss the first charge then I ask that it at least dismiss the second charge, that of the sale of spirits. The evidence of Capt Fern is that he issued an order that no spirits would be sold in the mess, I ask the Court to treat that

with little credibility. I point out that Cap Fern's evidence shows that he signed cheques, the very cheques which are recorded by this Court to substantiate the first charge, that is for the purchasing of spirits for the mess. And also that he bought spirits which the Prosecution alleges were the spirits in question which were bought for the mess and sold for the mess. It is submitted on the evidence before the Court that that could not have been done corners and therefore if these acts which are complained of were in contravention of an order issued by him that contravention was allowed or excused by his conduct.

REPLY BY THE PROSECUTOR

Sir,

In answer to the submission I need only say in order to succeed in his attempt to have the case dismissed it is necessary for the Court to feel that no prima facie case has been made out against the accused in regard to the charges against him. I maintain there is more than sufficient evidence before the Court to establish a prima facie case and to cause the accused to give evidence to answer to the charges thus far proved against him. It is proved that he was told not to buy or sell spirits for the mess, in the mess, and it has been said by eight witnesses that he did buy and sell spirits. He obviously sold them in contravention to the order that was issued and therefore is guilty. As for the second charge the order is the same that no spirits would be sold, from Capt Fern who says he told the accused of this order. I have proved that S/Sgt Dwane, the accused did sell bottles of whiskey after that order was issued. I think there is sufficient evidence before the Court to make a case and I ask the Court not to entertain the application made by the Defending Officer.

COURT IS CLOSED TO CONSIDER THE SUBMISSION

COURT IS RE-OPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION HAS BEEN DIS-ALLOWED

EVIDENCE FOR THE DEFENCE Note D-6

1st WITNESS FOR THE DEFENCE

The Accused (D 71212 Pte DWANE, J.R.) C Pro C, on strength No 1 CGRU, having been duly sworn states:

Q225 Where were you stationed between 25 Nov 43 and 18 Feb 44?
A225 I was on strength Cdn Det Bks, I was accounts NCO and chief clerk. I was Treasurer of the Sgts mess from 14 Oct 43 until 17 Feb 44.

Q226 What orders did you receive from Capt, then Major Fern relating to the sale of spirits in the sgts mess?
A226 I was not given any orders by Capt Fern ~~xxx~~ either verbal or written regarding the sale of spirits in the mess.

Q227 Did you receive any other orders from anyone regarding spirits?
A227 No Specific orders or instructions regarding the purchase of sale.

Q228 I show you Ex 1, will you tell the Court how that came to be signed?
A228 This is a letter dated Nov 1st, 1943. Sometime previous to the making up of this order it had been decided that spirits would be purchased for the sgts mess to be sold by the glass with the Comd's permission or by the bottle if permission was not granted. But owing to our entitlements being changed our names were not on the list of the NAAFI at Esther, Surrey, and we wished them to send us our requisition and we were giving them our strength, ie. of our mess. Major Fern signed the letter and I forwarded it to the NAAFI. I received no instructions from Capt Fern after the letter was forwarded. It was mailed the same day

that he signed it. I had heard just previous to this that the sale of spirits by the glass in the mess had been forbidden by the Comd, it was as far as I know a verbal order, and we had asked the RSM to try and regain the lost privilege and it was still in the balance. I was never given any definite instructions from Col Shanklin relating to the management of the mess.

Q229 Did the RSM give you any instructions that he had received from the Comd?
A229 No. I only saw the RSM at the committee meeting where we decided to purchase spirits for Christmas that were to be sold by the bottle, and we had asked him to try and get us permission to sell it by the glass.

Q230 How did the mess know it would not be sold by the glass?
A230 The mess at that time was still working on the principle that spirits would not be sold by the glass.

Q231 What was the decision of the mess regarding the purchase and the sale of spirits in Nov or Dec of 43?
A231 There was a full vote taken and it was fully decided that the order management had the authority to purchase spirits for the mess and funds were made available for these purchases.

Q232 Tell us about this entitlement?
A232 Under the ration scheme it is based on so many members of the mess so much whiskey and gin each month, the NAAFI are informed of the number of members of the mess and they make up invoices showing you how much you are entitled to and forward this to you and you attach your chacque to it and send it back to NAAFI for shipment.

Q233 I show you Ex 3 and Ex 4, will you tell the Court how you come receive that invoice?
A233 That invoice was addressed to the president of the Mess and was handed to me from the RSM's office. I brought the matter to the attention of the president of the mess, CSM Steele and I believe I handed it to him and he returned it to me to bring up with more accounts to be signed. I made out the cheque and presented it to Major Fern, there was some other accounts, one to McEwen and Younger and someone else. The invoice for the NAAFI for the previous month and also for this entitlement. The cheques were signed without question and sent off, they included this one for the invoice from the NAAFI which was attached and handed to him, the invoice was with the accounts and right before him.

Q234 What was intended to be done with the spirits?
A234 They were intended to be sold by the bottle to the members of the mess.

Q235 What relation had that transaction with the meeting of the mess that has been described?
A235 This was the completion of the will of the mess.

Q236 What was the date of this meeting you have referred to?
A236 Sometime between the 11 Nov and the 25 Nov 43.

Q237 Then I take it the spirits were delivered, where were they put?
A237 The stock was to be in the sgts mess and with the aid of the mess steward a large part of it was put below surface and the gin was left on the surface to be sold. The stock was clearly marked in cartons.

Q238 How was it disposed of?
A238 It was sold to members of the mess and those who wanted it immediately, in order to see that everyone had a fair share of it I took control of it and took anyone's name that wanted a bottle and put his name on a pad that was kept in the accounts office. I kept two lists, one with those who had taken theirs and had paid me and those that wanted some but had not taken it.

I kept the money for it in the safe in the accounts office and finally credited it with the account of the sgts mess. There was a profit on the whole transaction. It was understood that the officers on strength, not having a mess would be allowed to have a supply and some of them took what was available.

Q239 How were these purchases arranged?
A239 The members usually bought by cash and they would be given a bottle over the bar and the entry made in the cash book. When purchased by check that was deposited in the sgts mess account some of the stock was delivered at the bar, some handed to people other places. In the case of CSM Raistrick, he came into the accounts office and asked me to keep him a bottle of gin it was handed to him by the bar steward.

Q240 How about the transaction in Jan?
A240 That was still another purchase.

Q241 I show you exhibits 7 & 6, how was the amount there determined?
A241 To clarify the whole case. We are always 30 days in arrears and at the NAAFI we trade with regularly, however we were able to get this added stock and I put it up to the mess and was authorized to get it, so I made out a check and thus we were able to get the spirits before the holiday season was over. It was a special meeting of the bar committee and mess committe.

Q242 What was Major Fern told about that cheque?
A242 I don't recall him asking but if he did question it he was told that it was for our entitlement of spirits for the holiday season.

Q243 Was there anything done about the other transactions which came out in the evidence regarding the Bordon NAAFI?
A243 No Sir. We have spent several hundred pounds there and if the manager has any supply of liquor left over he lets us know and we pick it up, that is the reason for the cheque being left blank, we were often able to get a few extra bottles.

Q244 What exeplanation did you give Capt Fer when you asked him to asked him to sign a cheque leaving the amount blank?
A244 I explained that we did not know the amount we could purchase at the NAAFI, and told him that whoever went in to purchase it would fill in the amount required. I told him it was for any entitlement that we could get at the NAAFI.

Q245 What else did you buy at the NAAFI except spirits?
A245 Ocasionally a few cigarettes, but not very often we don't like them and have a very little demand for them.

Q246 What would be your bill excluding spirits for a month from the NAAFI?
A246 About £13 for cigarettes, choclates and other odds and ends, such as dry canteen items.

Q247 Can you tell the Court what knowledge the RSM had of these spirits transactions in the sgts mess?
A247 He was present in the mess as chairman or senior member when these items were discussed by the mess as a whole, he was later present when the board of management of the mess met to discuss it and he in turn was to act between the board of management and the Col for the permission to have spirits sold in the glass again instead of by the bottle.

Q248 How about CSM Steele?
A248 He was called away when the stock was being purchased, however he was one of the members that bought some for Christmas and he knew it was bought through the mess.

Q248 Regarding the issue of the order by Capt Fern can you tell the Court whether you were present with RSM Illingsworth, CSM Steele when Capt Fer issued any instructions regarding the sale of spirits in the mess?

A 248 No Sir. I heard no such order.

Q249 Were any orders issued to you at any other time by Capt Fern regarding the purchase or sale of spirits in the mess?
A249 No Sir.

Q250 Was there an audit that month?
A250 Yes Sir, there was two auditms in Nov. All accounts and account books were available and were examined by the unit audit board and signed by them before being passed to the PMI.

Q251 What were they shown along with the statements?
A251 The stock was available in the accounts office and the cash book from the bar and the order book which was endorsed.

Q252 What was ~~kkm~~ done about invoices at the audit?
A252 They were ~~xp~~ passed as called for and checked off against the statement and passed on as having been examined, all invoices whether paid or not.

Q253 How about Ex 3?
A253 It was available and examined by the unit audit board, and also exhibit 6.

Q254 I show you a document, what is it?
A254 It is the stock book for the sgts mess, Cdn Det Bks. Here are the accounts for the months of Dec 43 and Jan 44 (Witness shows the Court the purchases from the NAAFI for the spirits represented by the invoices Exhibits 3 and 6, stock book of sgts mess Cdn Det Bks marked Exh 14 by the Court)

Q255 Who made the entries in this book?
A255 I did.

Q256 What if any remarks were made to you by the president or members of the audit board regarding these transactions of spirits?
A256 There was no observations made by the audit board to me. They knew that spirts were sold in the mess they had bought whiskey there.

Defending Officer stated that the members of the audit board for the months of Dec and Jan were not now available, as he had been given to understand.

Q257 With reference to you r subsequent history after you ceased to be treasurer of the sgts mess?
A257 I ceased to be treasurer about the 17 Feb 44 and was posted to No 6 Coy in London and then re-posted to Manchester Det and remainded there until 24 Jun 44 when I returned to 1 CGHU as a pte as I was up until that time acting sgt and Staff.

CROSS EXAMINATION BY THE PROSECUTOR

Q258 Did you between the 15 Nov 43 and 18 Feb purchase spirits for the sgts mess?
A258 Yes Sir.

Q259 Did you during the same period sell spirits for the sgts mess?
A259 Yes Sir.

Q260 I sh~~o~~ you three cheques exhibits 8,9,10, were they payments for liquor belonging to the sgts mess?
A260 Yes Sir.

Q261 Did you deposit them personally?
A261 No Sir. They were signed and handed to the Mess Committee and deposited with the remainder of the funds.

Q262 When you took ex 4 into Capt Fer to be signed you say you brought it at the same time the invoice ex 3?
A262 Yes Sir.

Q263 And were there other cheques and invoices brought in at the same time?
A263 Yes Sir.

Q264 And Cheques in one bundle and invoices and bills in another?
A264 I brought them all together, the cheques separate and the invoices separate, they were not pinned together, I presented them all to Capt Fern for signature.

Q265 Do you know for a fact that he checked the invoices against the cheques as he signed them?
A265 He should have, and had the opportunity, they were all there. I was responsible to get the cheques and bills prepared which I did and placed them on his desk, I know that they were all there as there would be a corresponding cheque for each bill or invoice.

Q266 Was Ex 6 brought in with the cheque ex 7 to Capt Fern together?
A266 Yes Sir.

Q267 Were other invoices and cheques brought in at the same time?
A267 Yes, the cheques were on top of the pile of invoices. I do not know whether the saw the invoices but they were there for his check.

Q268 Was there any resolution during this period in the minutes of the sgts mess or decision that spirits should be sold by the bottle?
A268 Yes there there was a decision come to and voted on by the mess. This was carried out at a meeting subsequent to the 11 Nov and one before the 25 Nov 43. However the minutes of the meetings were not properly kept a fact that had become apparent at the Court of Inquiry.

Q269 In that case why did you not still sell over the bar?
A269 I sold several bottles over the bar. I had the spirits in plain sight of anyone that took the trouble to look.

Q270 Did anybody else order spirits during the period under review?
A270 The NAAFI entitlement was signed for by the President of the mess, I made out the cheques.

Q271 Did you handle the money obtained from the sale of the liquor in the sgts mess?
A271 I handled all the moneys for everything sold by the sgts mess.

Q272 Did you, during this period, lead people to believe that you had personal contacts where you could procure liquor for them?
A272 I told anyone wanting liquor that they were buying from the sgts mess. And some of the members that purchased bottles of liquor knew where it had come from.

BY THE COURT

Q273 Did Capt Fern every tell you to cancel Ex 1?
A273 No Sir, I was never told by Capt Fern to cancel it or by anyone else to cancel it. After it was signed it was put into the mail and nothing more was brought up about it.

Q274 Did he ever say in words to you that there would be no more buying or selling of spirits in the sgts mess?
A274 No Sir.

Q275 How did he ask you for the 12 bottles of whiskey?
A275 He asked me if any stock was available, I told him there was and he asked if it could be left at his billet. I did not discuss with him where it was coming from, as the officers had no mess it was customary for them to buy spirits from the sgts mess.
In the opinion of the Court it is unnecessary to comply with AP 83(E)
CASE FOR THE DEFENCE IS CLOSED

PROSECUTOR ADDRESSES THE COURT ON THE FINDING:

Sir

As I pointed out to the Court previously I am not here to make an investigation. during the long period at 1 Cdn Det Bks. We are faced with certain charges and as far as the Prosecution is concerned it is merely facts that have been produced that I have to rely on. Under Sec 40 he is charged with receiving a certain order regarding the purchase of liquor and the sale of liquor or spirits in the sgts mess, for the sgts mess, and he acted contrary to that order. He purchased and sold spirits and if I have proved to the satisfaction of the Court that he did this then you must find him guilty.

Now the facts ~~xx~~ are these. So far as the order which is one of the keys to the whole question is concerned we have positive statements of Capt Fern that at that time he was a major and PRI of the sgts mess and had received certain orders from Col Shanklin and passed these orders on to the mess committee and to the accused. There is no question here whether it should have been by the glass or by the bottle, under the counter or over the counter. It is a complete prohibition, the comple lack of spirits by anybody in the sgts mess, and the sale or purchase of spirits for the mess. We have first of all Ex 1 the letter signed to the NAAFI mentioning the number of members of the sgts'mess and on the basis of that letter the NAAFI allocate certain amounts of liquor or spirits, this letter is dated 1 Nov 43 signed by Major Fern, subsequently no more letters were written or sent. Major Fern gave orders for the cancellation of that letter and was told by the accused that it would be tended to and depended upon the accused to have it done. I am not here to say that one person is to be blamed more than another, that is for the Court to decide, but taken everything into consideration I feel that the Court should come to the conclusion that Capt Fern had in fact cancelled that letter and that nothing of its kind was ever sent out after 1 Nov 43 as there was a definite prohibition as to the sale of liquor in the sgts mess.

We have certain invoices which involved the purchase of spirits by the sgts mess, we have the cheques which are in payment for the spirits mentioned in the invoices, all these cheques were thrown into the PRI's basket to be signed and he had too much work to spend all day sorting and comparing and checking those invoices and cheques, he had a staff that was responsible for that sort of work. We have a cheque with Major Fern's name on it a personnal cheque, however he signed that in payment for some spirits which he was under the impressio had been bought privately for him.

Then we have the evidence of the RSM, the senior officer inthe sgts mess who tells us that if he had known that thesgts mess was buying or selling liquor he would have reported the matter, he is aware of the order that there should be no liquor in the sgts mess. To me the question of whether it was sold by the bottle or by the glass does not come into the picture, and the RSM is of the same opinion, he would have had it stopped whether it was by the glass or the bottle. RSM says he bought a bottle from the accused and belives it was a personal transaction, he believes he was not buying stock belonging to the sgts mess. Capt Clark also bought spirits and he too believes it was a personal transaction, here are two people that believe Dwane had special personal contacts, perhaps it was because he had been working in the mess and had been buying for them that gave these people that impression. CSM Raistrich also bought spirits and he says it was a personal transaction and received his bottle off the premises. You will notice that all the members of the mess are anxious to point that any transaction was off the presises and was a personal transaction between them and the

accused. Everyone make it clear that he did not know it was liquor that belonged to the sgts mess, and some, those in authority have stressed that had they known the matter would immediately have been reported. I must remind the Court that even if other members of the mess were not convicted in this matter there is only one man on trial today, the accused is on trial and the accused alone charged with a contravention of orders issued to him by Major Fern. It is obvious from the evidence of all the witnesses for the Prosecution that there was liquor around and in the mess, and in a couple of cases that at least three bottles were mess property, those that were raffled at Christmasstime, those three bottles alone if there had been no more was a contravention of the orders received by the accused and that would consitute grounds for these charges. The accused sent Jean-Louis to Aldershot and collected some spirits that were delivered to the home of Major Fern, these spirits were bought in the name of the sgts mess, 1 Cdn Det Bks and charged to that account. With this evidence before the Court I leave the decision to you, I feel that the Prosecution has produced sufficient evidence to find him guilty on both charges.

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING:

Sir,

The charges against the accused relate to the purchase and sale of spirits after being warned by Capt Fern not to do so. The evidence of Capt Fern tells us that he knows he warned the accused, on crossexamination it was made plain that less than a month ago he was not positive that he warned the accused. I suggest that his conviction arises from evidence stated and discussion with others since he gave his evidence at the summary. I would like to draw attention to two or three slight mistakes in the evidence as outlined by the Prosecutor in his address. With relation to the letter of 1 Nov, the Prosecutor states that Major Fern's evidence was that no more letters were sent but actually Major Fern said that no more letters were signed by him or to his knowledge. Also the Prosecutor suggested that Capt Fern said that the letter was cancelled and not sent out, actually he said he told the accused to cancel it, but he did not write a cancelling letter or take any effective steps to have a letter cancelled that had been mailed 25 days. Now it is significant that Capt Fern never warned anyone of the order, the RSM says he heard this order from the CO who told several members of the mess at the same time, but no one corroborates Capt Fern's statement that it was he that told them of this order or of any order. The Prosecutor next referr d to the evidence of the RSM and said that the RSM was unaware of the transactions, and that if he had known he would have reported them. It is true that he had xxxxxx no knowledge of them, it is also true that all witnesses are anxious to deny any knowledge of anything to do with this case, but CSM Hurrel and Bennison said that the RSM did know of these xxxxxxxxxxxxxx incidents and there is no evidence that he reported anything. On that point the RSM has talked himself out of the Court. Now what are the facts of this case? The case as we see it took place between 25 Nov and 18 Feb, the accused bought and sold spirits for the mess, that in itself is not enought to convict, the Prosecution must convince the Court that he received the order that he must not do so. On the evidence which the Prosecution relies we have the evidence of SM Hurrel, Steele and Sgt Bennison and S/Sgt McArthie to the fact that it was announced in the mess by the RSM that liquor could not be sold by the glass, but it was decided in some way that liquor could be sold by the bottle, that is endorsed by the evidence of the accus d who understood the xxx same. What order then was he contravening? Only if the Court believes that Capt Fern

personally warned the accused, can they find that he acted contrary to the order because the only other evidence, apart from that of Capt Fern is that of the RSM and CSM Raistrich who bought bottles os spirits from the accused. I submit that the Court cannot believe that these transactions, large transactions involving over 80 bottles of spirits could have occured in the under hand fashion that the Prosecution suggests. And if, as SM Hurrel and Sgt Bennison and McArthie state that sales made were common knowledge and that this liquor was for sale in the mess what are we to believe. Are we to believe that the whole mess were involved in a huge conspiracy. In that case it would appear more logical than what I've heard about certain people who were in and out of the mess every day and yet didn't know that whiskey was being sold. In that case must we prosecute the whole mess? or are we to believe that the sale of liquor in the fashion in which it did take place was not prohibited.

It is true, as the Prosecutor said, a number of times that a number of witnesses were anxious to point out that they did not see liquor in the mess and they add that had they done so they would have stopped it, and that any transactions they had were private transactions between themselves and the accused. All these people have gone free and the accused prosecuted, there has been no evidence that these people know that the transactions were private, no one offered any suggestion as to where he could get the liquor in some of the quantities that he seemed to be able. The accused has come before the Court and told you the whole story, he bought and sold this spirits as a favour not only to the members of the sgts mess but as a convenience to the officers who did not have a mess, there was no personal profit for him, all moneys were placed in the account of the sgts mess. We have the evidence of the chairman of the bar committee and the president of the mess who authorized the purchase of this liquor, the accused made up the cheques, signed them and then placed them together with the invoices before the PRI for his signature. If Capt Fern did not have to check these invoices and do the job properly then he should have asked for assistance, and no mention has been made of his applying to the CO for help in any particular job. There was two bottles of spirits in the mess the two that were raffled, and they were raffled with the mess presidents sanction, and if, as the Prosecutor says even two bottles proves that there was a contravention to the rule, then as the two responsible people of the mess knew of the contravention, who is then responsible. I submit that the responsibility was taken off the accused shoulders and others are responsible for any wrongs or contraventions to the order regarding liquor in this mess, I therefore feel that the accused should be acquitted. It is of course that it is the law that in order to find an accused guilty on either charge in such a case as this that there must be no doubt in the minds of the members of the Court, and in this particular case there is conflicting evidence and I am sure that it has not been proven to this court beyond all reasonable doubt that the facts to support the charges are true and have been proved by the evidence produced, and if the Court is not satisfied beyond all reasonable dout that some of the essential facts has been proved in evidence then it is the duty under the law to acquit the accused, and that applies equally to both charges.

COURT IS CLOSED TO CONSIDER THE FINDING

COURT IS RE-OPENED AND THE PRESIDENT ANNOUNCES THAT THE ACCUSED IS FOUND NOT GUILTY ON BOTH CHARGES.

~~Exhibit A~~

[redacted]

SDB/S-G-G
1 Nov 43

The Manager
Wines and Spirits Dept.,
[redacted]
Esher, Surrey

Re: Sergeants Mess Wine and Spirit Entitlement

1. I hereby certify that the number of warrant officers and sergeants on strength this Unit as of today's date is one hundred and twenty two (122).

2. May this unit be supplied with the necessary forms to purchase our entitlement under the existing rationing scheme.

3. For your consideration and necessary action, please.

(signed) [redacted], Major,
[redacted]

Certified true copy 8 Sep 44
J. de Billebeck Major

Certified true copy of the original thereof:

President.....

EX 1
MM

Copy/saw

CANADIAN DETENTION BARRACKS
CANADIAN ARMY, OVERSEAS

CDB/9/0/0
22 Nov 43

EX 2

The Manager,
Lloyds Bank Ltd.,
Grayshott, Surrey.

Re: Canadian Detention Barracks, Sergeants Mess Account

1. Kindly be notified that all previous powers of signing cheques are cancelled with effect to-day and the following is substituted on the a/m account.

2. All cheques will be signed in future by a member of the Board of Management and by the A/Commandant Major W.Fern.

3. Specimen of signatures:-

.....CSM	.....S/Sgt	.....Major
(J.T.Steel)	(J.R.Dwane)	(W.Fern)

4. All cheques will be signed by either one of the a/m Non-Commissioned -Officers and by Major W Fern, A/Commandant.

5. For your information and necessary action, please.

.....Major
(W.Fern) A/Commandant.
Canadian Detention Barracks
Canadian Army, Overseas

Certified true copy of the original thereof
President.

A Exhibit 3

NAVY ARMY AND AIRFORCES INSTITUTES

No. L. 07296

NAAFI, Stationery Branch,
Kennings Way,
London, SE 11

1st December, 1943

Pro forma Invoice

PRESIDENT SERGEANTS MESS
CANADIAN DETENTION BARRACKS
C.A.I.E.
HASLEMERE, SURREY

Please send your remittance with this Invoice to NAAFI Stationery Branch, Kennings Way, London, SE11

If remittance is not received within one month from date of this Invoice this transaction will be automatically cancelled.

IMPORTANT

Loss in Transit, Damage, etc.

Damage, loss or discrepancy in weight must be noted on the delivery sheet and the sheet signed accordingly, a written notification advising the damage or shortage must be sent immediately to the Railway Company or Carrier.

If goods are not received within ten days of the despatch of your remittance to the Warehouse the Railway Company or Carrier which usually delivers goods should be notified.

A copy of such notification should be sent to Manager, NAAFI Stationery Branch, Kennings Way, London, SE 11

		Price	Amount
30 bottles	Whiskey @	22/9½	33-18-9
12 bottles	Gin @	22/0½	13-4-6
3 bottles	Sherry (SA)@	10/4	1-11-0
2 bottles	Port (Empire)@	10/4	1-0-8
1 bottle	Cordials @	1/11½	0-2-0
4 containers	@	15/-	3-0-0
		£	52-15-11

CONSIGN TO HASLEMERE SURREY RLY STN

Certified true Copy of Exhibit A

Certified true copy of the original thereof:

President.

Ex 3

Certified true copy of the original thereof:

Prisoner

D No. 347 15 Dec 43

LLOYDS BANK LIMITED
Grayshott

PAY Navy Army and Airforce Institutes

Fifty two Pounds, sixteen shillings, eleven pence.

(signed) (JR Dwane) S/Sgt
(W. Fern) Major

31026

52-16-11
CANADIAN DETENTION BARRACKS SERGEANTS MESS
WESTMINSTER BANK LTD
NEWINGTON BUTTS BRANCH
A/C NAVY ARMY AND AIR FORCE INSTITUTES
NOT NEGOTIABLE

Exhibit "H"

Official Receipt E40353
Navy Army and Air Force Institutes

Received PSM Date 10th Dec 1943
Canadian Detention Barracks, CAIE,
Haselmere, Surrey

FIFTY TWO----------Pounds
SIXTEEN----------Shillings ELEVEN----------Pence

Cash (Net)

		Discount Allowed / 10% Premium added
Credit A/C		
Deposit A/C		
Total	52 16 11	

Regd No. SAB LDN

For NAAFI (signed)
(HJ Baker)

Area Inv L. 07298

Certified true Copy 8 Sep 44
J Forbes Robertson Capt

Certified true copy of the original thereof:
President. [illegible] Col

Ex 5
MM

Exhibit "F"

Copy E. 07874

1-1-44

President Sgts Mess,
Canadian Detention Barracks.

DR: to Navy Army and Air Force Institutes.

Kennings Way, Kennington, SE 11

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	Bottles, Whiskey	22/7½	28-5-8
25	" Gin	22/0½	13-4-6
12	Sth African Sherry	10/4	1-0-8
2	Port	13/0½	13-0
1	Cordials	1/11½	15-8
8	4 containers	15/-	3-0-0
			£ 46-19-6

Certified true copy 8 Sep 44

John Sellers Sgt

Certified true copy of the original thereof:

President. [illegible] Lt Col

Ex 6

Certified true copy of the original thereof:
President...
Jan 1945

Ex 7
RM

Exhibit ...

31026
6 January, 1944

No. 347586

LLOYDS BANK LIMITED

Grayshott

PAY Navy, Army and Airforce Institutes or Order
Forty-Six Pounds, nineteen shillings and six pence
(signed) W. Fern, Major
J.R. Dwane, S/Sgt.

certified true copy by
[illegible] Sgt.

46-19-6
CANADIAN DETENTION BARRACKS SERGEANTS MESS ACCOUNT
WESTMINSTER BANK LTD
NEWINGTON BUTTS BRANCH
A/C Navy Army and Air Force Institutes,
NOT NEGOTIABLE

7546

Copy/saw

No B042264

London 12 January 1944

BANK OF MONTREAL
9, Waterloo Place, Pall Mall, S.W.

Pay To Cash or Order

Nineteen Pounds

£-19-0-0

"W. FERN"
LLOYDS BANK
Grayshott, Hindhead Surrey.

Certified true copy of the original thereof:

President.

EX 8

7546

Copy/saw

London 13 January 1944

No B 254305

Bank of Montreal
9, Waterloo Place, Pall Mall, S.W.

Pay To Cash or Order

One pound ten shillings

"W. FERN"

£ 1-10-0.

LLOYDS BANK
Grayshott, Hindhead Surrey.

Certified true copy of the original thereof

President. [illegible] 11/10
E 7 9
MM

Copy/saw

No B 254311

7546

London 15 February 1944

Bank of Montreal
9, Waterloo Place, Pall Mall, S.W.

Pay To Cash or Order

Six pounds five shillings

£ 6-5-0.

W. FERN

LLOYDS BANK
Greyfort, Lindhead Surrey.

Certified true copy of the original thereof:

President.

Navy Army and AirForce Institutes. Req Z 248659
R. 182403

Exhibit "G"

INVOICE for supplieson 3-1-44
TO Sgts Mess, Cdn Detention Bks
Headquarters

Quantity	Article	Price
2	Scotch @ 21/9	2-11-6
1	Gin	1-5-3
		3-16-9
		7-7
	Total	3-9-2

RECEIVED GOODS AS PER INVOICE
SIGNATURE XXX
DATED

R. 182403

Certified true copy 8 Sep 46
Judge Advocate

Certified true copy of the original thereof:
President.....

Ex II

Exhibit "1"

Certified true copy of the original thereof:
President..... D No. 34707.....

310M6 February, 1944

certified true copy of Exhibit "1" to Affidavit of Jules Gallet sworn

LLOYDS BANK LIMITED
Grayshott

PAY Navy Army and Airforce Institutes or Order

EX 12 Three Pounds Nine Shillings Twopence

(signed) (W. Fern) Maj
(JR Dwane) S/Sgt.

3-9-2

CANADIAN DETENTION BARRACKS SERGEANTS MESS ACCOUNT

Certified true copy of the original thereof
President

Official Receipt Z248659

Exhibit "F"

Navy Army and Airforce Institutes,
Headquarters - Ruxley Towers, Claygate, Esher, Surrey
DATE Feb 3rd, 1944

RECEIVED
of Sgts Mess Detention Bks
Three POUNDS Nine SHILLINGS two PENCE

Amount Paid 3-9-2
Discount 7-7
Total £ 3-16-9 (signed) (E. Marsden)
for NAAFI

Command Aldershot Regd No. 36689

Ex 13 certified true copy

SUMMARY OF EVIDENCE
In the case of

D. 71212 Private DWANE, James Rodgers, Canadian Provost Corps on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian ArmyOverseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

The officer taking the Summary of Evidence warned Captain William Fern, Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit that if he is asked questions that would tend to incriminate him at his own trial he need not answer, but in any case this evidence would not be used against him at his own forthcoming trial.

FIRST WITNESS for the prosecution

Captain William Fern, Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Captain William Fern, Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit.

From the 11 of April, 1944 until 23 August, 1944 I was D.A.P.M. 2 CBRG, Canadian Army Overseas. Now I am presently on the strength of No. 1 Canadian General Reinforcement Unit. Between the 25 November, 1943 until 18 February, 1944 I was the Assistant Commandant of Canadian Detention Barracks, Canadian Army Overseas. Between the 25 November, 1943 and 18 February, 1944 Private Dwane, whom I now recognize as the accused was a Staff Sergeant at Canadian Detention Barracks. He was N.C.O. employed in the office of the Accounts Officer and Sergeants' Mess Treasurer. To the best of my recollection sometime in November on or about the 25 I gave an order to the accused to the effect that there would be no purchases or sale of spirits for the Sergeants' Mess, Canadian Detention Barracks. I recall having signed a letter, Exhibit "A", CDB/9-0-0 dated 1 November, 1943 addressed to Manager, Wine and Spirits Department, N.A.A.F.I., Esher, Surrey, reference Sergeants' Mess, Wine and Spirit entitlement. I believe that sometime in November I told the accused not to send that letter and to cancel it. I remember having bought some spirits from the accused when he was Sergeants' Mess Treasurer. I paid by cheque made out to cash as I figured it was a personal transaction between me and the accused. I do not recall having seen the Invoice, Exhibit "B", No. L.07298 dated 1 December, 1943 addressed to the President of Sergeants' Mess, Canadian Detention Barracks, containing purchase of spirits, wine and cordials and containers in the amount of £52.16.11.. I can see that this invoice represents purchase of spirits by the Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. Kenningsway, London, SE 11. I don't recall having seen the official receipt, Exhibit "D", No. F 40353 dated 10 December, 1943 for the amount of £52.16.11 covering payment alleged in the invoice L. 07298. I identify as Exhibit "C", cheque No. 347--2 of Lloyd's Bank Limited, Grayshot dated 6 December, 1943 payable to N.A.A.F.I. in the amount of £52.16.11 and signed by myself, W. Fern, then Acting Major and J.R. Dwane, then Staff Sergeant. I signed the cheque to cover payment for sup-

Certified true copy of the original thereof.

President.....

plies for the Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. I don't recall having seen, during that period, copyof invoice, Exhibit "E", L.07874 dated 1 January, 1944 addressedto the President, Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I., Kenningsway, Kennington, SE 11 containing purchase of spirits, wine, cordials and containers for the amount of £46.19.06. I can see that this invoice was to cover the purchase of spirits by Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. I recall having seen cheque No. 347586, Exhibit "F", Lloyd's Bank Limited, Grayshot, dated 6 January, 1944, payable t o N.A.A.F.I. for the amount of £46.19.06 and signed by myself, W. Fern, then Acting Major and J.R. Dwane, then Staff Sergeant. As for the first cheque it was in prepayment of supplies bought for the Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. I can assume that the cheque, Exhibit "G" was to cover the purchase alledged in the invoice, Exhibit "B". I can also assume that the cheque, Exhibit "F" was to cover the amount alledged in the Invoice, Exhibit "E". ~~REGIMENTAL SGT MAJOR ILLINGSWORTH~~ I gave an order to Regimental Sgt Major Illingsworth and Company Sgt Major Steele, J.T., at the time President of the Sergeants' Mess, Canadian Detention Barracks, that no spirits were to be sold, by bottle or otherwise in the Sergeants' Mess, and to the best of my recollection it included the accused. That order also included that no spirits would be purchased for the Sergeants' Mess, Canadian Detention Barracks. To the best of my recollection that order was given on or about the 25 November, 1943.

The accused declines to cross-examine this witness.

(W. Fern) Major ~~CAPT~~

SECOND WITNESS for the prosecution

H. 6234 Regimental Sgt Major Illingsworth, D., Canadian Provost Corps on the strength of Canadian Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am H. 6234 Regimental Sgt Major Illingsworth, D. Canadian Provost Corps on the strength of Canadian Detention Barracks. I was appointed Regimental Sgt Major on 23 November, 1943 at Canadian Detention Barracks, Canadian Army Overseas. I recognize Private Dwane as the accused. The accused was a Staff Sergeant at the Canadian Detention Barracks between the 25 November, 1943 and 18 February, 1944. During that period he was the Sergeants' Mess Treasurer. I don't recall having told the accused that there would be no purchase or sale of spirits in the Sergeants' Mess. Some time in October I asked the accused to get me a bottle of spirits and I got it sometime in December, 1943 from the accused, to whom I paid the regular price. That transaction did not occur in the Mess. During that period, due to quite intensive outside work I was not very often in the Sergeants' Mess and while I was there I did not notice any raffle of spirits.

The accused declines to cross-examine this witness.

H. 6234 RSM Illingsworth, D.

Certified true copy of the original thereof

President.....

THIRD WITNESS
For the prosecution

Pursuant to R.P. 76 of M.M.L., take notice that Captain W.A. Clark, RCAPC, attached to Canadian Detention Barracks, will give evidence at your forthcoming trial as follows:

Captain W.A. Clark has bought some spirits from the Sergeants' Mess, Canadian Detention Barracks sometime between 25 November, 1943 and 18 February, 1944.

The accused declines to cross-examine this witness.

~~Wm. Clark, Capt~~

FOURTH WITNESS
For the prosecution

M. 37281 CSM Raistrick, W., Canadian Provost Corps on the strength of No. 22 Canadian Special Employment Company, Canadian Army Overseas, having been duly sworn, states:

I am M. 37281 Company Sgt Major Raistrick, W., Canadian Provost Corps on strength of No. 22 Canadian Special Employment Company. I was Company Sgt Major in Canadian Detention Barracks, Canadian Provost Corps during the period 25 November, 1943 to 18 February, 1944. I know the accused. During that period he was Staff Sergeant in Canadian Provost Corps at Canadian Detention Barracks, Canadian Army Overseas. The accused was Treasurer of the Sergeants' Mess. I bought some spirits during that period from the accused. I asked him about October if he could get me a bottle for Christmas and he said he would try. One day, somewhere around the end of December I asked him if he could get me a bottle and he said "yes" and he let me have one outside the Barracks. I remember a raffle during that period but I don't remember if it was spirits or not. I think it was chicken and I never paid much attention to these raffles anyway. During that period I never saw any bottles of spirits in the bar of the Sergeants' Mess, Canadian Detention Barracks.

The accused declines to cross-examine this witness.

M. Raistrick

M. 37281 CSM Raistrick, W.

FIFTH WITNESS
For the prosecution

D. 105754 Private Jean-Louis, RCASC, attached Canadian Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D. 105754 Private Jean-Louis, RCASC, attached Canadian Detention Barracks. I have been a driver for Canadian Detention Barracks since 6 January, 1943. I recall having been ordered by the accused, then a Staff Sergeant, to go to McEwan and Youngers, Aldershot and pick up a parcel to be delivered to Captain, then Acting Major, Fern. I did pick up that parcel as ordered and I found it was two bottles of spirits and I delivered them to Captain, then Acting Major, Fern's private residence. When I was handed over the parcel I was given the bill which I gave back to the accused, then Staff Sergeant. I don't know if these bottles were bought for the Sergeants' Mess.

The accused declines to cross-examine this witness.

D. Jean-Louis Pte

D105754 Pte Jean-Louis

Certified true copy of the original thereof

President.....

8 SIXTH WITNESS for the prosecution

A. 34002 Company Sgt Major Hurrell, P., Canadian Provost Corps on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am A. 34002 Company Sgt Major Hurrell, P., Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit. I was Acting Staff Sergeant, Canadian Detention Barracks between the 25 November, 1943 and 18 February, 1944. During that period I was Chairman of the Bar Committee, Sergeants' Mess, Canadian Detention Barracks. I inspected the bar of the Sergeants' Mess at least once a day. Around the end of November or the beginning of December during the course of my inspection of the bar of the Sergeants' Mess, I noticed two bottles of spirits at the bar on the shelf. They were in plain sight entering the bar from the bar door. Between the 25 November, 1943 and 18 February, 1944 I noticed once a raffle of bottles of spirits in the Sergeants' Mess. To my knowledge two bottles were raffled. The first one was raffled for 45 shillings, the second one was dropped down ten shillings by the President of the Mess, making a total of 35 shillings for the second bottle. There were no minutes kept by the Bar Committee during that period while I was Chairman of the Bar Committee. I remember that Staff Sergeant Adams and Staff Sergeant Fowler were also members of the Bar Committee. I never bought any spirits from the accused during that period. I don't remember if the accused was or was not a member of the Bar Committee during that period.

The accused declines to cross-examine this witness.

Hurrell
A34002 CSM Hurrell, P.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you givem will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of 4 pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and 76 have been complied with.

(JULES PELLETIER) Capt.,
Headquarters, CRU
Officer detailed to take Summary of Evidence.

~~Certified true copy of the original thereof:~~

In the Field
5 September, 1944.

~~President.....~~

ADDITIONAL SUMMARY OF EVIDENCE

In the case of

D71812 Private DWANE, James Rodgers, Canadian Provost Corps on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the additional Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

C. 30146 Sgt Bennison, J., Canadian Provost Corps, on strength of Canadian Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C30146 Sgt Bennison, J., Canadian Provost Corps, on strength Canadian Detention Barracks, ~~Canadian Provost Corps~~. I was Sergeants' Mess Caterer for the Canadian Detention Barracks between the 25 November, 1943 and 18 February, 1944. Staff Sergeant Dwane informed me just before Christmas last year that it had cost him 32 shillings in taxi fares to bring some spirits to the Mess, so I suggested that he raffle three bottles off in the Mess. The first bottle we raffled off I got two Pounds 6 shillings and while I was raffling the second bottle off, CSM Steele intimated that we were getting too much money and he cut it down to 35 shillings. That was in the Sergeants' Mess. I gave the proceeds of the raffle to the accused, whom I now recognize and who was then a Staff Sergeant and, as far as I can remember, was Treasurer of the Sergeants' Mess, Canadian Detention Barracks. During that period I saw 5 full cartons of spirits in the Sergeants' Mess, that would be 60 bottles. There was a few bottles down below underneath the trapdoor in the bar of the Sergeants' Mess and some in the porch and a couple of bottles in a little cupboard we had on the shelf, probably two or three bottles. When I was through raffling the three bottles of spirits off I purchased one bottle myself, to the amount of 30 shillings from the accused, out of one of these cartons and one I handed to CSM Raistrick on a note from Dwane. I was just in charge of the beer sale and the accused was looking after the stock of spirits. The shipments of spirits were brought in the Mess by the accused and they were kept in the bar of the Mess as I said in the beginning. I didn't keep any record in the stockbook of the liquor coming into the bar of the Sergeants' Mess. The stockbook was locked after by somebody from the bar. The stockbook was looked after by wasn't kept in the bar committee or one of the committees but I don't know who he was. Sometime during that period I was requested to get our monthly assignment from McEwan and Youngers, sometime in January. I think in all I got seven bottles and then sometime later on I was asked to make inquiries about our monthly ration of spirits by the accused. Sometime in January I went to McEwan and Youngers, Aldershot, to get the entitlement of spirits for the Sergeants' Mess, Canadian Detention Barracks. I was told then that the Sergeants' Mess, Canadian Detention Barracks had already had their share of spirits for that month. I said that I never saw this entitlement of spirits and McEwan and Youngers showed me an invoice alleging three bottles of spirits as having been delivered to the Sergeants' Mess, Canadian Detention Barracks. The said invoice being signed by Pte Jean-Louis, a driver at Canadian Detention Barracks. At the request

Certified true copy of the original thereof

Prosecutor

of the accused at the beginning of February, 1944 I went to Borden. I bought there for the Sergeants' Mess, from the Manager NAAFI Borden, three bottles of spirits. These bottles were handed over to me with an invoice that I identify as Exhibit "G", #R. 182403 addressed to Sergeants' Mess, Canadian Detention Barracks covering that purchase. Attached to it was an official receipt that I identify as Exhibit "H", #Z. 248659 addressed to Sergeants' Mess, Canadian Detention Barracks covering the amount of purchase mentioned in the Invoice, Exhibit "G". I had with me a cheque which I identify as Exhibit "J" #347591 Lloyd's Bank Limited, Grayshot, dated February, 1944 payable to NAAFI and signed by JR Dwane, Staff Sergeant, the accused and W. Fern, Major. The amount in that cheque was left blank. The accused had instructed me to fill in the amount on that cheque according to the amount of the purchase. I didn't have my glasses with me, but Staff Sergeant McLean, who was with me, who is now C.M.S somewhere in France, in my presence, filled in the amount £3-9-2 to cover the payment of the amount alleged in the Invoice, Exhibit "G". I brought that stock of spirits to the mess and handed it over to the accused with the Invoice, Exhibit "G" and the official receipt, Exhibit "H".

The accused declines to cross-examine this witness.

C20146 Sgt. Hennison, J.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down inwriting and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing additional Summary of Evidence, consisting of 2 pages was takendown by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

(Jules Perletier) Capt.,
Headquarters, CHU,
Officer Detailed to take additional
Summary of Evidence.

In the Field
8 Sep 44

~~Certified true copy of the original thereof:~~

~~President.....~~

LIST OF EXHIBITS

Exhibit "F" Letter CDS/9-0-0 dated 1 Nov 43 addressed to Manager, Wines and Spirits Dept, N.A.A.F.I. signed by W. Fern, Major", S i/c Cdn Det Bks, S.C.(O).

Exhibit "G" Invoice No. L. 07298 dated 1 Dec 43 addressed to President, Sgts Mess, Cdn Det Bks from N.A.A.F.I. Stationery Branch, Kennings Way London, SE 11 disclosing a purchase of spirits for £52.16.11

Exhibit "H" Lloyd's Bank Limited Grayshott, cheque No. 347--5 dated 6 Dec 43 payable to N.A.A.F.I. to the amount of £52.16.11 signed by W.R. Dwane, S/Sgt and W. Fern, Major.

Exhibit "I" Official Receipt Z40252 dated 10 Dec 43 from N.A.A.F.I. of the amount of £52.16.11 addressed to President Sgts' Mess, Cdn Det Bks.

Exhibit "J" Copy of Invoice L07674 dated 1 Jan 44 addressed to President Sgts' Mess, Cdn Det Bks from N.A.A.F.I., Kennings Way, Kennington, SE 11 involving a purchase of spirits for £46.18.6.

Exhibit "K" Lloyd's Bank Limited, Grayshott, cheque No. 347592 dated 5 Jan 44 payable to N.A.A.F.I. to the amount of £46.18.6 signed by W. Fern, Major and J.R. Dwane, S/Sgt.

Exhibit "G" Invoice No. B. 182403 dated 3 Jan 44 addressed to Sgts Mess, Cdn Det Bks from NAAFI, Borden, disclosing a

Exhibit "H" purchase of spirits for £3-9-2

Exhibit "I" Official Receipt Z248659 dated 3 Feb 44 from NAAFI of the amount of £3-9-2 addressed to Sgts Mess, Cdn Det Bks

Exhibit "J" Lloyd's Bank Limited, Grayshott, cheque No. 347591 dated February 44 payable to NAAFI to the amount of £3-9-2 signed by W. Fern Major and JR Dwane, S/Sgt.

Certified true copy of the original thereof:

President.....

LIST OF WITNESSES

For the Prosecution

1. Capt W. Fern	1 C.C.R.U.
2. M. 6234 MSM Illingsworth, D.	Cdn Det Barracks
3. Capt W.A. Clark (RCAFC)	
4. M. 37251 CSM Raistrick, W.	22 Cdn Spec Emp Coy
5. D. 105754 Pte Jean-Louis	Cdn Det Barracks
6. A. 34002 CSM Murrel, F.	1 C.C.R.U.

For the Defence

N I L

LIST OF WITNESSES (ADDITIONAL SUMMARY)

For the Prosecution

1. C. 30146 Sgt Bennison, J.	Cdn Det Barracks

For the Defence

N I L

REQUEST FOR DEFENCE COUNSEL

I, S. 7161 Pte Dwan, James Rodgers, Canadian Provost Company, on the strength of 1 Canadian General Reinforcement Unit, desire to have Lt Spicer, a lawyer, to my defending officer to represent me at my forthcoming trial.

J.R. Dwan

S. 7161 Pte Dwan, J.R., Can Pro C.,
1 C.R.U.C.
(6)

Certified true copy of the original thereof:

President.....

64 R

Gnr Klueger, W F

O. H. M. S.

M. F. B. 270

D-6672, Gnr. Dwyer, H.F. 648
3 C.A.R.U.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this FIFTH day of OCTOBER, 1942. — Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of "C" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

PROCEEDINGS REVIEWED.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	F.J. GILMOUR, RCA,	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	J.B. NASH, RCA,	2 C.A.R.U.
LIEUT.	S.A. TURNER, RCA,	2 C.A.R.U.
LIEUT.	Waiting Member from	3 C.A.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Signed [illegible] Brigadier
Commanding "C" Group, Cdn. Reinf.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-6672 GNR. DWYER, H.F. (R.C.A.) 3 C.A.R.U.	FIRST CHARGE A.A. Sec. 15(1)	Guilty	Guilty	Confirmed JFS
	SECOND CHARGE A.A. Sec. 40	Guilty	Guilty	
	THIRD CHARGE A.A. Sec. 40	Guilty	Guilty	
	FOURTH CHARGE A.A. Sec. 24(2)	Guilty	Guilty To undergo detention for 6 Months & to be Put under stoppages of pay until he has made good the sum of £4-18-0 in respect of costs of apprehension & the sum of £1/16/4 in respect of loss of kit as set out in 4th charge & exhibit "G" 6/10/42 JFS.	

See Charge Sheet Attached.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) J. F. Smart Brigadier, (Signed) J. F. Richmond Major RCA
Commanding "C" Group Cdn Reinf Units / Convening Officer (d) — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*3. ~~The interpreter~~ N/A
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 6th day of October 1942.

J. F. Richmond Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (k) on page 762 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this 7th day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has, no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 7th day of October 1942

J. F. Smart Brigadier,
Commanding "C" Group,
Can. Reinforcement Units.

Promulgated and extracts taken in the case of D-6672 Gnr. Dwyer, Harold Foster

(a) (Dated) AO 210 d 8/10/42 (Signed) A. M. Martin Capt
Records Officer, No. 3 C.A.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wm. H. & Co., Ltd. Cat. 740-2

CHARGE SHEET

The accused D-6672, Gunner Harold Foster DWYER, 'p' Training Wing, No. 3 Canadian Artillery Reinforcement Unit, R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he

at Huron Camp, Bramshott, Hants, absented himself without leave from 1200 hrs. 21 May 1942 until apprehended by the Cdn. Provost Corps at Edinburgh, Scotland, at 1440 hrs. 26 September 1942, incurring costs of apprehension and return in the amount of £4-11-0. Total absence 128 days, 2 hrs., 40 min.

2nd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

at Edinburgh, Scotland, when arrested at 1440 hrs., 26 Sep 42, was impersonating a sergeant, viz; wearing three bar chevrons, knowing he was not entitled to that rank.

3rd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

at Edinburgh, Scotland, at 1440 hrs. 26 Sep 42, when arrested by the Cdn. Provost Corps, was improperly dressed, viz; was wearing a tie with the Battle Dress Blouse open at the neck to the third button, and was without a First Field Dressing.

4th Charge
Section 24(2)
Army Act

WHEN ON ACTIVE SERVICE
LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES.

In that he

at Huron Camp, Bramshott, Hants., on 30 Sep 1942 was deficient of equipment, clothing and regimental necessaries to the value of One Pound, Sixteen Shillings and Four Pence (£1-16-4), which sum is 75% value of the vocabulary price of such articles which amounted to Two Pounds, Eleven Shillings and Two Pence (£2-11-2), in accordance with C.A.(O) R.O. No. 1398 as per exhibit 'D'.

(C.E. Woodrow) Lieut. Col.
Commanding
'p' Training Wing
No. 3 C.A.R.U.

Huron Camp,
Bramshott, Hants
30 September 1942

(P.T.O.)

Huron Camp
No. 3 C.A.R.U.

6 October 1942

This is to certify that I have examined D 6672 Gnr. DWYER, H.F. on this date and find him fit to undergo trial by Court Martial.

(W.R. Little) Capt.
Medical Officer
No. 3 C.A.R.U.

B.J. Palmer
Major

CHARGE SHEET

The accused D-6672, Gunner Harold Foster DWYER, "p" Training Wing, No. 3 Canadian Artillery Reinforcement Unit, R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
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ABSENTING HIMSELF WITHOUT LEAVE

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at Huron Camp, Bramshott, Hants, absented himself without leave from 1200 hrs. 21 May 1942 until apprehended by the Cdn. Provost Corps at Edinburgh, Scotland, at 1440 hrs. 26 September 1942, incurring costs of apprehension and return in the amount of £4-11-0. Total absence 128 days, 2 hrs., 40 min.

2nd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

at Edinburgh, Scotland, when arrested at 1440 hrs., 26 Sep 42, was impersonating a sergeant, viz; wearing three bar chevrons, knowing he was not entitled to that rank.

3rd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

at Edinburgh, Scotland, at 1440 hrs. 26 Sep 42, when arrested by the Cdn. Provost Corps, was improperly dressed, viz; was wearing a tie with the Battle Dress Blouse open at the neck to the third button, and was without a First Field Dressing.

4th Charge
Section 24(2)
Army Act

WHEN ON ACTIVE SERVICE
LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES.

In that he

at Huron Camp, Bramshott, Hants., on 30 Sep 1942 was deficient of equipment, clothing and regimental necessaries to the value of One Pound, Sixteen Shillings and Four Pence (£1-16-4), which sum is 75% value of the vocabulary price of such articles which amounted to Two Pounds, Eleven Shillings and Two Pence (£2-11-2), in accordance with C.A.(O) R.O. No. 1398 as per exhibit "D".

(C.E. Woodrow) Lieut. Col.
Commanding
"p" Training Wing
No. 3 C.A.R.U.

Huron Camp,
Bramshott, Hants
30 September 1942

(P.T.O.)

To be Tried by Field General Court Martial

Brigadier,
Commanding "C" Group, Cdn. Reinf. Units.
(Convening Officer)

Bordon, Hants.,
5 Oct 42.

Huron Camp
No. 3 C.A.R.U. 6 October 1942

This is to certify that I have examined D 6672 Gnr. DWYER, H.F. on this date and find him fit to undergo trial by Court Martial.

(W.R. Little) Capt.
Medical Officer
No. 3 C.A.R.U.

B.J. Cashman
Maj a/Pers

-4-

DJA 9/10

DJA

REF. 6/Dwyer 47/0

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT In the Field ON THE 6 DAY OF Oct 42

TRIAL OF:- No. D6672 Gnr. Hanna Foster Dwyer Unit 3 CARU

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Major J.B. Edwards (Unit) 3 CARU.

Defending Officer:- (Name) Major N.N. McKenzie (Unit) 3 CARU

At 1430 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally enter to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No sir

The President, members and [illegible] (if any) are duly sworn.

The following constitute the Court:-

President Maj. A.J. Johnson (Unit) RCA

Members Capt. J.B. Nash (Unit) 2 CARU

Lt. J.A. Turner (Unit) 2 CARU

The officers under instruction are duly sworn.

~~Q2. Do you object to .....acting as shorthand writer? A2.-~~

~~The shorthand writer is duly sworn.~~

The accused pleading guilty to the charges in the above mentioned charge sheet, R.P. 35(3) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is cleared to consider its finding. Court is re-opened.

Name Maj. A.J. Johnson (Unit) R.C.A.R.U. sworn, produces AFB 296 Part II & III & upon being questioned by Court states that the accused is the person named in these documents which have been compiled by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - Yes.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

The accused reads a written statement in mitigation which is handed in and attached to the proceedings. Major N.N. McKenzie the Defending Officer on the Soldiers behalf addressed the Court. Stating there was no [illegible] and interrupted in reading his statement - reading his mind better & [illegible] you to [illegible] many months I appear before [illegible] Points out there was a [illegible] for [illegible] charge - because [illegible] there was a [illegible] life - full [illegible] guy. Pointed [illegible] had a very active life - full [illegible] guy. Pointed [illegible] charge sheet was over a year old [illegible] Points out [illegible] Does not [illegible] only two [illegible] for [illegible] and finished 3rd year at the [illegible] (Over)

at age of 20 years - asks for leniency
+ suggests that the army might be able
to direct his energies + intellectual
abilities along channels that
would get the best service from
the accused. The accused defending
officer hands in a written statement
which is attached.

The court is closed to consider
sentence.

J G Gilmour Major
Pres

In mitigation of Punishment. Dwyer. H. E.

In my address to the court on behalf of the accused no intention of detraction only submit for your consideration in mitigation of punishment.

as to charges 2-3 accused had no evil intent accused to think he would be better learned & thereby carry a little more prestige with those with whom he came in contact. I submit that charges are part & parcel of chg 1 & could very aptly be manipulated in same to the consideration of punishment

as to Chg 1. In the offence of evil. I put there must always be a motive. In this particular case I submit the accused spoke the truth. He has led a very active life in all sorts of sport having played in Rs. hockey & Aust Rules their energy his manifest temperament his desire for adventure & all called for action. As he stated the period of inactivity weighed heavily on him. and due to the fact that he was injured hastily to the RCAF and also to the airborne corps. time dragged heavy & it appears the only outlet he thought available to satisfy his desire for action of some sort, was to go AWL.

Punishment. We must not condone wrong, & offenders must be punished. If we can deal out punishment to an offender which will correct his wrongdoing. then we will have achieved the ideal, but, in order to do this I think it requires a great deal of understanding the individual concerned. We have the hard, & unchecked criminal, the only punishment he understands is the one with a real sting to it. whereas again we may have an intelligent, clean youth who needs discipline a harsh punishment may go will towards ensuring the desired results. I submit the

accused comes under the class intelligent type
& if his ability & energy can be directed into useful
work he should indeed be a very valuable man
to us. I am inclined to believe, punishment that
was fair & perhaps very lenient in relation to
his offence would I hope bring this desired results.
We have also to take into some consideration the
fact that a third person has been inadvertently
drawn into this picture. I am of the opinion that
fact that he is now married & realizes his
responsibility will have a very sobering effect on
his temperament, & may be the means of him doing
much better in the future.
Finally, I would very humbly suggest for your
consideration this possibility, if the ends of
justice would not be better served if the
punishment awarded in this particular case
was the very minimum for the charges to
which the accused has pleaded guilty.

I am Sir
Your most obedient
Humble Servant.

Statement in mitigation of Punishment

Oct-6-42.

No D6672. Pte H.F. Dwyer.
No 3. C.A.R.U.

Statement as to Charge-1-

I enlisted for the purpose of serving my country, and also for the spirit of adventure. All my life I've been very active, taking part in all kinds of sport. Having played Pro Hockey + Base ball. My spirit seemed to yearn for something doing all the time. After coming overhere and spending considerable time in training, it all got very lonesome + due to no action and so much inactivity I became very restless and frowned off as it were. I got paraded to my O.C. and asked him if I could be transfered to the Air force, feeling I could get more action which is what I came over here for. all I was doing at the time was foot and rifle drill, and gun drill, day after day. But I was refused. Then later on I was paraded to my O.C. once more, and asked him if I could be transfered to the Air borne troops and I was refused again. Time went on and on until I reached the stage where I had to do something to relieve my tention, so I went A.W.L. I did not at any time entertain the thought of desertion far from it. I intended to rejoin my unit the moment they went into action. The day Dieppe raid started I thought it was the real thing so I was on my way back but when I got so far and found out it was only a raid I went back

Charges 2-3.

Was only foolishness I didnt intend doing anything wrong only thought I looked more dressed up. I never used the stripes for any illegal purpose, only just for looks that was all. I got married because I have known the girl for ten months. I did not realize I was committing a crime, I thought one could get married without permission, and if I did my wife would not get any allowance for the periode of two months. We used to talk about the subject amongst ourselves in the barracks. I realize now I did very wrong in the whole thing. I realize my responsibilities now more than I ever did since getting married, it has given me a new lookout on life.

All I ask for is one more chance to prove to you that I can play the game fair and square. And that also that I can show my wife that I can be worthy of her.

Harold Foster Dwyer

SUMMARY OF EVIDENCE IN THE CASE OF
D 6672, Gnr. DWYER,H.F.
"A" BATTERY, "P" TRAINING WING
No. 3 C.A.R.U.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution

D 10153 Sgt. Edwards,R.A.W., No. 3 C.A.R.U., having been duly sworn states:-

"On the 21st of May 1942, I was Troop Sgt. of "C" Troop "A" Battery. Gnr. Dwyer was given leave on the 14th of May and was to return at 1200 hrs. the 21st of May. He did not return on the 21st and was still absent when I left the Battery on the 25th of June, 1942".

The accused declines to cross-examine this witness.

R.A.W. Edwards Sgt.

Second Witness for Prosecution

M 11861 L/Cpl. Sinclair,D., C.P.C., Edinburgh, Scotland.

I, J.A. Biggar, Capt., R.C.A., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot, in my opinion, be readily procured.

J.A. Biggar Capt.

I now produce and read to you a statement, dated at Edinburgh, Scotland, on the 26th day of September, 1942, purporting to be signed by the said L/Cpl.Sinclair, marked "A" and annexed hereto, indicating the date on which you were apprehended by him as being 1440 hrs., 26 September 1942 and also the fact that you were improperly dressed, viz; wearing a collar and tie with Battle Dress blouse open at the neck to the third button. Further, that when apprehended, you were wearing stripes of the rank of Sergeant.

The accused does not require the presence of this witness for the purpose of cross-examination.

Third Witness for Prosecution

Capt. M.E. Byers, Officer i/c Detention Room, #6 Provost Coy., C.P.C.

I, J.A. Biggar, Capt., R.C.A., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot, in my opinion, be readily procured.

J.A. Biggar Capt.

I now produce and read to you a statement, [redacted] purporting to be signed by the said Capt. M.E. Myers, marked "B" and annexed hereto, indicating the date on which you were apprehended as being 1440 hrs. on the 26th day of September, 1942.

The accused does not require the presence of this witness for the purpose of cross-examination.

Fourth Witness for Prosecution

Lieut. H.W. Cowling, No. 6 Provost Coy., C.P.C., London.

I, J.A. Biggar, Capt., R.C.A., the officer taking this Summary of Evidence, certify that owing to the loss of time and expense involved, the attendance of this witness cannot, in my opinion, be readily procured.

J. A. Biggar Capt

I now produce and read to you an "Expense Voucher" R.f. K.R.& O. (Can) 539, marked "C" and annexed hereto, showing the expenses incurred in apprehending you and returning you to this Unit, in the amount of £4-11-0. This expense voucher is signed by Lieut. H.W. Cowling.

The accused does not require the presence of this witness for the purpose of cross-examination.

Fifth Witness for Prosecution

D 9224 S/Sgt. Lamarre, J.B., i/c Regt'l Police, No. 3 C.A.R.U., having been duly sworn states:-

"At 1350 hrs. on 28 September 1942 I was on duty in the Guard Room, Huron Camp, No. 3 C.A.R.U., when Gnr. Dwyer was escorted back by the Cdn. Provost Corps.

He was sober but improperly dressed, i.e. no respirator and no Field Dressing."

The accused declines to cross-examine this witness.

S/Sgt. J.B. Lamarre

Sixth Witness for Prosecution

H 35360 Sgt. Clement, R.H., N.C.O. i/c Kit Stores, No. 3 C.A.R.U., having been duly sworn states:-

"On 30 September 1942 I re-examined the kit of Gnr. Dwyer and found him to be deficient of articles to the value of £2-11-2, which at 75% of the vocabulary price amounts to £1-18-4, in accordance with C.A.(O) R.O. 1398, as per list I am now presenting."

This list is marked "D" and attached hereto.

The accused declines to cross-examine this witness.

R. Clement Sgt

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e), reserves his defence.

Certified that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

Taken down before me in the presence and hearing of the accused this 30th day of September, 1942, at "D" Training Wing, No. 3 Cdn. Artillery Reinforcement Unit.

J. A. Biggar
(J.A. Biggar) Capt.
No. 3 C.A.R.U.

CHARGE

Army Form B 252
(See King's Regulations)

3rd.Cdn.Art.Reinf.Unit. Regiment

Battery / Squadron / Troop or / Company

CHARGE against No. D-6678 Rank Gnr.

Name Dwyer,H.F.

Place Edinburgh Date of Offence

OFFENCE W.C.A.S.Absent without leave from.... ....until apprehended by the Cdn.Provost Corps on Leith St.at about 14.40 hrs,on the 26-Sep-42.(2)Improperly dressed,at the same time, date and place,i.e. was wearing Lt't's.stripes to which he was not entitled.

H.F.Dwyer 6678 Gnr.
C. W. Detention Room
No. 6 Provost Company.

Names of Witnesses:-

L/Cpl.Sinclair,D. Cdn.Provost Corps.

L/Cpl.Jackson,J.N. Cdn.Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of

D-6672 Gnr.Dwyer,H.F.
3rd.Cdn.Art.Reinf.Unit.

Sir:

At Edinburgh at about 14.40 hrs,on the 26-Sept-42,I was on duty on Leith St.in company with L/Cpl.Jackson,where I saw the a/m soldier He was wearing the rank of a Sergeant,and was wearing a collar and tie with his battle blouse open at the neck to the third button.I approached him and asked him for his pass,to which he stated that he had left it at home,I then asked him for his paybook,on examining it it was found that he had not been paid since May 1942.I asked him if he has been absent since then and he replied yes.He also admitted that he was impersonating a sergeant. I placed him under arrest and escorted him to the Barrier Gate guard room where I handed him over to the N.C.O.i/c guard to be detained

Edinburgh
26-Sept-42

D.R.Sinclair L/Cpl.
(M-11861 Sinclair,D.)

Sir:

I have read over and corroborate the above statement.

Edinburgh
26-Sept-42

J.M.Jackson L/Cpl.
(M-11599 Jackson,J.M.)

REMARKS

Certificate in accordance with the Army Act Section 163 (1) (JJ).

I certify that Regt No D-6678 Rank Gnr Name Dwyer, F.H.

Unit No.3 Cdn.Art.Reinf.Unit was arreseded at Place Edinburgh

at HOUR. 14.40 DATE. 26-Sept-42 and that the time of his arrest

he was wearing military uniform.

Signature of Provost Marshal, A.P.M. or other officers into whose custody the above named person was taken in arrest M E Byers Capt

B

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. D6672 Rank ~~Gnr.~~ Name Dwyer, F. H. Unit "3 CARU

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Edinburgh

Date	Particulars	Amount		
27/9/42	Escorts return fare from LONDON To Edinburgh	3	0	8
	Prisoners single fare to LONDON From Edinburgh	1	10	4
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	4	11	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H. W. Cowling Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/53
40/P & S/481

No.3.Canadian Artillery Reinforcement Unit. (Overseas). 30 Sep 42.

D 6672 Gnr. Dwyer F.H

LIST OF DEFICIENCIES

			100% £ s. d.	75% £ s. d.
Brushes boot blacking	1		- 8.	- 6.
Brushes Clothes	1		1- 1	- 9¾
Shaving	1		1- 4	1- 0
Disc's Identity	3	@ 1 d. ea.	- 3	- 2¼
Dressing first field	1		1- 1	- 9¾
Gloves woollen	1pr.		2- 7½	1-11½
Socks Worsted	2prs.	@ 1/8d. pr.	3- 4	2- 6
Straps shoulder R&L	2	@ 3/4d. ea.	6- 8	5- 0
Helmets Steel	1		10- 0½	7- 6¼
Respirator Complete	1		1- 1- 0½	15- 9¾
Eyeshields A/G	6	@ 4½. ea.	2- 3	1- 8¼
Ointment A/G	1		- 9½	8 7
		TOTAL	£ 2 - 11 - 2	£ 1 - 18- 4

I hereby certify that I have examined the kit of D 6672 Gnr. Dwyer F.H and find the above mentioned list of deficiencies.
Dated this 30 th. day of September 1942.

Signed. R.H.Clement
N.C.O. i/c Kit Stores #3 C.A.R.U.

D

HURON CAMP

30 Sep 42.

Commanding Officer
No. 3 C.A.R.U.

F.G.C.M.

1. Reference my pending trial by F.G.C.M., it is respectfully submitted that counsell be appointed to defend me.

2. If possible, I should like Major H.N. McKenzie, R.C.A., to act as my Defending Officer.

3. Respectfully submitted.

H.F. Dwyer
D 6672 Gnr. (Dwyer, H.F.)

No. D 6672 Name DWYER, H.F. Sqn., Battery, or Company — Corps R.C.A. Date of enlistment 21.11.39 G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet 17.1.40 — No. and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc. J. Campbell Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On 21 May 1940 this soldier completed six months service and in accordance with R.O. 71 CASF (Overseas) his previous sheet was destroyed.									
Leipzic Bks	17-10-40	Gnr		WOAS Absent from parade AA 15(1)	Sgt.King	7 days C.B.	17-10-40	Major Todd	
"	19-10-40	"		WOAS Absent from parade AA 15(1)	Sgt.Mullis	7 days C.B.	21-10-40	Major Todd	
"	22-10-40	"		WOAS Absent from parade AA 15(1)	Sgt.McCormack	96 hrs Det.	23-10-40	Lt.Col. Ft 4 D.P. Roome FRI	
"	1-2-41	"		WOAS Dirty equipment on parade A.A. Sec. 40	BSM Boorhead	7 days C.B.	1-2-41	Major Todd	
"	4-2-41	"		WOAS Absent from parade AA 15(1)	Sgt.Booth	96 hrs Det.	2-2-41	Lt.Col. Ft 4 D.P. Roome FRI	
Colchester	6-6-41	"		WOAS AWL 2 hrs.40 min. AA 15(1)	Sgt.Munro	7 days C.B.	6-6-41	Major Campbell	
"	20-7-41	"		WOAS Absent from parade AA 15(1)	Sgt.Munro	7 days C.B.	21-7-41	Major Campbell	
"	21-7-41	"		WOAS Absent from parade AA 15(1)	Sgt.Mountain	168 hrs Det.	22-7-41	Lt. Col. Fts 7 D.P. Huckvale FRI	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Number of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
olchester	5-8-41	Gnr		WOAS AWL 2 dys, 9 hrs, 59 min. A.A. 15(1)	Sgt.Ronan	14 dys Det.	6-8-41	Lt. Col. Huckvale	Fts 14 D.P. FRI 149(1)(b) Fts. 3 D.P. FRI 149(1)(a) Total 17 D.P.

CERTIFIED TRUE COPY OF ORIGINAL CONDUCT SHEET 2 Oct 42

(J.A. Biggar) Capt., R.C.A.
Adjutent
"P" Training Wing
No. 3 C.A.R.U.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-6672	Gunner	DWYER, H.F.	No. 3 Cdn. Arty. Rein. Unit.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec 15(1)	6 times	Eight times.
For A.A. Sec 40	times	One times.
For	times	times.
For	times	times.
For	times	times.

[redacted] ctd

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

[redacted] ctd

[redacted] ctd

3. The accused is not under sentence at the present time. [redacted] ctd

[redacted] ctd

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and Term days in military custody, making a total of Term days, of which nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 23 yrs. 95 days.

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 21 Nov. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs. 151 days.

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs. 151 days service.

9. The accused is entitled to reckon 2 yrs. 151 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, *no* military decoration or military award. [redacted] ctd

[redacted] ctd

[redacted] ctd

[redacted] ctd

[redacted] ctd

(A4339) Wt.21060/1161 125,000 6/42 A.P.W.Ltd. Gp.688

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D-6672 Rank Gunner Name DWYER, H.F. of No. 3 C.A.R.U. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
---	---	--- N/A ---	---	---

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of October 1942

(C.E. Woodrow) Lieut. Col.
Commanding
"P" Training Wing, No. 3 C.A.R.U.

13 [redacted]

In the rank of ____ years. Date of Promotion.

In the rank of ____ years.

In the rank of ____ years.

(Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a NCO by first award regimental No. convictions may be omitted from such sentence as are considered not to be seriously considered when dealt with briefly.)

LIST OF WITNESSES

For Prosecution

D 10153 Sgt. Edwards, R.A.W., "A" Battery, "P" Wing, No. 3 C.A.R.U.

M 11861 L/Cpl. Sinclair, D., C.P.C., Edinburgh, Scotland.

Capt. M.E. Byers, Officer i/c Detention Room, # 6 Provost Coy., C.P.C.

Lieut. H.W. Cowling, No. 6 Provost Coy., C.P.C., London

D 9224 S/Sgt. Lamarre, J.B., i/c Regtl Police, No. 3 CARU

H 35360 Sgt. Clement, R.H., N.C.O. i/c kit stores, No. 3 C.A.R.U.

For Defence

4X-60.
Pte. Dwyer T.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 32092 Pte Thomas William DWYER, W.N.S.R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 6(2)H A.A.	Not Guilty	Guilty	
2nd 9(2) A.A.	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, one in loss of kit see RP 44 fn 6.)

[illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labor for eighteen (18) months.

27 Jan 45
Date awarded

(Sgd) "R.M. Horsey, Major"
President (RP 45, 90.)

(Sgd) [illegible] "RH"
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd)
Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

[illegible] PEB"

(1. AA 57A. Delete if not used.)

(Sgd) "P.E. Bernatchez, Brig"
Commanding 3 Cdn Inf Bde
Confirming Officer.

Date 30 Jan 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 570a, 577.)

Accused.	Date.	Signature of Offr.
F-32092 Pte Dwyer, T.W. West N S R	1 Feb 45	"A.J.W. Dyer, Capt & Adjt" West N S R

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(D M OWEN) CAPT

Cdr Sec 2 Ech AFHQ

FIELD GENERAL COU

RECO

[illegible] F.G.C.M.

Convened by Order of Lt-Col H.P. Bell-Irving A/comd

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to rec rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 32

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	
F 32092	Pte	Thomas Wil... Full Christia...

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) ...45 "RH"

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, [illegible] assemble, and the Court is closed. "RH"

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM, in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A55, for paths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 131.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [illegible] attached thereto ("RH" The Court is satisfied that it is properly convened and constituted(1), accused is [illegible] amenable to military law, and "RH" each charge discloses an offence.(2) "RH"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 47, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1100 hours trial commences "RH"

A4. The Prosecutor produces a Medical Certificate that accused is [illegible] fit to undergo trial by court-martial.(1) [illegible] "RH"

(1. KR Con 557. 2. AA 46(B), RP 90 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President [illegible] Do you object to [illegible] as shorthand writer ? Ans [illegible] "RH"

The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2) "RH"

(1. RP 110. 2. If no objection, waiting member returns. RP 60(B). If objection, see procedure AA 51, RP 25, 31, 38, MML p 741.)

A7. The President, Members, [illegible] any sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc

President	Major	R.M. Horsey	C Y R
Member	Capt.	A.A. Dube	[illegible] R
Member	Lieut.	J. Laporte	W N S R
Judge-Advocate	N/A	E.D. Hers[illegible]	W N S R
Prosecutor	Capt.	O.E. Lacroi[illegible]	W N S R
Defending Offr	Lieut		

(1. RP 110. 2. If no objection, waiting member returns. RP 60(B). If objection, see procedure AA 51, RP 25, 31, 38, MML p 741.)

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings (for information of Conv Offr). 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See D1 p 81)

A8. The accused F32092 Pte Thomas William DWYER before arraignment, makes(s) (no) [illegible] plea. "RH" (1)

(1. If a special plea is made for separate trial on more or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36(i)), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 35), such plea, the endorsements records in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see reference in fns to RoP cited. Issuers to All rank and name of the accused making the plea.)

A9. The accused is [illegible] arraigned [illegible] on all charges in the charge sheet.(1) The accused does [illegible] "RH" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea(s) in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Witness sworn then see Charge Sheet see RP 62; when severance accused to be tried separately see RP 71(G), and use separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court [illegible] considers the Instrs on Procedure after Arraignment, at top of p 2. The pro- "RH" ceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 32092 Pte Thomas William DWYER, W.N.S.R.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	6(2)H A.A.	Not Guilty	Guilty	
2nd	9(2) A.A.	Not Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

~~If guilty, to be sentenced to~~ Sentence Deferred (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labor for eighteen (18) months.

(Sgd) ~~President~~ "RH" 27 Jan 45 (Sgd) "R.M. Horsey, Major"
Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~If guilty, the sentence is hereby mitigated to~~ "PEB"
(1. AA 57A. Delete if not used.)

(Sgd) "P.E. Bernatchez, Brig"

Date 30 Jan 45 Commanding 3 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
F-32092 Pte Dwyer, T.W. West N S R	1 Feb 45	"A.J.W. Dyer, Capt & Adjt" West N S R

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

CERTIFIED TRUE COPY

RECORDED AT CMHQ IN AB 160 4X-60

CPA86 (In lieu of AFA3) 45-P-Ac-H-1600 (2654)

FIELD GENERAL COURT-MARTIAL

(D M OWEN) CAPT
Cdn Sec 2 Ech AFHQ

Convened by Order of Lt-Col H.P. Bell-Irving A/comd 3 Cdn Inf Bde dated 22 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Permt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 32092	Pte	Thomas William	DWYER	W.N.S.R.

Proceedings Reviewed.
W.P.Bate Capt A/DJA.
Cdn Sec 2 Ech AFHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 27 Jan 45 "RH"

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~and Judge-Advocate~~ assemble, and the Court is closed. "RH"

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns BOn. For guidance as procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(1)~~ attached thereto.(1) "RH"
The Court is satisfied that it is properly convened and constituted(2), accused is ~~(1)~~ amenable to military law, and "RH"
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(1)~~ brought before the Court. At 1100 hours trial commences "RH"

A4. The Prosecutor produces a Medical Certificate that accused is ~~(1)~~ fit to undergo trial by court-martial.(1) "RH"

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President ~~(1)~~ ~~signed~~: Do you object to ~~(1)~~ as shorthand writer? Ans "RH"
The Interpreter is sworn.(2) Do you object to ~~(1)~~ as shorthand writer? Ans
The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~and Judge-Advocate~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: "RH"

President	Major	R.M. Horsey	C Y R
Member	Capt.	A.A. Dube	R 22 R
Member	Lieut.	J. Laporte	WNSR
Judge-Advocate	N/A		
Prosecutor	Capt.	E.D. Hersey	WNSR
Defending Offr	Lieut	O.E. Lacroix	WNSR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F32092 Pte Thomas William DWYER before arraignment makes(s) (no) (~~1~~) plea. "RH" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Lieutenant in AB rank and name of the accused making the plea.)

A9. The accused is ~~(1)~~ arraigned ~~(1)~~ on all charges in the charge sheet.(1) The accused does ~~(1)~~ "RH" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when severed accused to be tried separately see RP 71(C), and use separate copies of CF AF5 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(1)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro- "RH"
ceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 25(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on this sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) opening address.(1) "RH"
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) [redacted] establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s) and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the ..... charge(s).(4) "RH"
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 71 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans I wish to give evidence as a witness Do you intend to call witnesses on your behalf ?
Ans Yes Are they witnesses as to character only ? Ans No
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 108(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened. "RH"
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed ("RH" "RH"
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. The first alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes, call a witness as to character
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true "RH" copy (copies) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3) "RH"
(1. *MFB 215 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement and Conduct Sheet, and in mitigation of punishment ?(1) Ans No (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him [redacted] "RH"
(1. *When several accused tried separately see RP 37(D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 90, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1 Dec 45

10/Dwyer. TWH
26 Nov 45

J J Kerr
Capt

CHARGE SHEET

The Accused,
F32092 Pte Thomas William DWYER, West Nova Scotia Regiment,
a soldier of the Canadian Army Overseas, CMP, when on Active
Service, is charged with,

1st Charge
Sec 6(2)(h)
Army Act

WHEN ON ACTIVE SERVICE, WHEN A SOLDIER ACTING AS A SENTINEL LEAVING HIS POST BEFORE BEING REGULARLY RELIEVED.

in that he,

in the Field, in Italy, at approximately0100 hrs 8 Jan 45
after being posted as a sentry on a standing patrol, left
his post without having been regularly relieved.

2nd Charge
Sec 9(2)
Army Act

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

in the Field in Italy, at approximately 0100 hrs 8 Jan 45
when ordered by F34867 L/Cpl Connolly G F WNSR to return
to his post did not do so.

"F E Hiltz"
(F E Hiltz) Lt col
Comd, West N S R

In the Field
22 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"H P Bell-Irving"
(H P Bell-Irving) Lt.-Col
A/Comd 3 Cdn Inf Bde

In the Fd
26 Jan 45

"H"

"LJB"
25 Jan 45

FIELD GENERAL COURT-MARTIAL

CFA 80 (In lieu of AFAS) 60/PAM/1697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F32092	Pte		Thomas William	DWYER	WNSR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Jan 45 endorsed by me, (~~or a copy of which is attached~~) "HPBI" To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is necessary for the due administration of military law that such offence(s) should be tried by a Field General Court-Martial~~) "HPBI"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~It is expedient that the Court should sit at~~ "HPBI"
~~(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)~~

5. ~~The above-named Judge-Advocate is hereby appointed~~ "HPBI"
~~(RP 106(E). Delete, if none appointed.)~~

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	R K HORSEY		CYR

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	A A DUBE		R22R
Lt	J LaPorte		WNSR

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt	W C Gallagher		CYR

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in		(Signed personally. RP 105 fn 2.)	(Rank.)
Italy (Country.)	"H P Bell-Irving"		Lt-Col

Date 26 Jan 45 A/ Commanding 3 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

"H"

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 85(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections noted not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE. RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (*RP 40 fn 5*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 87(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*Where accused charged jointly see RP 85.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 86(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations to printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can. 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy on lieu of original see KR Can 580. As to certified copies of regimental books see AA 148 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 85(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

I certify that I have this morning examined,

No P32092 Pte Dwyer J W of the West Nova Scotia Regiment,

and in my opinion he is fit to undergo trial by Court Martial.

In the Field "P Goldstein, Capt."
Medical Officer

Date 27 Jan 45

"H"

---

(1)

PROSECUTION - OPENING ADDRESS

In the case of the accused P32092 Private J.W Dwyer the prosecution will endeavor to prove:

1. The accused was a sentinel on duty at a particular spot in the line.
2. The accused left his post by returning to another position not his own but farther back from the enemy without permission.
3. On the second charge the prosecution will bring witnesses to show that the accused was given an order to return to his post by an NCO in the execution of his duty and he did not obey the order.
4. When given a second order to return to his post a short time later by a NCO the accused again did not do so.

"H"

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(2)

1st Witness for Prosecution
P34867 A/Cpl Connolly G P WNSR sworn states:

I am sec Comd of No 6 Sec 14 Pl C Coy WNSR on the night of 7th 8th Jan 45. I was 2 i/c of a standing patrol occupying positions on the East bank of the Senio River, the patrol consisted of two NCOs and four privates. (at this point the witness draws a scetch of the positions occupied by the patrol, the accused does not object to this sketch). The sketch is marked exibit "X". The accused whom I recognize as Pte Dwyer was a member of this standing patrol he was one of the bren gunners occupying the left hand post. At approx 0100 hrs 8 Jan 45 I heard enemy small arms fire & grenades towards our position. I went to investigate. At that time I was behind a shed which is shown on the sketch. I saw Pte Dwyer coming towards the house which was used as patrol HQ. I went over to the house and asked Pte Dwyer what had happened, he told me that several of the enemy had approached his position from the river and had thrown hand grenades towards his position on the dyke. I looked up to Pte Dwyer's position on the dyke and saw that the other man who occupied the same trench with him was still there. This man was Pte Dunn. I then ordered Pte Dwyer back to his post, he did not go he say he had no bren gun as he had knocked it over the dyke. I then went over to the right hand post

1st Witness for prosecution (Cont'd)

see what the situation was there. I found that the occupants of the post had left. I saw them leaving as I approached. I then returned to patrol HQ and reported what had happened to Cpl ~~xxxx~~ George, the patrol Comd. Cpl George ordered me to take Pte Dwyer back to his post at the same time ordering Pte Dwyer to return. I told Pte Dwyer to accompany me back to the post, he refused to do and started towards pl HQ of 15 Pl. I then went back and reported to Cpl George that all our positions were un-manned and that Pte Dwyer had left. Cpl George then phoned the Coy Comd for orders and about 10 minutes later Cpl George & I went over to 15 Pl HQ house. There I saw Pte Dwyer, Cpl George placed him and the other men of the patrol under arrest. The other men were Pte Lunn, Pte Mallett and Pte Lagace. We then returned to Coy HQ. At approx 2100 hrs on the 7 Jan Cpl George and myself both placed Pte Dwyer and Pte Lunn in position on the dyke showing them where to dig their post. When I spoke to Pte Dwyer after he left his post, I told him to return saying that the grenades were going well over our heads and the Pte Lunn was still there and ~~xxxx~~ that there was nothing to worry about. I was present when Cpl George ordered Pte Dwyer back to his post. I heard him tell Pte Dwyer to return to his post and Cpl George told me to take Pte Dwyer back

"H"

1st Witness for prosecution (Cont'd)

Pte Dwyer definitly refused to go saying no I will not go then he started running towards 15 Pl. At no time did I give Pte Dwyer permission to leave his post.

Cross examination by Defending Officer

I have often been on this type of patrol having been an infantry man in action for over a year. I was about 30 yds from the nearest position being behind the shed dug in there. When I first ordered Pte Dwyer back to the trench he was not armed with any type of weapon nor was he armed when he was placed under arrest by Cpl George. When I questioned Pte Dwyer about the Bren gun he said he had knocked it over the bank getting out of the post. I considered it reasonable for Pte Dwyer to return to his post even though he was unarmed. The orders ~~to~~ the men at the post were to fire on any enemy that approached the post. The night was a very clear one and it would be possible to see any large body of enemy if they approached the position. Cpl George and I indicated the exact spot where the post was to be dug and after it had been dug I personnally checked the field of fire. The patrol was to be relieved at 0200 hrs by another patrol from ~~another~~ OUR OWN pl. Cpl George & I returned to Coy HQ before it arrived. Pte Dwyer did not tell me at any time that he had tried to fire the bren gun and that it would not work.

"H"

By the Court

The only fire by our patrol at the enemy was Pte Lunn who threw two grenades over the Dyke. I acted as guide for the other patrol which went down and occupied the position on the dyke. this was at about 0200 hrs.

R.P. 83 B Complied with

Second Witness for prosecution

F7401 Cpl George F L sworn states: I am section Comd of 4 Sec 14 Pl C Coy. WNSR. On the night 7/8 Jan 45 I was in command of a standing patrol on the South bank of the Senio River, the patrol consisted of one Cpl, that is myself, L/Cpl Connolly, Pte Dwyer whom I recognise as the accused, Pte Lagace, Pte Mallett and Pte Lunn. (The witness draws a sketch of the posn which is essentially the same as exibit "X" the accused does not object to the use of this sketch). At approx 2100 hrs 7 Jan 45 I led the patrol to ~~xx~~ the dyke of the river and indicated to them where to dig positions on the dyke. I then returned to the house and set up a telephone. Pte Dwyer &

Pte Lunn were detailed by me to dig the left hand post which they did. At approx 2200 hrs I returned to the position on the dyke the men had finished digging the posts. I then returned to the house. At approx 0100 hrs. I heard the enemy start throwing grenades and saw the bursts of the grenades through the door which was open, also I heard small arms fire. Shortly after Pte Dwyer with out my

"H"

2nd Witness (Cont'd)

permission left his post and came to the house where I was. I ordered him back to his post saying "go back to your post and stay with Pte Lunn." L/Cpl Connolly was present at the time. I ordered Pte Dwyer back to his post. I then ordered L/Cpl Connolly to go with Pte Dwyer to the post they both then went out of the house. Shortly after this L/Cpl Connolly reported to me that Pte Dwyer refused to go back to his post. I immediately after that I went outside and found Pte Dwyer about 20 yds behind the house, that is about 30 or 40 yds from the dyke. I then took Pte Dwyer down to Coy HQ after phoning from 15 Pl and placed him in close arrest there. I did not at any time give Pte Dwyer permission to leave his post.

Cross examination by Defending Officer

As far as I could see some of the grenades may have landed quite close to the positions on the dyke. The small arms fire did not appear to be directed at the posts but it was near. I personally took Pte Dwyer, Pte Lunn up to their position on the dyke. L/Cpl Connolly did not accompany me, he remained at the bottom of the dyke with the other two men waiting for me and I made my visit to the positions alone at 2300 hrs L/Cpl Connolly remained at the telephone, I did see L/Cpl Connolly visit the posts. Apart from the grenades the first indication I had that anything was

"H"

Second Witness for Prosecution

wrong at the post was when Pte Dwyer arrived at Patrol HQ. When Pte Dwyer arrived at the house he was unarmed he appeared to be pretty excited and did not answer me immediately when I spoke to him. He told me a grenade had landed quite close to him. I did not know that Pte Dwyer had lost his Bren gun when I ordered him back to his post. I did not hear Pte Dwyer refuse to go back to his post but I did hear L/Cpl Connolly order him to go back to his post. Pte Dwyer was not a regular member of my section, that night I had men from each section in the pl. he had only been a member of 14 pl for a couple of days. All men on the patrol that night had volunteered for the job.

By the Court

One patrol was to be relieved at 0200 hrs 8 Jan by another patrol from our pl. I arrived back at Coy HQ before the relieving patrol left Coy HQ. It went out later guided by L/Cpl Connolly. After I ordered Pte Dwyer to return to the post he told me the Bren gun was missing. When I questioned him about the bren, he told me he had dropped it on his way down the dyke. The relieving patrol found the Bren the next morning and brought it back to the pl. Pte Dwyer gave me no definite reason why he left the post other than that a grenade had landed quite close to him.

RP 83(b) Complied with

"H"

1st Witness for the defence

F87491 Pte Lunn D M WNSR sworn states: I am a member of 6 section 14 Pl C Coy. I joined the pl on 27 Dec 44. I recognize the accused as Pte Dwyer he was a member of the same section as I. On the night of 7/8 Jan 45 I was a member of a patrol which consisted of Cpl George, L/Cpl Connolly, Pte Dwyer, myself and two other men whose names I do not know. Pte Dwyer and I dug a position on the bank of the Senio River at about 2100 hrs that night. Cpl George showed us where to dig our position. At about 0100 hrs an enemy patrol approached our post, Pte Dwyer was manning the Bren gun and I was just finishing off the digging of the post. I saw the patrol and picked up two grenades and pointed the enemy out to Pte Dwyer. I threw one grenade and then looked around and found that Pte Dwyer had left the trench. Sometime after we started to dig our post we were visited by L/Cpl Connolly, Cpl George did not visit us. I was later placed under arrest that night and charged with deserting my post in the face of the enemy but the charge was dismissed when I went up before the C.O.

Cross examination by prosecutor

I am positive that it was L/Cpl Connolly who visited out post that night.

By the Court

When I saw the enemy they were

"H"

(9)

1st Wit for Defence

Crawling towards our post, they did not fire before I threw my grenade. After I threw my grenade I saw Dwyer running down the dyke I did not see the Bren gun it was not in the post. I did not hear the bren gun fire nor did I hear any fire from the other posts. I left the post after I saw Dwyer running away because I had no weapon to fight with. After I left the post the first persons I saw were the two Cpls coming out of the house. I joined them and we went to 15 Pl. While we were in the post before the enemy arrived, nothing happened to cause us to be particularly nervous. The enemy threw about a dozen grenades at our post certainly no more, only one landed near our post. Had the bren gun been there I would have tried to stay in the post. I doubt if the enemy I saw could have driven us out if the bren gun had been manned.

RP 83(b) Complied with.

2nd Witness for defence

F.59940 Sgt Evans, J W E sworn states: I am pl Sgt of 14 Pl C Coy WNSR. I recognize the accused Pte Dwyer he was a member of 14 Pl. I have known Pte Dwyer for about a year he was an member of 18 pl when I was in D Coy he was a stretcher bearer for about a month or so. As far as I know his work as a S.B. was satisfactory. Pte Dwyer was only under my command for about a month as S.B. Pte Dwyer was only

"H"

(10)

2nd Witness for defense

in 14 Pl with me for a very short time only a matter of hours, so I don't know anything about him as a rifleman.

R.P. 83 B complied with

2nd

3rd Witness for Defence

32092 Pte Dwyer C A the accused, sworn, states: On the 7th Jan 45 I was told I was going out on a standing patrol. The Cpl, that is Cpl McDonald, my section Cpl, gave me a couple of Bren magazines and a Bren. I proceeded with the patrol to the dyke, the Cpls, that is Cpl George & L/Cpl Connolly were in the lead of the patrol. I was at the rear of the section as they started up the dyke, we stopped then & the two Cpls started down the dyke headed for 15 Pl. I heard someone say that there were Jerry standing patrols across on the other side of the River. The Cpl then lead us back to 15 Pl HQ we want in the house, someone asked why we were back. Cpl George said he would not take his men back up to the dyke because there was a standing patrol of enemy on the other side. Someone said its a Poor Cpl that wont order his men back. I said if ~~the~~ Cpl George will go so will I. The patrol then started back when we reached the house where patrol HQ was, Pte Lunn was carrying the bren gun. He handed me the bun and said you can use it better than I. I don't know much about it. I took the bren up and placed it on top of the dyke, no one

"B"

3rd Witness for Defence (11)

showed us where to dig, they only said up on top of the dyke. Pte Lunn & I dug in and about an hour later L/Cpl Connolly visited us. He looked over the bank out of the trench and went back down the dyke. At about 0100 hrs a flare went up followed by machine gun fire. I pressed the trigger of my bren it would not fire. Pte Lunn said there is a patrol at the bottome of the dyke. I saw at least 2 enemy directly in front of me. I tried the Bren again it would not fire. Then a grenade landed almost on top of us the blast struck me in the face and I fell backwards with the bren ~~xxxxxxxxxxxxx~~ I rolled over the bank and the bren slipped out of my hands. I could not find the bren so I went to the house where patrol HQ was. I was pretty excited and nervous when I got there. I remember talking to one of the Cpls but I do not remember hearing anyone order me back to my post. There was a lot of noise from grenades or mortars. I went outside of the house and having no weapon I went to 15 Pl thinking I might get a weapon there. I had just reached 15 Pl when the rest of the patrol arrived. I was then placed under close arrest and no reason was given at that time. I had always formerally been a S.B. and this was my first time on a bren gun. I had never handled a bren or rifle in action before.

"B"

rd Witness for defence (Cont'd) (12)

Cross examination by defence

No one showed us where to dig one of the Cpls pointed from the bottom of the dyke to the top saying dig up there. I don't think I left the trench before Pte Lunn fired the grenade. I didn't search for the bren. I could not see it when I looked around. I did not meet L/Cpl Connolly as I came down from the dyke on my way to patrol HQ. I did not receive permission to leave the post no one was around to give it. I did not ask Cpl George or L/Cpl Connolly. I did not volunteer to go back to the post when we collected at 15 Pl.

By the Court

The only orders we had were to dig in on the dyke and remain there until we were relieved at 0200 hrs. We were told to fire on the enemy but to wait till they were quite close so we would be sure of stopping them.

R.P. 83 B Complied with.

(13)

CLOSING ADDRESS - DEFENCE

: Pte Dwyer

We encourage our men to think. We do not condone the use of robot soldiers. Pte Dwyer acted according to what he thought was right and to the best of his ability. He was not accustomed to this type of work and when he came to the house he was under such a mental strain, so nervous and excited he does not remember being spoken to and by Cpl George's own admission, he could not speak for quite some time. By Cpl George's testimony, L/Cpl Connolly did not show the men where to dig in, he never mentioned Pte Dwyer refusing him to go back, nor did he hear him refusing him L/Cpl Connolly. Let me point out that it is quite impossible for a man to obey an order or command he did not even hear nor understands. Furthermore, a man not trained in such a duty as was carried out on the night of Jan 7-8-45 a man who was in his first action, cannot be expected to cope with a situation with which he is not familiar unless he is under direct and constant supervision of a trained NCO and neither Cpl George nor L/Cpl Connolly were in a position to keep both posts under supervision at once. Cpl George was in the house handling the phone and L/Cpl Connolly was behind the shed. Nobody took the trouble to find out anything about Pte Dwyer as a Bren gunner. Nor did they even notice the strain, nervousness and anxiety he was suffering at the time. There certainly was danger of being cut off from such a position as the accused was occupying at the time due to the fact that the other position could not give them supporting fire from anything coming up the draw, and may I point out that on a following occasion one man was "H"

(14)

killed and seven taken prisoners from that very same position. When the summary of evidence was taken, Cpl George & L/Cpl Connolly both stated that the entire patrol was placed under arrest at No 15 Pl HQ, therefore the accused never had a chance to volunteer once more to go out.

Due to the fact that Pte Dwyer acted to the best of his knowledge, that he would have carried out his job if it had been possible and that the witnesses for the prosecution contradicted themselves, I ask that the accused be handed in a verdict of Not Guilty. Gentlemen, I thank you.

"O E Lacroix, Lt." "E"

(15)

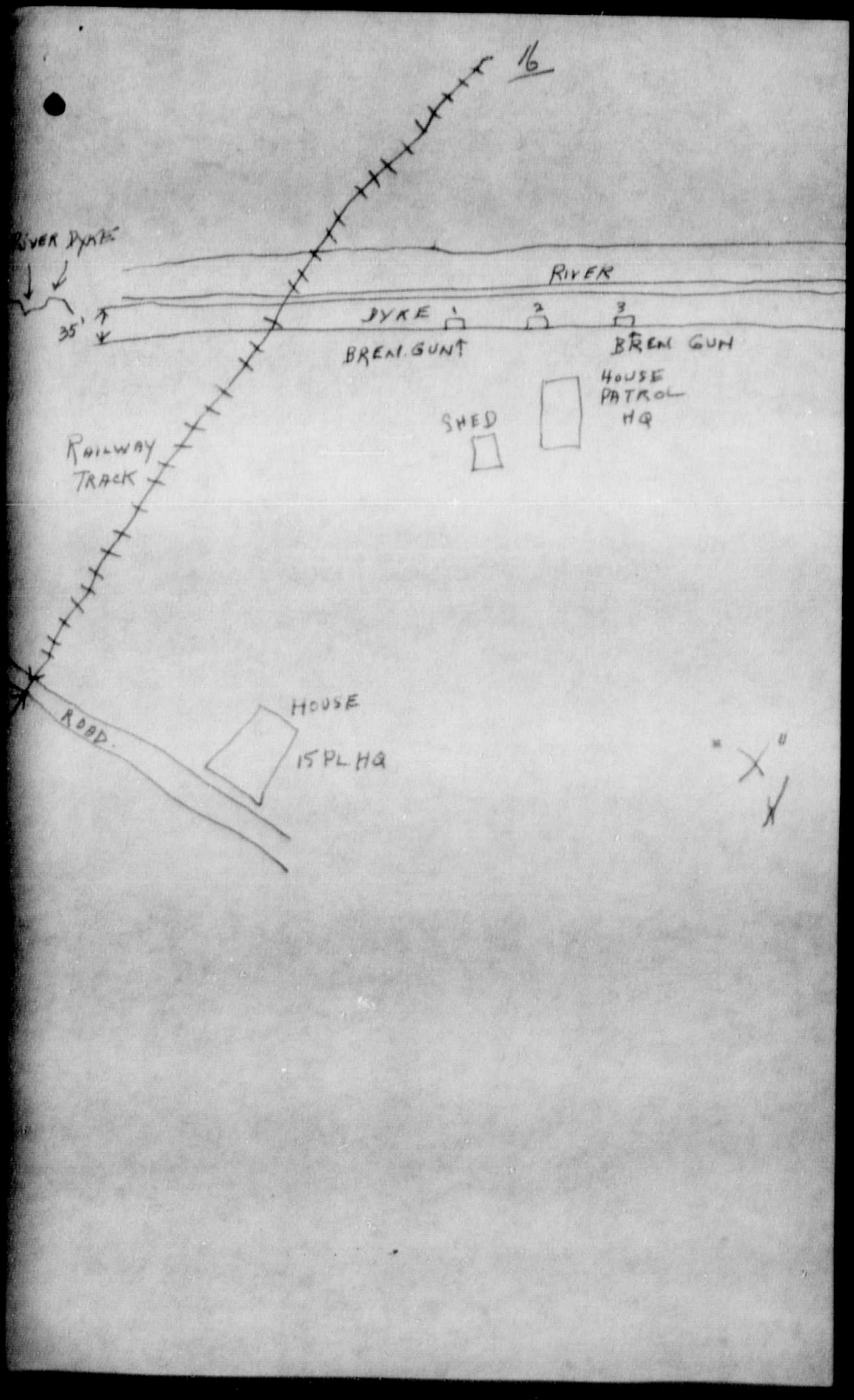
PROSECUTION - CLOSING ADDRESS

In summing up the evidence of the prosecution witnesses in the case of the accused, if it please the court, I would like to deal with each charge separately.

On the first charge under Sec 6(2)(h) AA both witnesses gave evidence to the fact that the accused, Pte Dwyer was posted as a sentry in accordance with Note 2 of AA Sec 6. Both bore witness to the fact that he was seen at patrol headquarters in the house at a time when he should have been performing his duties as a sentry. Neither the corporal nor the L/Cpl gave him permission to leave according to their evidence. I submit, Gentlemen, this man is definitely guilty of leaving his post as charged under AA Sec 6(2)(h).

On the second charge both witnesses for the prosecution swear they ordered the accused to return to his post and the accused admits himself he did not return after he left his post when his Bren gun did not fire.

"E D Hersey, Capt"
Pros Offr


16
RIVER DYKE
35'
RIVER
DYKE
1
2
3
BREN GUN
BREN GUN
HOUSE
PATROL
HQ
SHED
RAILWAY
TRACK
HOUSE
15 PL HQ
ROAD

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F32092	Pte	Thomas William DWYER,	West Nova Scotia Regiment

1. The following is a fair and true summary of the entries in the ~~regimental and squadron~~, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—As a trial by field general court martial has summary may be compiled from the field conduct sheet.

The sentence should be mentioned should be produced in court with this statement, and any asserted to the statement.

† See para. 671, K.R., 1940.

* The sentence herein stated should correspond with the particulars of entries in the conduct sheets, particularly those given in the third column relative to rank entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions.—In the blanks to be inserted the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec 15 (1) AA	two times	times.
For Sec 19 AA	times	one times.
For Sec 40 AA	times	one times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused. N/L

2. The accused has not been previously convicted. ~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 19 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~ beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for NO days in civil custody, and 19 days in military custody, making a total of 19 days, of which NO days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 14 AUG 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or military award~~ (or is in possession of or entitled to *state any military decoration or reward*) GVSM & clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of N/A dated

"A"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E32092 Rank Pte Name DWYER, T W of Regt NSB Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29 day of Jan 45

Capt
Adjt
Nova Scotia Regiment

11. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ... years.

In the rank of ... years.

In the rank of ... years.

Date of Promotion.

(*Instruction.—If any answer be one of the above paragraphs cannot be stated from the regimental books the paragraph must be struck out, and the reason why the information cannot be obtained from such records or any other available source must be stated. In the case of a child by first marriage, the information may be obtained from the parents or guardian.*)

M.F.M. 6

No. F32092 Name Dwyer T.W. | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | (A.F. 40/P & /5[illegible] 2962)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Jun 42	AB		(aa Sec 40) Conduct to the prejudice etc. at 2240 hrs 30 Jun 42 found asleep in his billet with the light on & the blackout down	Lieut Dale	7 Days C.B.	2 Jul 42		"A"
Field	9 Nov 42	Pte	1	(aa 19) Drunkenness (aa 24)) Loosing by neglect clothing etc value £ 1-2-3 (aa 40) Unshaven for Parade & was absent without leave 20 hrs	Capt Mc Millan & Lieut Brown / Sgt Kelly & Lieut Nairn	Admonished & stoppage £1-2-3 / 2 Days C.B. 1 Days C.B. suspended	12 Nov 42 / 19 Nov 42		"B"
Field	1-9-44	Pte		(aa Sec 15 (1)) Absent absent from 1800 hrs 1-9-44 until 2100 hrs 1-9-44 (Absent 11 hrs)	L/Cpl Happier	1st Day C.B. 6 Days pay [illegible]	2-9-44		

(P.T.O.)

	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24 Nov 44	Pte	(AA Sec 15 (2))	W.O.R. AWOL from 1430 hrs 24 Nov 44 until 1400 hrs 30 Nov 44 (6 Days 22 hrs)	Lcpl McKinnon Bateman	28 Days FP 28 Days FP	8 Dec 44		

Certified true copy from the Regimental Books in my custody 23 Jan 45

Officer i/c Regt'l Records,
West Nova Scotia Regiment.

SUMMARY OF EVIDENCE in the case of F32092 Pte Thomas William DWYER, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, NWY, when on Active Service

Evidence taken upon oath.

By the order of Lt Col F E Hilts, Comd, West N S R.

1st Witness for Prosecution

F34867 L/Cpl Connolly, G F, West Nova Scotia Regiment, having been duly sworn states :-

On the night of 7-8 Jan 45 I was 2 i/c of a standing patrol occupying a position on the southern bank of the SENIO RIVER. The patrol consisted of 2 NCOs and 4 other ranks, Pte Dwyer T W being one of the other ranks. Accompained by Cpl George I showed Pte Dwyer where he was to dig in and man the gun. The patrol finished digging in at approximately 2300 hrs 7 Jan 45. There were two positions about 75 yards apart. Pte Dwyer was in the left hand position (facing the enemy positions on the opposite bank). At about 0100 hrs 8 Jan 45 I was over towards the left hand position (about 50 yards from it by a shed) when "Jerry" started lobbing a few hand grenades and three of them(enemy) came up thru the draw, about 100 yards from the left position. I then saw Pte Dwyer going towards the house at the foot of the bank where the phone was located. I went back to the house and wanted to take him back to the position but he refused, at the same time Cpl George ordered him back. I then went up to the right position and on coming back down ordered Pte Dwyer back again, he refused, and was placed under arrest with the remainder of the patrol which had collected at 15 platoon HQ. I did not give the accused permission to leave his post at any time.

Signed

The accused declines to cross examine this witness.

2nd Witness for Prosecution

F741 Cpl George F L, West Nova Scotia Regiment, having been duly sworn states :-

On the night of 7-8 Jan 45 I was incharge of a standing patrol (consisting of 1 Cpl , 1 L/Cpl and 4 Pte) on the South Bank of the SENIO RIVER where the Lugo-Russi railway crosses. I showed the accused, Pte Dwyer, T W , whom I now recognize, where to dig in, after showing him where to dig in I went to the house at the foot of the embankment to set up the phone. At approximately 2300 hrs 7 Jan 45 I visited the posts after they had been dug in At approximately 0100 hrs 8 Jan 45 Jerry started lobbing grenades and a few bursts of automatic fire, L/Cpl Connolly reported to me that the positions were deserted. I next saw the accused about 20 to 30 yards away going towards 15 Pl HQ. I then went to 15 Pl HQ and received orders for the Company Commander to place the accused under arrest. I did not give the accused permission to leave his post at any time.

Signed

The accused declines to cross examine this witness.

The accused having been duly cautioned as follows :-"
"Do you wish to make any statement or to give evidence
upon oath ?" You are not obliged to say anything or to
give evidence unless you wish to do so, but, whatever
you say or any evidence that you give will be taken
down in writing and may be given in evidence", declines
to make a statement or to give evidence upon oath.

Certified that Rule of Procedure 4 (a) (d) (e) & (f)
have been complied with.

Taken down by me, in the Field, in the presence and hearing
of the accused this 22nd day of Jan 1945.

In the Field
22 Jan 45

.....
(Officer taking Summary)
Lt Nova Scotia Sig Lt

CHARGE SHEET

The Accused,
T/30008 Pte Thomas William BROWN, Nova Scotia Regiment,
a soldier of the Canadian Army Overseas, CMF, then on Active
Service, is charged with,

Lst Charge
Sec 6(1)(a)
Army Act

WHEN ON ACTIVE SERVICE, WHEN A SOLDIER ACTED AS A SENTINEL
LEAVING HIS POST BEFORE BEING RELIEVED,

In that he,

In the Field, in Italy, on approximately 0100 hrs 8 Jan 45
after being posted as a sentry on a standing patrol, left his
post without having been regularly relieved.

2nd Charge
Sec 9 (1)
Army Act

WHEN ON ACTIVE SERVICE, ENDANGERED A LAWFUL COMMAND GIVEN BY
HIS SUPERIOR OFFICER,

In that he,

In the Field, in Italy, on approximately 0100 hrs 8 Jan 45
when ordered by WO/NCO A/Sgt Connolly G F to return to his
post refused to do so.

F.C. Kelly
(F C Kelly) Lt C A
Coml, Nova Scotia Regt

In the Field
10 Jan 45

Certified true copy taken from the Regt Records in my custody

[illegible] Capt
O/C Regt Records
Nova Scotia Regt

4R-104

Pte. Dyball A. E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 75157 Private Arthur Edward Dyball

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(a)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of Kit see RP 44 fn 6.)

~~At present under sentence~~ ~~beginning on date~~ (1)

(1. Insert sentence being served, or device, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for eighteen (18) months

(Sgd) ..... 8 Jan 45 (Sgd) I F Douglas Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567 577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~not committed to prison or detention barracks until further ordered~~ released.
(1. AA 57A. Delete if not used.)

JAN 16 1945 (Sgd) ..... Brig
Date COMMANDER
Commanding CDN BASE RFT GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-75157 Pte DYBALL, A.E. H&P Regt 4 Bde - 1 CBRGP	18 Jan 45	Delegom Capt Adjutant for Lieut-Colonel Commanding

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4B-104

CFAMB (To take place of AFA81) 40-V & B(1698) 140/101

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of Lt Col I F Flynn Comd 4 Cdn Rft Bn 1 CBRG dated 5 Jan 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B75157	Pvt (a) Rfn (b)	Arthur Edward	Dyball	4 Cdn Rft Bn 1 CBRG

PROCEEDINGS OF TRIAL.

Held at and I'd in (country) Italy on (date(s)) 8th Jan 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2H-81

A1. The President, Members, waiting Member, ~~JA, Interp~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is at p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereof. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 1. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0915 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~or interpreter? As~~

~~The Interpreter is sworn.~~ Do you object to B75157 Pte Dyball, A.E. as shorthand writer? Ans No Sir
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JA, Interp~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	I F Douglas	4 Cdn Rft Bn
Member	Capt	R T Sansom	4 Cdn Rft Bn
Member	Capt	V P E Hubert	4 Cdn Rft Bn
Judge-Advocate			
Prosecutor	Capt	H S Hoffer	4 Cdn Rft Bn
Defending Offr	Capt	G Vangelos	4 Cdn Rft Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Sir Is the Defending Offr a lawyer? Ans Yes Sir

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 86 (B) and fn 2 were not followed. See Dr p 33)

A8. The accused B 75157 Pte Dyball A E before arraignment makes(s) (no) (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 495 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. M14G

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-86 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if he, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your ples to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Stat.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty.(2) charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge to which the plea of Guilty is (are) not changed the President records finding of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 36(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 71 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans.....
Do you intend to call witnesses on your behalf ? Ans.....
Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(H).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Stat
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of conviction, (convictions), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and respectively.(2)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s), and Conduct (Character), and in mitigation of punishment ?(1) Ans No Stat.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and also by the members.(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, (119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 44 (3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(f), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED, NUMBER B75157 PRIVATE ARTHUR EDWARD DYBALL, OF 4 CDN RFT BN, 1 CDN BASE RFT GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, ALLIED ARMIES IN ITALY, IS CHARGED WITH:

1ST CHARGE
A A Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy, absented himself without leave from 1100 hrs 8 Sep 44 until surrendering himself at approx 2130 hrs 28 Dec 44. (Total Time Absent 111 days 10 hrs 30 mins).

L J Flynn

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

In the Field
5 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

L J Flynn

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

In the Field
5 Jan 45

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FIELD GENERAL COURT-MARTIAL

CFA30 (To Item of AFA33)
60/PAM/1097 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(2) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Permt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B75157	PRIVATE	ARTHUR EDWARD	DYBALL	4 Cdn Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 5 Jan 45 endorsed by me, ~~[HIS]~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial;

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed, or detailed hereunder.

4. (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	I F DOUGLAS	4 Cdn Rft Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R T SANSOM	4 Cdn Rft Bn
Capt	V P E AUBUT	4 Cdn Rft Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	B BEAN	4 Cdn Rft Bn

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 104.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

Date 5 Jan 45

(L J Flynn) (Signed personally. RP 105(4)-2.)

Lt-col (Rank.)

Commanding 4 Cdn Rft Bn - 10Cdn Base Rft Group CMP Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 2400 hrs on 15 Jun 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) All option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 45 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 46 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 46 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 5 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 7 of Schedule on p 6 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 750.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

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MEDICAL OFFICER'S CERTIFICATE

JAN 8 1945

K.R. (CAN) Para 557

I hereby certify that I have this morning examined No B75157

PTE DYBALL AE on strength 4 Cdn

Rft Bn, 1 C B R Gp, and in my opinion he is FIT/~~UNFIT~~ to undergo

trial by Court Martial

Capt

Medical Officer 4 Cdn Rft Bn

PLEA IN MITIGATION

I would to draw the attention of the court to the previous conduct of the accused who has been in the army for nearly four years. He has served both in Sicily and Italy and later on was chosen for a special Cdn Company which was fighting in Florence. This coy was made up from the best record men they had over here. He went A.W.L. when they came out of the line at Florence.

Ex "C" 19

Summary of Evidence in the case of B75157 Private Arthur Edward DYBALL, of 4 Cdn Rft Bn, 1 C B R G, who is charged with WOAS Absenting Himself Without Leave, A A Sec 15(1).

By direction of the Commanding Officer, the evidence is taken upon oath:

1st Witness

A49672 Cpl King J P, of 4 Cdn Rft Bn, having been duly sworn, states:

I am A49672 Cpl King J P, Bn Orderly Room Clerk, 4 Cdn Rft Bn.

I produce a certified true copy of a declaration of a Court of Inquiry purporting to relate to the accused and showing that Pte Dyball absented himself without leave from 1100 hrs 8 Sep 44. (Produced, shown to accused, marked Exhibit 'A' and attached hereto).

I further produce a certificate under A A Sec 163 (1) (j) purporting to relate to the accused and showing that Pte Dyball surrendered himself at 2130 hrs 26 Dec 44 at Florence. (Produced, shown to accused, marked Exhibit 'B' and attached to proceedings).

J P King

(J P King) Cpl

The accused declines to cross-examine this witness.

Question to the Accused:

Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but anything you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused:

I have no evidence to give.

I certify that R P 4 (c) (d) (e) and (f) have been complied with.

I certify that this summary was taken down by me in the presence and hearing of the accused.

(R R Brown) Capt
Officer taking Summary

In the Field
5 Jan 45

Army Form B 115 IFO

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at 4 Cdn Rft Bn on the 5th day of October 19 44 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B75157 Pte Dyball A E

DECLARATION.

The Court declare that No. B75157 Pte Dyball A E, 48 Highrs of C, on strength of 4 Cdn Rft Bn, 1 C B R Gp, illegally absented himself without leave from 1 Cdn Spec Inf Coy en route to 4 Bn at 1100 hrs on the 8th day of September 44 and is still so absent

Capt

Names of President and Members	Capt R F S Robertson CIC Pres. Lt P Alexander CIC Member Lt P E Vincent CIC Member

Signature of Commanding Officer Signed " L J Flynn" Lt-col

CERTIFIED TRUE COPY

(A E Davidson) Capt & Adjt

Signature of Officer having custody of the Original Record.

PSSN/1761/2 41/10.000

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IFO 19 DEC 1944

Certificate under Section 163 (i) (j) Army Act

I C.D. PRETORIUS Certify that No B75157 Rank L/CPL

Name Arthur Edward DYBALL of the 4 Bn;, No. 1 C.B.R.G.

surrendered himself to No 226216V Rank Cpl Name Jonker R.B.

at Florence on the 28th Dec 44 about 2130 hrs hrs as a

deserter/absentee without leave.

Commanding ..... Captain

D.A.P.M. (17 Det.)

2 I. of C. PRO, LOY. (V), C.B.F., C.M.F.

(Commanding Officer of the person or portion of His Majesty's Forces to whom surrender was made).

F556 13P4 30M 11-44

Exhibit 170

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B75157	Private	Dyball A E	4 Cdn Rft Bn - 1 C B R G

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheet(s) of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—(1) A trial by field general court-martial (summary trial) may be ordered from the field only.

(2) The conduct sheet(s) mentioned should be produced in court with this statement and not passed to the prosecutor.

* See para. 427, K.R., 1940.

* The particulars herein stated shall commence with the entry of the accused's first joining his unit after attaining the age of seventeen years, and shall include every entry given to the said accused by the unit authority in his record, and shall be recognised as such by the accused, and all cases of sickness, etc., or imprisonment whether

Instructions.—1. In the charge sheet the particulars from the entries to be recorded must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	(No MFM 6 available) times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For		

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence of beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for from 2130 hrs 28 Dec 44 days in civil custody, and 11 days in military custody, making a total of 11 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 21

6. The date of his attestation specified in his record of service is 29 Oct 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A.

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or award)*) N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated

and in his regiment (*or corps or department*) the rank of dated

(71/6220) Wt.13888/144 125,000 5/43 A.&E.C.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B75157 Rank Private Name Dyball A E of 4 Cdn Rft Bn Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court, or authority disposing of the charge, or order of the disposing authority.	Punishment remitted.
		No MFM 6 available		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of January 1945

(A E Davidson) Capt & Adjt
4 Cdn Rft Bn - 1 C B R U

17. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

To the rank of ..... years ..... months

To the rank of ..... years ..... months

To the rank of ..... years ..... months

(Insert date.—If any matter in any of the above particulars cannot be stated from the regimental books the particulars must be stated as far as possible from other sources, and the exception must be explained. In the case of a rank by local promotion only, the exception may be validated from such records as are available.)

RECEIPT FOR CHARGE SHEET & SUMMARY OF EVIDENCE

I hereby certify that I have this date 5 Jan 1945 received from 4 Cdn Rft Bn, 1 C B R Gp, 1 copy of Charge Sheet and Summary of Evidence referring to charge (s) of

A w l 86 15(1)

for which I was remanded for Court Martial.

J E Duffell
(Sig of Accused)

REQUEST FOR DEFENDING OFFICER

I hereby request that Capt G Vaughen if available, act in my defence. If this officer is not available I request that the Commanding Officer of 4 Cdn Rft Bn, 1 C B R Gp appoint an officer to act in my behalf.

J E Duffell
(Sig of Accused)

Pursuant to Chap V Sec V Sub Sec 25 of MML, I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

(Sig of Accused)

5J-118

P6 Dyck-J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		GUILTY	GUILTY	
2nd		ALTERNATIVE WITHDRAWN		
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be imprisoned with hard labour for two (2) years and to be discharged with ignominy from His Majesty's Service

(Sgd) ..... 16 MAY 45 (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 23 MAY 45 A/Commanding 6 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H107194 Pte George DYCK	28 May 45	[illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SJ-118

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA31) 40-P-N-51/1608 (40/501) 4/38B

Convened by Order of A/Col V. STOTT A/Comd 6 CDN INF BDE dated 16 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent & confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appt.	Full Christian Names.	Surname.	Unit.
H 107194	PTE		GEORGE	DYCK	Regt. No. Army

Certified true Copy

[illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date) 16 MAY 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 32/80

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Captions do NOT include all relevant Fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1 P.M. hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused :~~ Do you object to ..... as interpreter ? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer ? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	F. LEE	S SASK R
Member	CAPT	H.A. OSBORN	S SASK R
Member	LT	J.C.H. ST PIERRE	S SASK R
Judge-Advocate			
Prosecutor	LT	J.D. HUNTER	Cameron of C
Defending Offr	CAPT	C.E.G. WHATLEY	Cameron of C

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 32.)

A8. The accused H 107194 Pte GEORGE DYCK NO (1) before arraignment makes(s) (one) (or plea)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 105; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), to call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: Do you wish to make a statement? Ans. N C (3)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*b*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.

Do you intend to call witnesses on your behalf?

Ans. Are they witnesses as to character only? Ans.

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(5)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Offr. Cf RP* 95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1; 84(*C*). *Note the further opportunity in para E1 of Record Form E. Record after Notes addresses, statement, evidence and any summing up by the JA under RP* 42. (5) *fn*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 107(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character.(1)

Ans. N C

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 34(2)(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex and Ex respectively.(3)

(1. *AFB* 253 *or AFB* 294. 2. *AFB* 96. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should prevent accused or his witnesses to prove on oath anything been or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and* 111 *provision, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 119(*A*); *KR Con* 508, 2282, 3613-3616. *Overseas RO JEN* 1213. *MML p* 60, 737-738. *As to sentences assigned for civil offences by the law of England see AA* 40(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 58(1); *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on Inside of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

12 Oct 45

J.A.G. Nov

Original proceedings despatched Donner to DHD.

This D: 10/Docket G/1

Dated 16 Oct 45

Jun Trayd CO

AG Rec

PLEA OF MITIGATION BY DEFENDING OFFICER EXHIBIT "C"

Mr President Members of the Court, Plea of evidence as given for Pte. Mackie will I think do very well for Pte. Dyck also. I may xxx wof pte Dyck has been wounded once andhas just recently returned to the field. He has seen quite some time in action and has a very good record. Due to duress of the moment this man's actions and stand he took was because of his youth and that he did not realize the seriousness of the case and what result would be. Therefore I ask you to bear this in mind on passing sentence on the accused.

"F"

SUMMARY OF EVIDENCE EXHIBIT "A"

In the case of L.107194 Private George DYCK, THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA, a soldier of the Canadian Army Overseas

---

The accused is informed of his rights.

The Commanding Officer directs and the accused demands that the evidence be taken on oath.

FIRST WITNESS for the prosecution: C.79191 A/SCM Leclair T.F., THE QUEENS OWN CAMERON HIGHLANDERS OF CANADA, having been duly sworn states:

"On the 31 March 1945, "C" Company of the Queen's Own Cameron Higlanders of Canada was pinned down along a highway by mach ne gun fire. An "O" group was called and a plan of attack was laid on by the Company Commander. When the time, which was laid on, came and 13 platoon started to move forward, a commotion was noticed in the movement of the platoon, looki g across the road to see what was the matter I noticed that two men were not moving forward and were holding up the rest of the platoon from following their platoon commander. One of these men was L.107194 Private Dyck, G. whom I now recognize, a member of that platoon. I then yelled an order across to L.107194 Private Dyck, G. to get up and move forward with the platoon, this was heard by him for an answer came back which said "No, I can't" Upon hearing this reply I then ordered the rest of the platoon to by pass him and follow their platoon comander in the attack. Upon the completion of the attack I returned to find these men. I found them in a barn which was along the highway, I then sent them to Rear Bn HQ where they were placed under close arrest and a charge was laid by myself."

The accused declines to cross-examine

"T.F. LECLAIR"
C.71911 CSM LeClair T.F.

SECOND WITNESS for the prosecution: L.609741 Pte. Doherty, J.J. THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA, having been duly sworn states:

"On the 31 March 1945 "C" Company of the Queens' Own Cameron Highlanders of Canada were going forward in the attack but was pinned down by machine gun fire. After some time 13 platoon started to move forward Two men in front of me refused to. One of these men was L.107194 Pte. Dyck, G. whom I now recognize, he was ordered to get up and move forward with the platoon. He said "I Can't" We then went forward without him".

The accused declines to cross-examine

JJ DOHERTY"
(L.609741 Pte. Doherty J.J.

THIRD WITNESS for the prosecution: Lt C.E. Newbury, THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA, having been duly sworn:

"On 31 March 1945 I was commander of 13 platoon "C" Company, THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA. A plan of attackon a cross-roads had been formed by the Company Commander, and I had gone forward on recce. I came back and stopped about 100 yards in front of my platoon I shouted for the platoon to advance and follow me. There was considerabl hesitation and loss of time. The Section Commanders were having trouble getting the men to move. Finally the platoon came up, minus two men one of these men was L.107194 Pte.Dyck, G. whom I now recognize, I saw the CSM shouting at them after 13 platoon move off, so I left L.107 194 Pte. Dyck, G., and the other man to his discretion. I gave no permission to any man to remain out of the attack on the cross roads.

The accused declines to cross-examine

"C.E. NEWBURY"
(C.E. Newbury) Lieut.

"FL"

The accused, having been duly cautioned in accordance with RP 4 (e) says:

"I have nothing to say"

" GEORGE DYCK "
B.107194 Pte. Dyck, G.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that RP 4 (c) (d) (e) have been complied with.

"J.D. HUNTER"

(J.D. Hunter) Lieut.
Officer detailed to
complete the summary

EX "Y"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
L.107194	Pte.	Dyck G.	Cameron of Canada

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

~~xxx~~ ..... ~~xxxx~~

~~xxxx~~ ..... ~~xxxx~~

~~xxx~~ ..... ~~xxxx~~

~~xxx~~ ..... ~~xxxx~~

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* ~~xxxx

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		-----NIL-----		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 16th day of May 1945

"FL"

"W.E. OSLER"

(W.E. OSLER) Capt

No. 1.107194 Name DYCK George

Sqn, Battery, or Company: EX "Z"

Corps: C.I.C.

Date of enlistment: 16 Oct 43

GC Badge:

Service or Proficiency Pay:

3/17 MFM 6 (AFB 122) 40/PAM/135 15418

Date of last entry in Company Conduct Sheet:

No. and date of last drunk: NIL

Period not reckoning towards freedom from extra fine: B/A

Sheet No: one

Signature OC Company, etc: A.C. Wilson Major A.16 CITC CA

Character:

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				SHEET DESTROYED 16 APRIL ~~xx~~ 1944. Certified no entries A.C. Wilson Major A16 CITC CA					
				CERTIFIED TRUE COPY OF DOCUMENTS IN MY POSSESSION					
				"W.E. OSLER" "FL" (W.E. Osler) Capt Adjt Camerons of C.					

(PTO)

PLEA OF MITIGATION OF PUNISHMENT By Defending Officer

Mr. President, Members of the Court:-

In behalf of the accused, I would like to place before you one or two outstanding factors which might be given your consideration in passing sentence on charge of which the accused is found guilty. In evidence submitted, it has been brought out that prior to this charge, the accused and members of his platoon had been subjected to heavy fire repulsed and forced to lie in ditch on side of road, awaiting reorganization of his coy.

Further evidence indicated that at no previous time had this man shown tendencies of cowardice and I feel that this young man being confronted with these conditions became mementarily afraid for his personal welfare and felt that he was not capable of carrying on with rest of his platoon. Fact that platoon commander was not in close contact with his platoon at time in question, did not give him an opportunity to prevent his feeling to his platoon commander and receive reassurance from him. Had this been possible, this youth, he is till a yo th, has a future to face and I feel that at this period, an unduly heavy sentence might influence and prejudice his outlook socially when he returns to a civilian status.

Therefore, I ask you to keep this in mind when weighing the evidence and dealing out punishment.

CHARGE SHEET

The accused, L.107194 Private George DYCK, THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA, a soldier of the Canadian Army Overseas, on active service, is charged with:

FIRST CHARGE
AA Sec 5 (7)

WHEN ON ACTIVE SERVICE, MISBEHAVING BEFORE THE ENEMY IN SUCH A MANNER AS TO SHOW COWARDICE

IN THAT HE,

in the field on 31 March 1945 during an attack and when under the enemy's fire fell out of the ranks and went back to take refuge in a barn.

SECOND CHARGE
AA Sec 9 (2)
(Alternative)

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he,

in the field on 31 March 1945 refused to move forward with his platoon when ordered to do so by C.79191 CSM LeClair, T.F., Camerons of Canada

In the field
25 Apr 45

"R.L. RUTHERFORD"
(R.L. Rutherford) Lt.-Col.
Comd Camerons of C

TO BE TRIED BY FGCM

In the field
May 45

"V. Stott" Lt.-Coll
(V. Stott) Lt.-Col.
A/Comd 6 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA8) 40/PAM/1497 (29468)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L.107194	Private	George	DYCK	Camerons of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 MAY 1945 endorsed by me, (~~or by an offr of his unit for trial~~), "To be tried by Field General Court-Martial". "YS"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to superior authority~~) "YS"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. "YS"

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Pl Offr as Prosecutor, for the reasons I have attached hereto.~~ "YS"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ "YS"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	F. LEE (Must be named. RP 106.)	R. CAMP R (Unit.)

MEMBERS.

CAPT	R.A. OSBORN	G. CAMP R
LT (Rank.)	J.C.H. ST. PIERRE (Named or detailed. RP 106.)	G. CAMP R (Unit.)

WAITING MEMBER.

CAPT (Rank.)	E.B. MORGIN (Named or detailed, if any. RP 106.)	2nd SCOTS (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (Country.)

Date 16 MAY 1945

"V STOTT" (Signed personally. RP 105 fn 2.)

(V. Stott)

Lt.-Col. (Rank.)

Commanding 6 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS "YL"

(See overleaf for oaths and notes for use on trial.)

FIELD GENERAL COURT-MARTIAL

CFA45 (In lieu of AFA8)
40/PAM/1697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L.107194	Private		George	DYCK	Cameron of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~HAVE~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 MAY 1945 endorsed by me, (~~or by an offr of my unit for trial~~). To be tried by Field General Court-Martial ". "VS"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reasons connected with military exigencies)~~ "VS"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed "VS" or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Pd Offr as President, for the reasons I have attached hereto.~~ "VS"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~ "VS"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	F. LEE (Must be named. RP 106.)	S. RANK R (Unit.)

MEMBERS.

CAPT (Rank.)	H. A. GIBSON	S. RANK R (Unit.)
LT (Rank.)	J. C. H. ST. PIERRE (Named or detailed. RP 106.)	S. RANK R (Unit.)

WAITING MEMBER.

CAPT (Rank.)	K. B. MORGAN (Named or detailed, if any. RP 106.)	THE SCOTS (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (Country.)	"V. STOTT" (Signed personally. RP 105 fn 2.)	Lt.-Col. (Rank.)
	(V. Stott) Commanding 6 Cdn Inf Bde Convening Officer.	

Date 16 MAY 1945

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS "VS"

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(AO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 88(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) The Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 63.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of evidence except as provided by RP 40(E), KR Can 565(e).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 986. As to certified copies of regimental books see AA 165 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after statute of sentence awarded. (*AA 53(9), RP 115(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

EXHIBIT "B"

QUCH OF C 16 May 45

This is to certify that I have this day examined I.107194 Pte. DYCK, G. and find him fit to stand trial by Court martial.

"G.I. THEAL" CAPT RCAMC
MC QUCH of C

86 b. Sp. Wyn. D. R

A-16207 Spr. Dwyer D.R.
No. 1, Eng Hldg Unit.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 2nd day of June, 19 .

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [*and that it is not practicable to delay the assembly of a General Court Martial for the reasons stated below.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

[*If the convening officer is not the officer commanding the force to which the accused belong, state reasons why it is impracticable that the order should emanate from such officer.

*(1. The Convening Officer.)

*(2. An officer superior in command to the Convening Officer.)

*(3. The officer commanding the district or place where the accused is serving.)

*Signature of officer.]

President.

Rank.	Name.	Regiment.
Major	F.L. Price	No. 2, Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Capt	J. Coles	No. 2, Cdn Inf Hldg Unit
Lieutenant	L.P. Lebrie	No. 3, Cdn Inf Hldg Unit
Lieutenant	J. Wilson	No. 1, Cdn Inf Hldg Unit

Proceedings Revised by Deputy Judge Advocate, Can. Military Hdqrs, London, England, 11/6/41

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-18207 SPR. DWYER D.R. No. 1 Cdn Eng Bldg Unit.	First Charge A.A. Sec. 15 (1) as per charge sheet	GUILTY	GUILTY	Confirmed L. F. Page Brigadier
	Second Charge A.A. Sec 24 (2) as per charge sheet	NOT GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF SEVEN MONTHS AND TO BE PUT UNDER STOPPAGES OF PAY UNTIL HE HAS MADE GOOD THE SUM OF £2-17-0 IN RESPECT OF LOSS OF KIT AND EQUIPMENT AND TO BE PUT UNDER STOPPAGES OF PAY UNTIL HE HAS MADE GOOD THE SUM OF £2-7-4 IN RESPECT OF COSTS OF APPREHENSION.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— NO.

(Signed) L. F. Page, Brigadier (Signed) F. H. Ray Major
Commanding Cdn Base Units, Cdn Army *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President: as to proceedings.

I certify that the above Court assembled on the 7th day of June, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter) Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 7th day of June 1941.
F. H. Ray Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ L.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 20th day of June 1941
L. F. Page Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of A-18207 Spr Dwyer D.R

(*a*) (Dated) 26 Aug 41 (Signed) A. Crich Lieut.
ADJUTANT
No 1 Cdn Engineer Holding Unit C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

D/230

Army Form B 252
(See King's Regulations)

CHARGE

Regiment
Battery
Squadron
Troop or
Company

ADJUTANT'S OFFICE
5 JAN 41
GARRISON
CARLISLE

CHARGE against No. ... Rank ... Name ...

Name ...

Place ... Date of Offence ...

OFFENCE

(i) ... apprehended by the MILITARY POLICE ... at about 0800 hrs. 3/5/41.

(ii) ... Conduct to the prejudice of ... and Military Discipline, ... truly false statement to an N.C.O. ... of the Military Police in order to avoid ... at the above date, time and place.

(iii) ...

Names of Witnesses:—

L/Cpl. ... L/Cpl. ...

Signature of O.C., Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

STATEMENT OF **EVIDENCE** IN THE CASE OF:-

No.A1[illegible]7
Spr.DWYER,D.R.
No.1 HOLDING UNIT.
THE ROYAL CANADIAN ENGINEERS.
LEWISVILLE RCE.
BORDEN
HANTS.

Sir,

At CARLISLE on the 3/5/41 at about 2300hrs.I was on duty in CITADEL GUARD where I saw the above named soldier.

I questioned him and he said he was on sick leave but his pass and A.B.64.had been stolen in LANCASTER.

I detained him pending enquiries and later he admitted being absent.

I arrested him and conducted him to the GARRISON DETENTION ROOM and handed him over to the R.C.O.i/c GUARD to be detained.

[illegible] L/Cpl.
C.M.POLICE.

CARLISLE.
3/5/41.

Sir,

I have read over and corroborate the above statement.

[illegible] L/Cpl.
C.M.POLICE.

CARLISLE.
3/5/41.

REMARKS

Description of Court by which Trial was held, Name or Names of Officers composing the Court and Officer disposing of the charges dispensing with Trial	Date and place of Trial or summary award, or of Order dispensing with Trial	Charges upon which convicted, or with which charged when trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this [illegible] day of [illegible] 19[illegible]

(W.S. Hogg) Lieut.
Assistant Adjutant,
No.1 (Cdn) E.H.U.
C.A.(o.s.)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A-18207 Spr. Dwyer, R.D. of the No.1 (Cdn) Engineer Holding Unit.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For Absent without leave	times	Three times.
For Breaking barracks without permission whilst a defaulter.	times	One times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody,

and 35 days in Military Custody.

Total 35 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 yrs. 4 mons.

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 20 Sept. 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 9 mons.

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr. 9 mons. years' service.

9. The accused is entitled to reckon 1-9mons. years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings. F.H.P.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted

Description of Court by which tried, or nature of offence on finding of the Court in cases dispensed with	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

(Continued overleaf)

CERTIFIED A TRUE COPY Sheet #1 destruyed 30-3-40

No. A-18207 Name Dwyer Donald Raymond | Sqn., Battery, or Company | Corps 1st. Field Park | Date of enlistment 20-9-39 | G.C. Badges | Service or Proficiency Pay | Character

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	9/6/40	Spr.		AWOL from 2200 hrs 9 June 40 until 2100 hrs 14 June 40.	1 Cpl. Steward	9 dys. det.	16/6/40	J.C.Clunie	F.5 days pay F.R.&I.149.
Petawawa	24/8/40	Spr.		AWOL from 2200 hrs 22-8-40 till 2200 hrs 23-8-40.	L/Cpl.Selens 1 L/Cpl.McCaffrey	10 days C.B.	24-8-40	Lt. Turner	F.R.&I. 1 days pay forf.
Petawawa	26/8/40	Spr.		Breaking barracks without permission while a defaulter.	Lt.Turner Spr.Easton	3 days C.B.	26-8-40	Lt.Clunie	
Cove	9/1/41	Spr.		A.W.L.from 0600 hrs 27 Dec 40 till 1600 hrs 8 Jan 41. A.A.Sec.15(1)	L/Cpl. Soughton	28 days Detention	9 Jan 41.	Lt.-Col. Mackenzie	Forfiets 13 days under F.R.&.I. 149.

(P.T.O.)

I, the undersigned, request that an Officer be present to represent me at my Trial.

I request that Lieut. G.T.Burbidge or Major W.E.Andrews represent me if possible.

Spr. D.R. Dwyer

List of Kit Deficiencies of No.A-18207 Sapper
Donald Raymond Dwyer, No.1 (Cdn) Engineer Holding Unit
as of 7th. June 1941

Article	Deficient	Value
Brasses, button	1	0 - 0 - 3
Brushes, shaving	1	0 1 2
Drawers, woolen, prs.	1	0 7 9
Holdalls	1	0 0 9
Housewife	1	0 0 7
Razors	1	0 0 5½
Shoes, canvas, prs.	2	0 3 8
Towels, hand	1	0 3 0
Bags, ration	1	0 0 2½
Belts, waist	1	0 3 7
Braces, L. & B.	1	0 7 8
Carriers, cart.	2	0 0 3
Covers, Hessian	1	0 7 0
Haversacks	1	0 7 6
Packs	1	0 10 0
Sheets, ground	TOTAL	£ 2 - 17 - 0

Lt. Qr. Mr. for Quartermaster
(Honorary) Lieut.
No1. (Cdn) Engineer Holding Unit
Canadian Army (Overseas).

FHP

List of Kit Deficiencies of No.A-18207 Sapper
Donald Raymond Dwyer, No.1 (Cdn) Engineer Holding Unit
as of 7th. June 1941

Article	Deficient	Value
Brasses, button	1	0 - 0 - 2
Brushes, shaving	1	0 1 2
Drawers, woolen, prs.	1	0 7 9
Holdalls	1	0 0 9
Housewife	1	0 0 7
Razors	1	0 0 6½
Shoes, canvas, prs.	1	0 3 6
Towels, hand	2	0 3 0
Bags, ration	1	0 0 2½
Belts, waist	1	0 3 7
Braces, L. & R.	1	0 3 8
Carriers, cart.	2	0 7 8
Covers, Messtin	1	0 0 3
Haversacks	1	0 7 0
Packs	1	0 7 6
Sheets, ground	1	0 10 0
	TOTAL	£ 2 - 17 - 0

for Quartermaster
Lt. Quinn, Lieut.
Hel. (Cdn) Engineer Holding Unit
Canadian Army (Overseas).

FHP

Army Form B115

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

Record of the Declaration of a Court of Inquiry assembled at East Louisburg Barracks, BORDON, Hants., on the 14th. day of March, 1941, for the purpose of inquiring into and reporting upon the illegal absence and deficiencies of kit, if any, of A-18207, Spr. Dwyer, D.R. of the No.1(Cdn) Engineer Holding Unit Canadian Army (Overseas).

DECLARATION OF THE COURT

The Court declars that A-18207, Spr. Dwyer, D.R., illegally absented himself without leave at No.1 Engineer Holding Unit, BORDON, Hants., at 2200 hrs. on the 19th. day of February, 1941,; that he is still so absent, and that on the 20th. day of February, 1941, he was deficient and is still deficient of kit to the value of £13-1-3.

Deficiencies

Article	No.	£	s	d.
Anklets, Web	1		8	11
Battle Dress, Blouse	1	1	2	8
" Trousers	1	1		6
Boots, ankle, prs.	1	1	2	6
Braces, prs.	1		1	6
Brasses, button	1			2
Brushes, boot blacking	1			8½
" polishing	1		2	1
" button	1		1	2
" cloth	1		2	9
" shaving	1		1	2
" tooth	1			6½
Caps, comforter	1		1	3
Caps, field service	1		2	2
Drawers, woolen, prs.	1		6	3
Dressings, F.P.	1		1	2
Gloves, woolen, prs.	1		1	8
Holdalls	1			11
Housewife	1			6
Jacket, sweater	1		8	6
Razor	1			8½
Shirts, F.K.	2		18	10
Shoes, canvas, prs.	1		3	6
Socks, prs.	3		5	9
Towels, hand	2		2	8
Cake, ration	1			2½
Belts, waist	1		5	4
Braces,	1		3	7
Carriers, cartridge	2		9	9½
Covers, messtin	1			3
Haversack	1		10	7½
Helmet, steel	1		7	0
Packs	1		12	5½
Sheets, ground	1		10	
Respirator, complete	1		16	10
Eyeshields, pkg.	1		2	3
Ointment, A.G.	1			9½
Anti-Dim	1			3
Total Deficiencies		£ 13	1	3

Ref: K.R.& O.(Can.)539

Regt.No: A 10207

Rank: Spr

Name: Dwyer D.R.

Regt: R.C.E.Holding Unit

Unit:

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from Carlisle

DATE	PARTICULARS	AMOUNT		
7-5-41	Portion Escorts return fare from London to Carlisle		15	4
	Prisoners single fare to London from "	1	3	0
	Prisoners single fare from London to Portion of Escorts expense for bed,meals,bus fares and meals for the prisoners.		9	0
	TOTAL -- £	2	7	4

I certify that the above statement of expenses is correct and that the amounts are fair and just.

Capt.
(V.Harries Goad)
D.A.P.M. Canadians.

NOTE.

No reimbursement for this account is to be sent to our office from your goodself,as the amount has been paid from petty cash and charged to Public Funds.
If the accused is found guilty a stoppage of pay should be put through your units Part II Orders.

LIST OF EXHIBITS

In the case of A-18207, Sapper Donald Raymond Dwyer No.1(Cdn) Engineer Holding Unit.

(a) Record of the Declaration of a Court of Inquiry.

(b) Army Form B252, Charge Report.

(c) Expenses of Apprehension.

Names of Presidnet and Members

President: C.V.F.Weir, Lieut.,R.C.E.
Members H.M.Brack, Lieut.,R.C.E.
C.B.Fels, Lieut.,R.C.E.

I concur with the findings of the Court

Signed (L.F.Barnes) Lt.-Col.,R.C.E.
Officer Commanding,
No1. (Cdn) E.H.U. C.A.(O.S.)

(L.F.Barnes) Lt.Col.,R.C.E.
Officer Commanding
No.1 (Cdn) E.H.U.C.A.(O.S.)

Certified true copy:-

ADJUTANT
No.1 Cdn. Engineers' Holding Unit C.A.

A-18207 Spr. Dwyer D. R.
No 1, Eng Hldg. Unit.

Evidence in Mitigation of Punishment

Major W. E. Andrews
2/c No 1. Eng Hldg Unit.

1. That the a/m sapper was believed to be under age
2. That he had been subject to shock as a result of bombing in London sometime previously
3. That he was a good soldier and that the writer would like to have him in his Coy. and could make a useful soldier out of him by proper handling.

W. E. Andrews Major

SUMMARY OF EVIDENCE

Article	Deficient	Value £	s	d
Anklets, web, prs.	1	0	4	4
Boots, ankle, prs.	1	1	2	6
Brasses, button	1	0	0	2
Brushes, boot, blacking	1	0	0	8½
" " polishing	1	0	2	1
" button	1	0	1	2
" cloth	1	0	2	3
" shaving	1	0	1	2
" tooth	1	0	0	5
Caps, comforter	1	0	1	8
Drawers, woollen, prs.	1	0	7	9
Holdalls	1	0	0	9
Housewife	1	0	0	7
Razors	1	0	0	5½
Shirst, F.S.	2	0	18	10
Shoes, canvas, prs	1	0	2	8
Socks, prs.	2	0	3	10
Towels, hand	2	0	3	0
Bags, ration	1	0	0	2½
Belts, waist	1	0	3	7
Braces, L.&R.	1	0	3	5
Carriers, vart.	2	0	7	8
Covers, Messtin	1	0	0	3
Haversacks	1	0	7	0
Packs	1	0	7	6
Sheets, ground	1	0	10	0
	TOTAL	£3	14	9½

D G Milton W/Sgt.

The accused declines to cross-examine this witness.

The accused, after being cautioned, as provided by R.P.4(E), declines to make a statement.

Certified that R.P.4 (C)(D)(E) and (F) have been complied with.

Taken down before me in the presence and hearing of the accused, at Louisburg East Barracks, BORDON, Hants., this 14th., day of May, 1941

W.M. Cleveland

(W.M. Cleveland) Capt.
No.1(Cdn) Engineer Holding Unit
C.A.(O.S.).

J.H.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. A-18207, Sapper Donald Raymond Dwyer, No.1(Cdn) Engineer Holding Unit, a soldier of the Canadian Army (Overseas).

Evidence taken on oath as ordered by Lieut.-Col. L.F.Barnes, Officer Commanding No.1(Cdn) Engineer Holding Unit.

FIRST WITNESS: Lieut. W.S. Hogg, No.1(Cdn) Engineer Holding Unit, having been duly sworn, states:

I am Officer i/c Records No.1(Cdn) Engineer Holding Unit, and as such, produce in evidence certified true copies of documents as follows:

(a) Record of the Declaration of a Court of Inquiry assembled at East Louisburg Barracks, BORDON, Hants., on the 14th day of March, 1941, for the purpose of inquiring into and reporting on the illegal absence and deficiencies in kit, if any, of A-18207, Sapper Dwyer, D.R., of No.1(Cdn) Engineer Holding Unit.

(b) Army Form B252, Certificate of apprehension and statement of evidence as submitted by the Canadian Military Police.

(c) Statement of expenses incurred in apprehending and returning No.A-18207, Sapper Dwyer, D.R. to his unit from CARLISLE.

I have satisfied myself that these documents refer to the accused.

W.S. Hogg Lieut.

The accused makes no objection to the above documentary evidence.

The accused declines to cross-examine this witness.

SECOND WITNESS: No. L-22039, L/Sgt. Milton, D.A., No.1(Cdn) Engineer Holding Unit, having been duly sworn, states:

I am W.C.O. i/c Clothing Stores, No.1(Cdn) Engineer Holding Unit. On the 13th day of May, 1941, I took an inventory of the kit of No.A-18207, Sapper Dwyer, whom I now recognize. I checked the kit in the possession of Sapper Dwyer and that previously turned into Pack Stores with the MPC800 of Sapper Dwyer and found him to be deficient of the following to a total value of ~~XXXXXX~~ $5-14-02

Bordon, Hants,

.....June, 1941.

I have this day examined A/8207 Gnr. Dwyer D.R.
..... and found him medically fit
to undergo trial by Court Martial.

[signature] Capt.

MEDICAL OFFICER
No. 1 Cdn. Engineers' Holding Unit, C.A.

CHARGE SHEET

(L.F.Barnes) Lieut.-Col.,
Officer Commanding,
No.1(Cdn) Engineer Holding Unit
C.A.(O.S.)

BORDON,Hants.,
14th., May,1941.

To be tried by Field General Court Marshall

(L.F. Page) Brigadier
Commanding Cdn Base Units.

...ton, Hants
1st June 41.

CHARGE SHEET

The accused, No.A-18207, Sapper Donald Raymond Dwyer, No.1 (Cdn) Engineer Holding Unit, a soldier of the Canadian Army (Overseas) is charged with:

First Charge
Sec. 15(1)
Army Act

Absenting himself without leave,

in that he, at Louisburg East Barracks, BORDON, Hants., absented himself without leave from 2200 hrs. the 19th. day of February, 1941, until apprehended by the Canadian Military Police at CARLISLE, at about 2200 hrs. the 3rd. day of May, 1941, thereby incurring expenses of apprehension amounting to £2-7-4.

Second Charge
Sec.24(2)
Army Act

Losing by neglect, his clothing, equipments, and regimental necessaries,

in that he, at Louisburg East Barracks, BORDON, Hants., on the 13th. day of May, 1941, was deficient of the following:

Article	Deficient	Value
Anklets, web, prs.	1	0 - 4 - 4
Boots, ankle, prs	1	1 2 6
Brasses, button	1	0 0 2
Brushes, boot, blacking	1	0 0 8½
" " polishing	1	0 2 1
" button	1	0 1 2
" Cloth	1	0 2 3
" Shaving	1	0 1 2
" Tooth	1	0 0 5
Caps, comforter	1	0 1 8
Drawers, woolen, prs.	1	0 7 9
Holdalls	1	0 0 9
Housewife	1	0 0 7
Razors	1	0 0 3½
Shirts, F.K.	2	0 18 10
Shoes, canvas, prs.	1	0 3 6
Socks, prs.	2	0 3 10
Towels, hand	2	0 3 0
Bags, ration	1	0 0 2½
Belts, waist	1	0 3 7
Braces, L. & R.	1	0 3 5
Carriers, Cart.	2	0 7 8
Covers, Mess tin	1	0 0 3
Haversacks	1	0 7 0
Packs	1	0 7 6
Sheets, ground	1	0 10 0
TOTAL		£5 - 14 - 9½

To be tried by Field General Court Marshall

(L.F. Page) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 2nd June 41.

ON-131

Ale. Dyer, E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-1329 Pte Ernest DYER PPCLI att 1 Cdn Discipline Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty.	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E1.)

Sentence Awarded by the Court:

To undergo detention for six months.

(Sgd) ... Judge-Advocate, if any. 19 June 45 Date awarded. (Sgd) ... President. (See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that ~~the accused be not released from detention barracks until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) W. Lind Brig

Date 3 July 45 Commanding 3 C B R G P Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H1329 PTE ERNEST DYER	4 JUL 45	J. Richmond Lt-Col Comd. 1 Cdn Discipline Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 15 JUL 1945 CMHQ

RECORDED AT CMHQ IN AB 160 SN 131

FIELD GENERAL COURT-MARTIAL (Appointed by Order of Brig J S H LIND Comd 3 CBRG dated 14 JUN 45)

CF(AB) in lieu of AFA(S) 40 & 41/1608 (4/38)

4/388

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-1329	Pte		Ernest	DYER	PPCLI att 1 Cdn Discipline Centre

PROCEEDINGS REVIEWED 16 Jul 45 [illegible] Capt WTNOS REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 19 June 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 34/32.

A1. The President, Members, ~~waiting Member, J.A. if any~~, ~~and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereto. See back of Convening Order, CF 645, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

~~The President to accused: Do you object to ... as interpreter? Ans ...~~

~~The interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A5. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No - Sir. (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A6. The President, Members, ~~Judge-Advocate, and Offrs under instr, if any, are sworn or~~ The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A E LEFROY Seaforth Highrs	Cdn C M Centre
Member	Capt	M.R.M. DALE	Cdn C M Centre
Member	Capt	R.C.L. MILES RCA	Cdn C M Centre
Judge-Advocate	—	— — —	—
Prosecutor	Capt	G.T. GALE	Cdn C M Centre
Defending Offr	Capt	R.R. BROWN	Cdn C M Centre

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 3.)

A8. The accused H-1329 Pte Ernest DYER before arraignment make(s) (no) ~~no~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or for one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the submissions made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP Court. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 645 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

JCBP Vol. 1 p. 111

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(D), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charges, to call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No - Sir.

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p. 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3.* *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....

Do you intend to call witnesses on your behalf? Ans.....

Are they witnesses as to character only? Ans.....

(1. *RP 115.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(A).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (5), RP 45, 120(B).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No - Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy extract of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.S. 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MOB 255 or AFB 294.* 2. *MFM 6.* 3. *RP 46, KR Can 338. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, in mitigation of punishment through Defending Officer.

(1. *RP 37(C), 46(D).* 2. *Witness, if any, recorded per Notes. Court should permit accused or his witnesses to give evidence on oath anything theirs or previously proved which would affect the amount of punishment.* *RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also by the Court~~.(2)

(1. *Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its promise, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 340-344, Overseas AO 309, 2323, MML p 66, 732-738. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(7), KR Can 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ OL 175)

I certify that I have this day examined H1329 (No.)
Pte (Rank) DYER (Name) E. and in my opinion he is
fit to undergo trial by Court-Martial.

Station Field

Date 19-6-45

(Sgd) (Medical Officer)

Unit I Cdn. Disc. Centre.

CHARGE SHEET

The accused, H-1329 Pte E rnest DYER, Princess Patricia's Canadian Light Infantry, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1500 hrs 11 Apr 45 until apprehended in ANTWERP, Belgium at 1630 hrs 5 Jun 45.

(Total absence: 55 days 1 hr 30 minutes)

In the Field
9 Jun 45

(J M Sharp) Major
a/Comd
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
14 Jun 45

(J S H LIND) Brigadier
Commanding
3 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-1329	Pte		Ernest	DYER	PPCLI att 1 Cdn Discipline Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 JUN 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	A E LEFROY	Seaforth Highrs	Cdn C M Centre

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	M R M DALE		Cdn C M Centre
Capt	R G L MILES	RCA	Cdn C M Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 14 JUN 45

(Signed personally. RP 105 fn 2.)

(J S H LIND)

Brigadier (Rank.)

Commanding 3 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RD (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 86(C)*), any objections (*RP 86(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (or, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 19)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to *facts* or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(D)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 40(E), KR Can 565(a).*)

(vii) *Summing up by JA, if any.* (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*See RP 83(C).*)

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

Pte in Litigation

Pte Page joined army in Jan 43. when he reached the age of 18½. He came overseas in July 43, and joined the 22nd LI in Italy in Dec. 43. Then he fought through the Hitler Line - and the other man drew with his unit. He arrived in Rimini 6 March 45, and opted that I am - he rejoined now, as was AWL.

One way he could look at it, he stayed longer than he had studied.

Pte Page is now only 21 yrs old. His Mom & Dad are minor cases.

I ask the court to consider these facts when passing sentence.

Brown Capt
Defending Officer

Exhibit "A"

Summary of Evidence in the case of H 1329 Pte DYER E, PPCLI, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Pt 11 Order No 36 dated 16 May 45

Exhibit "B" - Certificate of arrest dated 5 Jun 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

M. Rousseau Capt
(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

In the Field
9 Jun 45

Exhibit A
M. Rousseau Capt

PRINCESS PATRICIA'S CANADIAN LIGHT INFANTRY.
PART II ORDERS ISSUED BY
CANADIAN SECTION 2ND ECHELON HEADQUARTERS
21 ARMY GROUP

Last Order No.35 3 May 45 — This Order No.36 16 May 45

"A". OFFICERS.

1 ATTACHED.

(a) Attached from HQ 2 Cdn Ind Bde wef 13 Apr 45
H/CAPT G A MEIKLEJOHN CCS

(b) Ceases attached from HQ 2 Cdn Inf Bde wef 10 Apr 45
H/CAPT E H S IVISON CCS

2 LEAVE OF ABSENCE.

(a) Granted 9 days PL to UK with money allowance in lieu of rations and proceeded 29 Apr 45
Capt J A McLEOD RCAPC
LIEUT H E DAHLQUIST

(b) Returned from 9 days PL to UK date shown
CAPT E D McPHAIL 2 May 45
LIEUT C S PROST 2 May 45

3 STRENGTH DECREASE.

(a) SOS to XS List wef 1 May 45 Auth Defensor A.G/7324
CAPT A M CAMPBELL

"B" OTHER RANKS

4 STRENGTH INCREASE.

(a) TOS from RCR wef 1 Apr 45 Auth GOC 1 Cdn Inf Div
L13618 PTE ADAMES EW

(b) TOS from X-4 PPCLI wef 25 Apr 45 Auth ARS/169 dated 23 Apr 45
H021186 PTE SCHWARTZ H
H616823 PTE TAYLOR GC
H615825 PTE ZAWORSKI WW
H614572 PTE YONDA J
H614610 PTE YOZENKO F
H614519 PTE YURCHAK W
H616380 PTE ZAREK PW
B48674 PTE MAYO VR
B148750 PTE MITCHELL HR

(c) TOS from X-4 PPCLI wef 25 Apr 45 Auth ARCO G/203 dated 21 Apr 45
H16855 PTE HYMAN CE Shoemaker "C"
H613290 PTE SAWULA M

(d) TOS from X-3 PPCLI wef 27 Apr 45 Auth ARCO/EAR/G/309 dated 1 May 45
H40722 PTE GOODIE P DM(MV)"C"

(e) TOS from X-4 RCASC wef 2 May 45 Auth ARCO G/272 dated 28 Apr 45
F34954 PTE ENUPE CE RCASC Cook "B"

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4 STRENGTH INCREASE. (Cont'd)

(f) TOS from X-4 PPCLI wef 30 Apr 45 Auth ARS/197 dated 28 Apr 45

H606703	PTE	BELBAS	N	
M12245	CPL	CROSSMAN	JW	
L50175	PTE	GOUVERETTE	FL	
H37021	PTE	PAVEL	F	
H64014	PTE	FILL	S	
H45902	PTE	KELLY	LP	
H16109	PTE	MATHESON	J	
B74218	SGT	PITRE	JE	
K74611	PTE	PRINGLE	GE	
M12195	SGT	WHITFORD	AR	

(g) TOS from X-4 PPCLI wef 2 May 45 Auth ARCO 9/271 dated 29 Apr 45

L155897	PTE	BEATON	HH	
H62904	PTE	BISHOP	ED	
L155540	PTE	BOGLES	H	SIG INF "C"
L105185	PTE	FOSTER	VS	SIG INF "C"
L107580	PTE	HARRIS	EN	SIG INF "C"

5 TRANSFERS.

(a) Transferred from CIC to RCOC and to remain posted to PPCLI wef 30 Apr 45 Auth EA7/5073 dated 27 Apr 45

H16241	PTE	LOCKHART	LS	SPC BAKER "B"

(b) TRansferred from CIC to RCASC wef 17 Apr 45 and to remain posted to PPCLI Auth CIC/4-6 dated 25 May 44

L106235	PTE	RIGDEN	G	Cook "C"

(c) Transferred from CIC to RCASC wef 27 Apr 45 and to remain posted to PPCLI Auth CIC/4-6 dated 25 May 44

B144288	PTE	DUNCAN	HW	Cook "C"

6 ATTACHED.

(a) Attached fap to HQ 2 Cdn Inf Bde wef 30 Apr 45

M10570	PTE	BALMER	D
H66009	PTE	PAULSON	B
L105658	PTE	HUDYMA	M

(b) Attached fap to 1 Cdn Cooking School wef 3 May 45

M11709	SGT	WEDDELL	J	RCASC Cook "B"

7 LEAVE OF ABSENCE.

(a) Returned from 9 days PL to UK 28 Apr 45

L88605	PTE	BAPTISTE	B
H17361	PTE	BECHDOLDT	VG
H16732	L/Cpl	BROWN	PG
M100704	CPL	BROWN	J
K85388	PTE	BUTCHER	NS
H17113	PTE	CARLSON	CGW
L86512	PTE	CAMPBELL	DW
K65661	PTE	CREIGHTON	H

7 LEAVE OF ABSENCE. (Cont'd)

(a)

H16767	PTE	DUNCAN	J
H17200	PTE	deMONTIGNY	RJ
P22274	SGT	ENGLAND	CL
H17793	PTE	ESAU	H
L13588	PTE	FITZPATRICK	JA
H16984	PTE	GAUTHIER	A
H17442	PTE	GAUTHIER	A
H17442	Pte	GLASS	K
K62289	CPL	GOODRICH	KE
K67285	PTE	HARRISON	AW
P22261	SGT	ISAAC	JF
K65283	SGT	JENNINGS	JE
H102756	CPL	KNOX	GW
H200063	PTE	KUMHYR	B
H16492	√SGT	LAW	I
H100899	PTE	LINDAL	EH
H16515	PTE	McBRIDE	F
H16275	SGT	McDONELL	DAW
H17170	PTE	MAXIM	J
C78028	L/CPL	MEAGHER	BG
H17815	PTE	MESTDAGH	A
H16236	PTE	MILLER	J
H16685	PTE	MORDEN	RJ
H16344	√SGT	NORTHWOOD	K
H16559	PTE	OLSEN	CVF
H3029	√CQMS	PAPINEAU	OJ
H16671	L/CPL	PROUT	HW
H16968	PTE	SCARLETT	CW
H20862	PTE	SEDOR	J
M31286	SGT	SMITH	EF
H17725	CPL	STEVENSON	W
H17161	PTE	TURNER	GH
H16782	√SGT	WRIGHT	JD

(b) Returned from 9 days PL to UK 2 May 45

H17836	√SGT	EICHELE	
M11323	SGT	SMYTHE	S
K85256	CPL	HART	SA
H16417	√L/SGT	JOHNSON	H
K74376	√CPL	JOHNSTON	JM
H17874	L/CPL	McLAY	J
H16711	PTE	AIMOE	JA
H46443	PTE	ATTRIDGE	AL
H16118	PTE	BROWN	JE
C77931	PTE	DEIR	PL
H49854	PTE	ENINGER	B
H16967	PTE	ERICKSON	ED
H17697	PTE	FAVEL	H
E106618	PTE	GIRARD	JA
K85337	PTE	HAMILTON	LJ
L101661	PTE	KINCH	C
H95686	PTE	JORGENSON	GB
H16241	PTE	LOCKHART	LS
H16695	PTE	McKAY	R
B127652	PTE	McLAGHERN	LC

7 LEAVE OF ABSENCE. (Cont'd)

(b)

H16064	PTE	NOVADILE	H
H77337	PTE	deKERUZEC	AG
H16064	PTE	PIGEON	JM
C78197	PTE	SMITH	W
M12300	PTE	SIM	G
K92251	PTE	STEPHENSON	J
H16947	PTE	MORIN	LJ
H16955	PTE	SIMS	EG
H35484	PTE	PRATT	A
H16563	PTE	ZIMMERMAN	AR
H16803	PTE	MASON	KC
M11709	SGT	WEDDELL	J RCASC

(c) Returned from 9 days PL to UK wef 26 Apr 45

H16788	PTE	BRADLEY	LA
H16942	PTE	CAMPBELL	DW
K85410	PTE	DAVIES	LB
H16312	PTE	MURRAY	WM
H16368	PTE	PARKINSON	AC
K97803	PTE	TOWMLEY	RW
H16234	PTE	CODY	TJ

(d) Granted 9 days PL to UK with money allowance in lieu of rations and proceeded on 29 Apr 45

K24080	A/SGT	ALLEN	EE
M107038	A/SGT	CODERRE	A
H17185	A/SGT	REILLY	AE
K85315	L/SGT	FREER	EJ
L104453	L/SGT	MATTSON	RH
H16865	L/SGT	PERKINS	CW
H8584	A/CPL	HATHAWAY	D
K49854	CPL	WILLIAMS	C
H17123	L/CPL	HENDRICK	J
K49711	PTE	BROWN	HM
L105792	PTE	BROWN	SJ
H16342	PTE	COLE	R
B85796	PTE	DRURY	EJ
L102538	PTE	FISCHER	AP
K37091	PTE	FORTIN	AM
M103572	PTE	GRENIER	M
H17175	PTE	GORDON	JP
H16061	PTE	HORA	JB
D82278	PTE	JONES	J
H16777	PTE	KLASSEN	JV
M12384	PTE	KNOX	PS
H17189	PTE	KASPRICK	JJ
D82366	PTE	MAHER	JJ
H101408	PTE	MARSHALL	JE
F3165	PTE	MATTHEWS	HJ
H16760	PTE	MOORE	JH
H16337	PTE	OLINYK	M
B42219	PTE	PEWSON	LG
H16334	PTE	POGHAILO	T
C79226	PTE	ROK	DI
H16287	PTE	TESSOVITCH	JW

This Order
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7 LEAVE OF ABSENCE. (Cont'd)

(d)

K85479	PTE	TODEVIC	
C65055	PTE	TORRANCE	JS
K47353	PTE	WHITEHEAD	TA
			C

(e) Granted 9 days PL to UK with money allowance in lieu of rations and proceeded on 2 May 45

H38377	SGT	STANNARD	
H16795	L/SGT	MILNE	CG
K80112	L/SGT	RAVEN	EK
K21105	A/SGT	WOOD	PJ
H1606	A/CPL	DANE	WGA
B52757	CPL	FINNEMORE	GW
H1090	A/CPL	FOX	RJ
H37143	A/CPL	HERRY	JA
H17295	A/CPL	SLATER	D
M106176	A/CPL	ST JEAN	JE
H18654	CPL	WHYTE	EJ
H17886	CPL	WOODFORD	D
K69672	L/CPL	BLAIS	WJ
B52749	L/CPL	HAYES	PA
H8099	L/CPL	HENDERSON	RP
B49463	A/CPL	LALONDE	S
K48499	PTE	ANTHONY	TJ
K67042	PTE	BEGON	AM
H57004	PTE	BUCK	M
M11361	PTE	COVE	CW
L106144	PTE	DESJARLAIS	GA
H16613	PTE	DOIG	A
B144288	PTE	DUNCAN	DA
D157575	PTE	FRENCH	RW
H8432	PTE	GLADSTONE	GM
H1758	PTE	GLADSTONE	JW
H1440	PTE	GRAFKO	HW
K80617	PTE	GUTIERREZ	J
H6226	PTE	HARPER	P
H1416	PTE	HARRISON	J
H54802	PTE	LeCAIN	AB
K67016	PTE	LOUGHEED	GA
M106822	PTE	MARTIN	JL
B106617	PTE	MURPHY	H
B51749	PTE	NOBLE	V
K48654	PTE	PAPP	JW
H16206	PTE	PHILLIPS	J
H101095	PTE	PHILLIPOTT	AN
K73244	PTE	POLLOCK	AE
H16810	PTE	PRITCHETT	WC
H16491	PTE	PYNE	AS
H200184	PTE	RICHARDS	WA
H16385	PTE	ROBLIN	W
M106099	PTE	ROGERS	WE
K69811	PTE	SALONEN	GJ
K49640	PTE	SCHERK	RT
H103787	PTE	SMITH	WC
B42770	PTE	STREET	H
H16430	PTE	T ODD	AH
K37098	PTE	WELLS	LE
M30942	PTE	YAUSIE	B
H100166	PTE	ZIELKE	HJ
			PW

Exhibit H
M. Rousseau Capt

PRINCESS PATRICIA'S CANADIAN LIGHT INFANTRY
PAGE 6

This Order
No.36
16 May 45

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8 ABSENT WITHOUT LEAVE.

(a) AWL from 0600 hrs 11 Apr 45 Still absent 0600 hrs 3 May 45
22nd day
C80257 PTE ANSLEY J

(b) AWL from 1500 hrs 11 Apr 45 Still absent 1500 hrs 3 May 45
22nd day
H1389 PTE DYER E

9 APPOINTMENTS & PROMOTIONS.

(a) To be A/WO.II CSM wef 20 Apr 45
P21433 CQMS D'ALTROY FA

(b) To be Sergeant wef date shown
M107039 CPL A/SGT GODERRE A 25 Apr 45
H16307 CPL A/SGT SHERWOOD WH 25 Apr 45
M31286 CPL A/SGT SMITH EF 3 May 45
H17836 CPL A/SGT ZICHELE A 1 May 45

(c) TO be A/Sergeant date shown
K51807 CPL(T/SGT) THOMSIC MA 4 Apr 45 CR A/- 6 Apr 45
M100704 CPL BROWN JA 28 Apr 45
K21105 CPL (T/SGT)WOOD WGA 2 May 45

(d) To be A/T/Sergeant wef 2 May 45
H16546 PTE(A/CPL) TUGBY JA

(e) To be A/CQMS wef 20 Apr 45
H100316 SGT DOLL EJ

(f) To be A/Corporal date shown
K67168 PTE WOTHERSPOON J 22 Apr 45 RCASC Cook"C"
M106057 PTE(T/CPL)HUDRUD MR 8 Mar 45 CR A/- 10 Mar
M106176 PTE(T/CPL)ST JEAN EJ " "
H9397 PTE(T/CPL)ZWARICH P " "
H87900 PTE(T/CPL)CARDINAL WO 1 Apr 45 CR A/-6Apr 45
H17871 PTE(T/CPL)McLAY J 28 Apr 45
H45902 PTE KELLY LF 2 May 45
B49463 PTE(T/CPL)LALONDE TJ 2 May 45

(g) To be T/Corporal date shown
H14076 PTE PHILPOTT AG 29 Apr 45
M100671 PTE SMITH H 30 Apr 45
H14883 PTE BIRSS EH 8 Mar 45 CR A/- 10 Mar
L104095 PTE OSBORD LL " "
K69998 PTE UNDERWOOD C " "
H14851 PTE WILKIE W " "
M52971 PTE MEADS RG 28 Apr 45
M100899 PTE LINDAL EH 30 Apr 45
M105645 PTE GRAMS LE 2 May 45
M100860 PTE THIESSEN A 2 May 45
H43297 PTE STEUART CC 1 May 45
B143694 PTE LAMBERT MN 2 May 45
M106204 PTE YOST MSS 3 May 45
H16769 PTE MOORE JH 4 May 45
K50410 PTE INGLIS CHA 4 May 45
H101093 PTE PHILIPPOT AE 4 May 45

9 APPOINTMENTS & PROMOTIONS. (Cont'd)

(h) To be Corporal wef 20 Apr 45.
H16654 PTE(A/CPL) WHYTE D

10 REVERSIONS.

(a) Reverts to Private wef 20 Apr 45. To draw incr daily regt'l rate of pay of $1.50
L65207 PTE(L/CPL) PENNINGTON R

(b) Reverts to Private at own request wef 28 Apr 45 To draw daily regt'l rate of pay of $1.50
H21076 PTE(L/CPL) PARK AL

(c) Reverts to Corporal wef 4 Apr 45 at own request
K51342 SGT HOLUBOSH J

11 PAY & ALLOWANCES.

(a) Granted daily regt'l rate of pay of $1.50 wef 11 Nov 44 having completed 6 mos service with efficiency and good conduct Auth CO.486/42
B161545 PTE KAY ML

12 TRADESMENS' QUALIFICATIONS.

(a) Qualified Cook Gp "C" wef 17 Apr 45 Auth T.T.Bd Report dated 17 Apr 45
L105235 PTE RIGDEN G

(b) Qualified Cook Gp "C" wef 27 Apr 45 Auth T.T.Bd Report dated 27 Apr 45
B144288 PTE DUNCAN RW

13 TRADESMENS' RATES OF PAY.

(a) Granted tradesmens' rates of pay Cook Gp "C" wef 17 Apr 45
L105235 PTE RIGDEN G

(b) Granted tradesmens' rates of pay of DM(MV)"C" wef 1 Apr 45
H87468 PTE WIGGETT EA

(c) Granted tradesmens' rates of pay Cook Gp "C" wef 27 Apr 45
B144288 PTE DUNCAN RW

(d) Ceases tradesmens' rates of pay Cook "C" wef 15 Apr 45 (Failed to requalify) To draw daily regt'l rate of pay of $1.50
K85400 PTE PEARSON NF Cook "C"

14 PUNISHMENTS.

(a) On 19 Apr 45 awarded a forf of 28 days pay for an offence under A.A.Sec.40. Forf 28 days pay under FR&I.149(2)
H103767 PTE SMITH H

(b) On 1 May 45 awarded 14 days FP and a forf of 14 days pay for an offence under A.A.Sec.40 Forf 14 days pay under FR&I.149(2)
H18322 PTE DEARIE G

14 PUNISHMENTS. (Cont'd)

(c) On 23 Apr 45 awarded 27 days FP and a forf of 27 days pay for offence under A A Sec 15(1) AWL from 0815 hrs 15 Apr 45 to 1200 hrs 19 Apr 45 Absent 4 days 3 hrs 45 min Forf 27 days pay under FR&I.149(2) Forf 5 days pay under FR&I.149(1)(a) Total forf of 32 days pay
B148750 PTE MITCHELL HF

(d) On 1 May 45 awarded a forf of 7 days pay for an offence under A A Sec.40 Forf 7 days pay under FR&I.149(2)
L65739 PTE ESLER WR

(e) On 2 May 45 awarded a forf of 10 days pay for 2 offences under A A Sec 40 Forf 10 days pay under FR&I.149(2)
L155630 PTE FISET A
H14776 PTE GOBIN A

(f) On 3 May 45 awarded 27 days FP and a forf of 27 days pay for an offence under A A Sec.40 Forf 27 days pay under FR&I.149(2)
D136934 PTE CARPENTER JA

15 PERMISSION TO MARRY.

(a) On 15 Apr 45 granted permission to marry Miss Edith Marjorie Joan Gibson 31 Jessie Terrace Reading Berkshire England Auth CMHQ 1000:110a dated 15 Apr 45
L13588 PTE FITZPATRICK JA

16 MARRIAGES.

(a) Married with permission to Miss Edith Marjorie Joan Gibson at Branley Southampton England on 21 Apr 45
L13588 PTE FITZPATRICK JA

17 BIRTHS.

(a) Son - Gordon Wayne - born at Moose Jaw Sask Canada on 24 May 45
Wife: Mrs Laura Hannah Gray
H69957 PTE GRAY AW

18 NEXT-OF-KIN.

The name and address of N of K is now verified as shown

(a) L13588 PTE FITZPATRICK JA — Mrs Edith Marjorie Joan Fitzpatrick (Wife) 31 Jessie Terrace Reading Berkshire England.

H16984 PTE GAUTHIER A — Mrs Doris Gauthier (Wife) 580 Bannerman Ave.Winnipeg Man Canada.

H9753 L/CPL JAMIESON JF — Mrs Elizabeth Jamieson(Wife) Ste 6 536 Dominion St. Winnipeg Man Canada.

18 NEXT-OF-KIN (Cont'd)

(a) L91535 PTE HELKENBERG WN Mrs Ida Helkenberg (Wife) 100 Kerrobert Sask Canada

K50722 CPL PARKER RA Mrs Esther Parker (Mother) 657 Powell St Vancouver BC Canada.

P22290 SGT MACKIE JB Mrs Margaret Lamberton Mackie (Wife) 269 Lizzie St Winnipeg Man Canada.

H16291 L/CPL LaCLAIR A Mrs Phoenie Edith LeClair (Wife) St.Norbert Man Canada

19 HONOURS & AWARDS.

(a) Awarded the Canadian Efficiency Medal Auth R.O 1222
H16790 PTE WICMORE JA

20 STRENGTH DECREASE.

(a) SOS to 5 Cdn Armd Tps W/Shops RCEME wef 24 Apr 45
Auth E47/4816 dated 20 Apr 45
L65207 PTE PENNINGTON R

(b) SOS to X-8 List wef 29 Apr 45 Auth Adm H.FCA AG/261 dated 22 Apr 45
C49168 PTE DAIGLE LJ
H9432 PTE DYCK P

(c) SOS to X-8 List wef 1 May 45 Auth Defensor AG/7524
H16527 SGT COULTER JE

(d) SOS to X-3 PPCLI date shown
H16393 PTE(L/CPL) JOHNSTON L 29 Apr 45
C78028 PTE(L/CPL) MEAGHER SC 4 May 45

(e) SOS - Killed in Action - wef 22 Apr 45
H204125 PTE HUDSON M
H60605 PTE BROWN LH

(f) SOS to HQ 2 CDN Inf Bde wef 28 Apr 45 Auth Comd 2 Cdn Inf Bde
H16786 PTE BRADLEY LA

(g) SOS to X-3 RCASC wef 30 Apr 45
H16624 PTE WICKSTROM JE RCASC Cook "B"

(h) SOS to Y-3 List 1 Cdn Reoept Depot wef 26 Apr 45
H16802 PTE KULYK W

(i) SOS to X-8 List wef 2 May 45 Auth E47/5174 SECRET dated 28 Apr 45
H16543 PTE BREMNER A

(j) SOS to X-8 List wef 3 May 45 Auth 2 CIB/4-6/G dated 17 Apr 45
Rot of Instr to UK
K50722 CPL PARKER RA

(k) SOS to X-8 List wef 4 May 45 Auth Act Leave No.6
H16571 PTE BLANCHARD RE
H16732 PTE(L/CPL) BROWN FG

20 STRENGTH DECREASE. (Cont'd)

(k)

H16762	PTE(L/CPL)	BRYAN	F	
H16769	PTE	BURDENIE	S	
H16485	PTE	CLARK	RG	
K85343	CPL	CLARKE	JC	
K85348	CPL	CROWTHER	WG	
P21443	CQMS(A/WO.II	CSM) D'ALTROY	FA	
H16767	PTE	DUNCAN	J	
H16742	PTE	ELLIS	FR	
H16967	PTE	ERICKSON	EO	
H17005	PTE	ERLINDSON	CE	
U1649	PTE	FABBRI	A	
P21417	WO.II CSM	FORD	FJ	
K85250	CPL	HART	SA	Clerk "B"
K85382	PTE	HUTCHINSON	C	DM(MV)"C"
H16197	PTE	IRWIN	ELK	Sqpt Rep "C"
K85283	SGT	JENNINGS	JE	
H16131	PTE	KNIGHT	FA	DM(MV)"C"
H16693	PTE	McKAY	R	DM(MV)"C"
H16333	CPL	McKINLEY	JW	DM(MV)"C"
H16236	PTE	MILLER	J	DM(MV)"C"
H16947	PTE	MORIN	LJ	
H16312	PTE	MURRAY	WA	DM(MV)"C"
H16064	PTE	NOVADILE	H	
H16559	PTE	OLSEN	CVF	
H16254	PTE	PENMAN	NM	
H16087	PTE	POLHILL	WE	
H16329	WO.II CSM	RAYNBIRD	C	
H16110	CQMS	SCHLEN	A	
H16764	PTE	SCHMIED	J	
H16354	PTE	SHIELLS	G	DM(MV)"C"
H17167	CPL(A/SGT)	SOUTHWORTH	GS	

(l) AMENDMENT Part II Order No.33 para 7(b) dated 25 Apr 45 is amended to read "SOS to X-2 List PPCLI"

"C" TRAINING INCREMENT.

OFFICERS.

21 LEAVE OF ABSENCE.

(a) Returned from 9 days PL to UK wef 26 Apr 45
CAPT A C ROBINSON

(J A FENELON) Capt.
for Officer i/c
CANADIAN SECTION 2ND ECHELON HEADQUARTERS
21 A. Gp.

HAS.

SCHEDULE "B"

CERTIFICATE IN ACCORDANCE WITH P.C. 2787 OF 10 A[illegible]

I, CERTIFY THAT NO. H-1329 Rank PTE. Name DYER L. M. Ranks Regt.

Unit P.P.C.L.I. - 1 CDN. DIV.

was arrested at ANTWERP.
(Place)

at 1430 hrs on 7 June 44 date and that at the time of his arrest he was wearing (Military Uniform) Nor (Civilian Clothes)

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding officer of the portion of His Majesty's Forces of the officer, warrant officer, or non-commissioned officer in charge of the detachment of the Can Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.)

(Rank)

(Unit)

(Rank)

(Unit)

Company

H.Q. 1st Cdn. Inf. Div. Pro. Coy.

1st Cdn. Inf. Bde. Pro. Coy.

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Pt 11 Order No 36 dated 1o May 45 "A"

Certificate of arrest dated 5 Jun 45 "B"

I, the undersigned, hereby acknowledge receipt of one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 9 Jun 1945.

E. Dyer.

H-1329 Pte DYER E

I, H-1329 Pte Dyer E desire to have an officer assigned to represent me at my trial by Field General Court-Martial.

~~I desire the services of~~ ~~if he is available.~~

DATE: 9 Jun 45

E. Dyer.

(Signature of Accused)

Exhibit "B"
AAH

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
H 1349	Pte	DYER K	P P C L I

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For 15(1) 3 times

For 4 times

For ____ times

For ____ times

For ____ times

Date of first entry in Field Conduct Sheet 18 Oct 43

Date of last entry in Field Conduct Sheet 21 Day Nil AAH

2. Previous convictions of the Accused by a Cour-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody and for 15 days in military custody, i.e. NIL days in Open Arrest 15 days in Close Arrest, of which NIL days were spent in hospital.

5. The present age of the accused is 21 years 11 months old.

6. The date of his Attestation is 12 Jan 43.

7. The service which the accused is allowed to reckon ____.

8. The accused is in possession of C. I. S. M with Clasp.

9. (If the accused is a Warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of ////	____
In the War substansive rank of ////	____
In the acting rank of ////	____

SCHEDULE OF CONVICTIONS BY COURT MARTIAL OR CIVIL COURT OF SUMMARY A AND UNDER SECTION 47 AA AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried	Date & Place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

No record of conviction by Court Martial or Civil Court on MFM 6

I hereby certify that the foregoing particulars which have been extracted from the regimental books are correct to the best of my knowledge and belief.

Signed this 19th day of Jun 45

(MA Cooke) Lt
Officer ic Regtl Books
1 Cdn Discipline Centre

SUPPLEMENTARY

No. H1329 Name DYER | Sqn, Battery, or Company E | Corps CIC | Date of enlistment 12 Jan 43 | GC Badges | Service or Proficiency Pay | Exhibit "L" | MFM 6 (AFB 122) (P AB/130 (5418))

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order convening trial	By whom awarded	Remarks
Field		Pte		AWL 14 hrs 30 mins			18Oct43		Forf 4 days pay 149(2) 1 days pay 149(1)(a)
Field	8Jan44	Pte		AWL from 2200 hrs 8 Jan 44 to 0945 hrs 9 Jan 44 Abs 11 hrs 45 mins		7 days CB			Forf 1 days pay 149(1)(a)
Field	14Apr44	Pte		AWL 7 hrs 10 mins		7 days FP	14April44		Forf 1 days pay 149(1)(a) 7 days pay 149(1)(B)
Field	21Aug44	Pte		AWL from 2230 hrs 21 Aug44 to 2200 hrs 23 Aug44. (Abs 1 day 23 hrs)			24Aug44		Forf 2 days pay 149(1)(a) 15 days pay 149(2)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Duplicate created from MFM 4 15 Apr45 Record of conduct in Canada prior to not available			TOS Cdn Army Overseas 27 Aug43 "F KNIGHT" Officer ic Records C Cdn Sec 2 Ech HQ 21 A Gp		
				Certified true copy of original MFM 6 in my custody				(WA Cooke) Lt Officer ic Regtl Books 1 Cdn Discipline Centre	

4424-85

Pte. Dyer G.L.

RECORDED AT CMHQ IN AB 160.. 24 24 21 - 85

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA21) 40/P.R.S./1898 (1400) 4/38B

Convening Order of Brig G S N Gostling, ED, Comd "A" GP CRU dated 12 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H16699	Pte	(A/Cpl)	Geoffroy Lloyd	DYER	6 CIRU C PRO C

PROCEEDINGS REVIEWED
~~Proceedings~~ Apptd.
25 Aug 44

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) England on (date(s)) 14th of August 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns/ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 1. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the OC.(2)~~

(1. KR Can 559. 2. ~~AA 48(8), RP 60 fn 1.~~ For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the Interpreter~~ as interpreter? Ans: ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 78, MAML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	P P LORANGER, MC	6 CIRU
Member	Capt	R. Hobroyd	6 CIRU.
Member	Pte = Capt.	~~Cpl~~ Sgt. [illegible] Chaffelkin	6 CIRU.
~~Judge Advocate~~			
Prosecutor	Lieut	W. Delaney	6 CIRU
Defending Offr	Capt	P.E. Symes.	6 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans: No. Is the Defending Offr a lawyer? Ans: No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See RP 90.)

A8. The accused H16699 Pte(A/Cpl)Dyer, G.L. before arraignment makes(s) (no) objection(s) to(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 104(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See plans 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H16699 Pte (A/Cpl) Geoffroy Lloyd DYER 6 CIRU C PRO C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 11	Not guilty	Not guilty	
Alternative			
2nd AA Sec 40	Not guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~As present entire sentence for~~ beginning on (date) ~~(1), delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~

Time in confinement awaiting present trial: a total of 2 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be severely reprimanded

(Sgd) ..... Judge-Advocate, if any. 15th August 1944 Date awarded. (Sgd) Dave Loranger maj. President. (RP 47(1).)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(2), MML p 760(2))

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 4, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be duly discharged on release or detentionary barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 16 Aug 44 (Sgd) (G S N Gostling) Brig Commanding "A" Gp Cdn Rft Units C&O Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
H.16699 Pte (A/Cpl) Dyer Geoffroy Lloyd 6 CIRU - C. Pro. C.	18 Aug 44	[illegible] CAPT. ADJT. 6 CDN INF. RFT. UNITS

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 84, 85; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination : and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans .....[5]
(1. *RP 37(B).* 2. *RP 37(D) fn 5.* 3. *RP 35(B) fn 3, para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded *NOT GUILTY* the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B4 to B5 of Record Form B above.[1]
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans Yes .....[1]
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. *RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st & 2nd charge and charges[2] (3). The Court is cleared, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the 1st & 2nd charge and charges, and allowed on the ..... charge[4], and that, accordingly, the trial will proceed on the 1st & 2nd charge and charges only.
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Yes I wish to give evidence on oath.

Ans Yes ..... Are the witnesses as to character only ? Ans No .....
(1. *RP 115* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 89(f). Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2nd charge and charges being subject to confirmation, will be promulgated later.[1] Part I of the Schedule is dated and signed.[2]
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 117. This elaborate announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1] Ans No I do not.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 45 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (k), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 3 and Ex 4 respectively.[3]
(1. *MFB 355 or AF B 2495.* 2. *MFM 5.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement of Service and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans Yes.
(1. *RP 27(C), 46(D).* 2. *Accused, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 142, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 583-586. Overseas KO 309, 1323, MML p 66, 153-159. As to sentences assigned for civil offences to the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44-2(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

14th Aug 44

CHARGE SHEET

The accused, No H-16699, Private (Acting Corporal) Geoffroy Lloyd DYMER, of the Canadian Provost Corps, attached to No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 11
ARMY ACT

WHILST ON ACTIVE SERVICE, NEGLECTING TO OBEY CAMP STANDING ORDERS,

in that he,

in the Field, at approximately 0010 hours on the 30th day of July, 1944, drove a military vehicle (5 cwt) through the camp lines at an excessive rate of speed, contrary to No 6 Cdn Inf Rft Unit camp standing orders, directing that speed limit for all types of motor vehicle within camp area is limited to 10 miles per hours.

SECOND CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, at approximately 0010 hours on the 30th day of July, 1944, drove a military vehicle (5 cwt) through the camp lines at an excessive rate of speed.

(W.E. MORGAN), Col.
Commander
6 Cdn Inf Rft Unit

In the Field
10th Aug 44.

To be tried by Field General Court Martial.

(G S W Gostling) Brig
Comd
"A" Gp Cdn Rft Units
CAO

Field
12 Aug 44

14 Aug 44 J.L.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit
H16699	Pte	(A/Cpl)	Geoffroy Lloyd	DYER	6 CIRU C PRO C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 12 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable for delay this trial for reference to a superior qualified offr.~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR (Rank.)	P P LORANGER, MC (Must be named. RP 106.)	6 CIRU (Unit.)

MEMBERS.

Capt	to be detailed by OC 6 CIRU	
Lt (Rank.)	to be detailed by OC 6 CIRU (Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Lt (Rank.)	to be detailed by OC 6 CIRU (Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 12 Aug 44

(Signed personally. RP 105 fn 2.)

(G S N Gostling)

Brigadier (Rank.)

Commanding "A" Gp Cdn Bft Units CAO

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFAMS (TS) 1001 of AFAI 41/P & R/1807 (60)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 269.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(*C*)), any objections (*RP* 95(*B*)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl R. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 10 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 60(*C*), 87(*C*), 92(*C*) (*D*).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 1(*B*)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 95(*C*).)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(*C*), 92(*C*) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)
(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(*C*), 92(*C*) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 563(*e*).)
(vii) Summing up by JA, *if any*. (*RP* 82.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 105, 107, 114.
(iii) Medical Certificate(s). (*KR Can* 557.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 163 (1) (*g*) (*h*).)
(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to *p 4* of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on *p 4* after minute of sentence awarded. (*AA* 52(9), *RP* 118(*C*), *MML* p 788.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

14th Aug 44
J.L.

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No: H-16699 Cpl (Rank) DYER, G.L. (Name)
of No 7 Pro Coy and in my opinion he is fit to undergo
~~unfit~~ ~~X~~
trial by Court Martial.

Station In the Field

Date 14 Aug 44

Sgd A. D. Brown Capt
(Medical Officer) RCAMC
& C.I.R.U.

15 aug 44
J.P.

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. M-1669 (Rank) A/Cp (Name) Dyer G.L.
of Can Pro Corps and in my opinion he is fit to undergo
trial by Court Martial.

Station In the Field

Date 15 Aug 44

Sgd _____ (Medical Officer)

"Keep in touch with the folks at home"

THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANADIAN FORCES

14 Aug 44

P.D.

14 Aug 1944

STATEMENT COVERING REQUEST FOR ADJOURNMENT: FROM DEFENSE COUNSEL FOR H-16699, A/CPL. DYER, G. L.

24 hours

Defence respectfully requests adjournment on the following grounds:-

(1) Defence Counsel was warned of his duties at about 1000 hrs. 12 Aug., and at once interviewed the accused, and examined all papers relative to the case which had been given to the accused.

(2) The Summary of Evidence refers to EXHIBIT "A", but the accused was not given a copy of this exhibit, although it appears to be the most vital piece of evidence on which the Prosecution should base its case.

(3) At 1140 hrs. 12 Aug. defence counsel went to the office of the Legal Officer and requested a

copy of Exhibit "A". No copy was available. A sergeant employed in Legal Office promised to provide defense counsel with the required copy as early as possible.

(4) At 0820 hrs. 14 Aug., defense counsel was warned that court-martial proceedings would commence at 1000 hrs. 14 Aug.

(5) Up to the time of this writing (0945 hrs, 14 Aug.) defense counsel has NOT received copy of Exhibit "A".

(6) It being an imposition and obstruction to the defense to have had such delays, the defense hereby states its inability to conduct adequate defense until such time as defense counsel is provided with all available means of preparing its case.

J. F. Gonder Capt.
Defense Counsel

(7) Up until 0955 hrs. 14 Aug. the accused had not been medically examined nor provided with a report. R. P. (836) has been duly apprised of 14th Aug. D. R.

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THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANADIAN FORCES

R.P. 39 (a)

14th of August 1944

The court having listened to the motion of adjournment presented by the defending officer, decides that in all fairness for the accused the adjournment should be granted, and so decides that the court will now adjourn until 0930 hrs, 15th August 1944.

Pierre Lepranger
maj. & pres.

15th of August 1944

Adjournment

On the 15th of August 1944 at 0930 hrs the Court, ~~personnel~~ present, ~~present~~ went to adjournment, present a new member Capt. R. Chaplaine who replaces Lt. Lemieux J.A. who was obliged to leave this morning at 0730 hrs for Adjt. C.R.C. Officers Training Corps.

Capt R. Chaplaine who was waiting member in this case, was informed to sit as a member of this court by order of the Convening Officer.

R.P.

Pierre Lemieux maj. & pres.

15th Aug 44
I

FIRST WITNESS
FOR THE
PROSECUTION, having been duly sworn, states:

"I am Lt-Col G.F. Clingan, Comd "H" Wing, 6 CIRU;"

Q. Do you recognize the accused?
A. I do not. To the best of my knowledge, I never saw the accused before.

Q. Will you tell us what happened on the night of 29-30 Jul 44?
A. On the night of 2930 Jul 44, at approximately 0010 hrs, I was returning to Camp accompanied by Capt Ackerman. We were on foot. At approximately half way between the main gate and No. 1 Camp, we were overtaken by a 5 cwt car without a top travelling at a high rate of speed, which I estimated at the time to be approximately 40 m.p.h. The night was quite dark and there were a number of men on the road. As the speed limit within the camp area is 15 m.p.h., we stopped at the Transport Office to check which vehicle this might be. We were assured that no vehicle on charge to 6 CIRU was authorized to be out. As I considered the car to be driving at a dangerous speed, I instructed Capt Ackerman to ascertain, if possible, the number of the car and the name of the driver.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q. Do you recognize the accused?
A. I do not.

Q. What is the speed limit in this Camp area?
A. 15 m.p.h.

Q. Are you cognisant with 6 CIRU Standing Orders?
A. Signs within the Camp say: 15 m.p.h. speed limit.

Q. Have you seen such signs?
A. Yes.

Q. On the night in question, on what side of the road were you walking?
A. On the left side of the road.

Q. How was visibility on the night in question?
A. The night was dark.

Q. Considering the darkness of the night, do you think your own judgment was just as clear as it was possible to be.
A. I have said that I estimated the speed of the vehicle at 40 m.p.h.

Q. What distance do you judge you were from Camp entrance when the car passed you.
A. Approximately half way between the Camp gate and No. 1 Camp.

Q. Could you be more specific?
A. I estimate the distance between the main gate and "A" Wing office as 600 yards. I was approximately 300 yards from the main gate.

Q. Are you thoroughly familiar with the road in question?
A. Fairly well.

Q. Do you admit that there is a sharp up-hill left hand turn a few hundred feet inside the main gate?
A. Quite.

Q. Do you know if 6 CIRU authorizes employment of vehicles used by the Provost?
A. I do not.

R.P. 83 (2) has been complied with.

15th Aug 44 2.
P.P.

SECOND WITNESS FOR THE PROSECUTION, having been duly sworn, states:

"I am A/Capt J.H. Ackerman, Administration Officer "H" Wing, 6 CIRU":

Q. Do you recognize A/Cpl Dyer as being the accused?
A. Yes.

Q. Will you tell us what you saw on the night of 29-30 Jul 44 at approximately midnight?
A. On the night of 29-30 Jul 44, at approximately midnight, I was returning to Camp from Otley. At about half way between the main gate and No. 1 Camp, a 5 cwt vehicle passed us. I would estimate that the vehicle was travelling at approximately 40 m.p.h. There were a lot of soldiers on the road at that hour. With Colonel Clingan, I stopped at the Transport Office in order to find out which 5 cwt vehicle had authority to be out of Camp, with a view of finding the driver. We were informed by the Transport Office that neither of the two 5 cwt vehicles belonging to the Unit had authority to be out of Camp.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q. Did you see the accused just after midnight on 30 Jul 44?
A. I did not.

Q. How was visibility on the night in question?
A. It was very dark.

Q. On your latter enquiries, in connection with this vehicle, did you consult Camp Standing Orders as regards the speed limits?
A. Speed limits have been published in Part I Orders, in Camp Standing Orders, and there are signs on the road.

Q. Do you recognize this (presenting a paper)?
A. This is Camp Standing Orders, made up in Whitley Camp. They do not apply to this Camp in particular.

QUESTIONED BY THE COURT

Q. What investigation did you make after you went to the Transport Office?
A. The following morning, Colonel Clingan asked me to find out, if possible, who the driver of the vehicle was that had passed us the previous night. I went to the Transport Office again and had the records checked to verify the information I had received the night before. I again received the answer that no 5 cwt vehicle had been authorized to leave Camp by the Transport Office, 6 CIRU. Knowing that the Medical Officer had a 5 cwt vehicle for his personal use, I checked with the M.O. and also with the driver, and was informed that this 5 cwt had not been out of Camp. I then went to "A" Wing office and was told that No. 2 Detachment 7 Provost Company was in possession of a 5 cwt vehicle. Accompanied by Lt L.G.R. Smith, I proceed to the place where the Provost vehicles are usually kept and found a 5 cwt vehicle. I heard Lt Smith ask for the Provost Sergeant and question him as to whether the 5 cwt vehicle which apparently belonged to 7 Provost Company had been out of the Camp the night before. I heard the Provost Sergeant ask several men who were standing near us if the 5 cwt vehicle had been out and one of them answered "Yes". I then heard Lt Smith ask the Provost Sergeant to find the driver, and a few minutes later, Cpl Dyer came out. Cpl Dyer stated he had had the vehicle out the night previous and had returned to Camp just after midnight.

15th Aug 44 P.R.

Q. Did you make any personal check at the main gate to see if a 5 cwt vehicle had passed the gate?
A. I did.

Q. What did you find out?
A. I asked "A" Wing to find out the name of the Guard at the gate at 0010 hrs 30 Jul 44. The name given to me was Pte Allard. I asked to see him but at that time, he was not in Camp. I interviewed Pte Allard the following morning and asked him if he was at the main gate at 0010 hrs 30 Jul 44. The answer was "Yes". I then asked him if a 5 cwt vehicle had entered Camp at approximately 0010 hrs and again the answer was "Yes".

Q. Did you ask Pte Allard if he had checked the WD number of the vehicle when it stopped at the gate?
A. I did not ask him if he had checked the number. He did tell me that the vehicle had stopped.

Q. Did you verify the WD number?
A. I understand they do not always take down the number when the vehicles go in and out at the gates.

Q. Did you ask Pte Allard if it was a Provost vehicle?
A. Yes.

Q. What did he say?
A. He said "Yes".

RE-CROSS EXAMINED BY THE DEFENDING OFFICER

Q. Is it true that carrying out the instructions given out by Colonel Clingan, you gathered all the information you could find and presented it to Colonel Clingan?
A. I turned in all the necessary information.

Q. Did you ask Pte Allard whether he saw the accused that night or not?
A. No, I didn't consider it necessary.

Q. Did you question Pte Allard before or after Cpl Dyer admitted having had the vehicle out?
A. After.

R.P. 83 (B) has been complied with.

THIRD WITNESS
FOR THE
PROSECUTION, having been duly sworn, states:

"I am Pte Allard, R.P., Number D.163131, attached to "A" Wing, 6 CIRU".

Q. After midnight between 29-30 Jul 44, did you see a 5 cwt vehicle come into Camp?
A. The MP's car, a jeep, stopped at the gate. I checked the work ticket and when I saw that it was correct, I let it pass.

Q. Do you remember having seen the accused in charge of the vehicle?
A. The only thing I remember is that he was a Corporal.

Q. After his entry in the Camp, did you notice the speed of the vehicle?
A. About ten to fifteen m.p.h. when he started moving.

CROSS EXAMINED BY THE DEFENDING OFFICER

Q. When you examined the work ticket, did you recognize the accused?
A. No.

Q. Between midnight and 0015 hrs on the night in question, were there any other military vehicles stop at the main gate?
A. Yes, a staff car and trucks.

Q. During this same period of time, did you stop any other 5 cwt vehicles?
A. No.

Q. At the time you saw the 5 cwt vehicle drive away from the main gate, did it seem to be under control?
A. Yes.

QUESTIONED BY THE COURT

Q. Are you sure you recognize the accused as being the driver of the 5 cwt vehicle you stopped at the main gate?
A. I noticed the stripes, but not the face.

Q. Are you sure the 5 cwt vehicle stopped, or did it just slow down?
A. It stopped.

Q. Do you check the work tickets when vehicles go out and in?
A. Yes.

Q. Did you check this work ticket when the vehicle came in?
A. Yes, I checked the number of the vehicle and the place.

R.P. 83 (B) has been complied with.

"Keep in touch with the folks at home"

THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANADIAN FORCES

15 aug 44

Submission by the def. Officer
to establish a prima facie case. (P.B.)

194

The Defence requests the Court to dismiss this case because evidence is insufficient to establish a prima facie case, for the following reasons:

The Prosecution has failed to prove beyond any reasonable doubt that the accused, Cpl. Dyer, has any connection with a vehicle driven at an excessive rate of speed.

The Prosecution has failed to prove that any person positively saw the accused, Cpl. Dyer, anywhere on the night of 29-30 Jul/44.

With reference to the Prosecution's claims through the evidence submitted by Pte. Allard, the Court is reminded that Pte. Allard stated on oath that there were other military vehicles at the gate from 2359 hrs. 29 Jul to 0015 hrs. 30 Jul., but that he failed to recognize or identify the driver

of any ~~that~~ which 5 cut car passed through the main gate during this period. He also states that this particular car was in good control, not driven at any excessive speed.

/s/ H. Wonderlapt.
Defense Counsel.

15 aug. 44
D.R.

R. R 83 (6) has been duly complied with
D.R.

15 Aug. 44
D.D.

First Witness for the Defense H-16699 A/Cpl Dyer G.L., of The Cdn Provost Corps, having been duly sworn states as follows; (The accused giving evidence on oath as a witness).

Q Where were you shortly after midnight 30 Jul 44?

A I was just returning to barracks having completed a tour of duty.

Q Were you stopped at the main gate by the sentry?

A Yes.

Q What did the sentry do?

A He stopped my vehicle and checked my work ticket.

Q Was he satisfied with your work ticket so far as you know?

A Yes.

Q What type of vehicle were you driving?

A A Willys 5 cwt.

Q Were there any others in the vehicle besides your self?

A Yes.

Q Were they on duty?

A One was.

Q Were there others who were not on duty?

A I had three passengers I had picked up on the road back to camp.

Q Why did you pick them up?

A They were walking up the road and I gave them a ride in order to get them back to camp in less time.

Q Who was driving?

A I was.

Q Was the car moving while your work ticket was being examined?

A No.

Q Were your passengers still in the car when it moved away from the gate?

A Yes.

Q On leaving the gate at what speed did you start at?

A Approximately 10 m p h.

Q What do you think was your maximum speed before coming to another stop?

A I had to attain 15 m p h in order to change into another gear. I am quite certain I maintained that speed.

Q How was the visibility at that time?

A Very dark.

Q What night of the week was it?

A Saturday night.

Q Did you see anybody walking on the road in the same direction?

A Yes, there were a large number of troops walking on the road.

15 aug. 44
P.L

Q What do you understand is the speed limit in the camp?

A 15 m p h.

Q Two charges involving this court martial were laid against you on 10 Aug. Have you been in close arrest since then?

A No.

Q How have you been occupied since that time.

A On duty.

Q Has this duty included any driving?

A Yes.

Q As a corporal in the Provost Corps if you expect a vehicle of exceeding the speed limit how do you act?

A On highway patrols we are required in fairness to the driver to trail the vehicle for one mile and clock it with our speedometers to obtain the average speed?

Q How long have you been in the Provost Corps?

A Four years this Sep.

Q What proportion of this time have you spent on traffic control.

A About half of that time.

Q On the night in question after leaving the main gate did you recognize anybody on the road.

A No.

Q Could anybody have recognized you in the darkness?

A No.

Q When you arrived at the main gate or before you left it were there any other military vehicles there?

A There were three vehicles outside the gate. I could not say if they were militar y vehicles.

Q So far as you know on that night in question within the camp area did you drive a vehicle at an excessive rate of speed.

A No.

Q Can you think of anybody to support your statement?

A The only one is the corporal who was with me.

Q What is his name and appointment?

A Cpl Smith of the same unit.

CROSS-EXAMINED BY THE PROSECUTING OFFICER

Q Do you know if these three passengers had to be in camp at any particular hour?

A Yes, they had to be in at 2400 hrs.

Q Did you drop them at No 1 Camp or did you continue to any camp they belonged to?

A They belonged to No 1 Camp so I left them off there.

QUESTIONED BY THE COURT.

Q Are you in open arrest?

A Yes, because I have been on duty.

R.P. 83(b) has been complied with.

Second Witness for the Defense (For character and facts) L/121 A/Cpl Smith, L.H., employed as M.P., of The Cdn Provost Corps, having been duly sworn states as follows:

Q Do you recognize the accused?

A Yes. (Pointing at A/Cpl Dyer).

Q Did you see the accused the night of 29 Jul 44?

A Yes.

Q Did you see him shortly after midnight the night of 29/30 Jul 44?

A Yes.

Q Did you return to camp with him?

A Yes.

Q Had you both been on duty?

A Yes.

Q How long had you been with accused during duty hours before returning to camp?

A From 1800 hrs 29 Jul 44 until we arrived back at 6 CIRU at the finish of our duty at 0030 hrs 30 Jul 44.

Q During this period on duty together what was the behaviour of the accused?

A Excellent.

Q How long have you know the accused?

A Approximately 2 years this September.

Q How did you return to camp with him on the night in question?

A In the 5 cwt Willys.

Q Who drove it.

A Cpl Dyer.

Q What is your opinion of his driving on the night in question.

A In accordance with all rules and regulations of army and civilian traffic.

Q Do you clearly remember the night in question?

A Yes.

Q What was the visibility like around midnight?

A Pitch black.

Q Do you think anyone in your vehicle could have been recognized by pedestrians which your vehicle passed on the road?

A No.

Q Were you stopped at the main gate?

A Yes.

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P.R.

Q Are you familiar with the road from that gate into No 1 Camp?

A Yes.

Q Is it a straight road?

A No.

Q Is it a level road?

A No.

Q Are you familiar with the vehicle you were using that night?

A Yes.

Q Have you driven it yourself?

A Yes.

Q As an experienced Provost Cpl would you believe that any responsible person would drive that vehicle carelessly under the conditions existing at that time?

A No.

Q Do you realize you are on oath?

A Yes.

Q Did that accused drive incautiously or dangerously within the camp area while you were with him?

A No.

Q Who authorizes the employment of Provost Vehicles in this camp area?

A Our Section Sergeant.

Q Is he responsible to the unit traffic officer?

A Yes.

Q How many 5 cwt cars are used by the provost section of which you are a member of?

A One.

Q What is the speed limit in this camp area?

A 15 m p h.

Q Have you seen anything displayed to support this statement?

A Yes.

QUESTIONED BY THE COURT.

Q Did you have anything to drink that evening?

A No.

Q Were you with Cpl Dyer all evening.

A We were together all evening.

R.P. 83 (b) has been complied with.

15 aug. 44
G.L.

Summing up for the Defense

The accused has pleaded NOT GUILTY to two charges. Let us consider the charges first and then the evidence.

The first charge specifically contains tow significant facts: (a) Within Camp Area (b) 10 miles per hour.

(a) WITHIN CAMP AREA. Evidence has been produced that there is some doubt as to what particular area is referred to. The prosecution very cleverly rummages through Unit Standing Orders to produce an appropriate sub- paragraph which can be incorporated within the implications of a serious charge; but it fails to notice that the said Standing Orders refer specifically to an area covered by Map Sheet No 124, some hundred of miles away from the Unit's present location. Possibly this blunder is less the fault of the Prosecution than of the unit itself. Whatever motives either the prosecution or the unit may have had in this matter they have produced a highly ambiguous means of pinning down their victim.

(b) 10 MILES PER HOUR Again the prosecution employs a categorical ruling, unequivocal and precise in itself, but inappropriate to existing regulations, because it is rendered void by accepted, prominently displayed restrictions. It has already been demonstrated that Unit Standing Orders are not up to date. Further evidence proved that the Unit ingraciously contredicts itself by displaying unmistakable signes for the benefit of military drivers. Whereas the Standing Orders stick to 10 miles per hour, the signs at the main camp entrence and within the camp itself, boldly tell the world that the speed limit is 15 miles per hour. How then does the Unit propose or expect to enforce it's unique traffic control system.

On the basis of ambiguity alone, the first charge defeats itself, for the charge as worded cannot convict the accused, because it cannot be proven beca se what it seeks to establish bears no reference to anything that happens here and now, or a a week or tow ago. In short, the Prosecution propounds a paradox, nothing else.

As regards the second charge, we have to contend with a more insiduous phrase - AN EXCESSIVE RATE OF SPEED. Enough has already been said to nullify the existence of any definite speed limit in the present area. It is necessary, there fore to establish w what is an excessive rate of speed. A recapitulation of the evidence will determine the answer to that.

In summing up the evidence the salient facts are these : -

The prosecution has not produced a single witness who positively saw the accused on the night in question. Practically all witnesses state it was a very dark night, and yet the Prosecution claims that two witnesses actually saw a 5 cwt car being driven at 40 m p h. Such a statement is out of all reason, neither is it verified by any evidence; but since the accused, after having performed his normal duty, was know to be in the neighbourhood at the time, he was charged with an offence.

The responsibility and experience of the accused proves his reliability, but he is thought by the Prosecution to be a dangerous, irresponsible character. Nothing has been produced to support such a supposition.

In view of the week evidence of the prosecution, and the ambiguity of existing speed regulations, the defence hopes and trusts that the Court will find the accused NOT GUILTY.

R.P. 83(b) have been duly complied with.

Signed. H.B. Gonder Capt

D Examples may be given.

Summing up by the (1) Prosecution 15 Aug 44 JLB.

Two witnesses have stated that the vehicle was travelling at approx 40 M.P.H. in the camp area. Such a speed, even if held only for an instant is sufficient to constitute a breach of Camp Standing Orders which limit the speed of Vehicles to 10 m.p.h. The opinion of the witnesses that the speed limit in camp is 15 m.p.h in no way alters the case. Further, I submit to the court that a speed of as low as 11 m.p.h., if proven would equally establish the guilt of the accused. For this reason I would ask the court to accept the statements of Lt Col Chapman and Capt Ackerman that the speed was approx 40 m.p.h. as proof that the vehicle was going at considerably more than 10 m.p.h.

The third witness Pte Allard agrees that a 5 cwt belonging to the Provost Corps driven by a Corporal entered the camp just after midnight 29-30 July 1944.

Capt Ackerman has investigated and, I believe, supplied sufficient

testimony to establish that Cpl Piper must have been in charge of the vehicle at the time.

The defence has attempted to prove that the accused drove cautiously. To have driven cautiously does not mean necessarily that the vehicle did not exceed the speed limit as laid down by the Camp standing orders. The defence grasps the fact that the standing orders were originally designed for an area some hundreds of miles from here. This only a technicality and it is pointed out that the map quoted on the orders does not alter the fact that the orders still apply to #6 C.I.R.U. While it exist as a camp covering a relatively large area and made up of a large number of huts connected by Avenues over which traffic must be controlled. Further, the accused admits that the passengers he picked up had to be in their respective camps as close to 12 o'clock as possible. This would supply a reason to step up his speed. It is admitted by the prosecution that

15 aug. 44

(3)

Cpl Dyer was not sure (Due to D.R.
darkness) by the prosecution witnesses.
But there is no doubt that he drove
the vehicle and that the vehicle
was seen travelling at an excessive
speed. & therefore I ask that he be
found guilty as charged

Pierre Lorange maj a.j.a.s.

15th Aug. 44
P.L.

Plea of Mitigation

At such a time as this considering the stage at which court procedures have reached, the defence has no right or reason to attemp to submit further evidence. The object of this speech is to plead for mitigation. The grounds on which this plea is made are: the record of service and conduct sheet of the accused clearly show that he has been a trusted and valuable soldier and NCO. The action of unit comds which although Cpl Dyer was awaiting trial in a court martial, nevertheless trusted him to carry out his duties freely is an action which somewhat belatedly indicates this unit's appreciation of this NCO. Since the value of Cpl Dyer is thus indicated we plead for special consideration which will encourage him to remain a loyal, obedient and dependable soldier in the preformance of his duties, in spite of this court martial.

The plea is made ofr yet another reason: that the unit has already been harsh in the treatment of his case. The court is of the opinion that action is justifiable against the accused. If this is so it is also true that this case could have been dealt with by a senior officer in this unit, without recourse to a court martial. It is logical to assume that this unit's primary function is to prepare soldiers for the battle field, where Canadians are fighting and dying to-day. Therefore time is valuable or should be in this unit. Yet the unit appears to institute proceedings which involve labour, presonnel and time within and without the unit, rather than exercise it's own power to check a supposed offence on the part of a single solitary soldier. In spite of the prostitution of valuable time which this unit authorized and abetted, the unit has none the leass not found time to render it's orders compatable with common sense.

It is a sad irony that only in a court martial does a soldier dare to criticize unit orders which coerce or embarass him, and he can only do so then because he is fighting for the sake of his reputation and his record which would ultimately affect his civilian career.

The existing provost section attached to this unit has materially reduced the shocking number of court martial involved within this unit. The accused is a member of this provost section and he went out of his way to prevent tardy soldiers from getting into trouble. We beg to plead that circumstance in mitigation also, for it is a pity that he should have been accused as a result of a kind hearted action on his part. Such experiences as can be suffered by an accused soldier in a court martial and particularly Cpl Dyer on the pretext revealed in this court frequently cause a good soldier to become bitter.

The Defense respectfully asks the court to consider the plea of mitigation mainly on the basis of Cpl Dyer's future service to the army, and secondly on the basis of his record, which is good, and his services which has helped this unit to improve it's discipline.

R.P. 83(1) has been duly complied with.

Pierre Lorange maj. Spts.

6 CDN INF RFT UNIT

Ep 1 app A
Off R
14 Aug 44

H WING/6-O-H16699

31 Jul 44

Comd,
6 CIRU.

DISCIPLINE
H16699 Cpl DYER GL

1. On the night of 29/30 Jul 44 at approx 0010 hrs I was returning to camp accompanied by Capt Ackerman. About half-way between the main entrance and 1 camp a 5-cwt car without a top passed us travelling at an excessive rate of speed. I would estimate the car was travelling at about 40 m p h. It appeared to stop at 1 camp.

2. Capt Ackerman and I called at the transport office to ascertain if the vehicle of this description belonging to this Unit had authority to be out of camp. We were told by the NCO on duty in the transport office that neither of the 5-cwts was authorized to be out.

3. The following morning Capt Ackerman again checked with the transport office and "A" Wing. It was learned from "A" Wing that 2 det, 7 Pro Corps had a veh of this description in camp. Accompanied by Lt LGR Smith, Capt Ackerman went to the veh park of 7 Pro Corps where a 5-cwt of this description was found, bearing number CM116512. Capt Ackerman and Lt Smith interviewed the Pro Sgt who inquired among his men as to who had been out the previous night. H16699 Cpl Dyer GL admitted having had the veh out and stated that he returned to camp at approx 0010 hrs. Capt Ackerman checked with the sentry on duty at 0010 hrs, D163131 Pte Allard JW who states that the Pro Corps 5-cwt entered camp just after midnight.

4. The speed limit is 15 m p h. It was a particularly dark night and a number of soldiers were returning to camp. For a veh to drive along a camp road at an excessive rate of speed under these conditions is an exceedingly dangerous practice.

5. May disciplinary action be taken, please.

JEA/j

(G F Clingan), Lt-Col,
O C "H" Wing, 6 CIRU.

I have read over the above statement and corroborate same. ..... Capt

Q42 15 Aug 44 ER H GMF D.R.

STANDING ORDERS

NO. 6 CANADIAN INFANTRY REINFORCEMENT UNIT

Map Ref : GS 1 inch to 1 mile sheet 124 — 12 Jan 44

COLONEL W.E. MORGAN O.B.E., M.C. COMMANDER

20 TRAFFIC

(a) Speed of motor vehs of all types within camp area is limited to 10 mph. Disciplinary action will be taken against persons in charge of vehs exceeding this limit.

Signed (W.E. Morgan) Col
Commander
No 6 Cdn Inf Reinf Unit

Certified true copy, dated 15 Aug 44

(L.O. A. Barette) Capt
Adjt - 6 C.I.R.U.

MFM 6
(AFB 122)
49/PAM/136 (3438)

No H 16629 Name A/Cpl Dyer S E Sqn, Battery, or Company Ep 3 15 aug 44 Corps Edn Pro Corps Date of enlistment 12 Jan 40 GC Badges n/a Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet 5 Jun 40 No and date of last drunk n/a If none, reckoning towards next from extra fine n/a Sheet No 1 Signature OC Company, etc S. M. Margett Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Last sheet destroyed 12 Jul 40					
Feild	30 Dec 42	Cpl		AA 40 Conduct to the prejudice of Good Order and Military Discipline (did carry civilians passengers without authority)	Documentary	Reprimanded	31 Dec 42	Capt. Margett	
Feild	1 Jan 43	Cpl		AA 40 Conduct to the Prejudice of good order and military discipline	Documentary	Reprimand	2 Jan 43	OC 24/43	

Certified true copy consisting of one page dated 7 August

A Mackelcha Lieut
Off having custody of original

Cp 4
15 aug 44 P.R.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-16629	Pte (A/Cpl)	Geoffrey Lloyd DYER	Cdn Provost Corps

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA.40 ... 2 times.
For ... times.
For ... times.
For ... times.

Date of first entry in Field Conduct Sheet 31 dec 42

Date of last entry in Field Conduct Sheet 2 jun 43

~~2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

~~3. The accused at the present time is under sentence for ... beginning on the ... day of ...~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for —

days in civil custody; and for — 14 — days in military custody, *i.e.*, — 14 — days in open arrest, — 20 — days in close arrest; of which — days were spent in hospital.

5. The present age of the accused is 26 years old

6. The date of his ~~attestation~~ ~~calling up (for) (into) service~~ is 12 jan 40

7. The service which the accused is allowed to reckon is [illegible]

8. The accused is in possession of Cdn Vol Med & Clasp

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

~~(a) in the substantive rank of ...~~

~~(b) in the war substantive rank of ...~~

In the acting rank of Corporal 17 Feb 44

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(22115A) W1,467/7/43 100,000 4/42 A.A.F.W.1.16. Gp.4/22 Forms/B.296/W.o/2
(22445) W1,272/24/1672 50,000

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted, or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 15th day of August 1917

officer having custody of original documents.

Exh "A" to Statement of Evidence dated 14 Aug 44

SUMMARY OF EVIDENCE

In the case of No H-16699 Acting Corporal Geoffrey Lloyd DYER, of No 7 (Area) Coy, on the strength of The Canadian Provost Corps, a soldier of The Canadian Army Overseas.

By direction of The Commanding Officer this summary of evidence is taken on oath.

First Witness for the Prosecution Lieut M.P.Menard, of The Cdn Inf Corps, on the strength of No 6 C.I.R.U., having been duly sworn states as follows:-

"I am assistant adjutant of No 6 Cdn Inf Reinf Unit. I hereby produce a certified true copy of a paragraph of Standing Orders of 6 C.I.R.U. dated 12 Jan 44, purporting to be signed by the adjutant of No 6 C.I.R.U. Standing Orders are distributed throughout the whole camp. Copies are forwarded to each Wing, Coy etc. Every opportunity is afforded for all ranks to read these orders. This is attached to this summary of evidence and is marked as Exhibit "A".

The accused declines to cross-examine this witness.

M.P. Menard ..... Lieut
(M.P. Menard)

Second Witness for the Prosecution Lt.-Col C.F. Clingan, of The Cdn Inf Corps, on the strength of No 6 C.I.R.U. A written statement of this witness's evidence has been read to the accused and is included in this Summary of Evidence and is marked as Appendix "A". Having regard to the exigencies of the service and expenses involved, attendence of this witness in my opinion cannot be readily procured.

Paul H. LeBel ..... Lieut
(Officer detailed to take the Summary of Evidence)

The accused does not demand the attendance of this witness for cross-examination.

Third Witness for the Prosecution A/Capt J.H. Ackerman, of The Cdn Inf Corps, on strength of No 6 C.I.R.U. A written statement of this witness's evidence has been read to the accused and is included in this Summary of Evidence and is marked as Appendix "A". Having regard to the exigencies of the service and expenses involved, attendance of this witness in my opinion cannot be readily procured.

Paul H. LeBel ..... Lieut
(Officer detailed to take the Summary of Evidence)

The accused does not demand the attendance of this witness for cross-examination.

Fourth Witness for the Prosecution No D-163131 Pte Allard J.W., of The Cdn Inf Corps, on the strength of No 6 C.I.R.U., having been duly sworn states as follows:-

"I am on the Regt'l police Force of No 6 C.I.R.U. On 30 Jul 44 at approximately 0010 hrs I was on duty at the main entrance to No 6 C.I.R.U. Camp when the accused, whom I now recognize, stopped his 5 cwt car in order to allow me time to check his work ticket, which was in order. He then proceeded towards No 1 Camp, 6 C.I.R.U.

The accused declines to cross-examine this witness.

J.W. Allard ..... Pte
(J.W. Allard)

The accused is then cautioned as follows: "Do you wish to make any statement or to give evidence on oath?" "You are not obliged to make any statement or to give evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence."

The accused declines to make any statement and reserves his defence.

Cpl 17 Aug 44 SDR

SUMMARY OF EVIDENCE

In the case of No H-16699 Acting Corporal Geoffrey Lloyd DYER, of No 7 (Area) Coy, on the strength of The Canadian Provost Corps, a soldier of The Canadian Army Overseas.

By direction of The Commanding Officer this summary of evidence is taken on oath.

First Witness for the Defence

No 1-121 Cpl Smith, L.H., of No 7 Coy(Area) The Canadian Provost Corps, having been duly sworn states as follows:-

"On the morning of 30 Jul 44 at approximately 0015 hrs in company with Cpl Dyer who was driving a vehicle 5 cwt-we stopped by the sentry on the gate of the main entrance to the camp of No 6 C.I.R.U. After checking our work ticket the sentry allowed us to proceed. We travelled at the rate of speed of approximately 20 miles per hour in second gear for about 100 yards to gain the proper speed to shift into high gear. We then continued on into camp at the proper rate of speed of 15 miles per hour as laid down by camp regulations of No 6 C.I.R.U.

The accused declines to cross-examine this witness.

L.H.Smith Cpl
(L.H. Smith)

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C),(D),(E),(F)&(G) have been duly complied with.

Paul M. LeBel Lieut
(Officer detailed to take the Summary of Evidence)

In the Field
10n Aug 44.

14th of August 1944

In the case of H-16699 Pte. (A/Cpl) G.L. Dyer

Waiting Member

Capt. R. Chaf de Laine & C.I.R.Q.

Officers under instructions

Lt. D.Q. Page.
Lt. W.D. Small man
Lt. G. Dube'
Lt. E. Pelle'

14 aug. 44
Pierre Lepage maj. a fois

14 Aug 44

G.L.

LIST OF WITNESSES

In the case of No H-16699, Private (Acting Corporal) Geoffroy Lloyd DYER, of the Canadian Provost Corps, attached to the Strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Prosecution

Lt M.P. Menard, Cdn Inf Corps, on the strength of No 6 CIRU.
Lt/Col G.F. Clingan, Cdn Inf Corps, on the strength of No 6 CIRU.
Capt J.H. Ackerman, Cdn Inf Corps, on the strength of No 6 CIRU.
D-163131 Pte Allard J.W., Cdn Inf Corps, on the strength of No 6 CIRU.

Defence

L-121, Cpl Smith L.H., Cdn Pro Corps, att to No 6 CIRU.

In the Field
10th Aug 44

14th Aug 44

LIST OF EXHIBITS

In the case of No H-16699, Private (Acting Corporal) Geoffroy Lloyd DYER, of the Canadian Provost Corps, attached to the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Exhibit "A": Certified true copy of No 6 CIRU., standing Orders.

In the Field
10th Aug 44

14 & Aug 44
G.L.

LIST OF APPENDICES

In the case of No H-16699, Private (Acting Corporal) Geoffroy Lloyd DYER, of the Canadian Provost Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Appendix "A": Statement of evidence.

In the Field
10th Aug 44.

14th Aug. 44
G.R.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by C/M.

2. I desire the services of an officer to represent me at my trial by C/M. I request the services of:

Lieut. Tanguay.

if he is available.

In the Field
11 day of Aug 1944.

G. Gagné

SE-69.

Pte. Dyke, D. R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-2615 Pte David Robert DYKE, RWR, 11 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 24(a) at Courbin	not guilty	guilty	
2nd	AA 24(a) at Courbin	not guilty	not guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~n/g~~ (1) beginning on (date) ~~n/g~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 (Twenty four) days, of which nil days were spent in hospital.(+)
(+. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six months.

(Sgd) ..... Judge-Advocate, if any. 15 Jan 45 Date awarded. (Sgd) ..... President. (RP 45(3))

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 340.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

... or duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(3), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 13, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, U/A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~(+)
(+. AA 57A. Delete if not used.)

(Sgd) Under nursing

Date 20 Jan 45 Commanding 2 C.B.R.G. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G-2615 Pte DYKE, David Robert RWR, 11 CBR Bn.	25 Jan 45.	D Stewart, Capt. Adjt 11 CBR Bn.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 169

CPA86 (Revised) (AFA81) 40/PER/1(3) 4/44

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig G S N Gostling Comd 2 CBRG dated 15 JAN 45

ACCUSED.

(For the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, (b) Appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-2615	Pte	David Robert	DYKE	RWR 11 CBR Bn

PROCEEDINGS REVIEWED
26 apr 45
WMW Shaw Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 6 JAN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Customs do NOT include all relevant fms IOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. Cf A95, for units and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initiates and lays before the Court the Convening Order and Charge Sheet(s) attached thereto(1). The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1745 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~X X X X~~ Pte Lavallee, ~~as~~ interpreter? Ans No

The Interpreter is sworn.(1) Do you object to ~~as~~ shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (1)

(1. RP 120. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.P. LEE	Gen List	att Cdn Sec GHQ 1 Koh, 21 A Gp
Member	Capt	F.A. BAILLARGEON	Gen List	att Cdn Sec GHQ 1 Koh, 21 A Gp
Member	Capt	E.B. VAN DINE	RCASC	att Cdn Sec GHQ 1 Koh, 21 A Gp
Judge-Advocate				
Prosecutor	Lieut	A.F. Mann	C I C	Apn 11 Jan 2 CBRGp Apn. 10 Jan 2 CBRGp
Defending Offr	Capt	D.F. Scotty	C I C (HQ)	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Div p 2.)

A8. The accused G-2615 Pte David Robert DYKE before arraignment make(s) (no) (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 6.2(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full name and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol P 102

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 2 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR C.m 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... (1) Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is(are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(7) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *AFB 255 or AFB 256.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(C) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-565. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G-2615 Pte David Robert DYKE, (RWR), 51 Coy, 11 CBR Bn, a soldier of the Cdn Army Overseas, is charged with:

FIRST CHARGE
AA SEC 24(1)

WHEN ON ACTIVE SERVICE - BEING CONCERNED IN THE MAKING AWAY WITH, BY SELLING, PUBLIC PROPERTY ISSUED TO HIM FOR HIS USE

in that he

In the field, in BELGIUM, on 18 Dec 44, after being issued with three Army blankets by 12 (Br) Convalescent Depot on 17 Dec 44, was concerned in the selling of said blankets to Marcel VANHEE of BARON VAN CALOENLAAN 6, DE HAAN.

SECOND CHARGE
AA SEC 40
ALTERNATIVE

WHEN ON ACTIVE SERVICE - CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the field, in BELGIUM, on 18 Dec 44, was concerned in the improper disposal of eight Army blankets, public property.

(G R Logie) Lt-Col
COMD, 11 CBR Bn

In the Field
13 JAN 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(G S N Gostling) Brigadier
COMD
2 CDN BASE RFT GP

In the Field
13 JAN 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(E).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-2615	Pte		David Robert	DYKE	R Wpg R, 11 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 15 JAN 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)		(Unit.)
Major	E.P. LEE	Gen List	att Cdn Sec GHQ 1 Echn, 21 A Gp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)		(Unit.)
Capt	F.A. BAILLARGEON	Gen List	att Cdn Sec GHQ 1 Echn, 21 A Gp
Capt	E.B. VAN DINE	RCASC	att Cdn Sec GHQ 1 Echn, 21 A Gp

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 15 JAN 45

(Signed personally. RP 105 fn 2.)

(G S N Goatling)

Brigadier (Rank.)

Commanding 2 CDN BASE RPT GP Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 95 (In lieu of AFB 2) w.f.a. E/1691 (HQ&S))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Can 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 762, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 85(C)), any objections (RP 85(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 85(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl R. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—"I've had enough parades".
RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 96(A), be taken by him verbatim. (RP 95 fn 1.) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the paras in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-43 will apply so far as practicable, having due regard to the public service. (RP 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (RP 60(C), 87(C), 92(C), (D).)
(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)), or evidence by accused, as to facts or his character or both. (See RP 41 fn 2, 46 fn 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (See RP 46 fn 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (RP 86(B)), or to prove previous convictions when accused has called witnesses as to character. (RP 86(C).)
(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (See RP 40 fns 8-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged jointly see RP 61.)
(vi) Closing address by Prosecutor. (See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence save as provided by RP 46(E), KR Can 562(a).)
(vii) Summing up by JA, if any. (RP 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (KR Can 557.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (As to admitting in evidence a certified copy or facts of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).)
(vi) Summary of Evidence, if not already an exhibit.
(vii) Summary of Evidence by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (AA 52(3), RP 118(C), MML p 759.)
(viii) Any report or remarks by Prosecutor or Court for attention of Confirming Offr will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (RP 95(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (RP 118(C), MML p 759.)

3. Any report or remarks by Prosecutor or Court for attention of Confirming Offr will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (RP 95(D).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (RP 118(C), MML p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined P/2615
(No.)

Rfn. DYKE, D.R.
(Rank) (Name)

and in my opinion he is

~~fit~~ unfit to undergo trial by Court-Martial.

Station Wisbech

Date 18 JAN 45

Medical Officer

11 CDN R Bn
(Unit)

Gr-2615 – Pte David Robert DYKE – RWR
attd 11 Bn – 2 CBR Group

D-3

First Witness for the Prosecution

727662 BSM Riley I. (R.A) attd 11 (Bn) Comm Depot having been duly sworn states:

I recognize the accused. On the a.m. of 15 Dec 44 it was reported to me that the accused previous night had lost 2 blankets. He was issued with 2 more. Owing to the fact that issued blankets had been missed, on the a.m. of 16 Dec 44 I asked CSM Portman if he could assist in recovering said blankets. He said he could and returned to my office in company with a civilian tailor. CSM Portman, the tailor and Sgt Holliday were in a room overlooking the parade. The civilian tailor pointed out the accused who was brought to my office in company with 2 other soldiers. CSM Portman questioned them as to whether they knew a civilian tailor in town. They said they did not. The civilian tailor was then brought to my office and again recognized the accused. I then placed them under close arrest.

Cross-examined

The accused lost three blankets on the p.m. of the 13th. It was reported to me on the 15th a.m.

By the court

The name of the tailor is Marcel Vanhee. I am CSM at 11 Coy Depot ile Q'M. Stores.

RP 62(b) complied with.

Second Witness for Prosecution 791012 CSM Portman I (NH), RCA Commands, having been sworn states:

I recognize the accused. As a result of a [illegible] with BSM Riley concerning the loss

of blankets I made enquiries at a tailor shop in Deurne. As a result I went with the tailor to the Astoria Hotel and placed him in a room overlooking the Parade ground. When the accused appeared on parade, the tailor identified him as being one of three men who came to his shop the previous evening with blankets. I sent for the accused, had him brought to the Coy. Office. The tailor again identified him as being one of the three men concerned. I placed the accused in close arrest. In the afternoon of the same day, Dec 15, 1944, I went to the tailor shop accompanied by 2 Gendarmes, K514 Pilly, and Cpl May of the C.M.P. The tailor produced 19 army blankets when asked to do so. These were taken into possession by Cpl May.

Cross-examination:

I was in the sanctum of the Belgian tailor when he identified the accused. I did not assist him in identifying the accused. It is 20 feet from the upper storey window to the parade ground. Sgt. Halliday was in the room when the tailor pointed out the accused.

RP 85 (E) complied with.

3rd Witness for the Prosecution

Mr. Marcel Vanbee, Deurne, Belgium having been duly sworn states:

I recognize the accused. This man came and sold me blankets with 2 others men. Then I bought some blankets and the 3 of them left together. On Monday night 18 Dec 44. On 19 Dec 44 in the a.m. a soldier came to my home and told me I had to go to Astoria Hotel. I went upstairs in a room, the detained soldier pointed me out 3 soldiers on parade then they brought the

Captain's to the Coy office. After they were in the Coy Office they asked me if those soldiers were the ones who were concerned in the case. I answered Yes. Then they let me go. ~~I left~~ I paid 800 francs for 8 blankets to the tallest one. This soldier did not get any of that money. He was there, though. The soldier picked out the soldiers ~~I left~~ before I picked them out. I could have picked them out myself. The accused was at my shop with 2 other soldiers.

Cross-examination:

They visited me between 7 and 8 P.m. I think it was. I didn't look at the clock. I recognized the accused's face on the 4th of the 15th.

(R.P. 53 (15) complied with.)

1st Witness for the Defence

6-2615 Pte D.R. Dyke, R.W.R., The accused, having been duly sworn states:

At 1500 hrs on afternoon of 15 Dec 44 I was in my room in the Astoria Hotel. At 1530 I left the Astoria accompanied by Pte Horseman. We went to the Braggiers Hotel. We arrived at approx 1535 hrs. where we met Sgt. MacDonald and ~~stayed~~ stayed there until 1500 hrs approx. We left the Hotel together and went to the Cinema. We stood in the ~~one~~ awaiting the 2nd show to begin between 1900 and 1930 hrs. There we saw Pte. Wilson. At 1930 hrs we went into the Cinema and stayed until 2030 hrs. We went out together and went to a Cafe called Smoky Joe's where we arrived at 2045 hrs. In this

Cafe we saw and talked to Pte Miele I also
about Sgt Boyle. We left this Cafe at 2130
and went back to Braziers Hotel where we
again saw Sgt McDougall. We stayed with
him until 2200 hrs. The 3 of us then left the
Hotel and started back to barracks. On passing
the Bristol Hotel we went in for beer. On
entering the Hotel the prop. said it was closed.
Sgt McDougall, Pte Horseman and myself then
left the Bristol and went back to the Astoria
Hotel, our barracks. We arrived there
about 2250 hrs. I then went to bed.

I drew 3 blankets on evening of 10 Dec 44.
I drew 4 blankets when entering the Coy Depot.
There are 4 nights before the 11th I found I was
missing 3 blankets. I reported it to Orderly Cpl
Patchin. I do not know Marcel Vanbee. I
never saw him before the identification parade.
I don't know what his trade or ship is. I've
never sold blankets to anyone.

Cross-examined:

I have no watch. Before I left the Hotel I asked
the time. In every cafe there's a clock. I do not
always time my movements. But I remembered
them because I was placed under close arrest.

Re-examination

Pte Horseman was with me from 1610 to 2215
hrs.

RP 87(a) complied with

2nd Witness for the Defence ~~S/16552 Pte Horseman H.C.~~
S/11777 Sgt McDougall J. N. Shore R having
been duly sworn States:

I know the accused. I saw him on evening
of 10 Dec in Cafe Braziers about 6:30 or 7 p.m.

with Pte Horseman. And again between 7:30 and 10 p.m. we left the Cafe Regiers and went to the Bristol Hotel. We had a lunch there and went to barracks. The accused left Cafe Regiers around 7 P.m. He said he was going to the show. Pte Horseman was with him both times.

Cross-examined:

I don't know where he was between 1900 hrs and 2130 hrs.

RP 83(B) complied with

3rd Witness for the defence

7963043 Tpr Wilson J. 1 N Hants Yeo.

having been duly sworn states:

I know the accused. I saw him on evening of 12 Dec 44 in a cinema queue waiting to go in the pictures. I saw him outside waiting for the show to start. It was between 7 and half-past in the cinema queue. I don't know what time he left the cinema. Pte Horseman was with him.

By the court

I know the accused by sight

RP 83(B) complied with.

4th Witness for the Defence

130103 61 Sgt Boylen E, R.W.F.

having been duly sworn states.

I know the accused to see him. I saw him on the evening of 12 Dec 44. I was in a Cafe at Dartmouth. The accused spoke to me. It was between 2000 hrs and 2100 hrs. I don't know if he was with anyone else. The Cafe was

crowded. I don't know how long he stayed

No cross-examination.

RP 83(B) complied with.

5th Witness for the defence. 6 147189 Pte Mills P., N Shore R. having been duly sworn states:

I recognize the accused. I know him in the Comm Depot since Nov. I saw the accused on evening of 15 Dec 44 in smoking Joi Cafe about 5:30 or 5:45 p.m. Pyke and Horseman were sitting together. I sat with them. They stayed till about 7:40. They were in there when I came in.

No cross-examination.

RP 83(B) complied with.

6th Witness for the Defence. H-34116 Rfn. Adams, H. RWR having been duly sworn states:

I recognize the accused. I saw him on evening of 16 Dec from 1720 to 1835 hrs. He sleeps in the same room and I saw him there after supper from 1730 to 1830. He stayed in the room. At about 1830 he walked out. He was not carrying anything. Pte Horseman went out with him. Horseman was not carrying anything. I saw him again at 1010 back in the room.

Cross-examination:

We left the next day so I know it was the 16th.

RP 83(B) complied with.

7 Statement
for the Defence

G. 53552 Pte Horseman H.D. N Shore R.

having been duly sworn states:

I know the accused. I saw him on the evening of the 17th inst at 1630 when we had tea. We returned to the Astoria Hotel and left there at 1810. Went to Boggies Pub. Stayed there until 1900 hrs. Went to Cesarea at 1905 hrs. Went in and remained until 2010 hrs. Went to a nearby Pub until 2100 hrs. Back to Boggies Pub until 10 P.m. Went to Bristol Pub and went back to Astoria Hotel, our billets. We parted there. We saw Sgt Mc Boyle in the Boggies Pub twice. He went back to the Astoria with us. I did not leave the accused at any time. He was with me between 7 and 8 p.m. He did not visit a Belgian tailor between 9:30 and 10 P.m. I do not know the Belgian tailor. He had no parcel with him when he left the Hotel. He has never sold blankets since I've known him. He never discussed the sale of blankets with me.

Cross-examination:

I am certain of the times I've stated as I went to the pub at 8:45 or 9 as I know we left the show around 9:30. I have no watch I have not talked over the times with the accused

RP 132(3) complied with

E Horseman
Witness
Pte

18 Jan 45

Closing Address For Prosecution:

S-4615 Pte. David Robert Dyke:

Sir:

It has been proven beyond a doubt that the accused is guilty. The Police Mr. Marcel Nanke positively identified the accused as one of the soldiers who sold him blankets on the night of 15 Dec 44. Mr. Nankes' evidence has been given under oath and he certainly has nothing to gain by committing perjury.

I do not hesitate in saying that the witnesses for the accused do not aid him in establishing an alibi for the evening of 15 Dec 44. The times they state do not correspond with others. The accused movements on the night of 15 Dec 44 leave ample opportunity to have sold the blankets between the hours 1900 and 2000 hours.

B. D. Dunn Lt

Prosecuting Officer.

Closing address by the Defending Officer.

Mr. President & Members of the Court:

The accused Pte Hyke is charged with being concerned in the selling of three Army blankets property of H.M. Forces. The prosecution has brought forth Marcel Vanhee, who claims that he identifies the accused as being a member of a party of three who appeared at his house between 17 & 0'clock on the 18th Dec 44. Marcel Vanhee only saw the accused once and then for only a few minutes. Is it not possible then for this Belgian tailor to have been mistaken in his identity of the accused. The identification was highly irregular and I submit gentlemen of the court that Marcel Vanhee was literally prompted in the identification of the accused, when the ~~C.S.M.~~ Provost Sergeant pointed out the accused to Marcel Vanhee before he had a chance to identify the accused. It seems to me quite impossible for the tailor to identify the accused by saw a ground storey window since he only saw the accused once, and then for only a short time.

The defence has proved conclusively that the accused was no where near the house of Marcel Vanhee on the evening of the 18th Dec 44, Pte Harrison, ~~a friend of the accused~~, was with the accused at all times during that evening of the 18th He states emphatically that the accused did not visit Marcel Vanhee at any time during the time he was with the accused, which was all evening. Sgt McClaymont states that he saw the accused in the company of Pte Harrison at the Brasserie Ispeil at 1845 hrs. Sgt McClaymont also states that the accused stayed at this Estaminet approx one hour. Spr James Wilson states that he saw the accused at approx 1915 hrs entering & joining the others. He also saw the accused in the others. Sgt Edmond Boyland saw the accused in a cafe between 2000 hrs & 2100 hrs.

I submit Mr President that the accused could

not possibly have misled the Boy tailor [illegible]
these defence witnesses are reliable and have
nothing to gain by perjuring themselves.

The accused himself states that he never was
in the tailor trade before in his life and furthermore
he never sold Military equipment, let alone
blankets, to anyone at anytime.

The facts show that there is more than
reasonable doubt as to the guilt of the accused
and I therefore ask for an acquittal on
both charges.

[illegible] Capt.
Defending Officer

Plea in Mitigation

Mr President & members of the Court:

Pte Hyde, who sits here before you, is one of many thousands who has done a grand job in the hills fighting in the Adriatic. He is a very young man, only 20 yrs of age, and yesterday has had to stand a short time. He joined up in Canada in July 43 and came overseas in July 44. He landed in France in Sept and was in action two days after arrival. He was relieved of front line duty in Dec 44 with a touch of T.B and naturally this has been a heavy weight on his mind.

His mom's family consists of two brothers and one sister, all of whom are in the Army. One brother landed with the Can troops on "D" day. This is certainly a fine record for our family.

Pte Hyde's brothers are married and his father is deceased, having died in 1940. Gentlemen, Pte Hyde's mother is getting along in years and her only means of support is the money that Pte Hyde has assigned to her.

He has $20. per month assigned
to him plus what ever spare
money he can send by postal note.

Pte Hyde only asks of one thing
and that is to be well again so that
he may rejoin his comrades,
and fight shoulder to shoulder with
them in the front line.

W Hulme Capt.
Defending Officer

M.F.R. 355
225m—(5-47)(272-8)
H.Q. 1775-39-650
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C2615	Pte	DYKE, D.R.	(R W R) 11 CBR BN

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For NO MFM 6 AVAILABLE	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / Section 47 of the Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges for NIL days in civil custody, and 18 30 days in military custody, making a total of 18 30 days in custody, of which NIL days were spent in hospital. (12 days open arrest)

5. The present age of the accused according to his record of service is / attestation paper is 21 Years

6. The date of his attestation specified in his record of service is / attestation paper 15 Dec 43

7. The service which the accused is allowed to reckon towards discharge is 1 year 1 month

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military / military possession of or entitled to). State any air force decoration or reward.

10. [redacted]

the regimental rank of

[redacted]

.....dated.....unit

.....dated.....

12. [redacted]

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number.....Rank.....Unit

Name.....of.....Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of Jan 45

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the president, and annexed to the proceedings.

(4)

Before CALDENAAR No 6, DE HAAN accompanied by B.S.M. KILBY, C/L MAY of 2nd Provost Coy and Two Escortsmen.

MARCEL Vanhee was asked if he had in his possession any U.D. blankets and he produced Fourteen blankets, Eight of these he stated he had bought the previous evening from THREE Soldiers, Five he had bought on the previous Thursday or Saturday, the additional one blanket was bought from the a Soldier, today in the mess.

THE TAILOR made a Statement in Flemish & signed the Statement in the presence of the Two GENDARMES, the blankets were taken in possession by C/L May of the 2nd Provost Company and conveyed to H.Qrs 2nd Provost Company.

The accused declines to Cross-examine this witness.

FOURTH Witness For THE Prosecution

A/37072 Sgt. J.A. HOLLIDAY CALGARY HIGHLANDERS having been duly Sworn States:—

On the morning of the 19 Dec 44 I was called to a house by B.S.M. I. PARTMAN MM, who's present in the house was a Civilian, and the Civilian was pointing to a parade forming up below. I was asked by B.S.M. I. Partman MM if I knew the Soldier the Civilian was pointing at and I said Yes. The accused whom I recognise was the Soldier pointed out by the Civilian present.

The accused declines to Cross-examine this witness.

The accused having been duly Cautioned in accordance with R.P. 43 (2) declines to make a Statement.

(1)

Summary of Evidence

in the Case of No C2 2615 Pte. David Robert Dyke Royal Winnipeg Rifles.

On direction of the Convening Officer the evidence is taken on oath.

Fifth Witness For THE Prosecution

MARCEL Vanhee, Born van CALDENAAR No 6, DE HAAN having been duly Sworn States:—

On the evening of the 18 Dec 44, THREE Soldiers came to my house and they asked me to buy some blankets. I bought 8 Blankets from them & paid to the Soldier the Sum of 200 (Belgs) Francs. They left immediately on receiving payment.

On the morning of the 19 Dec 44 a Soldier came to my house & took me to the ASTORIA HOTEL. I went with the Soldier to the ASTORIA HOTEL where I found in a room on the 1st Floor overlooking the PARADE Ground. A parade was forming up below and the Soldier then said to me is that the ONE, THAT ONE AND THAT ONE nothing direct pointing to individuals in the Room. I answered YES.

THE THREE Soldiers were with them from the PARADE and brought to the Company Office. I then was called into the Company Office and recognised the accused as one of the THREE Soldiers who called at my house to sell blankets — the evening of the 18 December 1944.

M Vanhee

The accused declines to Cross examine this witness.

Second Witness For THE Prosecution

727632 B.S.M. T. KILBY R.A. (FD) P/Attached 12 (Bde) Provost Det.: having been duly Sworn States:—

ON the morning of the 18 Dec/44 my Sentence
L/Cpl PALMER A.G. Reported to me that the accused whom I Recognise
had took 3 blankets on the night of the 17 Dec/44.
on the night of the 18 Dec 44 other
blankets were issued from the ASTORIA HOTEL. ON the morning of
the 19 Dec 44. I Called C.S.M. I. POLTEMAN MM from my Company into
my Office & asked him if he Could assist in identifying the lost
blankets. C.S.M. I. POLTEMAN MM had previously been Stationed in
the Town of De HAAN and agreed to help. LATER the
same morning C.S.M. POLTEMAN MM Returned to my Office
accompanied by a Civilian TAILOR Called Mordeh Vanher &
C.S.M. Poltman and the TAILOR were placed in a Room
adjoining a parade Ground. a Parade was formed of
at that time and the TAILOR then pointed to THREE Soldiers
on the PARADE & Said those are the Men who Called at my
house on the previous Evening to Sell blankets, the accused
whom I Recognise was one of the THREE Soldiers
identified from the window.
The THREE Soldiers identified by the
TAILOR were paraded from the PARADE & brought to my
Company Office. C.S.M. I. POLTEMAN MM asked the accused if
he knew a TAILOR in De HAAN and he answered - No.
The TAILOR Mordeh Vanher was then brought into my Office
and again identified the accused was one of THREE Soldiers
who Sold blankets to him on the evening of the 18 December
1944.
I then placed the accused under Close arrest.

J. Riley 13.5.45.

The accused declines to Cross-examine this witness.

THIRD witness For THE Prosecution

1870113 C.S.M. I. POLTEMAN MM.

No 1 Commando having been duly Sworn States: -
on the 19th Dec 1944 at approximately
0900 hrs. A/S/M. Riley Lieutenant Officer i/c A Coy, Called
me into his Office and informed me that 3 Men had Reported
the Loss of blankets on the previous evening. He asked me
if I Could be of any assistance in taking the statements and
as I had some knowledge of the District, having been
Stationed here previously, I said Yes, I will do my best.
I then went to Two TAILORS I Knew of
in De HAAN and ascertained them, the 1st one denied all
knowledge of blankets, the 2nd by name Mordeh Vanher
Said that THREE Soldiers whom he thought were Canadians,
had been in his Shop the previous evening with blankets for
Sale. I asked him if he Could Recognise the THREE men
again and he said he Could. I then took the
TAILOR to the ASTORIA HOTEL & placed him in a Room that
overlooked the PARADE Ground. I Knew that a Canadian
Battalion was moving away that morning & would be parading
there. When the accused appeared on parade the TAILOR
identified him as being one of the men who had been
in his Shop the previous evening with blankets for Sale.
I ordered Sgt. Holliday who was present to
send for the accused. When the accused appeared in the
Office I questioned him & asked him if he Knew of any
TAILOR in De HAAN and the accused answered - No.
I asked him if he had any Knowledge of the blankets
and the accused answered No. I then Called the
TAILOR Mordeh Vanher into the Room and he again
identified the accused as being one of the THREE Soldiers
Concerned. I placed the accused under Close arrest.
On the afternoon of the same day
I went to the Shop accompanied by Mordeh Vanher at

1st Witness for the Defence.

G 53852 Pte Military Donald HARSMAN
North Staffs Regt having been duly Sworn States:-

On the evening of the 18 December I was with the accused in the Astoria Hotel Trieste after having been until 1825 Hours. At 1825 Hours accompanied by the accused I went to the Hotel Stadttheater, De Haven and at approximately 1900 Hrs. I went to the Cinema Stadt of the Theatre, the accused was with me. We left the Cinema Stadt about 2100 Hrs and went for a drink at a nearby Cafe. Thence returning to the Hotel Stadttheater until 2300 Hours. From there we called at the Hotel Bristol but being unable to get a drink, we went to our quarters. From Transfer to the time of Returning to quarters - the night of the 18th December, I was with the accused the whole time.

HARSMAN Pte.

The accused declines to Cross-examine this witness

2nd Witness for the Defence.

17977 Sgt Vaughan 1st Bn Gaelic
North Staffs Regiment having been duly Sworn States:-

On the evening of the 18 December I was in the Hotel Stadttheater, and at approximately 1825 Hours the accused and I accompanied entered the Hotel. He came with & looked for me and left the Hotel with a Pte Harsman aboard half an hour later to go to a Show. I next saw the accused and Pte Harsman return to the Hotel at about 2130 Hrs. Vaughan Sgt

Question 1 Did you leave the Hotel Stadttheater at Closing Time with Pte Harsman and myself.

Answer 1 Yes.

Question II Did I and Pte Hoekman proceed to the Hotel Bristol

Answer II YES.

Question III Did you leave the Bristol Hotel with Me and return to Barracks with Me.

Answer III YES.

Question IIII Was Pte Hoekman with me the whole Time

Answer IIII YES. Vaughan MacDougall

3RD Witness For THE Defence.

13010361 Sgt Edward Boylan,
R.W.F. P/Attached to 12(Bt) Canadian Def.C having been duly Sworn States:-
on the evening of 18 Dec 44 between the hours of 2000 Hrs — 2100 Hrs I was in a Cafe having a drink when the accused whom I recognise entered the Cafe. I do not know how long he stayed as if he was accompanied.

E Boylan Sgt

The accused declines to Cross examine this witness.

4th Witness For THE Defence.

B/147185 Pte Patrick Mills.
North Staffs Regt having been duly Sworn States:-
on the evening of the 18 Dec 44 about 2030 Hrs I entered a Cafe & saw the accused whom I recognise together Pte Hoekman. I sat at the table in the Cafe with them and the accused accompanied by Pte Hoekman left the Cafe at about 2130 Hours.

Pte Mills P.

The accused declines to Cross-examine this witness.

5th Witness For THE Defence.

7963043 Tpr James Wilson 1 Cdn Northants Yeomanry having been duly Sworn States:-
on the evening of the 18th Dec 44, I saw the accused whom I recognise at about 1915 Hrs waiting to go into the Cinema Show. I also saw him inside the Theatre ~~[illegible]~~ Seated awaiting the pictures to Commence.

Wilson

The accused declines to Cross-examine this witness.

6th Witness For THE Defence.

6031787 L/Bdr Charles Pickles
2 Bn Essex Regt having been duly Sworn States:-
on the evening of the 18 Dec 44, I was ordinary Corporal of the Hotel Astoria, the accused whom I recognise was billeted in the Hotel.
at about 1830 Hrs I saw the accused leave the building. I did not see him again that evening.

C. Pickles Cpl.

The accused declines to Cross-examine this witness.

Certified that Rule of Procedure 44 (c) (d) (e) (f) have been complied with.

Taken down by me in the presence and hearing of the accused this 27 DAY of December 1944 at DE HAAN.

[illegible]
CAPT & ADJUTANT
12 (Bt) Canadian Def.C

REQUEST FOR DEFENDING OFFICER

I wish to have an Officer appointed at the direction of the Commending Officer defend me at my trial.

W R Dyke
(C26615 Pte DYKE, W.R.

LIST OF WITNESSES

PROSECUTION:

Mr M. Vanhee
727638 BSM T. Riley
1870118 CSM I. Portman, MM
[illegible] SGT J.A. Holliday

DEFENCE:

[illegible] Pte Horsman, M.D.
17977 Sgt Mc Dougall, V.
13010361Sgt Boylan, E.
3147181 Pte Miele, P.
7963043 Tpr Wilson, J.
4031787 Cpl Pitcher, C.

PT IV. PROMULGATED AND EXTRACTS TAKEN.

Accused	Date	Signature of Offr.
C2615 Pte Dyke D R	2 Apr 45	E.O. Trehon Lt Col Commandant (APW) 1 Cdn Detn &FP Sks Cdn Pro Corps

The Deputy Judge Advocate General, Cdn Sec 1 Sch HQ 21 Army Gp, having advised that the petition of the accused dated 29 Jan 45 be allowed, I, being a superior military authority, hereby direct under the authority vested in me by KR(Can) 574 that the record of the conviction on the charge in these proceedings be and the same is hereby removed and the accused relieved from all consequences of his trial thereon.

In the Field
/0 Mar 45

(E.L.M. Burns) Maj-Gen
GO I/C
Cdn Sec 1 Sch - HQ 21 Army Gp

3082

B. 9.83 Gnr. Dyke S.
3 M. A. A. Regt RCA.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 23rd day of June, 1941.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Military Headquarters, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial, ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~I am unable to appoint —~~

~~(1) Three Officers to form the Court~~

~~(2) A Field Officer as President~~

~~(3) Three Officers having more than one year's service~~

~~for the following reason, namely:—~~

Judge Advocate

Captain	A.N.Friedgut	J.A.G.Branch C.M.H.Q.

President.

Rank.	Name.	Regiment.
Lt.Col.	W.E.Huckvale	1 Lt.A.A. Regt. RCA

Members.

Rank.	Name.	Regiment.
Capt.	C.K.Osler	1 Lt.A.A. Regt. RCA
Lieut.	R.W.Reville	2 Lt.A.A. Regt. RCA

Waiting Members

Lieut.	T.F.Stephens	104 A/Tk.Bty. RCA
Lieut.	D.A.Wolstenholme	104 A/Tk.Bty. RCA

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (F.J.Montague) Major-General

Commanding Canadian Military Headquarters

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-9183 Gnr. DYKE, Fred. 53 Lt.A.A.Bty, 3 Lt.A.A.Regt. R.C.A.	First Charge A.A. Sec 18(4) (See Charge Sheet attached)	Not Guilty	GUILTY SENTENCE:- NINETY DAYS DETENTION DATE of AWARD 4 July 1941	Confirmed subject to [illegible] not in excess of [illegible] from date of award 3rd July 1941

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No

(Signed) (P.J. Montague) Major-General
Commanding Canadian Military Headquarters.

(Signed) [illegible] Lt
1st LAA Regt RCA
Convening Officer (c)
Asst Judge Advocate General

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of July 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court and Judge Advocate
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~) were duly sworn. the shorthand writer was

* Omit if not applicable.

Signed this 4th day of July 1941.

W. E. Mackenzie Lt. Col
President of the Court Martial.
A.H. Fraser Capt
Judge Advocate

C. Certificate in case of death sentences.

* See footnote (1) on page 360 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Lt Hendrick Unit
Convicted 23/6

CHARGE SHEET

Sec. 18 (4)
Army Act.

The accused, No. B.9183 Gunner Dyke, Fred, 53 Lt. A.A. Bty., 3 Lt. A.A. Regt., R.C.A., a soldier of the Canadian Army Overseas, is charged with:-

Stealing property belonging to a Regimental Mess,

in that he,

at Colchester, Essex, on 25 May 41, stole 17 pounds of beef, value nine shillings 1 penny, 2 pounds of bacon, value two shillings seven pence, and 3 pounds of margarine, value one shilling three pence, the property of the 3 Lt. A.A. Regiment, R.C.A., Officers' Mess.

(B.R. Ker) Lieut. Colonel,
Officer Commanding,
3 Lt. A.A. Regt., R.C.A., C.A. (O).

Colchester, Essex,
18th June, 1941

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(P.J.Montague) Major-General
Commanding
Canadian Military Headquarters.

23 Jun 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL IN THE CASE OF B9183, Gunner DYKE, Fred, 53 Lt. A.A. Bty., 3 Lt. A.A. Regiment, R.C.A., Canadian Army (Overseas)

Held at Colchester, Essex, on the 4 July 41. The Order convening the court, the charge sheet and the summary of evidence are laid before the court..

Rules of Procedure 22 and 23 are set out and complied with.

The order convening the court was read to the court in the presence of the accused and witnesses.

Court: Captain Osler is ineligible to sit on this court and his place has been taken by Lieut. T.K. Stephens. The reason for his being ineligible, is that he was a member of the officers mess from which certain meat is alleged to have been stolen.

Q.1: Have you any objection to being tried by court martial, by me as president of the court?

A.1: No sir.

Q.2: Have you any objection to being tried by court martial, by either of the members of the court?

A.2: No sir.

Q.3: Have you any objection to Gunner Crone acting as shorthand writer on this court martial?

A.3: No sir.

The President and members of the court and the shorthand writer were then sworn in.

The charge sheet was read to the court.

Q.4: To that charge, how do you plead?

A.4: Not guilty sir.

Q.5: Do you wish to apply for anadjournment on the ground thatany of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had suffieient opportunity for preparing yo r defence?

A.5: No sir.

1st. WITNESS FOR THE PROSECUTION: Detective Constable R. Spiller, Colchester Borough Police

Prosecution: Will you identify yourself to the court?

A.7: Detenceive Constable Reginald Spiller of the Colchester Borough Police.

Q.8: Do you recall the day of Sunday, 25 May, 41?

A.8: Yes sir.

Q.9: Will you tell the co rt what happened on the day of 25 May last?

A.9: About 8.30 P.M., I saw the accused Dyke, and Gunner Kehoe standing against the fence at the amusement park on Butt Road. I approached them, and said, "I am a police officer, what have you got in the bag?" Dyke then walked away and the other man, Kehoe said "Nothing only my kit, I am going on leave" On asking to see what was in the bag, Kehoe opened it up and there was some meat in it. I said to him, "I am satisfied that you and Dyke stole the meat" I cautioned them both and took them to the police station and took them to Detective Sergeant Kemp.

Q.10: Can you identify this bag?

A.10: Yes sir, that is the bag that contained the meat.

Q.11: How do you identify it?

A.11: By the number on it.

Prosecution: I produce this kit bag as exhibit '1' for the prosecution.

Q.12: Was the accused sober when you arrested him?

A.12: No sir, he was drunk.

Q.13: Did the accused just walk away or did he seem think he was in some kind of trouble and start to get away from you?

A.13: No sir, he didn't try to run away, he just walked away.

Q.14: When you said to them, "I am satisfied that you stole the meat, did they seem to realize that they were in a well, in a jam more or less?
A.14: I think that they realized that they were in trouble, yes.
Q.15: They were not too drunk to realize that?
A.15: No sir.
Q.16: Were they properly dressed when you accosted them?
A.16: Yes sir, as far as I know, they were properly dressed.

Defence: Constable Spiller, you say you saw these men with a kit bag and you went over to them and asked them what they had in the bag. What made you particularly suspicious of these men. Surely you see dozens of men carrying kit bags these days when there are so many soldiers about.
A.17: Well sir, you don't very often see men with large kit bags unless they have all of their equipment on too.
Q.18: Would you have arrested them for being drunk, if you had not seen what was in the kit bag?
A.18: Noxsir.
Q.19: Why not. You just said that they were drunk?
A.19: We don't usually arrest a man for being drunk unless he is making a disturbance of some kind or making a nuisance of himself.
Q.20: Just how drunk were these men?
A.20: Well, sir, they had been drinking but they were not to the point of being so drunk that they did not know what they were doing or what was going on.
Q.21: Constable Spiller, do you remember giving evidence at a previous summary, when you said that they were both 'very' drunk?
A.21: That was evidently an over-statement on my part sir. They did know what they were doing. They were not too drunk for that.
Q.22: Then you are right this time, when you say that they were not so very drunk?
A.22: Yes sir.

2nd WITNESS FOR THE PROSECUTION: M60955, Gnr. BANNON, J. 17 Lt. A.A. Bty., 3 Lt. A.A. Regiment, R.C.A.

The witness was sworn in.

Prosecution: Will you identify yourself to the court?
A.23: M60955, Gnr. Bannon, J., 3 Lt. A.A. Regiment, sir.
Q.24: To what batter do you belong?
A.24: To the 17th. Lt. A.A. Bty., R.C.A.
Q.25: Do you recall anything that happened on May 26th. last?
A.25: Yes sir.
Q.26: Will you tell the court in your own words what you know about anything that happened on that day?
A.26: In the mornin sir, about 6.30 I think it was, I was going through the supplies for breakfast and I noticed that there was some of the bacon missing.
Q.27: Did you notice anything else missing?
A.27: Not right then sir.
Q.28: How are you employed?
A.28: As a cook in the officers' Mess, sir.
Q.29: Which officers' mess?
A.29: The 3rd. Regiment Officers' Mess.
Q.30: What time did you notice this bacon missing?
A.30: In the morning sir, about 6.30 in the morning.
Q.31: On Monday morning?
A.31: Yes sir.
Q.32: And did you notice anything else missing?
A.32: No sir, I wasn't looking for anything else to be missing.
Q.33: Did you see this bacon at the previous summary of evidence?
A.33: Yes sir.
Q.34: Would you say it was the same bacon?
A.34: Well sir, I couldn't positively say it was the same bacon but it was cut in the same way and the same thickness.

Q.35: Was the bacon sliced?
A.35: Yes sir. It was sliced with an automatic slicer.
Q.36: And did you see the other meat that was in the kit bag?
A.36: Yes sir.
Q.37: What was it, what cut was it?
A.37: It was a prime cut of roast sir.
Q.38: How big was it?
A.38: It was 17 lbs. 4 oz. sir, if I remember correctly.
Q.39: And was that the usual cut that you got for the mess?
A.39: Yes sir, that was the usual cut and the usual size of the cut.
Q.40: And what about the margarine? Did you see it too?
A.40: Yes sir.
Q.41: Was it any special kind of margarine?
A.41: No sir, it was just the ordinary margarine that is issued to the messes.
Q.42: Now coming to Sunday afternoon. Did you see the accused in the mess or in the kitchen on that particular afternoon?
A.42: Yes sir, he was in the kitchen on that afternoon.
Q.43: Did you wonder what he was doing in the kitchen, or was it an ordinary thing for him to be in there?
A.43: It wasn't out of the ordinary for him to be in the kitchen because he was in and out of there very often in the line of his duties. He is a fireman in the mess, there.
Q.44: Where was this meat kept?
A.44: It was kept in a room at the back of the kitchen sir.
Q.45: And did Gunner Dyke ever have occasion to go into that room?
A.45: I don't think so sir.
Q.46: What time on Sunday did you leave the kitchen?
A.46: About 8 o'clock sir, in the evening.
Q.47: Was anybody in the kitchen at that time?
A.47: No sir, there was nobody in there then, I left to go to my room and write some letters.
Q.48: Did you check your stores on Saturday?
A.48: Not particularly sir.
Q.49: And where was this bacon kept? In the meat room too?
A.49: Yes sir.
Q.50: Was it out in the open or was it locked up?
A.50: It had a cover over it sir.

Defence: Gunner Bannon, you say that the bacon that you saw in the kit bag when it was opened up, was similar to that which was missing from the mess. Can you positively say that it was the same bacon?
A.51: No sir, I wouldn't say that it was because bacon all looks pretty much the same but it was the same kind of bacon and it was sliced with a slicer and it was sliced to the same thickness as we always slice it.
Q.52: So that the only thing you can say is that it looked like the same bacon. Is that right?
A.52: Yes sir.
Q.53: How long have you been working at the officers mess?
A.53: For three months sir.
Q.54: Then I take it you are fairly familiar with the kind of bacon that you use in that mess?
A.54: Yes sir.
Q.55: So that you have seen a good bit of bacon?
A.55: Yes sir.
Q.56: And I suppose it all looks pretty much the same doesn't it? Or is there a difference in the kind one mess gets from that that another mess gets?
A.56: No sir, it is all pretty much the same.
Q.57: And this beef, was it any different to any other beef?
A.57: No sir, I guess not but it was the same cut as we always get and it was approximately the same size.

3rd WITNESS FOR THE PROSECUTION: M49757, Bdr. Olive, R.A., 17 Lt. A.A. Bty., 3 Lt. A.A. Regiment, R.C.A.

The witness was sworn in.

Prosecution: Will you identify yourself to the court?
A.58: M49757, Bdr. Olive, R.A., 17 Lt. A.A. Bty., 3 Lt. A.A. Reg't., R.C.A.

A.J.

Q.59: How are you employed?
A.59: I am a cook sir.
Q.60: On the 25th of last May, how were you employed?
A.60: I was employed in the officers' Mess.
Q.61: Which officers' mess?
A.61: The 3rd. Regiment officers' mess sir.
Q.62: On Monday morning the 26th. May, do you remember what took place at that officers' mess?
A.62: Yes sir.
Q.63: Will you tell the court what happened?
A.63: Sir, I was down town on Monday morning getting groceries for the mess and I returned around 12 and went into the meat house to see about the meat for the evening meal and I found that there was not enough. So I asked Gunner Bannon what had happened to the meat that was there on Saturday.
Q.64: So there was a shortage of the meat, was there?
A.64: Yes sir, there was a large roast missing.
Q.65: Was there anything else missing?
A.65: I didn't miss anything else sir, right at that time. All I missed was the beef.
Q.66: How much was missing? What was the size of the beef?
A.66: About 20 pounds sir. That was the usual size of the cut.
Q.67: Did you see this beef that was brought back?
A.67: Yes sir.
Q.68: Would you identify it as the one that was missingx from the mess?
A.68: No sir, I couldn't say exactly sir, but it looked like the same one.
Q.69: It was the same cut?
A.69: Yes sir, it was the same cut.
Q.70: And how much bacon was there missing?
A.70: About two pounds sir.
Q.71: And to whom did this meat belong?
A.71: To the Officers Mess sir, of the 3rd. Regiment, R.C.A.
Q.72: Would Dyke or Kehoe have any right to that meat?
A.72: No sir.
Q.73: Would Gunner Dyke have any right to go into the room where the meat was kept?
A.73: No sir. He was just the fireman for the mess.

Defence: Bdr. Olive, you were in charge of the cook-house, were you?
A.74: Yes sir.
Q.75: Did you always keep the meat room locked?
A.75: No sir. Not all the time. The lock was broken.
Q.76: But could anyone get into that room if they so desired?
A.76: Yes sir, you could open the door if you pulled on it hard enough.
Q.77: You can't positively say that the meat which was brought back was the piece that was missing?
A.77: No sir, it was about the same size and the same cut and it looked like the same one but I can't say for sure that it was the same one.

4th. WITNESS FOR THE PROSECUTION: M60581, Bdr. Kurze, M.F., 17 Lt. A.A. Bty., 3 Lt. A.A. Regiment, R.C.A.

Prosecution: Will you give your regimental number, rank and name to the court?
A.78: M60881, Bdr. Kurze, M.F., 17 Lt. A.A. Bty., R.C.A.
Q.79: You were present at the time that a kit bag was opened up and some contents weighed? Is that right?
A.79: Yes sir.
Q.80: What was in the bag?
A.80: Some beef, bacon and margarine sir.
Q.81: Is this the kit bag which you saw opened?
A.81: Yes sir.
Q.82: How do you identify the bag?
A.82: By the name and number on it sir.
Q.83: What happened to the bag after it was emptied?
A.83: I gave it back to Lieut. Gillies sir.

Judge Advocate: Where did you get the kit bag?
A.84: It was at the regimental orderly room sir.

Gunner Bannon was then recalled.

Prosecution: What happened to the things that were in the kit bag that was found in the possession of the accused?
A.85: I took them out sir and used what I could of them.
Q.86: How long after the evidence was taken did you have the meat?
A.86: Almost a week, I think sir.
Q.87: Were they fairly well kept or in what condition were they?
A.87: The meat was going bad so I used just what I could of it.
Q.88: Who brought this kit bag over to you?
A.88: I don't know sir, somebody brought it over but I don't know who it was.
Q.89: You used up all the meat?
A.89: Yes sir.

Defence: In this case, I submit that the prosecution has not proved that the meat that was found in the kit bag was the meat that came from the officers mess and was not meat that could have come from anywhere else. There has been no witness that could identify the meat positively. They alwaysx said that it looked like the meat but they couldn't say that it was the meat in question. And as for the bacon, there is no way of telling that the bacon was in the officers mess or that it could not have come from any other place. It merely looked like the bacon that was on the mess. And the margaring was just ordinary margarine and could have come from almost anywhere. So I submit that there is no proof that the goods that were in the kit bag came from the officers mess of the 3rd. Regiment, as specified in the charge sheet. I submit that the meat has to be positively identified as that which was stolen from the officers mess in order to prove that the accused did steal it.

Prosecution: I would submit that the meat has been identified as a piece that is similar to that which was missing from the mess and that the bacon has been identified as the same as was used in the officers mess and the margaring is the same as was used in the mess, although it is the same as was used in the other messes. It is unlikely that part of the goods would be taken from one mess and the remainder taken from another mess. I submit that all the goods were taken from the one mess, the Officers Mess of the 3rd Lt. A.A. Regiment, R.C.A.

Court: Do you wish to give evidence yourself on your own behalf?
A.90: No sir.
Q.91: Do you intend to call any witnesses in defence?
A.91: Yes sir.
Q.92: Is he a witness as to character only?
A.92: No sir.

1st. WITNESS FOR THE DEFENCE: A17155, Sgt. Paisley, 53 Lt. A.A. Bty., 3 Lt. A.A. Regiment, R.C.A.

Prosecution: Will you identify yourself to the court?
A.93: A17155, Sgt. Paisley, 53 Lt. A.A. Bty., sir.
Q.94: Can you identify this man?
A.94: Yes sir, he is Gunner Dyke, sir.
Q.95: Did you see him on Sunday afternoon, on the 25 May, last?
A.95: Yes sir, I saw him. I am not positive about the date but I saw him on that Sunday afternoon. He was in my room, sometime between 4 and 6 o'clock, I believe, I don't remember just exactly the time but it was around in there somewhere.
Q.96: Was he intoxicated?
A.96: Yes sir, he was drunk, that day.
Q.97: How did you know that he was drunk?
A.97: By the way he was talking sir, he did a lot of mumbling.
Q.98: Would you say that he was responsible for his actions at that time?
A.98: No sir, I am positive that he wasn't.

Prosecution: You don't remember what date it was when you saw the accused?
A.99: No sir, I don't remember the date but I know it was on a Sunday.
Q.100: What time in the afternoon was it when you saw him, was it fairly early or was it late on in the afternoon?
A.100: I would say sir, approximately 5.30 in the afternoon.
Q.101: And although you say that this man was not responsible for his action, you didn't put him under arrest?
A.101: No sir, I didn't put him under arrest.
Q.102: Is that a practice in your regiment, to let men go around in a drunken condition and not put them under arrest?
A.102: I have seen more than men going around drunk sir, and they were not put under arrest sir, so that, unless a man is making a nuisance of himself or annoying anyone, I don' t put him under arrest. I told him to go home and get a little sleep and he would be all right.

Defence: Although you didn't put this man under arrest, you did send him home to get some rest and sleep it off, did you?
A.103: Yes sir, I told him to go and get some sleep and he would be all right.

Prosecution: You didn't put anybody over him as escort?
A.104: No sir. I didn't. I just told him to go home and get some sleep.

2nd. WITNESS FOR THE DEFENCE: A17104, Sgt. Ross, R.L., 53 Lt. A.A. Bty., 3 Lt. A.A. Regiment, R.C.A.

Defence: Will you identify yourself to the court?
A.105: A17104, Sgt. Ross, R.L., 53. Lt. A.A. Bty., R.C.A.
Q.106: Do you recognise this man?
A.106: I do, sir,
Q.107: Who is he?
A.107: Gunner Dyke sir.
Q.108: Did Gunner Dyke come into your room in the afternoon of ~~xxxx~~ Sunday, May 26th. last?
A.108: Yes sir.
Q.109: In what condition was he?
A.109: He was drunk sir
Q.110: He was drunk when he came into your room on that day?
A.110: Yes sir.
Q.111: What made you think that he was drunk?
A.111: By the way that he was talking sir, and he was very giddy ;and unwary in the way that he walked.
Q.112: Would you say that he was responsible for his actions?
A.112: I don't think he was sir, at athat time.
Q.113: What time was it that he came into your quarters?
A.113: About 2.30 sir.
Q.114: Are you sure of the time?
A.114: Yes sir, I am quite sure of the time.

Prosecution: Who do you room with?
A.115: Sgt. Paisely and Sgt. McCallum sir.
Q.116: Was the accused in that, your room between 5 o'clock and 6?
A.116: No sir.
Q.117: What time was it then?
A.117: About 2.30 sir.
Q.118: This man was not drunk enough to be put under arrest?
A.118: Well sir, he was drunk all rught but he wasn't put under arrest.
Q.119: He wasn't put under arrest?
A.119: No sir.

3rd. WITNESS FOR THE DEFENCE: B9067, Sgt. McCallum, W.F., 53 Lt. A.A. Bty., 3 Lt. A.A. Regiment, R.C.A.

Defence: Will you identify yourself to the court?
A.120: B9067, Sgt. McCallum, W.F., 53 Lt. A.A. Bty., sir.
Q.121: Do you recognize this man?
A.121: Yes sir.

Q.122: Who is he?
A.122: Gunner Dyke sir, is his name.
Q.123: This man came into your quarters on Sunday, May the 25th. Is that right?
A.123: Yes sir.
Q.124: And in what condition was he when he came into your quarters?
A.124: He was very drunk sir.
Q.125: Was he staggering?
A.125: Well, I wouldn't exactly say he was staggering sir, but he was very unsteady on his feet.
Q.126: Would you say that he was responsible for his actions?
A.126: No sir, I don't think that he was, at that time.
Q.127: What time was it that he came into your quarters?
A.127: Between 2 and 3 sir, in the afternoon.

Prosecution: You are quite sure of the time, are you?
A.128: Yes sir. It was between 2 and 3 o'clock in the afternoon.
Q.129: And you didn't put him under arrest?
A.129: No sir.

4th. WITNESS FOR THE DEFENCE: B9071, L/Sgt. Wood, J.H., 53 Lt. A.A. Bty., 5 Lt. A.A. Regiment, R.C.A.

Defence: Will you identify yourself to the court please?
A.130: B9071, L/Sgt. Wood, J.H. 53 Lt. A.A. Bty., R.C.A. sir.
Q.131: Do you recognize this man?
A.131: Yes sir.
Q.132: Who is he?
A.132: Gunner Dyke sir.
Q.133: Would you tell the court under what circumstances you saw the accused on Sunday afternoon, May 25th last?
A.133: In the afternoon of the 25th of May, sir, I went over to Gunner Dykes room to pick up Gunner Kshoe and take him over to the ball game and both the men were drunk.
Q.134: Why did you think that they were drunk?
A.134: They both seemed to be very dizzy sir.
Q.135: Did you see any bottles there in that room?
A.135: Yes sir, there were some large bottles of cider there on the table in the room.
Q.136: How many bottles were there that you saw?
A.136: 8 or 9 sir. Some of them were full and some were empty.
Q.137: What time would that be?
A.137: About 5 o'clock sir, about 1700 Hours.

Prosecution: How many bottles did you say were there?
A.138: 8 or 9 sir.
Q.139: And some of them were full?
A.139: Yes sir.
Q.140: How many of them were full?
A.140: I don't really know sir.
Q.141: Did you put these men under arrest?
A.141: No sir.

Court: Is cider an intoxicating drink?
A.142: Yes sir.
Q.143: How do you know?
A.143: I have drunk it sir, and I know that you can get drunk on it.

5th. WITNESS FOR THE DEFENCE: Major Woodrow, O.C. 53 Lt. A.A. Bty., RCA

Defence: You are Major Woodrow?
A.144: Yes.
Q.145: You are the Commanding Officer of the 53rd. Lt. A.A. Bty?
A.145: That's right.
Q.146: Do you recognize this man?
A.146: Yes, Gunner Dyke.
Q.147: How long have you known him?
A.148: Since April last year, 1940.

He was with me in the 4th. Field Regiment before he came to the 53rd. Battery.

Prosecution: Would you say he was a good soldier?
A.148: He is a good soldier in every respect. He alway does his wonk in a very conscientious way and is a soldier through and through. He has not been in this kind of trouble before to my knowledge and has a good record in the service. He has only one failing, he likes the bottle too much.

Defence: Sir, I would submit that the prosecution has not proved beyond any douht that the goods alleged to have been stolen, are the goods that were found in GunnerDyke's kit bag. They were not found in the possession of the accused, only found in his kit bag. I dont think that the evidence justifies a conviction on this charge. The goods could have come from almost any mess, but in the charge, the 3rd Regiment Officers Mess is specified. From his character, it is evident that he is not a thief at heart and would under no circumstances steal anything or take anythin that did not belong to him unless, as in this case, he was not in full control of his will-power. He had been drinking and would therefore be not exactly responsible for his actions. However, I submit sir, that there is not conclusive evidence that the accused stole the meat from the Officers Mess of the 3rd. Mt. A.A. Regiment.

Prosecution: Sir, I submit that the evidence against this man is such that it shows that he had the opportunity to take the meat from the mess in question. He was in the kitchen of that mess on the afternoon that the meat was taken. He was found with the meat, not actually in his possession at the time but with another man who was apparently carrying the meat. It was in his kit bag. The mere fact that he had been drinking and was probably not himself does not excuse the fact that he did appropriate certain goods that did not belong to him and that he had no right to. He apparently was not so drunk that he should have been put under arrest for there were no less that three sergeants that saw him in an intoxicated condition and none of them put him under arrest and I am quite sure that it is not the policy of the regiment to allow men to go around drunk all over the place. So I submit sir, that the accused was in possession of his senses to an extent that he knew what he was doing.

Court: Have you any evidence as to character and particulars of service of the accused?
Prosecution: Yes sir.

Lieut. D.S. Gillies

Court: Have you any evidence as to character and particulars of service of the accused?
A.149: Yes sir, I have here A.F.B. 296, Statement as to character and particulars of the accused.
Q.150: Is the accused the person named in this statement?
A.150: Yes sir.
Q.151: Have you compared the entries on this statement with the entries in the Regimental Books?
A.151: Yes sir.
Q.152: And is this statement a fair and true summary of the entries?
A.152: Yes sir.

Defence: I would like to address the court sir, on behalf of the accused.
Court: Yes, go ahead.
Defence: I refer first to the crime sheet of the accused sir, it is a good one considering that the accused has been in the army since shortly after the war broke out. He is a man whose service is not short. He served in the last war and is in

possession of 4 medals from the last war. He has a wife and 3 children to support and I would suggest that any harsh punishment would hurt them possibly more than it would him. He has served 39 days in custody already and I would suggest that this be taken into consideration by the court.

- -

Exhibit 2.
[illegible]
President [illegible]

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
B-9183	Gunner	DYKE, F.	3 LT. A.A. REGIMENT, R.C.A.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court-martial this statement may be compiled from the field service conduct sheet.

The conduct sheet(s) mentioned should be produced to court with this statement and annexed to the proceedings.

† See para. 827, K.R., 1940.

* The numbers therein stated should correspond with the entries in the conduct sheets, particular letter or number being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	*Since Enlistment.
For Absent without leave	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused~~

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~beginning on (date)~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 39 days in military custody, making a total of 39 days, of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 40

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 28-3-40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year 72 days

~~8. The accused is entitled to deferred pay or gratuity in respect of service.~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

10. The accused is in possession of, or ~~has been granted a certificate of military character for a period which has not yet expired in respect of~~ ~~entitled to wear any military decoration or decorations~~ 1914-1915 Star - General Service Medal Victory Medal.

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer had held the permanent~~ rank of ~~[illegible]~~ dated ~~[illegible]~~

12. (*In the case of an officer.*) ~~The accused holds~~ in the army the rank of ~~[illegible]~~ dated ~~[illegible]~~ ~~and in the regiment (or corps or department) the rank of [illegible] dated [illegible]~~

(P.S.O.) Wt. 30749/3602 70,000 12/40 A.R. H.W. Ltd. Gp. 675

A.A.J.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-9183 Rank Gunner Name DYKE, F. of 3 Lt. A.A. Regt. (or as the case may be)

(INSTRUCTION—A certified extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4- day of July, 1941

(A.M.CLARK) Captain, R.C.A.
Adjutant, 3 Lt. A.A.Regt., R.C.A.

13. The accused has served as a non-commissioned officer continuously, without reduction to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years, ...

(Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through, except that in the case of a trial by field general court martial the information may be collected from such sources as are available and the paragraphs completed accordingly.)

2

SUMMARY OF EVIDENCE

IN THE CASE OF

B-9183 GUNNER DYKE, F.

Summary of evidence in the case of No. B.9183

Gnr. Dyke, F. 53 Light Anti-Aircraft Battery,

3 Light Anti-Aircraft Regiment, R. C. A.

1st. WITNESS: Detective Constable Reginald Spiller, Colchester Borough Police,

states:

At about 8-30 p.m. on Sunday, 25 May 1941, I was on duty in Butt Road, when I saw the accused in the Amusement Park, beside the accused Kehoe was a kit-bag. I approached them and said, 'I am a police Officer, what have you got in the kit-bag?' Kehoe replied, 'Only my kit, I am going on leave.' Whilst this conversation was taking place the accused Dyke walked away. I then said to Kehoe, 'Let me have a look.' He then opened the kit-bag and I saw the meat I said to him, 'Where did you get this?'. He replied, 'It came from the Officer's Mess, we thought we would give someone a treat.' I cautioned him and told him he would be arrested.

I then saw Dyke and said to him, 'I am satisfied that you are concerned in stealing this meat,' and he replied, 'What meat?' I don't know what is in the kit-bag.' I arrested him and brought them to the Police Station, where after being cautioned again Kehoe made a statement which I wrote down in my pocket book and he signed. The

They were charged by Det. Serg't. Kemp and on the charge being read over to them made no reply.

QUESTION: Did you see any markings on the kit-bag?

ANSWER: Yes, the kit-bag had the regimental number and name of Dyke.

QUESTION: Did you notice the accused's condition?

ANSWER: Yes, they were both very drunk.

QUESTION: Were examined by Capt. Tinson -

QUESTION: Do you think that I was in a condition to give statement at the police

ANSWER: It is the usual procedure to take a statement if the prisoner desires to make one.

QUESTION: Even though he is drunk?

ANSWER: Yes.

Signed R. Spiller Det. Con.

The accused declines to cross-examine this witness DLB

Summary of evidence in the case of No. B 9183

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3 Light Anti-Aircraft Regiment, R. C. A.

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ANSWER: Yes, the kit-bag had the regimental number and name of Dyke.

QUESTION: Did you notice the accused's condition?

ANSWER: Yes, they were both very drunk..

~~CROSS-EXAMINED BY GUNNER KEHOE -~~

~~QUESTION: Do you think that I was in a condition to make a statement?~~

~~ANSWER: It is the usual practice to take a statement if the prisoner desires to make one.~~

~~QUESTION: Even though he's drunk?~~

~~ANSWER: Yes.~~

Signed R. Spiller Det. Cons.

The accused declines to cross-examine this witness

2nd WITNESS: No. 60955 Gunner Bannon, J., 3 Light A.A. Regt. RCA.

I am a cook in the Officer's Mess, Goojerat Barracks. It was on Monday morning when I first noticed anything. We were going through the bacon for breakfast when I noticed it was short. Then it was referred to Bdr. Olive from then on I think.

QUESTION: What time was the bacon missed?

ANSWER: Approximately 0630 hours Monday morning.

QUESTION: Were there any other rations missing that you noticed?

ANSWER: No. I wasn't looking for any other shortages. It was Bdr. Olive who missed the rest.

QUESTION: Can you identify this bacon as having come from the Officer's Mess?

ANSWER: Not definitely, although it is cut to the same thickness as bacon we have been getting.

Signed . . J. . Bannon. .

Accused declines to cross-examine this witness.

3rd WITNESS: No. M49757 Bdr. Olive, E.A., 3 Light A.A. Regt. RCA.

I am the Bdr. Cook in the Officer's Mess, Goojerat Barracks. I had been on a week-end pass and on Monday morning I went down town to buy some groceries for the mess and when I came back I went in the meat room about noon to see if there was meat for Monday's supper. There wasn't sufficient meat so I asked Gnr. Bannon what had been used while I was away. He said all but a rib roast which was for Monday's supper and we found that that was missing.

QUESTION: Was there anything else missing?

ANSWER: No, I couldn't say there was anything else. Gunner Bannon had told me that we were short of bacon for breakfast.

QUESTION: Can you identify this meat?

ANSWER: I would say that it is the same cut, that is, prime ribs and about the same size as the cut that was missing.

QUESTION: Would you say it is similar?

ANSWER: Yes.

Accused declines to cross-examine this witness.

Signed..E. A. Olive.....

4th WITNESS: No. K12088, Gunner Edwards, A., 3 Light A.A. Regt. RCA.

I am a cook in the Sergeant's Mess. I finished in the Sergeant's Mess just before 6 o'clock on Sunday evening and I went over to the Officer's Mess and on going in to the the kitchen saw Gunner Dyke there. Thinking he'd had a few drinks I asked Gunner Dyke where he'd obtained said drinks, he replied 'At the Sergeant's Mess at Sobrnon Barracks'.

Signed . A. Edwards . . . .

Accused declines to cross-examine this witness.

5th WITNESS:-M60581 Gunner Kurze, M.F., 17 Light A.A. Bty. R.C.A. 3 Light A.A. Regt. R.C.A. states:

I was present on 29th May when the kit-bag marked "F. DYKE B9183" was opened and I saw the contents weighed. The contents were

Beef	17 pounds	Value	9 shillings 1 penny
Bacon	2 pounds	Value	2 shillings 7 pence
Margarine	3 pounds	Value	1 shillings 3 pence

Signed . . . . . Kurze M.F.

1st WITNESS FOR THE DEFENCE: No. A17155, Sgt. Paisley, 53 Light A.A. Bty. R.C.A., 3 Light A.A. Regt. R.C.A. states:

Gunners Kehoe and Dyke came up to our quarters at about 1500 hours Sunday afternoon and they were both quite intoxicated. I told them that they should go home and get a little rest and they said they would.

QUESTION: Can you give me your reasons for supposing these men were intoxicated?

ANSWER: They were both talking quite silly and seemed quite giddy.

Signed . . . J. Paisley A.S. . . . .

The accused declines to cross examine this witness.

2nd WITNESS FOR THE DEFENCE: No. A17104 Sgt. Ross, R.L., 53 Light A.A. Bty. R.C.A., 3 Light A.A. Regt. R.C.A. states:

On Sunday May 29th Gunners Dyke and Kehoe came up to my room. It was about three o'clock in the afternoon. They were both intoxicated. They were doing a lot of weaving around and were quite giddy, enough so to make me think they were quite drunk.

Signed . . . Sgt. Ross R.L. . . . .

The accused declines to cross-examine this witness.

3rd WITNESS FOR THE DEFENCE: No. B9067 Sgt. McCallum, W.F., 53 Light A.A. Bty. R.C.A., 3 Light A.A. Regt. R.C.A. states:

On sunday afternoon between 2:30 and 3 o'clock Gunners Kehoe and Dyke came up to our quarters. They were to all appearances intoxicated. They were talking very disjointedly and acting giddy and silly in the usual manner when one is intoxicated.

Signed . . . . . .

The accused declines to cross-examine this witness.

4th WITNESS FOR THE DEFENCE: No. B9071 L/Sgt. Wood, J.H., 53 Light A.A. Bty. R.C.A., 3 Light A.A. Regt. R.C.A. states:

On Sunday May 25th I went over to Gunner Dyke's room in the Officer's Mess to pick up a set of stripes and to take Gunner Kehoe to the baseball game. When I walked in the room I noticed about eight bottles of cider on the table. Both men were intoxicated and I told them to go to bed right away and then I went down to the game myself about 1730 hours.

QUESTION: Can you give me your reasons for supposing the men intoxicated?

ANSWER: Gunner Kehoe took an unusually long time to roll a cigarette and both men appeared very tired and sleepy. I'd known Kehoe a long time and he did some very silly things which he wouldn't normally do.

Signed . . . . . .

CROSS-EXAMINED BY THE ACCUSED:

QUESTION: Did you notice any beer bottles?

ANSWER: No, the only bottles I noticed were cider. I think the name was Gaylmar's. Some were empty and some were full.

Signed . . . . . .

Taken down by me at Colchester, Essex, this 2nd day of June 1941 in the presence of the accused. Rule of Procedure 4 complied with.

Signed . . . . . Lieut. R.C.A.
(D.O. Officer)
3 Light Anti-Aircraft Regiment R.C.A.

No. B9183 Name Sgm. Pidgeon Sqn., Battery, or Company 53rd Corps R.C.C. Date of enlistment 28/3/40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. — Character

M.F.M. 6

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
Petawawa	23/7/40	Sgm		A.W.L. from 0600 hrs 23-7-40 ~~till~~ 1400 hrs 24-7-40	Sgt Flynn T.S.M. Richardson	3 days C.B. forfeit 2 days pay	25-7-40	Capt Young	

Certified true Copy
D.S. Gillies Lieut
D.S. Gillies

(P T.O.)

Exhibit 2
W.E. Hackville Lt. Col.
Presented 7.36pm

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B. 9183 Gunner Dyke D.

B. 9183 - Gunner Dyke of the 324 A.A. Regiment R.A.C.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For Absent without leave	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of

Lt. Adjutant 324 A.A. Regt R.A.C.

Description of Court by which tried, or name of Officer dispensing with Trial	Date and place of Trial, or summary award or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges for Nil days in Civil Custody,

and 39 days in Military Custody.

Total 39 days.

Of which _____ days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 40

6. The date of his commission / attestation specified in his record of service / attestation paper is 28/3/40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 72 days.

~~8. The accused is entitled to deferred pay or gratuity in respect of~~ _____ years' service.

~~9. The accused is entitled to reckon _____ years' service for the purpose of determining his pension, &c.~~

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to 1914-15 Star. General Service Medal. Victory Medal.]

~~11. *(If the accused is a warrant officer.)* The accused before he was made a~~ warrant officer last held the regimental rank of _____

12. *(In the case of an officer.)* The accused holds in the army the rank of _____, and in his regiment (*or* corps *or* department) the rank of _____, dated _____, dated _____

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion
In the rank of	_____ years,	_____
In the rank of	_____ years,	_____
In the rank of	_____ years,	_____

(INSTRUCTIONS.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

~~The above statement (with the schedule of convictions and of cases in which trial~~ has been dispensed with) is read, marked _____, signed by the ~~President and~~ annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the Soldier 2. 9152 Pte. W. H. Cooper R. F. C.

Note.—A verbatim extract from the regimental books of the proceedings with trial, must be inserted

Description of Court by which tried, or nature of Offence dispensing of the Charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court, or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf)

No. B/9138 Gunner J. Lyke. 3 Lt A.A. Regt R.G.A.
desire to have Lieut J.A.G. Dowell represent me
at my trial by Field-General Court Martial

J. Lyke.

B 9138. (J. Lyke) Gunner.

List of Exhibits in the case
of B. 9182 Gnr. Lyke. 3 Lt A.A. Regt R.G.A.
, 15th Aug.

---

153 Hospital
Le Havre. 7.8.16 Medical Officers Report.

I certify that No B/9182 Gnr. Lyke J.
753 Lt. A.A. Bty is in a fit state of health
3rd Lt A.A. Regt R.G.A.
and able to undergo trial by Court Martial

J. Scott.
Medical Officer
J. Scott Capt. R.A.M.C.
Medical Officer
3rd Lt A.A. Regt R.G.A.
Late Scottish Command.

Station. Forges les Eaux
Date. 4 July. 1917.

22-15

SGT DYKE FG

FIRST CDN ARMY
16 DEC 1943
A.A.G. (GROUP A)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B21194 Sgt (A/BQMS) FRANK GOUGH DYKE

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p. 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	CHARGE	Guilty	Guilty	Withdrawing
2nd	CHARGE	Guilty	Guilty	Withdrawing
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~[illegible]~~ ~~beginning on (date)~~ ~~[illegible]~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the rank of Gunner

(Sgd) ..... Judge-Advocate, if any. 16 Dec 43 Date awarded. (Sgd) W.H. Young President. (RP 45, 50.) Penang 8/Jan

(See back of Convening Order as to custody and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 31(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RF 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the sentence be duly executed.~~ (1) ~~[illegible]~~

(1. AA 57A. Delete if not used.)

(Sgd) H.J. Leach

Date 16 Dec 43 (H. J. Leach) Brigadier

Commanding 1 Cdn Army Gp., R.A.E.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr
B21194 Sgt (A/BQMS) FRANK GOUGH DYKE 5 Cdn Med Regt RCA.	17 Dec '43	Comdg 5 Cdn. Medium Regt. RCA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

2-15

FIELD GENERAL COURT-MARTIAL

CPA96 (To [illegible] of AFA3) 40-P.N.S. 5/1608 (2064)

Convened by Order of Brig R S Leach Comd 1 Cdn Army Gp, R.A. dated 14 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

20/CMR 47-100

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B21194	Sgt A/BQMS	FRANK GOUGH	DYKE	5 Cdn Med Regt RCA

PROCEEDINGS REVIEWED

[illegible]

18 Jan 44

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) SICILY on (date(s)) 16 DEC 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns KRs. For guidance on procedure when a variation in this form arises, see form for GCM, in MML pp 740 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (a)(x) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (a)(x) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (a)(x) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~He may object to~~ an interpreter. Ans: ~~[illegible]~~

~~The Interpreter is sworn.~~(1) Do you object to D/Sgt [illegible] as shorthand writer? Ans: No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	CAPT (NAVAL)	W.H. YOUNG	2 CDN MED REGT, R.C.A.
Member	Lt (A/CAPT)	D.K. REA	11 A Fd Regt, R.C.A.
~~Member~~	~~Lt~~	B.D. BAILY	5 Cdn Med Regt RCA
Judge-Advocate	N/A		
Prosecutor	CAPT	A.S. DENAR	5 CDN MED REGT RCA
Defending Offr	CAPT	S.B. SHEPS	5 CDN MED REGT RCA

Questions by President: Is the Prosecutor a lawyer? Ans: No. Is the Defending Offr a lawyer? Ans: Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, unless RP 89 (B) and fn 2 were not followed. See also p 2.)

A8. The accused B21194 Sgt (A/BQMS) DYKE, F G before arraignment make(s) (no) ~~X~~ plea (or separate pleas) to the charge, as to jurisdiction of the court, in bar of trial, or relative to mental fitness.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is ~~(a)~~(x) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(x)~~ (no) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 32. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the pleas of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your pleas and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ....Yes.....(5)
(1. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ pleas of Guilty to Not Guilty on ~~the~~ charge(s). The accused is ~~not~~ so informed, ~~and he (they) change(s) his (their) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "B", initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B2 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....
Do you intend to call witnesses on your behalf ?
Ans.....
Are they witnesses as to character only ? Ans.....
(1. RP 122. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(m).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 42, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes, Capt C D in Dec
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "C" and Ex "D" respectively.(3)
(1. MFB 355 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. Where several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 116, 119(A), KR Can 308, 330, 563-566, Overseas AO 109, 2323, MML p 80, 750-758. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(8), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

W.154.

CHARGE SHEET

The accused No. B21194 Sergeant (Acting Battery Quarter Master Sergeant) FRANK GOUGH DYKE, 23rd Medium Battery, 5th Canadian Medium Regiment, Royal Canadian Artillery, a soldier of the Canadian Army Overseas, placed on active service is charged with:

FIRST CHARGE : CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

Sec. 40 Army Act

in that he

In the Field, at approximately 2045 hours, 8 December 1943, was improperly in possession of one case of American "C" rations, public property, on charge to Regimental Quarter stores.

SECOND CHARGE : DRUNKENNESS

Sec. 19 Army Act

in that he

in the Field, at approximately 2045 hours, 8 December 1943, was drunk.

(E. R. Suttie) Lt. Col.
Commanding 5 Canadian Medium Regt., R.C.A.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(H. J. Leach) Brigadier
Comd. 1 Army Gp., R.C.A.

In the Field
14 Dec 43

FIELD GENERAL COURT-MARTIAL

CFA65 (In lieu of AF 70)
40/FAN/1697 (2053)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B21194	Sgt.	A/BQMS	Frank Gough	Dyke	5 Med Regt.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Dec 43 endorsed by me, [illegible] "to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W.H. Young (Must be named. RP 106.)	2 Med Regt. (Unit.)

MEMBERS.

Captain	to be detailed	11 A Fd Regt
Lieut. (Rank.)	to be detailed (Named or detailed. RP 106.)	5 Med Regt. (Unit.)

WAITING MEMBER.

N.A. (Rank.)	N.A. (Named or detailed, if any. RP 106.)	N.A. (Unit.)

JUDGE-ADVOCATE.

N.A. (Rank.)	N.A. (Must be named, if any. RP 106.)	N.A. (Unit.)

On Active Service in the Fd

in SICILY (Country.)

(R.J. Leach) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 1 Cdn Army Gp., R.A. Convening Officer.

Date: 14 Dec 43

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 76, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(80 (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing *see* AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 95(C)), any objections (RP 95(B)), and any statements by accused, may be summarized and, the evidences, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accused in Court is Pte Smith. About 1400 hrs on 15 June 43 I ordered the accused to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for prosecution or defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP 172.*) If the Court considers such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 95(C), 87(C), 92(C); (D).*)

(ii) All *sworn* of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 42 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 6-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alleges has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* Prosecutor has no right to address Court on subject of evidence except as provided by *RP 40(E), KR Can 565(a).*)

(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides where both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule (*see p 4 after minute of sentence awarded. (AA 52(9), RP 118(C), MML p 759.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

5th Cdn.Med.Regt.R.C.A.

Duly.

MEDICAL CERTIFICATE

1. This is to certify that B21194 Sergeant(Acting Battery Quarter Master Sergeant) FRANK GOUGH DYKE has been medically examined and is physically fit to undergo trial by Court Martial.

16 Dec 43

.....
(J.Kussner)Capt.R.C.A.M.C.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON 16th OF DECEMBER, 1943.

Pleaded "Guilty" to charges under A.A. Sec 40 and A.A. Sec 19.

B2 STATEMENT BY THE ACCUSED M21104 Sergeant (A/RQMS) Dyke, Frank Gough, 23rd Medium attery, 5th Cdn Medium Regt., R.C.A. (not given under oath)

"Well Sir I think on taking these rations I had taken them while I was in a sub-conscious mind and figured that I could build up a reserve being that I was in the Quarter Stores and always on the scrounge and as I said I did this act while I was in a sub-conscious mind. Prior to this act it was my day off and I was fed up with life in general and I went out and started to indulge intoxicating liquors.

E1 STATEMENT UNDER OATH BY CAPT. C. D. L. DYKE, BATTERY CAPTAIN, 23RD MEDIUM BATTERY, 5TH CANADIAN MEDIUM REGT., R.C.A., AS TO THE ACCUSED'S CHARACTER

Def — Please give particulars of your job in the Regt.

Witness — I am Capt. C. D. L. Dyke, Battery Captain, 23rd Medium Battery, 5th Cdn Medium Regt., R.C.A.

Def — As such are you acquainted with the accused?

Wit — Yes

Def — How long have you known him?

Wit — 12 months.

Def — Under what circumstances?

Wit — For approximately the last four months he has been Battery Quarter Master Sergeant of the 23rd Medium Battery, and as such directly under me. For the remainder of the time I knew him as the Technical Sergeant in HQ.

Def — From that what is your opinion as to his military character?

Wit — As far as I am concerned very good.

Def — In your experience what has been his military conduct and efficiency in the execution of his duty?

Wit — Also very good.

Def — From your personal contact with the accused what is your opinion as to his general character

(Continued on Page 2)

Wit — As far as I am concerned he is efficient, never known him to be otherwise than honest, and generally a very good sort all round.

PLEA BY THE DEFENDING OFFICER, CAPT. S. R. SHEPS, IN MITIGATION OF SENTENCE

"Sir, the accused has considerable military service, service from January, 1940, of which 8 months has been served as a Sergeant and more recently as a R.Q.M.S. The record of service shows a clear conduct sheet and as the court has heard the accused has a military character that is very good. The accused is before this court on two charges. The first "having in his possession something to which he had no right of possession". I would ask the court to consider the attending circumstances in guiding them in their evaluation of what punishment is necessary. I would submit to the court that the act of taking the rations is predicated on a state of drunkenness, that it occurred during a period of drunkeness, according to the evidence of RQMS Weir and Gnr Freeman "very much so" and the evidence of L/Bdr Milne "he was very drunk and practically blind". I ask the court to consider what sort of taking and carrying away there was in this instance. The accused is a Quartermaster and as he suggested to the court the only possible explanation he can give for his action is that he was performing a typical quartermaster's act of being on the scrounge. I suggest that this is creditable in an examination of the circumstances. The accused asked the RQM for a case of rations, he was refused, they argued over Q.M. principles, and then the accused took the box of rations. He took it from one Q stores into another Q Stores where his clerks were and the implication in the evidence of L/Bdr Milne is that they sleep in there as well. There is no suggestion, I would suggest, of reducing that box of rations to his own personal use - I don't think he was in a condition to reduce it to anything at the time, but in any case the rations were unopened behind the first counter in his Q stores. I would suggest then to the court that this is not a criminal act at all - there is no element of dishonesty in it, and that the accused took it into his Q Stores because under the circumstances it seemed like a good idea at the time. Therefore, Sir, in essence it is not a serious offence, he is not reducing to his own use public property, he just had in his Q Stores what should have been in Regimental Q Stores only.

As to the second offence I direct the court's attention to Sec 19 where in the case of soldiers a differentiation is made in drunkenness on duty and drunkenness while not on duty. The middle of the 2nd para " quote " also in the 3rd para "quote"

That the Army Act distinguishes between drinking on duty and drinking whilst not on duty that in one case the maximum is 6 months detention and the other is imprisonment under the full powers of the Act.

Further on page 25 of the Manual, chapter 3, para 45, especially indicates further the differentiation that is made on "drunkenness on duty" and "drunkenness whilst not on duty".

We look at the circumstances of this case. The accused was on his day off - it was 2045 hrs, just before curfew - the accused was back in the billet area and admittedly was drunk. At that time of day Sir I would submit that it was not a harmful drunk, not a drunk that militated against his efficiency as a soldier but was the type of drunk that sneaks up on a person because of the powerful effect of the local "vino" and has not the accused walked into RQM Stores I would suggest that he would have walked quietly into his billet and gone quietly to sleep. I then submit to the court that the offences with which the accused is charge and to which he pleads "guilty" are not under the circumstances serious offences, that the accused has a very good [illegible]

(Continued on page 3)

Page 3

records both as to character and efficiency and that the court take these into consideration when considering the sentence.

Exhibit "B"
Copy

SUMMARY OF EVIDENCE

Charge against B21194, A/B.Q.M.S. DYKE,F.G. ~~(Cr.C.18-4) Stealing public property, in that he, at approximately 2045 hrs. 6 Dec.43, did steal one (1) box of American "C" rations.~~

List of Witnesses

1. P6631 R.Q.M.S. Weir,J. 5 Cdn.Med.Regt.R.C.A.
2. B6077 L/Sgt.Price,W. 5 Cdn.Med.Regt.R.C.A.
3. B21037 L/Sgt.Adams,H. 5 Cdn.Med.Regt.R.C.A.
4. B21104 Gnr.Freeman,A.F. 5 Cdn.Med.Regt.R.C.A.
5. B21170 L/Bdr.Milne,R.C. 5 Cdn.Med.Regt.R.C.A.
6. Capt. C.D. Ives, 5 Cdn Med Regt, RCA

List of Exhibits

1. One (1) box of American "C" Rations.

1st Witness - P6631, R.Q.M.S. Weir,J. 5 Cdn.Med.Regt.R.C.A. having been duly sworn states :-

I am P6631 R.Q.M.S.Weir,J.

At Approx. 2045 hrs. 8 Dec.43 I returned to the R.Q.M. stores having been out for the evening. ~~Lieutd.D.Tucker was present in the R.Q.M.stores drawing a case of American "C" rations on authority from the Regt'l. C.P.~~ R.Q.M.S.Dyke was also present and asked if he might have a case of rations also. I informed him definitely No, that the rations were not to go out of R.Q.M.stores without authority. He knew that this was so. R.Q.M.S.Dyke did not want anyone going over his head and drawing rations for personnel of his Bty. direct from the R.Q.M. We discussed this situationand came to the agreement that it should remain as before, i.e., All rations were to be drawn on the authority of the R.Q.M. Capt.C.D.IVES. R.Q.M.S.DYKE then left with his storeman Gnr.FREEMAN,A.F., who had come in to the stores during the discussion.

Approx. 5 minutes later I was informed by S6077 L/Sgt.PRICE,W. that he had seen R.Q.M.S.DYKE leaving the courtyard of the R.Q.M. stores with a case of American "C" rations. I immediately went out to follow R.Q.M.S.DYKE. I came in to the barrack block through the rear gate and met B21037 L/Sgt. ADAMS,R. in the quadrangle. He was returning from 7 Bty Q.M.Stores. Together, Sgt.ADAMS and I went in to the 23 Bty Q.M.Stores and inquired from R.Q.M.S.DYKE where the case of rations was. R.Q.M.S.DYKE made no reply so I went around behind the counter where I found a box of American "C" rations.

I said to R.Q.M.S.DYKE, "You know the meaning of this,Frank," and then left the 23 Bty Q.M. stores, stopping on the way at 7 Bty Stores. R.Q.M.S. DYKE had made the statement that other people had rations as well. For this reason I went to 7 Bty stores and asked R.Q.M.S.BROWN if he had any rations in his stores. He replied that he had, and produced a half case of rations from one of his packing cases. I then asked him where he had obtained them and he replied that they were surplus rations from the advance party on the rail trip from PALERMO to ZAFFERINA, that he had neglected to turn in.

This was all in the presence of L/Sgt.ADAMS,R. I then took the case and a half of rations and returned to the R.Q.M.stores.

I reported the matter to Capt.C.D.IVES this morning 9 Dec.43.

Question - What was R.Q.M.S.DYKE'S condition at this time?

Answer - In my opinion R.Q.M.S.DYKE was very much under the influence of liquor.

Question 2 - Upon what do you base this statement?

Answer 2 - Upon his appearance, his manner of speed and upon his actions, all of which indicated that he was not in control of his senses.

Question 3 - Do you recognize this box of American "C" rations?

Answer 3 - Yes, Sir. This is the box of rations (American "C") which I removed from the 23 Bty Q.M. stores and returned to the R.Q.M.stores. It is identical with the boxes of rations on hand in Regt'l. Ration stores.

J.Weir

The Accused declined to cross examine this witness.

Second Witness - B6077 L/Sgt.PRICE,W. 5 Cdn.Med.Regt.R.C.A. having been duly sworn states :-

I am B6077 L/Sgt.PRICE,W., regimental M.T. N.C.O. employed in R.Q.M. stores. At approx. 2050 hrs. on the 8 Dec.43, as I was leaving the R.Q.M. stores I saw B21194, R.Q.M.S.DYKE,F. leaving the courtyard of the R.Q.M. stores with a small wooden case on his shoulders. A few minutes later I went back into the stores and found R.Q.M.S.WEIR and Sgt.ADAMS checking the rations, R.Q.M.S.WEIR asked me if I knew anything of a case of rations which were open in the stores. I said "No." R.Q.M.S. then stated that there was a box of rations missing, so I then told him that I had just seen R.Q.M.S.DYKE carrying a wooden box out of the courtyard.

.....W. Price.....
(W.Price)

The Accused declined to cross examine this witness.

Third Witness - B21037, L/Sgt.ADAMS,R. 5 Cdn.Med.Regt.R.C.A. having been duly sworn states :-

I am B21037 L/Sgt.ADAMS,R. employed in R.H.Q. as Technical Storeman. On the evening of 8 Dec.43 at approx. 2100 hrs. I had completed a check of small arms in the 7 Bty Q.M. stores. I had just left the 7 Bty Q.M. stores and met R.Q.M.S. WEIR in the quadrangle. R.Q.M.S.WEIR asked me to accompany him to the 25 Bty Q.M. stores. Onentering the 25 Bty Q.M.stores R.Q.M.S.WEIR inquired from R.Q.M.S.DYKE as to the whereabouts of some American "C" rations. R.Q.M.S.DYKE mumbled something which I could not understand. Then R.Q.M.S.WEIR looked behind the first row of shelves and found one case of "C" rations, unopened. R.Q.M.S.WEIR then picked up the box of rations and we left the stores. Together we went into the 7 Bty Q.M.stores and R.Q.M.S.WEIR asked B.Q.M.S.BROWN,A.G. if he had any "C" rations in his stores. R.Q.M.S.BROWN replied that he had a part of a case of rations, which had been left over from the train trip from PALERMO to ZAFFERANA. He took the rations out of a packing case and handed them over to R.Q.M.S. WEIR. R.Q.M.S.WEIR and I carried the case and the parts case of rations back to the ration hut at the R.Q.M. stores.

Question 1 - Do you recognize this box of American "C" rations?

Answer 1 - Yes, Sir. This box of rations is the one which R.Q.M.S.WEIR and I picked up in the 25 Bty Q.M. stores. It is identical with the supply of boxes of rations which we have in ration stores in the R.Q.M. stores.

.....R. Adams.....
(R.Adams)

The Accused declined to cross examine this witness.

(cont'd)

Fourth Witness - B21104, Gnr.FREEMAN,A.F. 5 Cdn.Med.Regt.R.C.A. having been duly sworn states :-

I am B21104 Gnr.FREEMAN,A.F. 5 CMR, RCA, employed as storman in 23 Bty Q.M.stores. On the evening of 8 Dec.43 at approx. 2035 hrs. having been working in the stores checking equippment I went ~~in the R.Q.M.~~ out to see if B.Q.M.S.DYKE was around. On looking in the R.Q.M. stores I met him there. He was under the influence of liquor so I asked him if he was coming home. He replied "Yes", so I left him and came back to the 23rd Stores to make his bed. About 10 minutes later B.Q.M.S.DYKE staggered into the stores with a wooden case on his shoulder. We, myself and L/Bdr.MILNE, R.C. the tech.storeman, took the case off him and put it behind the shelves. At this point R.Q.M.S.WEIR came into the stores with B21037, L/Sgt.ADAMS,R. R.Q.M.S.WEIR wanted to know where the case of rations was. L/Bdr.MILNE showed the R.Q.M.S. where the box of rations was and he picked them up and left the stores.

Question 1 - In your opinion, was B.Q.M.S.DYKE drunk?

Answer 1 - Yes, Sir! Very much so.

Question 2 - Upon what do you base your statement?

Answer 2 - B.Q.M.S.DYKE was staggering and almost fell in through the door with the box of rations. He did not appear to be able to see what he was doing and we had to undress him, and put him to bed.

A.F. Freeman
.....
(A.F.Freeman)

The accused declines to cross examine this witness.

Fifth Witness - B21170 L/Bdr.MILNE,R.C. 5 Cdn.Med.Regt.R.C.A. having been duly sworn states :-

I am B21170 L/Bdr.MILNE,R.C. 5 C.M.R., R.C.A. employed as technical storeman in the 23 Bty Q.M.stores. On the evening of 8 Dec.43 at approx. 2040 hrs. I was in the 23 Bty Q.M.stores when B.Q.M.S.DYKE staggered in through the door and dropped a case of American "C" rations on the floor. Gnr.FREEMAN,A.F. and I were just trying to put him to bed and then return the rations to the R.Q.M. stores when R.Q.M.S.WEIR came in. The R.Q.M.S. asked about the case of rations and walked straight over to the box of rations and picked it up and left the stores. L/Sgt.ADAMS,R. was with him and left with him.

This morning when I woke B.Q.M.S.DYKE I asked him if he remembered anything about the box of rations. He said that he couldn't remember anything about the box of rations. He said that he couldn't remember anything at all about it.

Question 1 - Was B.Q.M.S.DYKE drunk?

Answer - Yes, Sir, he was very drunk, practically blind.

R.C. Milne
.....
(R.C.Milne)

The accused declined to cross examine this witness.

Sixth Witness - Capt.C.D.Ives, R.Q.M. 5 Cdn.Med.Regt.R.C.A. having been duly sworn states :-

I am Capt.C.D.IVES R.Q.M. of 5 Cdn.Med.Regt.R.C.A. On the 8 Dec.43 there were no cases of American 'C' rations on charge to Battery Quarter stores; all in the units possession were on charge to Regimental Quarter stores.

I produce herewith one case of American 'C' rations found in the 23rd Battery Quarter stores at approx. 2050 hrs. 8 Dec.43 and which have been in my possession since that date and time.

.....
(C.D.Ives)

The accused declined to cross-examine this witness.

Certified that Rules of Procedure 4 (c) (d) (e) & (f) have been complied with.

In accordance with R.P. 4 (e) having been duly cautioned as follows,

Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken downin writing, and may be given in evidence.

The accused declined to give evidence or to make any statement.

Taken before me in the Field this 9th day of December 1943

Signed.....
(L.Withers) Lieut.

Ex H. WHJ.

This is to certify that exhibit 1, as introduced by the summary of evidence, was produced in court. It is considered impractical to attach it to the proceedings and, as it is required by the Sch. Can Med Regs RCA this Certificate is attached to the proceedings in lieu under provisions of KR can 560.

WH Jamieson, Maj.

EX "D"
MFM 6 (1944)

No B2[illegible]4 Name Dyke, F.G. | Sqn, Battery or Company (1) | Corps R.C.A. | Date of enlistment 18-1-40 | OC Badges | Service or Proficiency Pay | Character

(AFB 122)
40/PAS/136 (3438)

Company Conduct Sheet Date of last entry in 1-6-41 | No and date of last drunk 2-5-40 | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on being confirmed in the rank of Sgt on 15-5-43.									
THIS IS A CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY POSSESSION									

D.H. Gillis

(D.H. Gillis) Capt R.C.A.
Adjutant 5 Canadian Medium Regiment R.C.A.

(PTO)

EX. "C"

N.F.B. 355
2254—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B21194	Sgt (A/BQMS)	Duke, F.G.	5 Cdn Med Regt R.C.A.

1. The following is a fair and true summary of the entries in the Regimental ~~or Equivalent~~ Entries ~~and~~ Conduct sheets ~~or Company Defaulters Sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~and~~ of summary awards under Section 47 of the Army Act ~~and~~ of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times

~~Number of entries of liability or misdemeanour~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Particulars of the manner in which convicted by a civil court, court-martial or~~ Section 47 of the Army Act and dispensed with ~~and the result of any appeal~~ are set out in the Schedule ~~appended hereto~~

3. The accused is not under sentence at the present time.

~~The period of the sentence now in force is~~ beginning on the ~~commencing~~ day of ~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 7 days in military custody, making a total of 7 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~recruiting~~ attestation paper is 30

6. The date of his ~~enlistment~~ attestation specified in his ~~last~~ attestation paper 18 January 1940

~~If the accused was transferred from another unit~~

~~If the accused is to be transferred at his own request or on his application~~

~~If the accused is a warrant officer~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
unit
..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

A(GRMS) 19 Oct 1945 Date of promotion.

In the rank of SERJEANT 8 mos. ~~years.~~

In the rank of BOMBADIER 7 mos. ~~years.~~

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~

~~Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army~~ 644

~~Act, and of cases in which trial has been dispensed with of accused.~~ Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~644~~ 16 day of December, 1945 Capt RCA

Adjt 1 Can Mobile Repair Unit RCA

The above statement (with the schedule of convictions [illegible]) is read, marked ..... and signed by the president, and annexed to the proceedings.

RRR-93
SGN- DYKEMAN R A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G32934 Signn Russell Arthur Dykeman A/Sp Sjt 4 Can Armd Bde

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AO 15 (1)	Guilty	Guilty	Sent
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

Sent (At present under sentence for ~~a term of~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which 0 days were spent in hospital.(*)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under (2).)

Sentence Awarded by the Court: To undergo detention for 28 days.

(Sgd) Ken Larson Capt — Judge-Advocate, if any. — 5 July 44 — Date awarded. — (Sgd) G.H.V. Naylor, Maj — President (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

(Sgd) ____ Commanding

Ken Larson Capt
A/D.J.A.
H.Q. 4 Can Armd Div.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 8, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

The decision on the finding(s) and sentence set forth in Part I is:

Confirmed. RWH

~~I advise that the accused be not committed to prison or detention barracks until further order.~~ (1) Rtn

(1. AA 57A. Delete if not used.)

(Sgd) R.W. Hoffmeister Brig

Date 5 July 1944 — Commanding H.Q. RCAMC 4th Can Armd Div — Confirming Officer.

Date 5 July 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
G32934 Sigmn. DYKEMAN R.A.	6 July 44	R.F. Letourneau Capt Admin Officer Sigs 4 Can Armd Div.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities have been observed which would warrant withholding confirmation.

RECORDS SECTION IN AD 160 AAK 9-3

REVIEWED 25 JUL 1944 JAG BRANCH G.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (to lieu of AFA96) 40/P & S/1008

4/38B

Convened by Order of Lt Col R.H. Noble Comd RCE MC dated 4 July 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent and confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G32934	Signn	Russell Arthur	Dykeman	A/Sp Sjt 4 Can Armd Bde

PROCEEDINGS REVIEWED 20 Jul 44 JAG Branch G.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England at CMHQ on (date) 5 July 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for notes and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) Hwl

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 2. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences. Hwl

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ Hwl

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ____ as interpreter? Ans ____~~

~~The Interpreter is sworn.(1) Do you object to ____ as shorthand writer? Ans ____~~ Hwl

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	G.H.V. Naylor	45 Can Fd Regt RCA
Member	Capt	R.O. Flett	14 Can F.D.S.
Member	Lieut	C.J. Phillips	HQ Sqn 4 Can Armd Div
Judge-Advocate	Capt	K. Larson	HQ 4 Can Armd Div
Prosecutor	Capt	G.D.W. Beckett	Sqn 4 Can Armd Div
Defending Offr	Capt	J.W. Rowland	Sqn 4 Can Armd Div

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See Dif p 2.)

A8. The accused ____ before arraignment make(s) (no) ~~no~~ plea. Hwl

(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 117), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) ~~separately~~ arraigned on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. Hwl

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF 886 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B-D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No.(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. *4. See para E1 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (4). The Court decides (does) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are used as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras B1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 29(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused : You will now be tried with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CA* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB* 255 *or MFB* 296. *2. MFM* 6. *3. RP* 46. *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Through my defending officer.(2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*B*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 68, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"B" ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G32934	Signn	DYKEMAN, Russell Arthur	Sigs 4 Cdn Armd Div

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers therein stated should correspond with the entries of offences in the conduct sheets, permission being given to the court striking out any such entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for a sudden case the visits for drunkenness must be stated separately and dated.

		* Within last 12 months.		* Since Enlistment.	
AA 19	For Drunkenness	NIL	times	Two	times
AA 161	For Absence without Leave	6	times	Ten	times
AA 104	For Breaking Out of Bks	NIL	times	1	times
AA 40	For Failing to Arise at Reveille	One	times	Two	times
	For —	—	times	—	times

[redacted]

2. [redacted]

3. The accused is not under sentence at the present time, [redacted]

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and Six days in military custody, making a total of six days, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 27 years 11½ mos (Born 16 Jul 16)

6. The date of his attestation specified in his record of service is 23 Nov 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 128 days

8. [redacted]

9. [redacted]

10. The accused is in possession of [redacted] Cdn Vol Service Medal and Clasp

11. [redacted]

12. [redacted]

[illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G32934 Rank Sigmn Name DYKEMAN, E.A. of Sigs 4 Cdn Armd Div Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or statement that officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
NIL		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4 day of Jul 1944

R L Houston Major
A/OC Sigs 4 Cdn Armd Div

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ... years
In the rank of ... years
In the rank of ... years

Remarks, if any, as to character, etc.

(Instructions: Any of the above paragraphs cannot be omitted from the regimental books the paragraph must be struck out and initialled by the officer in charge of the regimental books. Any corrections made in entries in any paragraph must be attested by the officer in charge of the regimental books. Such corrections must be initialled.)

No G32934 Name DYKEMAN, R A | Sqn, Battery, or Company | Corps RCCS | Date of enlistment 23-11-40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&A/136 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk 15-4-41 | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9-1-41	Fus	1	Drunkenness	Sjt McKiel	Admonished	11-1-41	Maj CR MacAlpine	
Field	17-1-41	Fus		(1) Breaking out of barracks whilst C B.	Cpl Stairs Lopl Reynolds	168 hrs detn	18-1-41	Lt Col Holder	
				(2) AWL 13 hrs 30 mins					
Field	15-4-41	Fus	2	Drunkenness	Lopl Reynolds Sjt Merritt	Fined $6.00	17-4-41	Capt Murray	
Field	24-3-42	Pte		AWL 10 hrs	Sjt Scott Lopl Burly	7 days CB	25-3-42	Lt Sigles	auto forf 1 days pay
Field	15-9-42	Signan		AA Sec 15(1) AWL 8 hrs 50 mins	Sjt MacLeod	14 days CB	17-9-42	Capt Burgoyne	forf 1 days pay
Field	2-2-43	Signan		AA Sec 40 Failing to rise at Reveille	Sjt Pickering	7 days CB	6 Mar 43	Maj RL Houston	
Field	5 Apr 43	Signan		AA Sec 15(1) AWL 8 hrs	Cpl Kerr Lopl Morton	7 days CB	6 Apr 43	Lt Col Peffers	forf 1 days pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-6-43	Sigmn		AA Sec 15(1) AWL 2 days 7 hrs	Documentary	14 days CB Stoppages of pay @ 9.0.0	13-6-43	Lt Col Peffers	forf 9 days pay
Field	3-6-43	Sigmn		AA Sec 40 Failing to rise at Reveille	Cpl Usher	7 days CB	3-6-43	Maj J Steele	
Field	29 Aug 43	Sigmn		AA Sec 15(1) AWL 2 days 23 hrs	Documentary	10 days FP 10 days pay	2 Sep 43	Maj Gillingham	forf 5 days pay
Field	28 Oct 43	Sigmn		AA Sec 15(1) AWL 1 hr	Cpl Madden	14 days CB	29 Oct 43	Maj Clements	
Field	24 Apr 44	Sigmn		AWL 3 hrs 45 mins	Sjt Pickering	5 days pay	24 Apr 44	Maj EL Houston	
Field	3 Jun 44	Sigmn		AWL 30 hrs 21 mins	Lejt Cornell	21 days pay	4 Jun 44	Lt Col Shirreff	auto forf 1 days
Field	11 Jun 44	Sigmn		AWL 12 hrs 8 mins	Lejt Cornell	15 days FP 15 days Pay	12 Jun 44	Lt Col Shirreff	auto forf 1 days pay

Certified true copy..... (E L Houston) Maj

from the Regimental Books in my possession.

Appendix A

CHARGE # 1

Army Form B 252
(See King's Regulations)

4 Cdn Armd Div Sigs ..... Regiment / Battery / Squadron / Troop or Company

CHARGE against No G 32934 ..... Rank SGMN .....

Name DYKEMAN WH

Place HAYWARDS HEATH ..... Date of Offence 28 Jun 44

OFFENCE WOAS. AWL

J W Stewart

(J W Stewart) Capt
O/C 8 Cdn Pro Coy

Names of Witnesses

A 68195 Cpl Piroski N

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant

P.T.O.

'A'

Statement of **EVIDENCE** in the case of

G 32934
Sgmn Dykeman WH
4 Cdn Armd Div Sigs

Sir

On 28 Jun 44 I was IC of Haywards Heath patrol. At approx 2210 hrs on said date, from a conversation heard, I received the impressio that the m/n soldier was AWL.

2 Upon questioning the m/n soldier I found that he has been AWL for 24 hrs. The Sgmn was apprehended on Platform # 2, Haywards Heath Rly Stn.

3 I placed him under "Close Arrest" and info ormed Coy HQ. At 0030 hrs 29 Jun 44 I turned him over to Sjt Lepenski of the 15 Fd Regt RCA To be held in their guard room until a Sigs/ until a Sigs escort came for him.

4 For your infm, please, Sir.

N Piroski

A68195 Cpl Piroski N
8 Cdn Pro Coy

REMARKS

"A" Sec II

SUMMARY OF EVIDENCE in the case of:-

B-30934 SIGMN. DYKEMAN, R.A.

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS

B-116851 L/Sgt. Napier, D.F.W., having been duly sworn, states as follows.

"I am B-116851 L/Sgt. Napier, D.F.W., detachment commander of A.C.V. S, "A" Troop, Main Squadron, 4 Cdn. Armd. Div. Sigs. At Main Div HQ, at 2300 hrs, 27 JUN 44, I entered my tent, in which Sigmn. Dykeman also sleeps, and found that the accused, Sigmn. Dykeman, whom I now recognize, was absent. He was absent without leave. At 0630 hrs, 28 JUN 44 I reported the fact that he was still absent to the Troop Sergeant of "A" Troop. That is all, Sir."

The accused declines to cross examine the witness.

D-116851 L/Sgt. Napier, D.F.W.

SECOND WITNESS

G-57119 L/Sgt. Cornell, R.G. having been duly sworn, states as follows.

"I am G-57119 L/Sgt. Cornell, R.G., troop sergeant of "A" Troop, Main Squadron, 4 Cdn. Armd. Div. Sigs. At Main Div HQ, at 0630 hrs, 28 JUN 44, L/Sgt. Napier reported to me that Sigmn. Dykeman was absent without leave. I immediately checked his tent myself, and found that the accused Sigmn. Dykeman, whom I now recognize was absent. He was absent without leave. I reported this fact to S.S.M. Pickering at 0630 hrs, the same date. That is all, Sir."

The accused declines to cross examine the witness.

G-57119 L/Sgt. Cornell, R.G.

THIRD WITNESS

B-30066 S.S.M. Pickering, E.R. having been duly sworn, states as follows.

"I am B-30066 S.S.M. Pickering, E.R. Squadron Sergeant Major of Main Squadron, 4 Cdn. Armd. Div. Sigs. At Main Div HQ, at approximately 0630 hrs, 28 JUN 44, L/Sgt. Cornell reported to me that Sigmn. Dykeman was absent without leave from 2300 hrs, 27 JUN 44 and was still absent. At 0830 hrs, I reported this to the Admn. Offr., Maor Squadron. At 0900 hrs, 28 JUN 44, I personally checked the billets and vehicles in the Main Div Sigs billet area and could not find, the accused Sigmn. Dykeman, whom I now recognize. He was still absent without leave. That is all, Sir."

The accused declines to cross examine the witness.

B-30066 S.S.M. Pickering, E.R.

SUMMARY OF EVIDENCE in the case of :-

G32934 Signn DYKEMAN, R.A.

By direction of the Commanding Officer, the evidence is taken on oath.

FOURTH WITNESS: A68195 Cpl Piroski, N., 8 Cdn Pro Coy.

Document purporting to be signed statement of the evidence of A68195 Cpl Piroski, N., 8 Cdn Pro Coy, was read over to the accused, marked ~~Exhibit~~ Appendix "A", and attached hereto.

I CERTIFY that in my opinion, owing to the exigencies of the service, incl the time and expensive involved, the attendance of this witness at the takings of the summary of evidence cannot readily be procured.

G.W. Beckett

(G.D.W. Beckett) Capt.,
Sigs 4 Cdn Armd Div

I do NOT demand the attendance of A68195 Cpl Piroski, N., 8 Cdn Pro Coy, as a witness for cross examination.

ACCUSED: R.A. Dykeman

G32934 R.A. Dykeman Signn

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given in evidence."

The Accused: "I Have nothing to say at this time."

ACCUSED: R.A. Dykeman

G 32934 R.A. Dykeman Signn

I CERTIFY that the foregoing summary of evidence, consisting of two pages, was taken down by me, in the presence of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

G.W. Beckett

(G.D.W. Beckett) Capt.,
Sigs 4 Cdn Armd Div,
Officer detailed to take
the Summary of Evidence.

In the Field

4 Jul 44.

intended to return to his unit by recreational transport which leaves Hong Kong Island nightly around 2300 hrs. While waiting on the station platform he was checked by the Provost Corporal, found to have no pass and apprehended. By his own statement he was left unattended for some half hour pending arrival of unit Provost who to other duties of more urgent nature. Sigmn Dykeman has been in close custody in barrack room from the time of his apprehension until this date, a matter of 6 days & some hours. I request that the Court in awarding sentence consider the circumstances under which this man absented himself and the fact that he is returning voluntarily.

Plea in mitigation of sentence

G 32934 Sigmn Dykeman R. A.

Sigmn Dykeman has acknowledged his guilt of the offence with which he is charged. There is little to offer in extenuation - however the court will notice that the only offence shown in this man's conduct sheet are dissimilar and charges which do not have any connection with the absence now in question. As a matter of fact the absence was entirely connected with liquor by the accused's own admission in this particular instance Sigmn Dykeman had just completed serving within the last 48 hrs a sentence of 14 days Field Punishment. He had requested a pass for the evening of 23 Jan 44 which had not been granted and he states that he was given no reason for it not being granted. In the usual manner of persons feeling hard done by he took "French Leave". After spending the night and the following day on Tham Bridges he returned to Hospital at Ledeacon by train and

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY that I have this morning examined G32934 Sigman Dykeman, R.A., of "A" tp, Sigs 4 Can Armd Div, and in my opinion he is fit to undergo trial by Court-Martial.

In the Field

Date: 5 Jul 44

J D Galloway Capt RCAMC
HQ 4 Can Armd Div

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 86(C)), any objections (*RP* 86(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following *order of procedure* (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 86.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by EP* 46(E), *KR Can* 565(a).)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can* 560. *As to certified copies of registered books see AA* 165 (1) (g) (ii).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 90(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 53(9), *RP* 118(C), *MML p* 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FA95/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 32934	Sigmn		Russell Arthur	DYKEMAN	4 Cdn Armd Div Sigs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 4 Jul 44 endorsed by me, ~~on behalf of the officer commanding~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for necessary [illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint the three Offrs to form the Court that an Adj Offr is required, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.H.V. MAYOR	Attached 23 Cdn Fd Regt SP RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CC 12 Cdn Fd Dressing Station	RCAMC
Lieut	To be detailed by CC	Hq Sqn 4 Cdn Armd Div

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	To be detailed by CC	4 Cdn Armd Div Tps Coy RCASC

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	H.A.Hanson	Hq 4 Cdn Armd Div

On Active Service in the Fd

in Engl and (Country)

R.H. Noble (Signed personally. RP 105 fn 2.)

(R.H.Noble)

Lieut Col (Rank.)

Date 4 Jul 44

Commanding RCEME 4 Cdn Armd Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused G32934 Signm Russell Arthur DYKEMAN, A Tp, Sigs 4 Cdn Armd Div, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the field on 27 Jun 44 absented himself without leave from his Unit from 2359 hrs 27 Jun 44 until apprehended by Canadian Provost at HAYWARDS HEATH at 2210 hrs 28 Jun 44. (Total time absent 22 hrs 11 mins).

R L Houston

(R.L. Houston) Maj
A/Comd Sigs 4 Cdn Armd Div

In the Field
4 Jul 44

To be tried by Field General Court Martial

(R.H.Noble) Lieut Col
Comd RCEME 4 Cdn Armd Div

In the Field
4 Jul 44

SSS 4/2

PIE DYMENT GA

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.57543 Pte Lyment, G.H.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	Guilty	except that he was not absent without leave from the 5th to 14th Jan 44 both days inclusive
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as to loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date).~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on AMF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 25 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on AMF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety (90) days.

(Sgd) ——— 14 Jul/44 (Sgd) W.H. Mumford

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

JGI

Date ——— (Sgd) ——— Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(2) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MMML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~. (1) JGI

(1. ~~See RP 6. Delete if not used.~~)

(Sgd) J.E. Cager Brigadier

Date 16 Jul 44 Commanding "F" Group C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B57543 Pte Lyment, G.H.	17 Jul 44	R.B. Beck Captain Adjutant - 1 CBW RCE(F)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORD OF CHANGE IN AD 160 555442

RECEIVED 9 E JUL 1944 C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CF A96 (In lieu of AF A32) A.C.I. P.S. B/1668 (1944)

Convened by Order of Brigadier J.E. Cager Comd F Gp CRU dated 13 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.57543	Private	Gerald Anthony	LYMENT	1 Canadian Base Workshop RCEME

PROCEEDINGS REVIEWED

J.R.C. Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 14 JUL 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, AA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which items are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 120.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the C.O.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(6). Delete, if not applicable.)

~~A5. President to accused: Do you object to ——— as interpreter? Ans~~

~~The Interpreter is sworn.~~ Do you object to P 39776 Sgt SHATZ I.F. as shorthand writer? Ans Nil

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~AA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D.L. REDMAN ED	HQ. CRU
Member	CAPT	L SYKES	1 CSAU
Member	LT	HH NEILSON	1 CSAU
~~Judge-Advocate~~			
Prosecutor	LT	G I KING	1 CBW
Defending Offr	LT	J.S.H. DUKES	1 CBW

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (2)

(1. RP 24, 27, 109, 111. List of offrs under instrs will be recorded separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ——— before arraignment make(s) (no) ~~a~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 128), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or the case of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and six separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

(5)

President to accused : Do you wish to make a statement ? Ans .....

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO - SIR (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(his)~~ (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ ..... charge(s).(2) ~~The Court is closed, and considers the submission.~~(3) The Court is re-opened, and the President announces ~~that the submission is disallowed on the~~ ..... charge(s), and allowed on the ..... ~~charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans MAKE A STATEMENT ~~Do you intend to call witnesses on your behalf ?~~

Ans NO - SIR ~~Are there witnesses as to character called ? Ans .....~~

(1. *RP115.* 2. *RP 40(A), see B5(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the~~ ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(7) (8), RP 42, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO - SIR

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFR 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Beg leave - Character NOTE - ATT

(1. *RP 37(C), 46(2).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)

(1. *When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Con 308, 330, 563-564, Overseas 80 BPP 2323, MML p 80, 757-759. As to sentences assigned for civil offences in the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.57543, Pte. Gerald Anthony DYMENT,
Royal Canadian Electrical Mechanical Engineers,
on strength of 1 Canadian Base Workshop, RCEME.
a soldier of the Canadian Army Overseas is charged with,
while on active service

1st Charge
Sec. 15(1)
Army Act

ABSENCE WITHOUT LEAVE

in that he

at Bordon, Hants, absented himself without leave
fro Tattoo Roll Call at 2230 hrs. 20 May 44 until
he surrendered himself at 1 C.B.W., R.C.E.M.E
Guard Room at 0140 hrs. 19 Jun 44. (total absence -
29 days, 3 hrs., 10 min.)

.....Colonel
Officer Commanding
1 C.B.W., R.C.E.M.E.

Bordon, Hants.
12 Jul 44

To be tried by Field General Court Martial.

(J.P. SAGER) Brigadier,
Comd "F" Gp, C.R.U.

13 Jul 44
BORDON, Hants

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/FAS/1607 (5868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B57543	Private	Gerald Anthony	DYMENT	1 Canadian Base Workshop RCEME

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Jul 44 endorsed by me, ~~as have~~ (as the case may be), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to adopt the alternative procedure as to superior authority.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I have omitted to appoint (a) those Offrs as have the Army, Air or Fd Officer President, for the reasons given against their names.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Under appeal as to the withdrawal of the following from the~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lieut-Colonel (Rank.)	D.L. Redman, VD (Must be named. RP 106.)	H, CRU (Unit.)

MEMBERS.

A Capt	of and detailed by OC	1 CBRU
A Lieut (Rank.)	of and detailed by OC (Named or detailed. RP 106.)	1 CBRU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 13 Jul 44

J.E. Page
J.E. SAGER (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding "F" Op, C.R.U. Cdn Army England.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 98 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The read in Court is Pte Smith. About 1400 hrs on 15 Jan 63 I ordered the accused to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 98, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused *(not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused akite has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 98 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or* ***lieu of original*** *see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 98 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 118(C), MML p 758.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Medical Officer's Certificate
K.R. (Can.) para.527

I certify that I have this morning examined No. B-57543 Pte. Dyment G.A.
(Rank) (Name)

of 1-R.W.R.C.E.M.E. and in my opinion he is fit to undergo trial by Court Martial

Station. Bordon Hants.

Date. 14th Jul. 44 Sgd. Capt.
(Medical Officer)

F.G.C.M. IN THE CASE OF

B 57543 PTE DYMENT, G.A., 1 CBW, RCEME

14 JULY 1944

EVIDENCE FOR THE PROSECUTION NOTE D-3

1st WITNESS FOR THE PROSECUTION
L 9806 Cpl SCOTTON, J.C. on strength 1 CBW, RCEME, having been duly sworn states:

I am L 9806 Cpl SCOTTON, I recognize the Accused as being Pte Dyment. I was the hut Cpl in hut B6, HQ Coy. It is my duty to call the roll at tattoo which I did on 20 May 44 at 2230 hours. The Accused did not answer his name. I called the roll at reveille next morning and he did not answer. He did not answer his name for the remainder of that week.

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE PROSECUTION
B 57592 Sgt HALEY, R., on strength 1 CBW, RCEME, having been duly sworn states:

I am B 57592 Sgt Haley, provost sgt 1 CBW, at 0145 hours 19 Jun 44 I was in charge the guard room when the Accused, whom I now recognize, reported back in from AWL. I knew him as Pte Dyment, G.A., 1 CBW. This guard room is at the 1 CBW Guadeloupe Barracks, Bordon.

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION
Capt R.H. BECK, on strength 1 CBW, RCEME, having been duly sworn, states:

I am the Adj of 1 CBW, RCEME, I produce Part II Order No 66, dated 24 May 44, 1 CBW. It deals with the absence of B 57543 Pte G.A. Dyment whom I recognize as the Accused.
(Part II Order No 66 marked Exhibit "1" by the Court)

I produce Part II Order No 68 dated 26 May 44, 1 CBW, dealing with the absence of the accused, Pte Dyment.
(Part II Order No 68 marked Exhibit "2" by the Court)

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q Capt Beck your Unit Order No 74, dated 12 Jun 44 shows that the accused was admitted to hospital wef 5 Jun 44, is that so?

A Yes.

Q I show you Part II Order No 74, entry No 8, will you please read it?

A Para 8 (a) - "Admitted to Hosp shown wef dates shown -
B 57543 Pte DYMENT, G.A., Paddington Hosp London, 5 Jun 44"
That is a correct copy of Part II Order No 74 dated 12 Jun 44.
(Part II Order No 74 marked Exhibit "3" by the Court)

Q I show you Part II Order No 81, of 1 CBW dated 26 Jun 44, will you read para 7(b) which relates to the accused?

A Para 7(b) - "Discharged from Paddington Hosp London wef 14 Jun 44. (Auth CMHQ Teleprint CASD/19(Restricted) d/23 Jun 44)
B 57543 Pte DYMENT, G.A."
(Part II Order No 81, 1 CBW, marked Exhibit "4" by the Court)

Q Is it correct that the accused reported back to your unit at 0140 hours, 19 Jun 44?

A That is correct.

Q But he was not paraded before his C.O., Coy, until 21 Jun 44, that is so is it not?

A That is right to the best of my knowledge.

Q Was there considerable difficulty in obtaining evidence from Peddington Hosp and from Can Records?

A Yes.

Q Was Pte Dyment remanded on the 22 Jun 44 for 48 hours?

A I do not remember the specific time that he was remanded, but I do know that the C.O. was not satisfied with the evidence and required further evidence.

Q On the 24 Jun was Dyment up before his C.O. for orders? and did he remand him for a summary?

A He did.

Q Was this summary not taken until nine days had passed, the 3 Jul 44?

A I know there was quite a lapse of time, I am not sure of the exact number of days. Efforts were made again to obtain specific evidence as to the accused hospital condition and as to the exact hours of his discharge.

Q Was Pte Dyment in close arrest from 19 Jun until today's date?

A He was in close arrest from the time of his apprehension until today's date.

RE-EXAMINED BY THE PROSECUTOR

Q It is pointed out that the summary of evidence was not taken until 3 Jul 44. Was certain evidence needed from the hospital to benefit the Prosecution or the Defence in this case?

A The evidence which the hosp could give us, in my opinion would benefit the accused.

Q Would you say then that the delay in taking the summary of evidence was for the sake of confirming what the accused said to the C.O. of his condition when he left the hospital?

A Yes.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

CASE FOR THE PROSECUTION IS CLOSED.

NOTE D-6

EVIDENCE FOR THE DEFENCE

1st WITNESS FOR THE DEFENCE

B 37583, the Accused (Pte DYMENT, G.A.) on strength 1 CBW, RCEME having been duly sworn states:

I went on pass which expired on Sat 20 May. This pass entitled me to be absent from barracks until 2359 hours 20 May 44. (Witness produces pay book) this pass is stamped on a sheet of paper hotticheed to my A.F.W. 1. I show you this sheet and particularly the date 20 May 44 and the next one dated 21 May 44. There is the signature of Capt Ross my Coy Comd written across the unit stamp. Above these stamps are the following words, "the bearer B 37583, Cpl Dyment G.A. has permission to be absent from his quarters from after 6 p.m. until 2359 hours on the date of ..... within the Toronto area by an officer and if so is then a good pass.

I ceased to be a cpl on the 4 Apr 44.
I proceeded to London, and remained in London that evening and the following day, having an after-duty pass for that day also, for the 21 May. I felt ill and suffering from a sore throat. I was subject to tonsilitis so I went to bed early that evening. I went to sleep and did not waken in time to catch the train to my unit the following day which was the 21 May. On the following day, the 22 may, I was feeling no better and I went to visit a Doctor Dunlop. He prescribed a gargle for my throat and gave me some tablets and advised me to stay indoors and out of drafts. I was also in a run down condition so I carried out his orders and remained in doors for that week. On the 3 Jun I again visited Doctor Dunlop and he examined me and said I had evidence of Quinsy and advised me to carry on with the prescription and that I apply a poltice to my throat which I did. On the following day which was the 4 Jun he visited me and examined my throat and advised that I had quincy and told me to continue using the gargle. On the 5 Jun he again came and seeing that my tempeture was still up he decided to send me to Paddington Hospital and called an ambulance. I was admitted to Paddington hospital, I have on me a certificate signed by Doctor D.W. Dunlop dated 29 June 44 which certifies that I consulted him on the 22 of May 44 and on the 3 Jun 44 and on the 4 Jun 44 and that I on a later date, he found me suffering from quincy and that on the 5 Jun he sent me to Paddington Hospital. While in hospital I was under the care of the House Physician, they kept me there until the 14 Jun and on that day I was discharged as my throat had cleared up. On coming out I felt very weak, due to the fact that I had been in bed for the length of time and had lost 18 pounds. As I did not feel able to return to my unit I remained there until Sunday 18 Jun at which time I reported to my guard room.

CROSS-EXAMINATION BY THE PROSECUTOR

Q Did you receive a pass on the 20 May44?
A I failed to pick it up from the orderly room.

Q Did you, between the 20 May and 19 Jun report to any military authority?
A No Sir. I phoned from the hospital to my unit and they got in touch with the duty officer and they told me that the duty officer was aware of the fact that I was in hospital. I asked them to phone again, they told me that they were aware of the fact and there was no need of any more phone calls.

Q Did you leave Paddington Hospital on the 14 Jun by walking out?
A Yes Sir, I was a walking case.

Q Was the doctor aware of the fact that you were walking out?
A Yes Sir.

Q How long after you left the hospital did you report to the military authorities?
A Four days.

BY THE COURT

Q Did anyone inform you that the Paddington Hosp was a military hosp?
A No Sir, but I thought it was a military hospital, there were other soldiers in the ward that I was in.

In the opinion of the Court it is unnecessary to comply with RP 83(5)

CASE FOR THE DEFENCE IS CLOSED.

PROSECUTOR ADDRESSES THE COURT ON THE FINDING

Sir,

The evidence produced by the Prosecution has proved the fact that the accused was absent at 2230 hours on the 20 May and I would like to point out that this absence was first shown as beginning on the 22 May in Exhibit "1" and is amended in Exhibit "2" to read 2230 hours 20 May 44. The evidence for the Prosecution shows that the accused did not return to his unit until 0140 hours 19 Jun 44. The Defence has brought forth evidence that this man was in a civilian hospital between the time he was found absent and the time he returned back to his unit. The accused was absent four days after he was released from this civilian hospital in London. The Prosecution maintains that the accused is guilty under Sec 15(1) MML, i.e. AWL.

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING

Sir,

I would like to point out one or two irregularities in the proceedings. First the accused returned to his unit at 0140 hours 19 Jun, he was not paraded before his Coy C.O. until 21 Jun, 3 days elapsed. Secondly on the 22 Jun 44 he was remanded for 48 hours instead of 24. Thirdly, when remanded by the C.O. for the summary of evidence this summary was not taken until nine days afterwards, the 3 July. He was charged with being AWL from the 20 May 44 until 19 Jun 44, when a soldier is AWL he cannot be accounted for by his unit. Yet this soldier's own unit shows him admitted to and discharged from Paddington Hospital during this period of absence on the charge. Therefore, how can he be absent for that time? I have before me a letter from a London Doctor stating that he was being treated by this doctor from the 22 May continuously up to the 5 Jun, when the accused was admitted by this doctor to Paddington Hospital. I also have CMRQ Records Teleprinter corroborating the period of the hospitalisation as shown in Exhibits "3" and "4". In view of these confused circumstances and irregularities of procedure, also the accused has now been under close arrest for 26 days awaiting this trial, I ask that this case be thrown out.

COURT IS CLOSED TO CONSIDER THE FINDING
COURT IS RE-OPENED

PLEA IN MITIGATION OF PUNISHMENT

Sir,

I feel that this man has been unjustly kept under close arrest and he was very sick at the time of his AWL. In view of the fact that he was sick and the good conduct sheet and his good all around record as an NCO and soldier I would ask the Court to be as lenient as possible when sentencing him. He has been in the army since 3 Dec 1941.

APPENDIX "AA"

CERTIFIED TRUE COPY

5 Jul 44

(R.H.Beck)Capt.
1 CBW RCEME

Ex 1

7

certified true copy R.H.Beck Capt

APPENDIX "B"

EX 2 RM

CERTIFIED TRUE COPY

5 Jul 44

(R.H.Beck) Capt.
1 CBW RCEME

1 BASE WORKSHOP, R.C.E.M.E.

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No. 66
29 May 44

6. COMMAND (Cont'd)

(f) To Gwd. 40 ... Uxbridge and 0700 hrs. 16 May 44 and Off Cmd. wef 2300 hrs. 19 May 44. (Auth: Lt/Col. McGregor.)

B-79603 Pte. BA... ... "HQ" Coy.

(g) On Cmd. to Donnington wef 0700 hrs. 22 May 44 and Off Cmd. wef 1800 hrs. 25 May 44. (Auth: Lt/Col. McGregor.)

B-78903 Pte. H... ...D. "HQ" Coy.

9. HOSPITAL

(a) Admitted to Hsp. 1 ... ... wef 17 May 44.

B-80341 Pte. GODWIN, D.H. "HQ" Coy.

(b) CANCELLATION

...O. Pt. II No. 65 d/22 May 44, para 8(c) is hereby CANCELLED.

B-96870 Pte. JARVIS, ... "D" Coy.

10. GRANT OF LEAVE

(a) Granted 14 days A.L. with money allce in lieu of rat. from 16 Sep 43 to 30 Sep 43. Total entitlement - 14 days. (Auth: Lt. from C.O. ... to (Glasgow) ... d/25 ... 43.

B-87224 Cfn. HAMPSHIRE, ... "D" Coy.

(b) Granted 7 days A. L. with 48 Hr. leave with money allce in lieu of rat. from 05 Mar 44 to 3 ... 44. Total entitlement - 9 days.

B-87224 A/L/Cpl. ANDERSON, ... "D" Coy.

(c) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1700 hrs. 28 May 44 to 1700 hrs. 4 Jun 44. Total entitlement -7 days (Auth: "D" Orp. CRU/806/Leave POL/1 d/24 May 44.)

B-13827 Pte. DRAKEWRIGHT, ... "HQ" Coy.

(d) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1700 hrs. 26 May 44 to 1700 hrs. 2 Jun 44. Total entitlement - 7 days. (Auth: "D" Orp. CRU/806/Leave POL/1 d/20 May 44.)

B-58429 Cfn. O'BRIEN, P. "D" Coy.

11. ABSENT WITHOUT LEAVE

7 (a) A.W.L. From 2230 hrs. 20 May 44. Still ab. 2230 hrs. 26 May 44. (6th d...)

B-87843 Pte. DYMENT, G.A. "HQ" Coy.

(b) A.W.L. from time and date shown. Rat. at time and date shown.

D-129421 Pte. BRIDSON, S.L.R. From 1010 hrs. 17 May 44 "D" Coy.
Rat. 1810 hrs. 24 May 44

K-74942 Cfn. SMITH, A.K. From 2230 hrs. 24 May 44 "D" Coy.
Rat. 2020 hrs. 25 May 44

(c) AMENDMENT

D.O. Pt. II No. 66 d/24 May 44, para 11(a) insofar as it concerns the ... is amended to read "AWL from 0230 hrs. 20 May 44."

B-87843 Pte. DYMENT, G.... "HQ" Coy.

12. APPOINTMENTS

(a) To be A/Cpl. w.e.f. 26 Mar 44. (Auth: 44/Ordnance/1/A (402) d/28 Mar 44. (Canvc, Sold/3330 d/31 Mar 44.)

B-8063 Cfn. DEEDS, W.C.G. "D" Coy.

13. MEDICAL CATEGORIZATION

(a) Posted to Base Workshop A.M. Grp. "B" and "Failed" w.e.f. 24 May 44. (Auth: ... Pt. II No. 0962 d/25 May 44.)

B-80348 Cfn. ... "B" Coy.

RHB

GOC-in-C HD
(c) On Command to Greenford w.e.f. 1500 hrs. 3 Jun 44 and Off Cmd. wef 2000 hrs. 4 Jun 44. (Auth: Lt/Col. McGregor.)
B-88636 Pte. GOCH, A. "HQ" Coy.

(b) On Cmd. to Birmingham, Derby, Chilwell and Old Dalby wef 0700 hrs. 3 Jun 44 and Off Cmd wef 1900 hrs. 8 Jun 44. (Auth: Lt/Col. McGregor.)
D-122038 A/Sgt. DeVINE, R. "HQ" Coy.

(c) On Cmd. to Birmingham, Old Dalby, Chilwell, Derby & Leicester wef 0700 hrs. 3 Jun 44, and Off Cmd. wef 1800 hrs. 8 Jun 44.(Auth:Lt/Col. McGregor.)
D-122031 Pte. GOOLD, R. "HQ" Coy.

(d) On Cmd. to Donnington wef 0700 hrs. 3 Jun 44 and Off Cmd. wef 2100 hrs. 4 Jun 44. (Auth: Lt/Col. McGregor.)
G-38471 Gfn. JACOBS, R. "HQ" Coy.

(e) On Cmd to Bicester wef 0700 hrs. 4 Jun 44 and Off Cmd wef 0030 hrs. 9 Jun 44. (Auth: Lt/Col. McGregor.)
G-38471 Gfn. JACOBS, R. "HQ" Coy.

(f) On Cmd to Hove wef 2000 hrs. 5 Jun 44 and Off Cmd wef 2000 hrs. 7 Jun 44. (Auth: Lt/Col. Miles.)
F-32012 Pte. McMILL, G. "HQ" Coy. M-103702 Pte. MRAGG, A.N. "HQ" Coy.

(g) On Cmd to Hove wef 1300 hrs. 6 Jun 44 and Off Cmd. wef 2000 hrs. 7 Jun 44. (Auth: Lt/Col. McGregor.)
M-73172 Pte. [illegible], J.G. "HQ" Coy.

(15)
SICK/WIA
(a) Admitted to Hosp. shown w.e.f. dates shown. London
B-87648 Pte. DIXON, G. Paddington Hosp. 5 Jun 44 "HQ" Coy.
M-106881 Cfn. JONES, L.H. No. 1 C.C.S. 6 Jun 44 "B" Coy.
M-87073 Cfn. LEVY, B. No. 1 C.C.S. 7 Jun 44 "C" Coy.
M-82055 Cfn. ROBERTS, J.K.L. No. 1 C.C.S. 8 Jun 44 "D" Coy.
G-88298 Cfn. THOMAS, G.S. No. 1 C.C.S. 8 Jun 44 "D" Coy.

(b) Discharged from No. 1 C.C.S. w.e.f. dates shown.
G-30849 Cfn. ARMSTRONG, R.C. 8 Jun 44 "D" Coy.
D-82847 Cfn. BUICK, A. 7 Jun 44 "HQ" Coy.
P-93834 Cfn. BATFORD, C.J. 10 Jun 44 "B" Coy.
M-16658 Cfn. STOVER, W. 8 Jun 44 "D" Coy.

LEAVE OF ABSENCE
(a) Granted 7 days Comp. Leave with money all'ce in lieu of rations from 26 May 44 to 1 Jun 44. (inclusive) Total entitlement - 7 days.
M-75344 Cfn. HUDSON, E.J. "D" Coy.

(b) Granted 7 days Com. Leave with money all'ce in lieu of rat. from 1900 hrs. 2 Jun 44 to 1900 hrs. 9 Jun 44. Total entitlement - 7 days.
M-20747 Cfn. SIMON, J.G. "D" Coy.

(c) Granted 6 days Comp. Leave with money all'ce in lieu of rat. from 1700 hrs. 2 Jun 44 to 1700 hrs. 8 Jun 44. Total entitlement - 6 days.
B-28523 Cfn. EVANS, W. "D" Coy.

(d) Granted 7 days Comp. Leave with money all'ce in lieu of rat. from 1800 hrs. 8 Jun 44 to 1800 hrs. 15 Jun 44. Total entitlement -7 days.
D-122317 Cfn. POLEN, P. "D" Coy.

(e) Granted 8 days Comp. Leave with money all'ce in lieu of rat. from 2000 hrs. 10 Jun 44 to 2000 hrs. 18 Jun 44. Total entitlement-8 days.
M-78210 Cfn. FELL, H.W. "D" Coy.

K.W.B

Certified true copy
[illegible] Capt & Adjt.

1 E.A.F. HEADQUARTERS, [illegible] No. 96

Part II Orders - Page 8 - 10 Jun 44

E x 3

7. CO.OZ RD

(a) Off Command to Greenford w.e.f. 1300 hrs. 3 Jun 44 and Off Cmd. wef 2000 hrs. 4 Jun 44. (Auth: Lt/Col. McGregor.)
B-58836 Pte. GOOL, F. "HQ" Coy.

(b) On Cmd. to Birmingham, Derby, Chilwell and old Dalby wef 0700 hrs. 3 Jun 44 and Off Cmd wef 1900 hrs. 8 Jun 44. (Auth: Lt/Col. McGregor.)
B-128856 A/Sgt. [illegible] "HQ" Coy.

(c) On Cmd. to Birmingham, Old Dalby, Chilwell, Derby & Leicester wef 0700 hrs. 3 Jun 44, and Off Cmd. wef 1900 hrs. 8 Jun 44.(Auth:Lt/Col. McGregor.)
B-128681 Pte. [illegible], F. "HQ" Coy.

(d) On Cmd. to Donnington wef 0700 hrs. 3 Jun 44 and Off Cmd. wef 2100 hrs. 4 Jun 44. (Auth: Lt/Col. McGregor.)
C-33472 Cfn. [illegible], R. "HQ" Coy.

(e) On Cmd to Bicester wef 0700 hrs. 3 Jun 44 and Off Cmd wef 0900 hrs. 9 Jun 44. (Auth: Lt/Col. McGregor.)
C-33471 Cfn. [illegible], [illegible]. "HQ" Coy.

(f) On Cmd to Hove wef 2000 hrs. 3 Jun 44 and Off Cmd wef 2000 hrs. 7 Jun 44. (Auth: Lt/Col. [illegible].)
F-32012 Pte. [illegible], G. "HQ" Coy. C-103702 Pte. [illegible], A.N. "HQ" Coy.

(g) On Cmd to Hove wef 1300 hrs. 3 Jun 44 and Off Cmd. wef 2000 hrs. 7 Jun 44. (Auth: Lt/Col. McGregor.)
L-73172 Pte. [illegible], J.G. "HQ" Coy.

8. HOSPITAL

(a) Admitted to Hosp. shown w.e.f. dates shown. London
B-37868 Pte. [illegible], [illegible]. Paddington Hosp. 5 Jun 44 "HQ" Coy.
C-106851 Cfn. [illegible], L.A. No. 1 C.H.E. 8 Jun 44 "D" Coy.
H-37073 Cfn. [illegible], E. No. 1 C.H.E. 7 Jun 44 "C" Coy.
L-22055 Cfn. [illegible], S.E.A. No. 1 C.H.E. 8 Jun 44 "D" Coy.
G-33295 Cfn. [illegible], H.J. No. 1 C.H.E. 8 Jun 44 "D" Coy.

(b) Discharged from No. 1 C.H.E. w.e.f. dates shown.
C-30849 Cfn. [illegible], N.C. 8 Jun 44 "D" Coy.
D-82847 Cfn. BUICK, [illegible]. 7 Jun 44 "HQ" Coy.
F-93854 Cfn. [illegible], D.J. 10 Jun 44 "D" Coy.
H-18458 Cfn. [illegible], [illegible]. 8 Jun 44 "D" Coy.

9. LEAVE OF ABSENCE

(a) Granted 7 days Comp. Leave with money all'ce in lieu of rations from 26 May 44 to 1 Jun 44. (inclusive) Total entitlement - 7 days.
H-75334 Cfn. HODGKIN, E.J. "D" Coy.

(b) Granted 7 days Com. Leave with money all'ce in lieu of rat. from 1900 hrs. 26 Jun 44 to 1100 hrs. 3 Jun 44. Total entitlement - 7 days.
H-20747 Cfn. JINKS, J.G. "D" Coy.

(c) Granted 5 days Comp. Leave with money all'ce in lieu of rat. from 1700 hrs. 2 Jun 44 to 1700 hrs. 7 Jun 44. Total entitlement - 5 days.
B-93523 Cfn. [illegible], W. "A" Coy.

(d) Granted 7 days Comp. Leave with money all'ce in lieu of rat. from 1800 hrs. 8 Jun 44 to 1800 hrs. 15 Jun 44. Total entitlement - 7 days.
D-128317 Cfn. [illegible], F. "D" Coy.

(e) Granted 5 days Comp. Leave with money all'ce in lieu of rat. from 2000 hrs. 10 Jun 44 to 2000 hrs. 15 Jun 44. Total entitlement - 5 days.
L-75210 Cfn. [illegible], [illegible]. "D" Coy.

K.H.D.

7. GOING HD

(a) On Command to Greenford w.e.f. 1300 hrs. 5 Jun 44 and Off Cmd. wef 2000 hrs. 6 Jun 44. (Auth: Lt/Col. McGregor.)
B-52838 Pte. CECIL, A. "HQ" Coy.

(b) On Cmd. to Birmingham, Derby, Chilwell and Old Dalby wef 0700 hrs. 3 Jun 44 and Off Cmd wef 1900 hrs. 8 Jun 44. (Auth:Lt/Col. McGregor.)
D-122636 L/Sgt. DEVILLE, E. "HQ" Coy.

(c) On Cmd. to Birmingham, Old Dalby, Chilwell, Derby & Leicester wef 0700 hrs. 3 Jun 44, and Off Cmd. wef 1800 hrs. 8 Jun 44.(Auth:Lt/Col. McGregor.)
D-128591 Pte. GOSLIN, F. "HQ" Coy.

(d) On Cmd. to Donnington wef 0700 hrs. 3 Jun 44 and Off Cmd. wef 2000 hrs. 4 Jun 44. (Auth: Lt/Col. McGregor.)
G-38471 Cfn. JACOBS, R. "HQ" Coy.

(e) On Cmd to Blenstop wef 0700 hrs. 8 Jun 44 and Off Cmd wef 0030 hrs. 9 Jun 44. (Auth: Lt/Col. McGregor.)
G-38471 Cfn. JACOBS, R. "HQ" Coy.

(f) On Cmd to Hove wef 2000 hrs. 5 Jun 44 and Off Cmd wef 2000 hrs. 7 Jun 44. (Auth: Lt/Col. Pitlab.)
F-32012 Pte. McNEIL, G. "HQ"Coy. M-103702 Pte. WRAGG, A.N. "HQ" Coy.

(g) On Cmd to Hove wef 1300 hrs. 6 Jun 44 and Off Cmd. wef 2000 hrs.7 Jun 44. (Auth: Lt/Col. McGregor.)
M-73172 Pte. WILSON, J.G. "HQ" Coy.

8. HOSPITAL

(a) Admitted to Hosp. shown w.e.f. dates shown. London
B-37565 Pte. DIXON, G. Paddington Hosp./ 5 Jun 44 "HQ" Coy.
M-106651 Cfn. JOHNSON, L.H. No. 1 C.C.S. 6 Jun 44 "D" Coy.
B-37075 Cfn. DEVLIN, P. No. 1 C.C.S. 7 Jun 44 "C" Coy.
L-22055 Cfn. RUSSELL, J.L.L. No. 1 C.C.S. 8 Jun 44 "B" Coy.
G-33295 Cfn. TRAVIS, R.S. No. 1 C.C.S. 8 Jun 44 "D" Coy.

(b) Discharged from No. 1 C.C.S. w.e.f. dates shown.
C-30849 Cfn. ARMSTRONG, R.H. 8 Jun 44 "D" Coy.
D-82847 Cfn. BUICK, A. 7 Jun 44 "HQ" Coy.
P-93834 Cfn. BAXFORD, G.J. 10 Jun 44 "B" Coy.
M-16658 Cfn. STOVER, R. 9 Jun 44 "C" Coy.

9. LEAVE OF ABSENCE

Granted 7 days Comp. Leave with money all'ce in lieu of rations from 26 May 44 to 1 Jun 44. (inclusive) Total entitlement - 7 days.
M-73534 Cfn. HODGKIN, S.J. "D" Coy.

Granted 7 days Com. Leave with money all'ce in lieu of rat. from 2000 hrs. 2 Jun 44 to 1900 hrs. 9 Jun 44. Total entitlement - 7 days.
M-20747 Cfn. DIXON, J.G. "C" Coy.

(c) Granted 5 days Comp. Leave with money all'ce in lieu of rat. from 1900 hrs. 2 Jun 44 to 1700 hrs. 7 Jun 44. Total entitlement - 5 days.
B-69283 Cfn. BROWN, W. "D" Coy.

(d) Granted 7days Comp. Leave with money all'ce in lieu of rat. from 1800 hrs. 8 Jun 44 to 1800 hrs. 15 Jun 44. Total entitlement -7 days.
B-122317 Cfn. POLEY, F. "C" Coy.

(e) Granted 5 days Comp. Leave with money all'ce in lieu of rat. from 1800 hrs. 10 Jun 44 to 1800 hrs. 15 Jun 44. Total entitlement-5 days.
B-75219 Cfn. PARKER, J. "C" Coy.

K.M.B

Ex 4

1 E.M. [illegible], A.C. . . .

No. 51
26 Jun 44

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7. HOSPITAL (Cont'd)
(b) Discharged from Paddington Hosp., London wef 14 Jun 44. (Auth: CMH [illegible])
Tulap: S. . .M.D./19 (restricted) d/23 Jun 44.)
B-B7543 Pte. DUTTON, G. . . "HQ" Coy.

8. LEAVE OF ABSENCE
(a) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1800 hrs. 25 Jun 44 to 1800 hrs. 30 Jun 44. Total entitlement-7 days.
B-83424 Pte. BOWDEN, R.D. "HQ" Coy.

(b) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1800 hrs. 22 Jun 44 to 1800 hrs. 29 Jun 44. Total entitlement - 7 days.
B-38891 A/L/Cpl. COCHRANE, R.J. "A" Coy.

(c) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1900 hrs. 23 Jun 44 to 1900 hrs. 30 Jun 44. Total entitlement - 7 days.
B-82654 Cfn. WATSON, G.F. "C" Coy.

9. ABSENT WITHOUT LEAVE
(a) A.W.L. from 0345 hrs. 25 Jun 44. Ret. at 2040 hrs. 25 Jun 44.
B-88448 Cfn. GOODWIN, H.D. "D" Coy.

(b) A.W.L. from time and date shown.
B-49256 A/L/Cpl. HAMMETT, J.J. 2230 hrs. 24 Jun 44 "A" Coy.
F-87256 Cfn. MacALONEY, E.B. 2356 hrs. 24 Jun 44 "A" Coy.
K-82424 Cfn. MacDONALD, ...D. 0700 hrs. 24 Jun 44 "B" Coy.
B-89307 Cfn. RADFORD, R.L. 0700 hrs. 16 Jun 44
Still Ab. 0700 hrs. 24 Jun 44 (8th day)

(c) Ceases to be A.W.L. on admission to No. 4 Cdn. Gen. Hosp. wef 1606 hrs. 26 Jun 44.
B-82484 Cfn. MacDONALD, A.D. "C" Coy.

(d) AMENDMENT
D.O. No. II No. 76 d/14 Jun 44, para 9(a) insofar as it pertains to the a/m is amended to read "1300 hrs. 13 Jun 44."
B-106984 Cfn. [illegible], ...J. "HQ" Coy.

(e) CANCELLATION
D.O. No. II No. 79 d/21 Jun 44, para 8(a) insofar as it pertains to a/m is hereby CANCELLED. (duplicate entry)
B-106984 Cfn. [illegible], ...J. "HQ" Coy.

10. PROMOTION'S AND APPOINTMENTS
(a) Reverted as Cpl. Duty wef 23 Jun 44. (Auth: CRU 408/1 G(D)/1 (Org 5) 459/ Dromm J.M./1 d/27 Jun 44.)
B-82556 Pte. BROWN, J. . . "D" Coy.
and qual.

(b) Trade tested as Wheel Mortar Grp. "B" wef 24 Jun 44. (Auth: E.T.T.S. Report No. 40336 d/26 Jun 44.)
B-104130 Cfn. ALLAN, G.H. "D" Coy.

(c) Trade tested as Fitter A.F.V. Grp. "B" and qual. wef 24 Jun 44. (Auth: E.T.T.S. Report No. 37620 d/26 Jun 44.)
B-82556 Cfn. [illegible], ...J. "D" Coy.

(d) Trade tested as Clerk (Gen. Duty) Grp. "B" and qual. wef 24 Jun 44. (Auth: E.T.T.S. Report No. 40340 d/26 Jun 44.)
B-106100 A/Cpl. [illegible], J. . . "HQ" Coy.
B-90007 Cfn. [illegible],

certified true Copy
[illegible] Capt & Adjt.

7. HOSPITAL (Cont'd)

(a) Discharged from Paddington Hosp., London wef 16 Jun 44. (auth: CMF Telex: G...S.D./19 (prestrict46) d/23 Jun 44.)
B-857843 Pte. DEXTER, G... "HQ" Coy.

8. LEAVE OF ABSENCE

(a) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1600 hrs. 25 Jun 44 to 1600 hrs. 30 Jun 44. Total entitlement - 7 days.
B-853284 Pte. MOULDS, R.D. "A" Coy.

(b) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1600 hrs. 28 Jun 44 to 1600 hrs. 30 Jun 44. Total entitlement - 7 days.
B-859891 A/L/Cpl. COCHRANE, R.C. "B" Coy.

(c) Granted 7 days Comp. Leave with money allce in lieu of rat. from 1900 hrs. 23 Jun 44 to 1900 hrs. 30 Jun 44. Total entitlement - 7 days.
B-852854 Cfn. VAUGHAN, G.T. "C" Coy.

9. ABSENT WITHOUT LEAVE

(a) A.W.L. from 0945 hrs. 23 Jun 44. Ret. to 2040 hrs. 25 Jun 44.
B-884468 Cfn. GRAHAM, R.D. "D" Coy.

(b) A.W.L. from time and date shown.

B-49286	A/L/Cpl.	HARRIS, J.J.	2230 hrs. 24 Jun 44	"A" Coy.
F-87255	Cfn.	MacMURRAY, E.E.	2350 hrs. 24 Jun 44	"A" Coy.
K-52424	Cfn.	MacDOUGALL, A.D.	0700 hrs. 24 Jun 44	"D" Coy.
B-89307	Cfn.	RADFORD, R.E.	0700 hrs. 16 Jun 44	"B" Coy.
			Still A.W. 0700 hrs. 24 Jun 44 (8th day)	

(c) Ceases to be A.W.L. on admission to No. 4 Cdn. Gen. Hosp. wef 1806 hrs. 26 Jun 44.
B-884468 Cfn. MacDOUGALL, A.D. "D" Coy.

(d) ~~AWARD~~ AMD
D.C.M. No. II No. 76 d/14 Jun 44, para 9(a) insofar as it pertains to the w/m is amended to read "1800 hrs. 13 Jun 44."
B-100984 Cfn. WHITMORE, W.J. "HQ" Coy.

(e) CANCELLATION
D.C.M. No. II No. 79 d/21 Jun 44, para 3( ) insofar as it pertains to w/m is hereby CANCELLED. (duplicate entry)
B-100984 Cfn. WHITMORE, W.J. "HQ" Coy.

10. PROMOTION TO UNPAID RANK

(a) Reverted to Cpl. Duty wef 23 Jun 44. (auth: CMC 408/1 CMC/1 (Org 8) 2887 from J.M./1 d/23 Jun 44.)
B-82556 Pte. BROWN, J. . "B" Coy.
and qual.

(b) Trade tested as Signal Dispatch Rnr. "B" wef 24 Jun 44. (auth: S.T.T.B. Report No. 40836 d/26 Jun 44.)
B-884180 Cfn. GRAHAM, R.L. "B" Coy.

(c) Trade tested as Pioneer A.F.V. Crp. "A" Echelon Qual. wef 24 Jun 44. (auth: S.T.T.B. Report No. 47620 d/26 Jun 44.)
B-82556 Cfn. [illegible] "A" Coy.

(d) Trade tested as Clerk (Gen. Duty) Crp. "B" Echelon Qual. wef 24 Jun 44. (auth: S.T.T.B. Report No. 40836 d/26 Jun 44.)
B-884180 Cfn. GRAHAM, R.L. B-83100 L/Cpl. [illegible], J. . "B" Coy.

7. HOSPITAL (Cont'd)
(b) Discharged from Paddington Hosp., London wef 14 Jun 44. (Auth: C.M.H. Tel.of: S.L.A.D./19 (restricted) d/20 Jun 44.)
B-87543 Pte. DEWART, G.H. "HQ" Coy.

8. LEAVE OF ABSENCE
(a) Granted 7 days Comp. Leave with money allee in lieu of rat. from 1600 hrs. 23 Jun 44 to 1600 hrs. 30 Jun 44. Total entitlement-7 days.
B-83424 Pte. BANNAN, R.D. "HQ" Coy.

(b) Granted 7 days Comp. Leave with money allee in lieu of rat. from 1600 hrs. 22 Jun 44 to 1600 hrs. 29 Jun 44. Total entitlement - 7 days.
F-85281 A/L/Cpl. COCHRANE, R.T. "A" Coy.

(c) Granted 7 days Comp. Leave with money allee in lieu of rat. from 1900 hrs. 23 Jun 44 to 1900 hrs. 30 Jun 44. Total entitlement - 7 days.
B-82654 Cfn. YARDLEY, G.W. "C" Coy.

9. ABSENT WITHOUT LEAVE
(a) A.W.L. from 0345 hrs. 25 Jun 44. Ret. at 2040 hrs. 25 Jun 44.
A-80448 Cfn. GAUVIN, H.D. "D" Coy.

(b) A.W.L. from time and date shown.
B-82256 A/L/Cpl. MASCOTT, J.J. 2230 hrs. 24 Jun 44 "A" Coy.
F-87255 Cfn. MacALONEY, E.B. 2359 hrs. 24 Jun 44 "A" Coy.
K-82424 Cfn. MacDOUGALL, A.D. 0730 hrs. 24 Jun 44 "B" Coy.
B-89307 Cfn. RADFORD, R.E. 0700 hrs. 16 Jun 44 "B" Coy.
Still Ab. 0700 hrs. 24 Jun 44 (8th day)

(c) Ceases to be A.W.L. on admission to No. 4 Cdn. Gen. Hosp. wef 1908 hrs. 26 Jun 44.
K-82424 Cfn. MacDOUGALL, A.D. "B" Coy.

(d) AMENDMENT
D.O. Pt. II No. 76 d/24 Jun 44, para 9(a) insofar as it pertains to the a/m is amended to read "1500 hrs. 25 Jun 44."
B-106984 Cfn. ROBINSON, W.J. "HQ" Coy.

(e) CANCELLATION
D.O. Pt. II No. 79 d/27 Jun 44, para 3(f) insofar as it pertains to a/m is hereby CANCELLED. (duplicate entry)
B-106984 Cfn. ROBINSON, W.J. "HQ" Coy.

10. PROMOTION'S QUALIFICATIONS
(a) Remustered to Gen. Duty wef 25 Jun 44. (Auth: CRU 408/1 GOCD/1 (Org 8) 459/ Brown J.W./1 d/20 Jun 44.)
B-82586 Pte. BROWN, J. "D" Coy.
and qual.

(b) Trade tested as Angel Beater Grp. "B"/wef 24 Jun 44. (Auth: S.T.T.B. Report No. 40836 d/26 Jun 44.)
A-104150 Cfn. ALEXANDER, G.L. "D" Coy.

(c) Trade tested as Fitter A.F.V. Grp. "B" (on qual. wef 25 Jun 44. (Auth: S.T.T.B. Report No. 27629 d/26 Jun 44.)
B-82584 Cfn. [illegible], W.F. "D" Coy.

(d) Trade tested as Cloth (Gen. Duty) Grp. "B" (on qual. Grp. "A" wef 20 Jun 44. (Auth: S.T.T.B. Report No. 40836 d/26 Jun 44.)
A-80027 Cfn. [illegible], A. B-82108 A/Cpl. [illegible], J.W.

(A.G.)

No B57543 Name DYMENT, G.A. | Sqn, Battery or Company | Corps R.C.E.M.E. | Date of enlistment 3 Dec 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/130 (3439)

Company Conduct Sheet Date of last entry in N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc D. Campbell Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
O/S	2-7-42	Pte.		WOAS AWL in that he at Jasper C. absented himself without leave from 0100 hrs. to 1200 hrs 2-7-42 (11 hrs.59 min)	Doc. Evd.	1 days pay	12-7-42	A.T.Field Major	1 days anto forf. PRSI 149 2 days pay.
Field	12-10-43	Cpl.		A.A. 40 WOAS, Conduct to the prej. whilst Guard Commander was found playing cards with a prisoner.	Lieut.Roberts Cpl.Scotton	Reprimanded	12-10-43	Lt.-Col. McGregor	
Field	13-3-44	A/Cpl.		AA 15(1) WOAS AWL 20 days, 23 hours.	Doc R.P's.	Revert to Pte.	4 Apr 44	Col.Secord.	21 days anto. forfeiture.

CERTIFIED TRUE COPY

5 Jul 44

(R.H.Beck) Captain,
Officer having custody
of Regimental Books.

(PTO

NFB 355

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment or unit
B.57543	Pte.	Gerald Anthony DYMENT	1 C.B.W., R.C.E.M.E.

1. The following is a fair and true summary of the entries in the Regimental and Company Conduct Sheets of the accused,

Within last 12 months	Since enlistment or appointment
For A.W.L. A.A. Sec.15(1) one time	A.W.L. A.A. Sec.15(1) One time
For Can.to the Prej.A.A.Sec.40 one time	

NOTE: If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 25 days in military custody, making a total of 25 days in custody, of which nil days were spent in hospital

5. The present age of the accused according to his attestation paper is 23 yrs. 7 mos. 15 days.

6. The date of his attestation specified in his attestation paper is 3 Dec 41

7.

8.

9. The accused is in possession of or entitled to military decoration. State any military decoration C.V.S.M. and Clasp.

10.

11. [illegible]

12. [illegible]

NOTE: - If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Army Act, Air Force Act, and of cases in which trial has been dispensed with or requested.

Number..... Rank..... Name..... Unit

of..... Regiment

NOTE: - A verbatim extract from the Regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried.	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

EXD 1117

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14 day of July 1944.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked..... signed by the president, and annexed to the proceedings.

R.H.Beck

(R.H.Beck) Capt. & Adjt.,
1 Cdn.Base Workshop, R.C.E.M.E.

Summary of Evidence
in the case of

B-57543, Private G... A... Dyment,
R.C.E.M.E; on the strength of 10 BW RCEME
a soldier of the Canadian Army, overseas.

By direction of the Commanding Officer
the Summary of Evidence is taken on
oath.

First Witness (for the Prosecution) L 9806 Cpl Scotton J. C. on the strength of 1 C B W R C E M E having been duly sworn, states:-

I recognize the accused to be Pte Dyment D. A. and to be quartered in Hut B8, H.Q. Coy. 1 C B W R C E M E.

I was Hut Corporal of Hut B8, H.Q. Coy. starting with Tattoo Roll Call, 19 may 44 to Reveille Roll Call, 26 may 44. It is my duty to call both Reveille and Tattoo Calls during that period.

I called the Tattoo Roll at 2230 hrs 20 may 44 and Pte Dyment did not answer to his name. I could not find him in his hut which is Hut B8, H.Q. Coy. He did not answer to the Roll calls made by me at Reveille 0545 hrs 2nd/4th Tattoo 2230 hrs on the 21, 22, 23, 24, 25th/26th days of may 44 2nd/4th Reveille Roll call at 0545 hrs 26 may 44.

The accused declines to question the witness.

The above record is read to the witness

J. C. Scotton Cpl

RM

Second Witness (for the Prosecution)

B57592 Sgt. Daly R. on the strength of 1 C B W R C E M E having been duly sworn, states:—

I am Orderly Sergeant of 1 C B W R C E M E. I was on duty at the Guard-Room of 1 C B W R C E M E at 0140 hrs 19 June 44 when Pte Dyment, whom I recognize as the accused, reported in to me without any Local Pass. He was sober and properly dressed.

The accused declines to question the witness

The above record is read to the witness.

Sgt. Daly. R.

Third Witness
for the prosecution

Captain R. H. Beck, in the strength of 1 C B W R C E M E having been duly sworn, states. I am Adjutant of 1 C B W R C E M E I recognize the accused to be Pte Symons. G.A.

I produce:-

(a) 1 C B W R C E M E Part II Order #66 Page 3. dated 24 May 44. which is marked Exhibit A and is attached to this Summary of Evidence.

Para. 11(a) of this order deals with absence without leave by the accused.

(b) 1 C B W R C E M E Part II Order #68 Page 3, dated 29 May 44. which is marked Exhibit B and is attached to this Summary of Evidence.

Para 11 (a) of this order deals with absence without leave by the accused.

Para 11 (c) of this order amends Para 11(a) of 1 C B W R C E M E Part II Order #66 which is attached to this Summary as Exhibit A.

I initial the above Exhibits for purpose of identification.

The accused declines the question to the witness

The above record is read to the witness.

Signed R. H. Beck

Maj

The accused is cautioned as follows.

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence under oath and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence and hearing of the accused, this 3rd day of July 1944, and that the Rules of Procedure 44 (a), (d), (e) and (f) have been complied with.

Bordon Hants
3 July 44.

G. D. King. Lieut
Officer detailed to take
the Summary of Evidence

MM

SUMMARY OF EVIDENCE

In the case of B.57543, Pte. Gerald Anthony DYMENT, Royal Canadian Electrical Mechanical Engineers, on strength of 1 Canadian Base Workshop, a soldier of the Canadian Army Overseas.
By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

First Witness for the prosecution

L.9806, Cpl. Scotton, J.C. on the strength of 1 C.B.W., R.C.E.M.E. having been duly sworn, states:-

I recognize the accused to be Pte. Dyment, G.A. and to be quartered in Hut B8, H.Q. Coy. 1 C.B.W., R.C.E.M.E.

I was Hut Corporal of Hut B8, H.Q. Coy. starting with Tattoo Roll Call, 19 May 44 to Reveille Roll Call, 26 May 44. It is my duty to call both Reveille and Tattoo Rolls during that period.

I called the Tattoo Roll at 2230 hrs 20 May 44 and Pte. Dyment didn't answer to his name. I could not find him in his hut which is Hut B8, H.Q. Coy. He did not answer to the Roll Calls made by me at Reveille 0545 hrs and Tattoo 2230 hrs on the 21,22, 23,24,25 days of May 44 and Reveille Roll Call at 0545 hrs 26 May 44.

The accused declines to question the witness.

The above record is read to the witness.

Signed. J.C. SCOTTON, Cpl.

Second Witness for the prosecution

B.57592, Sgt. Haley, R. on the strength of 1 C.B.W., R.C.E.M.E. having been duly sworn, states:-

I am Provost Sergeant of 1 C.B.W., R.C.E.M.E. I was on duty at the Guard Room of 1 C.B.W., R.C.E.M.E. at 0140 hrs 19 Jun 44 when Pte. Dyment, whom I recognize as the accused, reported in to me without any Leave Pass. He was sober and properly dressed.

The accused declines to question the witness.

The above record is read to the witness.

Signed. Sgt. HALEY, R.

Third Witness for the prosecution

Captain R.H. Beck, on the strength of 1 C.B.W., R.C.E.M.E. having been duly sworn, states:-

I am Adjutant of 1 C.B.W., R.C.E.M.E. I recognize the accused to be Pte. Dyment, G.A.
I produce:-
(A) 1 C.B.W., R.C.E.M.E. Part II Order #66 Page 3 dated 24 May 44, which is marked Exhibit "A" and is attached to this Summary of Evidence.
Para. 11(a) of this order deals with absence without leave by the accused.
(B) 1 C.B.W., R.C.E.M.E. Part II Order #68 Page 3 dated 29 May 44, which is marked Exhibit "B" and is attached to this Summary of Evidence.
Para 11(a) of this order deals with absence without leave by the accused.
Para 11(c) of this order amends Para 11(a) of 1 C.B.W., R.C.E.M.E. Part II Order #66 which is attached to this Summary as Exhibit "A"
I initial the above Exhibits for purpose of identification.

The accused declines to question the witness.

The above record is read to the witness.

Signed. R.H. BECK

The accused is cautioned as follows:-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence under oath and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, this 3rd day of July 1944, and that the Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

G.I. King

(G.I. King) Lieut.,
Officer detailed to take the Summary of Evidence.

Bordon, Hants.
3 Jul 44.

LIST OF WITNESSES

In the case of B.57543, Pte. Gerald Anthony DYMENT,
Royal Canadian Electrical Mechanical Engineers,
on strength of 1 Canadian Base Workshop.

(For the Prosecution)

1. L.9806, Cpl. SCOTTON, J.C.	1 Cdn. Base Workshop, RCEME
2. B.57592 Sgt. HALEY, R.	1 Cdn. Base Workshop, RCEME
3. Captain R.H. BECK	1 Cdn. Base Workshop, RCEME
Prosecutor Lieut. G.I. KING	1 Cdn. Base Workshop, RCEME

(For the Defence)

None

LIST OF EXHIBITS

In the case of B.57543, Pte. Gerald Anthony DYMENT, Royal Canadian Electrical Mechanical Engineers, on strength of 1 Canadian Base Workshop.

(For the Prosecution)

A. Certified true copy of 1 C.B.W., R.C.E.M.E. Part II Order #66 Page 3, dated 24 May 44, dealing with absence without leave by the accused.

B. Certified true copy of 1 C.B.W., R.C.E.M.E. Part II Order #68 page 3, dated 29 May 44, dealing with absence without leave by the accused.

(For the Defence)

None

I hereby request that the Convening Officer appoint an officer of any unit other than 1 CBW ROBME to represent me at my forthcoming Court Martial.

Bordon, Hants.
10 Jul 44.

G.A. Dymond

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Bordon preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

Bordon, Hants.
10 Jul 44.

G.A. Dymond

OFFICERS UNDER INSTRUCTION

F.C.C.M. 18 Jul 44

Lt	R.A.	BRIGHT	1 CERU
Lt	S.R.	RAMSEY	1 CGRU
Lt	G.E.	MARIAN	1 CGRU

TTT-4

PTE DYMOND C W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 48901 Pte Charles Wilfred DYMOND 13 Bn 2 CBRG.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st charge	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

To undergo ~~penal~~ servitude for ~~imprisonment~~ for ~~detention~~ ~~imprisonment with (or without) hard labour~~ ~~detention~~ ~~reduction in rank~~ ~~forfeiture of seniority~~ ~~dismissal from the service~~ ~~stoppages~~ ~~fine~~ ~~forfeiture of pay~~ ~~forfeiture of good conduct pay~~ ~~forfeiture of service for pay~~ ~~forfeiture of seniority

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without withy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 68(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO, SIR.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to NG charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing on Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras C1 to C4 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.(1)

(1. *If "Yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 71 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D6.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Do you intend to call witnesses on your behalf? Ans. Are they witnesses as to character only? Ans.

(1. *RP 115.* 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order CF 405. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*E*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. NO, SIR.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (*g*) (*b*), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MML* 215 *or AFB* 294. 2. *MML* 6. 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES, SIR.

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*a*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* XIII. 330, 563-566, *Queenstaus AO* 309, 2323, *MML p* 66, 737-739. *As to sentences subjoined for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), (*d*)(i), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 267. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

DMC

REQUEST FOR A DEFENDING OFFICER

"I C.48901 Pte Dymond, C.W. wish to have a competent officer appointed to defend me at my forthcoming trial by Court Martial."

C. W. Dymond

(C.48901 Pte Dymond, C.W.)

LIST OF WITNESSES

FOR PROSECUTION: Lt W.A. Murray

Capt R.E. Buell

FOR DEFENCE: Nil

LIST OF EXHIBITS

1. Copy of Pt II Orders issued by Canadian Section GHQ 2nd Echelon, 21 Army Group, showing C.48901 Pte DYMOND, C.W. to be absent without leave at 0900 hrs 18 Jun 44 and still absent 0900 hrs 26 Jun 44.

2. Statement of evidence as to time of apprehension purporting to be signed by Capt R.E. BUELL, HQ Army Tps Area. (Exhibit 2 Appx A).

3. CMHQ 1000: 55 Costs of apprehension £0. 5. 2. for returning C.48901 Pte DYMOND, C.W. to unit.

Exhibit C

MFM-6
(AFB 122)
40/PAS/150 (3458)

No	Name	Sqn, Battery, or Company	Corps	Date of enlistment	GC Badges	Service or Proficiency Pay	Character
048901	DYMOND, T.W.			26 Feb 41			

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						1 day pay	8 Jan 44		
Field	31 Dec 43	Pte		AA 15(1) AWL from 2300 hrs 31 Dec 43 to 0730 hrs 1 Jan 44.		awd 1 days pay 7 days CB	31 Jan 44		
Field	30 Jan 44	Pte		AA 15(1) AWL from 0800 hrs 30 Jan 44 to 2300 hrs 30 Jan 44		1 days pay awd 2 days pay			
						1 days pay	14 Feb 44		
Field				AA 15(1) AWL 9 hrs 15 mins		14 ys pay awd			
						28 days FP	25 Feb 44		
				AA 40		1 days pay			
				AA 15(1) AWL 8 hrs		3 days pay			
						21 days pay	15 Mar 44		
						3 days pay	16 May 44		
Field	13 May 44	Pte		AA 15(1) AWL from 0615 hrs 13 May 44 to 1500 hrs 15 May 44		awd 3 days pay			

5

(PTO)

Pass	Date of offence	Rank	Class of discharge-ment	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispens-ing with trial	By whom awarded	Remarks
Field	20 May 44	Pte		AA 15(1) AWL from 2359 hrs 20 May to 1100 hrs 21 May 44		1 days pay awd 7 days pay	22 May 44		
Field	11 Jun 44	Pte		AA 15 (1) AWL from 0900 hrs 11 Jun 44 to 0600 hrs 12 Jun 44		days pay 14 days pay RWD	13 Jun 44		

J Middleton Lt 15 July 44
13 Bn 2 CBRG

Exhibit B

DMC

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
G48901	Pte	DIMOND, C.W.	13 Bn 2 CBHG

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For AA Sec 15 (1) ____ 7 ____ times

For AA Sec 40 ____ 1 ____ times

For ____ ____ times

For ____ ____ times

Date of first entry in Field Conduct Sheet 31 Dec 42

Date of last entry in Field Conduct Sheet 11 Jun 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for na beginning on the na day of na

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 14 days in military custody, i.e., nil days in open arrest, 14 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation ~~enlisting or for military service~~ is 28 Dec 41

7. The service which the accused is allowed to reckon is 1 yrs 4 mos

8. The accused is in possession of†

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of ____	na
In the war substantive rank of ____	na
In the acting rank of ____	na

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

† Strike out if not applicable.

‡ State the military decorations (if any) held by accused.

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental records in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of July 45

(J.S. Miller) Lt
13 Bn 2 CBRG

Exhibit 121
Appendix A

8 July 44

Ref: G48901 Pte Dymond, C.W.
63 Tp Tpt Coy, RCASC

At about 2230 hrs on 7 Jul while on duty as duty officer at HQ Army Tps Area, I received a phone call from the police in Dorking to the effect that the a/m soldier had reported in to the Police Station, stating that he had just returned from leave, and could not now locate his unit.

I sent transportation to Dorking to bring the man to this HQ's and on questioning him, found that he was returning from absence without leave, stating that he had been away for about 20 days.

As I believe that his unit has moved, I placed him under close arrest and kept him in custody overnight. It was 2315 hrs when he was brought to me. No statement of surrender or apprehension was furnished by the Dorking Police, as they did not know the man had been AWOL.

Capt.
H.E. Buell
HQ Army Tps Area

EXHIBIT (B)

Expense Voucher Re—: Ref: KR & O (Can) 539

Reg No. G48981 Rank Pte Name Dymond, C. W. Unit 2 C.B.R.D.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Bayeux

Date	Particulars	Amount		
	Escorts return fare from LONDON To Bayeux		3	3-
8 July 44	Prisoners single fare to LONDON From Bayeux		1	9
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	2.

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R E Birch LIEUT.

Officer Issuing Railway Warrant and Expense money R. E. BIRCH.
No. 6 Area Provost Company, Canadian Provost Corps. ADMIN. OFFICER—D.P.M's BR.
C. M. H. Q.

CMHQ 1000/55
M17 &S/445(3)/39

Exhibit 10

DMC

63 CDN ARMY TRANSPORT COMPANY RCASC
Part II Orders issued by
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

Last Order
No 14
7 JUL 44

No 15
8 JUL 44

"A" OFFICERS

NIL

"B" OTHER RANKS

1 ABSENT WITHOUT LEAVE
(a) AWL from 0900 hrs 18 JUN 44 Still absent 0900 hrs 26 JUN 44 (8th day)
G48901 Pte DYMOND C W

(J.L.HENDERSON)Capt.,
for Officer IC
CANADIAN SECTION GHQ 2nd ECHELON
21 ARMY GROUP

/mcp

The accused does not require the presence of Capt R.E. BUELL at this time.

The accused was cautioned in accordance with rules of procedure 4 (e) of the Army Act.

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

"I certify that the foregoing summary of evidence consisting of 2 pages was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c) (d) (e) (f) and (g) have been complied with.

(B.J. Ashbridge) Lt RC Sigs
Officer taking summary of evidence
13 Bn 2 CMBG

In the field
15 Jul 44

E3
ZDMC.

STATEMENT MADE BY THE Defending Officer in the case of G 48901 Pte. Dymond, C.W.

The accused enlisted for Active Service 28 Feb 40 and proceeded overseas Aug 41. Six months ago he applied for permission to marry Miss Patricia Archer of Surbition from O.C. 66 Gen Tpt Coy. Two months later similar application was made from 63 Tp Tpt Coy. In each case permission was NOT granted but no reasons were given though in the second case letter of recommendation from employer and a negative blood test report were both produced. About three months ago the accused learned that Miss Archer was pregnant and when she became quite ill Pte. Dymond asked for compassionate leave. When he was granted a 24 hrs pass on 17 Jun he went to her and stayed with her until the sickness culminated in a miscarriage. The following day he surrendered himself to the civil police at Dorking.

His conduct sheet shows cases of A.W.L. of less than 15 hrs with one exception only when the accused was brought in sick with a doctor's certificate having been absent 2 days and 9 hours. The accused had a social responsibility to that girl and it was his duty to be with her during that period. He also observed his responsibilities to the army since as soon as the sickness was over he returned. The man has been ~~xxxxxx~~ under close arrest for 15 days.

MEDICAL OFFICERS CERTIFICATE

(Kit(Can) Form 557)
(CMHQ CL 173)

I certify that I have this day examined G48901 (No.)

PTE (Rank) DYMOND C.W (Name) and in my opinion he is

~~fit~~ unfit to undergo trial by Court-Martial.

Station FIELD

Date. 22 Jun 44

(Sgd) Medical Officer

(unit) 18 Bde 2 C R R

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing *see* AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in *CF A 96*, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 89(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 89(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 89(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 46 fns 6-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 46 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), KR Con 565(a).*)

(vii) Summing up by *JA*, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA*, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA*, if any, and then pinned by top left corner to p 3 of *CF A 96* in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114a.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of *CF A 96* and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 3 of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 119(C), MML p 759.*)

4. The President or *JA*, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-48901	Pte		Charles Wilfred	DYMOND	13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Jul 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court; (b) a Fd Offr as President, for the reasons I have checked hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge Advocate to attend the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	D.W.W.COOPER,		12 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Lieutenant	(To be detailed by OC)	13 CBR Bn
A Lieutenant	(To be detailed by OC)	13 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Lieutenant	(To be detailed by OC)	13 CBR Bn

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any.)	(Unit.)

On Active Service in the Fd

in England

Date 21 Jul 44

(Signed personally. RP 105 fn 2.)

Brigadier

(Rank.)

(A. W. BEAMENT)

Commanding Cdn Sec GHQ 1 Echn 21 A Gp

Convening Officer.

Approved

A.D.J. for DMA of AFHQ (P.A.O. 1367 dated)

Cdn Sec GHQ 1 Echn 21 A Gp.

20 JUL 1944

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use at trial.)

DMC

CHARGE SHEET

FIRST CHARGE
AA Sec 15 (1)

The accused G.48901 Pte Charles Wilfred DYMOND, 13 Bn 2 CBRG, a soldier of the Canadian Army Overseas, is charged with

WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field absented himself without leave from 0900 hrs 18 Jun 44 until 2230 hrs 7 Jul 44 when he surrendered himself to the Civil Police at DORKING. (Total time absent 19 days 13 hrs 30 mins). Costs of apprehension £ 0. 5. 2.

In the field
15 Jul 44

(W.J. Stewart) Lt.Col
Commanding 13 Bn 2 CBRG

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
16 Jul 44

(A.E.BEAMENT) Brigadier
GIC
Cdn Sec GHQ 1 Sch 21 A Gp

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

HF - 130
EF - 131
Gen. Raymond S.D.
Gen. Mosson K.G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 3180 Gnr Miles Smith DYMOND
H 8465 Gnr Kenneth George MOSSON

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 86, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
14 days Field Punishment.
14 days forf pay.

(Sgd) ..... Judge-Advocate, if any. 13 Sep 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

Part II MINUTE WHERE CONFIRMATION RESERVED. (AA 54(2), RP 120(f), MML p 760)

Not Confirmed

Date 3 Nov 44 (Sgd) ..... Lt Col Cmdg A/CRA 2 Cdn Inf Div

Commanding A/CRA 2 Cdn Inf Div

Confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be obtained before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date ..... Commanding .....

PART IV. PROHIBITED AND EXTRACTS TAKEN. (RP 55, KR Can 576, 577)

Accused. Date. Signature of Offr.
G 3180 Gnr Miles Smith DYMOND 8 Nov 44 Kenneth George Capt. Adjt 5 Fd Regt RCA
H 8465 Gnr Kenneth George MOSSON

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160 4F-130 4F-138

FIELD GENERAL COURT-MARTIAL

CFA90 (To Unit of AFA3) W/P & S 1898 (2804)

RECEIVED 7 Dec 1944 CMHQ

PROCEEDINGS REVIEWED DJAG 8 Dec GHQ 21 Army Gp

Convened by Order of Lt Col E D Nighswonder Comd 5 Cdn Fd Regt dated 13 Sep 44

ACCUSED.

(Note: As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G 3180	Gnr	N/A	Miles Smith	DYMOND	5 Cdn Fd Regt
H 8465	Gnr	N/A	Kenneth George	MOSSON	5 Cdn Fd Regt

PROCEEDINGS REVIEWED
J C Campbell Major
2 Dec 44
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 13 Sep 44 12/6 12/7

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 22, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 2015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elects to be tried by court-martial instead of being dealt with summarily by the O/C.~~
(1. KR Can 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans N/A
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans N/A
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following were the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R C D Stewart	5 Cdn Fd Regt RCA
Member	Capt	J. Byars	5 Cdn Fd Regt RCA
Member	Lieut	M M Taylor	5 Cdn Fd Regt RCA
Judge-Advocate			
Prosecutor	Lieut	J.D.L. Rheaume	5 Cdn Fd Regt RCA
Defending Offr	Capt	W.A. Martin	5 Cdn Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Cmdr. Offrs.)
Q. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment unless RP 89 (B) and fn 2 were not followed. See DH p 31.

A8. The accused ..... before arraignment makes(s) (no) ~~the~~ plea. (3)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 reasons and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~has~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, deletion cancel make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p* [redacted] *3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 66(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____ (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 3.* 3. *RP 35(B) fn to para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise the accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part 1 of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing, as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(1. *RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again and the trial is continued by using paras B3 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~(an)~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the FIRST charge(s) ~~and allowed on the charge(s) and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Give evidence on witness Do you intend to call witnesses on your behalf ?
Ans YES Are they witnesses as to character only ? Ans YES
(1. *RP 145 (1).* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(E).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and so he is released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is altered and signed.~~
(1. *AA 54(3) (d), RP 42, 120(A).* 2. *AA 54(2), RP 43, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES call witness
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A. 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as [illegible] mentioned. Admitted in evidence and marked Ex A1-1 and Ex B1-1 respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans YES
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately, see RP 71(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 120(A), KR Can 308, 385, 563-566. Overseas RD RDY, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 44(1)(b), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. As to commission and disposal of record after trial see insert on back of Convening Order.*
2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to suspension and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused G3180 Gnr. Miles Smith DYMOND and H8465 Gnr. Kenneth George MOSSON, 28th Field Battery, 5th Cdn. Field Regt., RCA., both soldiers of the Canadian Army Overseas are jointly charged with:

FIRST CHARGE:
A.A. Sec. 9(2)

W.O.A.S. disobeying a lawful command given by his superior officer in that they on 3 Sep 44 in the field when ordered by B.S.M. Gillin, F.J., his superior officer "take Gnr. McMahon into custody" or words to that effect and cautioned by him as to the seriousness of their failure to do so, did not do so.

(E.D. Nighswander) Lt-Col., RCA.,
Comd. 5th Field Regt., R.C.A.

In the Field
4 Sep 44

To be tried by F.G.C.M.
13 Sep 44
In the Field.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of trops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see NWL Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried seperately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 67, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fnt, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
G-3180	Gnr.	MILES SMITH LYMOND	26th FD BTY	5 CDN FD REGT R.C.A.
and				
n-5465	Gnr.	KENNETH GEORGE MOSSON	26th FD BTY	5 CDN FD REGT R.C.A.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on 4 Sep 44 endorsed by me, (or by my offr of my staff for my); To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete parts in brackets when not required for compliance with RP 103(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) Navy Offr to form the Court, (b) a Fd Offr as President, for the reasons I have stated below.~~

~~5. I order/appoint as Judge Advocate~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

(RP 106(F). Delete, if none appointed.)

PRESIDENT.

MAJOR R.C.D. STEWART 78th FD BTY 5 CDN FD REGT R.C.A.
(Rank.) (Must be named RP 106.) (Unit.)

MEMBERS.

CAPT F. RYAN 6 FD BTY 5 CDN FD REGT R.C.A.
(Rank.) (Named or detailed RP 106.) (Unit.)

LIEUT M.M. TAYLOR 78th FD BTY 5 CDN FD REGT R.C.A.
(Rank.) (Named or detailed, if any RP 106.) (Unit.)

WAITING MEMBER.

LIEUT A.J. CROZILY 78th FD BTY 5 CDN FD REGT R.C.A.
(Rank.) (Must be named, if any RP 106.) (Unit.)

JUDGE-ADVOCATE.

NOT APPLICABLE.
(Rank.)

On Active Service in the Fd
in FRANCE
(Country.)

Date Sep 44

(Signed personally, RP 105 fn 2.)
Commanding 5 Cdn Fd Regt R.C.A.
Convening Officer. (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (Page 1 to Sch of Apps AG 97 & 67/1367 (A&I))

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
G-3180	Gnr.	MILES SMITH LYMOND	88th FD BTY	5 CDN FD REGT R.C.A.
		and		
R-84655	Gnr.	KENNETH GEORGE	MOSSON	88th FD BTY 5 CDN FD REGT R.C.A.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) Sep 44 endorsed by me, (or by an offr of my staff for me)" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I am unable to do so.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I hereby appoint as Judge Advocate General at the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR R.C.D. STEWART	78Fd FD BTY	5 CDN FD REGT R.C.A.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT J. BYARS	5 FD BTY	5 CDN FD REGT R.C.A.
LIEUT M.K. TAYLOR	78Fd FD BTY	5 CDN FD REGT R.C.A.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT A.J. GREENLY	78Fd FD BTY	5 CDN FD REGT R.C.A.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	NOT APPLICABLE	

On Active Service in the Fd

in FRANCE (Country.)

Date Sep 44

(Signed personally. RP 105 fn 2.) Lieut-Col. (Rank.)

Commanding 5 Cdn Fd Regt R.C.A.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAAS (to incl of AFAS) GS F & S 67/1807 1/45)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

FOUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 91 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objection (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I was a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 10 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. Where a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply, so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance impracticable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn, or subject to cross-exam by Prosecutor, Court or J.A (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(D)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there have been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by J.A, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A, if any, and them pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to submitting an evidence a certified copy as item of original see KR Can 560. As to certified copies of regimental books see AA 163 (3) (g) (iv).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any reports or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence announced. (*AA 23(3), RP 118(C), MML p 759.*)

4. The President or J.A, if any, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICER'S REPORT

I certify that No. 93180, Dymond, M. S.
of 2 Div. H. Regt RCA is in a good state of health,
and fit to undergo Trial by Court martial.
this day.

H. A. Kneale Capt.
Medical Officer
(H.A. KNEALE) CAPT., RCAMC

Station In the Field

Date 15 Sep 44

M. F. B. 246
2334—6-41 (795)
D.Q. 573-39 460

WDG

MEDICAL OFFICER'S REPORT

I certify that No. 48465, Morgan, K. J.
of 5th Bn 7th Regt, USMC is in a good state of health,
and fit to undergo Trial by Court martial.
this day.

K. A. Kneale, Capt
Medical Officer
(H.A. KNEALE) CAPT., MCMC

Station In the Field

Date 13 Sep 44

M. F. B. 246
2534—8-43 (792)
31-29, 1172-09 MM

Field 13 Sept 44

Boundary: Cpl Dymond - Sgt Mossop

Capt Norman: Taken for Court: answer:

On the 2nd of Sept 1944 in my section
was sent to the front the end of a group
of about 15 soldiers + civilians dressed
back home three of our gunners were
obviously drunk + wounded in the shoulder
I ordered BSM Gillam to find a room
to be used as a guard room + to have
the three drunken gunners put into it.
under close arrest. Two of them went
in without any difficulty, but the third,
hearing of my order, became very
aggressive in front of the group of people
+ threatened to fight anyone who
tried to put him into the guard room.
There was quite likely about two
I ordered BSM Gillam to
detail two men at once to have
Gnr McMahon put in the guard room.
I heard BSM Gillam call Cpl
Dymond and Gnr Mossop, the two accused,
Gnr Dymond at that moment was
walking away from the disturbance +
was directly opposite the Estaminet, + Gnr
Mossop was in the Estaminet. Cpl Both
came towards the Sgt Maj + he advanced
towards them. I heard him, from a RODS
distance of approx seven paces, give
a lawful order to the effect "You take

him McMahon and put him on the guardroom and as he spoke he pointed out & waved towards it. On receiving the order Lce Sgt Dymond & Lce Mason both stepped in their tracks Lce Mason a little pause, the Lt Major then continued to walk towards Lce Sgt Dymond & Lce Mason who was approx two paces to the rear of Lce Sgt Dymond. I did not catch what B S M Cullen said but throughout it all neither of the Lce Sgts made a move. I saw B S M Cullen look at them & then say something more & then saw Lce Sgt Dymond & Lce Mason walking into the guardroom themselves without escort.

DO. Did you see B S M Cullen warn the accused of the seriousness of the charge.

A. No I did not.

DO Could you give me some idea of the length of time from when B S M Cullen told Lce Sgt Dymond and Mason to take the men into custody & they walked into the guardroom.

A/ Definitely not longer than five minutes and may have been less.

Pres. Was Lce Sgt McMahon in plain view of the accused

A McMahon was at B S M Cullen's right rear. All

B S M. Sellers - 2nd Statement for the Prosecution:

On the 2nd of September about your 1 o'clock I called to Lce Sgt Dymond & Morson to come & apprehend Lce Mc Mahon who had been drinking & place him in a room I had selected as a guard room. They approached me, Lce Sgt Dymond within two or three feet & Lce Morson slightly in the rear, but closely enough to hear what I said. After giving them the order that if they could not bring out the order to place Lce Mc Mahon in the guard-room, that they would be disobeying an order, & that they would have to place the guard on themselves. After I had told me they about disobeying the order, Lce Sgt Dymond said I will go in the guard room. I do not in you go & you will be under close arrest. The Lce Sgt Dymond went into the guard room followed by Lce Morson.

DO. ~~The~~ did you call Lce Sgt Dymond & ~~Morson~~ Mc Mahon to apprehend Lce ~~Morson~~

A. ~~The man I called was~~ but Lce Sgt Dymond was a large man.

DO. Was Lce Morson at the time

A. At the kitchen about 30 feet for the guard room door.

DO. Are you sure of your exact words when you told Lce Sgt Dymond & Morson to apprehend Lce Mc Mahon

A. Yes.

A/ I told them to throw ~~him~~ Mr Mahon into the guard room.

Q. Why did you caution the accused and to what would happen if they did not obey the orders

A/ Because I ~~I~~ formed the ~~impression~~ that they did not intend to obey the order.

Q. Will you repeat the exact words you used when you ordered the accused to place ~~him~~ Mr Mahon in the guard room

A/ I called ~~him~~ Sergeant Major to come & my exact words were to "Throw Mr Mahon in the guard room"

Q. Did either of the accused make any effort to carry out the orders.

A/ No none at all.

Q. As closely as possible what were your words when you cautioned the accused

A/ I told them that if they disobeyed the order they would have to go on the guard room charges.

Q. Were your orders ~~to~~ clear & clearly heard by the accused

A. Yes sir.

Pros How much time elapsed between your ~~after you~~ ~~gave~~ the order to the accused & they then went into the guard room themselves.

A/ About one minute.

Pros. Did you ask the accused if they intended to obey the order.

A/ I don't remember Sir.

Pros Did either of the accused make any reply to your order or the contents

A/

Ref. page 0 f

Motion for dismissal.

(1) Defense moves that the order X "Show him in the guard room" is not a lawful command.

(2) The superior officer, B S M Killen, did not allow sufficient time for the accused to act on his order.

Court is closed to consider the motion.

The court finds that X "Show him in the guard room" was a lawful command given by a superior officer in the execution of his office.

(2) The superior officer, B S M Killen, gave no clear alternative to the accused if the steps to comply with his order. They escaped the stockade and entered the guard room themselves

The court disallows the motion for dismissal.

First Witness for the Defense - Sgt Raymond Brown:

~~Do~~ ~~To be [illegible]~~ I just came around the corner of a shed next to the cook house when B S M Lillen called me to throw how Mc Mahon in the guardroom. As I came up to B S M Lillen, how Mc Mahon happened to be going by and I told him that he had better go into the guard room, that he had a lot of fellows in trouble. B S M Lillen then said, "Never mind the ~~or~~ to throw him in the guard room, or go in yourself, and close up." I stopped to think for a minute, as I did not want to throw him in the guard room, since I had never thrown a man in before, & I had never pulled hold of any one how never pulled hold of any one except in fun. B S M Lillen told me to go into the guard room myself, so I went in.

DO. In what way did B S M Lillen caution you as to the seriousness of not carrying out his order.

A/ He said if you do not do it you will go in the guard room yourself.

DO/ Have you any other reason for not using force.

A/ I am a colored fellow & I have had enough time getting along with white people without fighting. I told him, & I knew if I took hold of Mc Mahon it would mean a fight.

RBS

[illegible] charged
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

DO [illegible] you going to deal with this Labor"

A/ I was going to talk to [illegible] but Mc Mahon + tell him to go in the guard room when the B S M sent me off. If I had been allowed to speak to Mc Mahon I believe he would have gone in as he did in the mid. I also handled Mc Mahon before while I was in the conduction.

DO/

2nd Witness for the Def Lieut Monon sworn:

B S M. Sullivan did not give me a chance to say whether I would or would not carry out the order. He said if you don't do it both of you will go in the guard room. so I left after Sullivan to talk to walker before B S M

DO Did you hear Sullivan and Dwyer?

A/ no.

Pres Was the B S M's order quite clear to both of you

A yes
A yes

Pres Was it clear that if you did not carry out the order you would be placed under arrest

A yes
A yes

Pres Did you intend to carry out the order?

Dymond Yes I intended to tell Pte McMahon not to go in.

Morson Yes

Pres What effort did you make to carry out the order.

Dymond I told McMahon to go into the guard room or he would get a lot of unnecessary trouble.

Morson I was following Dymond's order I did not speak to McMahon myself

Court Did you by your actions at any time indicate that you would not carry out the order?

Dymond. No. When I passed to speak to Pte McMahon, BSM Dillon told me to go in the guard-room.

PO BSM Dillon said that a mounted charged before giving the original order & before you went into the guard-room, in the Tunnel.

A Dymond Yes

PO Did you think that BSM Dillon intended you to put Pte McMahon in the guard room

A Dymond He said "Shove him in"

P.O. Did you make any attempt to tell the B.S.M. that you had seen Sgt Mahon, had seen him drunk before & that you could handle him if he gave you time.

Sgt Mott. The B.S.M. didn't give me time to say anything

P.O. Did you at any time have any trouble in the army ~~in the army~~ because you are colored.

Sgt Mott NO.

Character Witness Capt Norton sworn:

I have known Sgt Mott for 4 yr. I was in the same Bty. His service record is clear and also is bad Mahon's. I have never known Sgt Mott to disobey an order or fail to carry out any duty he was given to do.

Capt Norman sworn:

I have known Sgt Mott since I have been in the 28 Bty & bad Mahon ever since he came to it. Both men are of good character, have done their jobs, with the exception will & even under the letter from me have had. They are well regarded in the Bty by both men, NCO's and Officers.

RESTED

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G3180	Gnr.	Miles Smith DYMOND	5th Cdn. Fd. Regt., RCA

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereinafter stated should correspond with the number of Entries in the Field Conduct Sheet, punishments being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Nil ____ times.
For Nil ____ times.
For Nil ____ times.
For Nil ____ times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. N/A

*Strike out if not applicable.

*3. ~~The accused on the present occasion absented himself~~ [illegible] from 1600 hrs. 4 Sep 44 beginning on the ~~day~~

4. The accused has been awaiting trial on the present charge for ~~days in military custody, i.e., days in civil custody; and for~~ 9 days in open arrest, ~~days in close arrest, of~~ which N/A days were spent in hospital.

5. The present age of the accused is 31 yrs. 3 mos. 24 days

6. The date of his attestation ~~calling-up for military service~~ is 4 Mar 40

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of: C.V.S.M.

State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

EXHIBIT A1 RDS

(21114) W1,987/0/666 250,000 6/42 A.& E.W.L.(2) Gp.698 Forms/B.296(War)/2
(21326) W1,332/0/1672 60,000 8/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14th day of September 1915

Capt.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H8465	Gnr.	Kenneth George MOSSON	5th Cdn. Fd. Regt., RCA

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Nil ____ times.
For Nil ____ times.
For Nil ____ times.
For Nil ____ times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. N/A

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ ~~days~~ ~~of~~ ~~imprisonment~~ ~~with~~ ~~hard labour~~ ~~beginning on the~~

4. The accused has been awaiting trial on the present charge(s) from 1600 hrs. 4 Sep 44 ~~days in civil custody; and for~~ ~~days in military custody, i.e.,~~ 9 days in open arrest, ____ days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 34 years 5 months

6. The date of his ~~enlistment~~ attestation is 2 Mar 43

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of‡

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of N/A	

‡State the military decorations (if any) held by accused.

EXHIBIT A 2 ABDS.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21134) W.L.M.70/909 300,000 4/42 A.& E.W.Ltd. Gp.698 Form B.296(W.477)
(33459) W.L.22/2/20/1671 80,000 9/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
				Nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14th day of September 44

Lt Col

M.F.M. 6
(A.F.B. 122)
8b/P & S/136 (2627)

No. H 3465 Name MOSSON, K.A. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 2 MAR 43 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks

Certified true Copy

[signature] CAPTAIN.
5TH FIELD REGT., R.C.A.

EXHIBIT B 2
MDE.

(P.T.O.)

M.F.M. 6
(A.F.B. 122)
40/P & S/130 (2637)

No. G-2180 Name DYMOND, M.S. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 5/2/40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 31-7-41 No. and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No. 1 Signature G.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy					
				[illegible] LIEUTENANT. 5TH FIELD REGT., R.C.A.					
						EXHIBIT B1 MDS			

(P.T.O.)

SUMMARY OF EVIDENCE

in the case of

G3180 Gnr. Miles Smith DYMOND

H8465 Gnr. Kenneth George MOSSON - both Of the 28th Field Battery, 5th Cdn. Field Regt., RCA.

soldiers of the Canadian Army Overseas.

The accused are informed of their rights and the charge read to them.
The C.O. directs that Lieut. J.D.L. Rheaume, 5th Cdn. Fd. Regt., RCA take a summary of evidence in writing under oath in this case.

First Witness For The Prosecution:
Capt. W.C. Newman, 28th Field Battery, 5th Cdn. Field Regt., RCA., sworn, states:

"On the 3 Sep 44 at about 1600 hrs. I saw Gnr. McMahon, K. was drunk and disturbing the peace in the wagon lines of the 28th Field Battery and issued orders to BSM Gillin to have McMahon placed under close arrest. I heard BSM Gillin call Gnr. Dymond and Gnr. Mosson and they came towards him. I heard him order them "Take Gnr. McMahon into custody" I saw both of them fail to comply with that order. I saw BSM Gillin then walk towards them since they had stopped in their tracks, there was some conversation which I did not hear. I then saw Gnr. Dymond and Gnr. Mosson walk into the room that we were using as a Guard Room. Other men had to be detailed to take Gnr. McMahon into custody"

Both accused decline to cross-examine the witness.

(W.C. Newman) Capt.

Second Witness For the Prosecution:
G3081 B.S.M. Gillin, F.J., 28th Field Battery, 5th Field Regt., RCA., sworn, states:

"At about 1600 hrs. on the 3 Sep 44 I called to Gnr. Dymond and Gnr. Mosson to report to me and I gave them an order, to apprehend Gnr. McMahon, K. and to put him in the Guard Room. Both men were reluctant to carry out the order. I then cautioned them that if they did not obey the order they were disobeying a lawful order, they did not carry out the order and I then ordered them into the Guard Room under close arrest."

Both the accused decline to cross-examine the witness.

(G3081 BSM Gillin, F.J.)

The accused after being duly warned under R.P. 4(F) says:
"I don't wish to make a statement now."
K.G. Mosson M.S. Dymond
The accused do not wish to call a witness in their defence at this time.

Certified taht R.P. 4 complied with.
In the Field
4 Sep 44

(J.D.L. Rheaume) Lt.

5 V – 86

Pte Dzedzora, A

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H21077 Fte DZEDZORA, A. - 2 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	GUILTY EXCEPT	that my absence was caused	
2nd AA 22	GUILTY	NOT at 0915 hrs but at 1630	
3rd AA 15 (1)	GUILTY	hrs 19 Oct/45 Proof dispensed	
4th AA 22	GUILTY	Concurrence of Convening Officer	
5th		obtained and the plea	
6th		finding GUILTY with variation as pleaded.	

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 8.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 16 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Forty (40) days and to be put under stoppages of Pay until the Pay made good £1-3-10 the expenses of his return to Holland 8 NOV/45

(Sgd) [illegible] Lieut

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back Finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) A.B. Connolly

Date 9 NOV 45 Commanding B Comp CRU

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H. 21077 Pte. DZEDZORA, A.	12 Nov 1945	[illegible] Lieut

D.O. #136 d/15 Nov 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AR 163-1 5V-86

CMHQ JAG BRANCH 23 NOV 45

FIELD GENERAL COURT-MARTIAL

CPA96 (To Serv of AFA31) 40/P & R/1600 (6/44) 4/38B

Convened by Order of Brig A.E. Connolly, CBE Comd "B" Gp, CRU dated 6 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H21077	Fte	Alexander	DZEDZORA	2 Cdn Repat Dep

PROCEEDINGS REVIEWED

23 Nov 45 A.Y. Brodey Maj

REVIEWING OFFICER AND BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 6 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instn, if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 157. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans ~~The interpreter is sworn.~~(1) ~~Do you object to~~ as shorthand writer? Ans ~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instn, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. Redman, VD	HQ CRU
Member	Captain	A.I. FIDDES	3 Cdn Repat Dep
Member	Lieutenant	J.M.A. TELMOSSE	3 Cdn Repat Dep
~~Judge-Advocate~~			
Prosecutor	LIEUT	G.S. MURRAY	2 CDN REPAT DEP
Defending Offr	LIEUT	J.M.G. DUBE	2 CDN REPAT DEP

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instn will be returned separately with proceedings (for information of Conv Offr.) 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) (a) plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to attend trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded (per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; witness several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record (per Notes.)

A10. The Court ~~arraigned and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO. (5)
(*1. RP* 27(*B*). 2. *RP* 27(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his plea(s) accordingly on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D.—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* 395. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO. SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFR* 253 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. [illegible] (NOT SIR.) (2)
(*1. RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove as such anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him; and also J.A., if any.(2)
(*1. Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 343-346. *Overseas* 80 309, 2223, *MML p* 80, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(1), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The acoused, No. H.21077 Pte Alexander DZEDZORA, on the strength of "A" Wing, No. 2 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas is charged with

First Charge
A.A. Sec. 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at In the Field did absent himself from "A" Wing, 2 Cdn Repat Depot, from 0915 hrs 19 Oct 45 until he surrendered himself to 17 Cdn Provost Coy at BRIGHTON at approx 2100 hrs 22 Oct 45. (Total time absent 3 days 11 hours 45 mins) Cost of apprehension £0-11-11.

Second Charge
A.A. Sec 22

WHEN ON ACTIVE SERVICE, WHEN IN CONFINEMENT ESCAPING

in that he

at In the Field when in confinement in "A" Wing Guard Room, 2 Cdn Repat Depot, at approx 0700 hrs 25 Oct 45, escaped.

Third Charge
A.A.Sec.15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

at In the Field did absent himself from "A" Wing, 2 Cdn Repat Depot from 0700 hrs 25 Oct 45 until apprehended by 17 Cdn Provost Coy at 2045 hrs 26 Oct (Total time absent 1 day 13 hrs 45 mins) Cost of apprehension £0-11-11.

Fourth Charge
A.A. Sec.22

WHEN ON ACTIVE SERVICE, WHEN IN LAWFUL CUSTODY ATTEMPTING TO ESCAPE

in that he

at In the Field at 1230 hrs on 27 Oct 45 when having dinner under escort awaiting return to unit escaped out of the billet on to Rock St. BRIGHTON and ran for four or five blocks before he was apprehended.

W.T. Ibbett

(W.T. Ibbett) Colonel
Commanding
No.2 Cdn Repat Depot

In the Field
5 Nov 45

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

A.H. Comelly

(A.H. Comelly) Brig
Comd "B" Gp
Cdn Repat Units

IN THE FIELD
6 NOV 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H21077	Pte		Alexander	DZIEDZORA	2 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 6 Nov 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO	3 Cdn Repat Dep
Lieutenant	to be detailed by CO	3 Cdn Repat Dep

~~WAITING MEMBER.~~ N/A

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~ N/A

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

(A.B. Connelly) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Dat 6 Nov 45

Commanding "B" Op. Cdn Repat Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 65 (To Gen of APA 3) 40/P&S/1691 (8142) (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 89(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 561(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then joined by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 966. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 118(C), MML p 738.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

I hereby certify that I have this date examined No.H.21007.. Rank..Pte..... Name..[redacted]..... and in my opinion he is..fit.. to undergo trail by Court Martial.

Medical Officer.

8 Nov 45
No 2 Cdn Repat Depot

8 November 45

Ideas of mitigation

Case of:
H-21077 Sgt Szedzon, Alexander, No 2 Edm Regt Depot

Regimental particulars:
The accused Sgt Szedzon, enlisted in the Canadian Army, Active Force in January 1940 and have been in U.K. ever since June 1941.
He served in Canada in the following regiments & Corps. First with the Queens own Cameron Highlanders then with the R.C.O.C. for a period of two month. ~~[illegible]~~ He came Overseas with the Edm Motor ambulance Corps where he served six month. He was remustered afterwards to the R.C.A.S.C.
On the night of his arrest while he were speaking in polish to some polish sailors a certain Sgt/ [illegible] of the Provost Corp suspected him of being a foreigner disguised in a Polish uniform. The accused was asked to produce his identity which he couldnot ~~as to his leave pass. The accused refused to~~ ~~I am defending fellow canadian language, actually~~ ~~he talks nine of them~~.

Point score for repatriation:
His point score is 109 points.

Civil occupation:
A Blacksmith of trade working for his own shop

Total days in detention:
16 days awaiting trial.

Gaetan Bedard Lieut.
Defending Officer
"A" Wing No 2 Edm Regt.

E-3
VM

SUMMARY OF EVIDENCE
in the case of H-21077, Pte DZEDZORA, Alexander.

on strength of Permanent Establishment, 2 Cdn Repat Depot.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: Capt. E.A.D. SIMONS, (RCASC) on strength Permanent Establishment, 2 Cdn Repat Depot, having been duly sworn states:-

"I am Capt. E.A.D. Simons and am employed as adjutant, at "A" Wing, 2 Cdn Repat Depot. Pursuant to Overseas R.O.5352 I present the following documents, relating to the accused H-21077, Pte. Dzedzora, A. whom I now recognize, which have been read over and shown to the accused and which are marked as Exhibits "A", "B", "C", "D", "E", and "F"."

Exhibit "A" Certified true copy of MFB 273 Absentee Report, which shows that the accused H-21077 Pte Dzedzora, A. absented himself without leave from 0830 hrs 19 Oct 45.

Exhibit "B" Certificate under Army Act Sec 165 (1) (j), which shows that the accused surrendered himself at Brighton to the Canadian Provost Corps at 2100 hrs, 22 Oct 45.

Exhibit "C" Expense Voucher for cost of return of the accused to his unit, 23 Oct 45.

Exhibit "D" Certified true copy of MFB 273 Absentee Report, which shows that the accused H-21077, Pte Dzedzora, A. absented himself without leave from 0700 hrs, 25 Oct 45.

Exhibit "E" Certificate in accordance with P.C. 2797 d/10Apr42 which shows that the accused was arrested at Brighton by the Canadian Provost Corps at 2045 hrs 26 Oct 45.

Exhibit "F" Expense Voucher for the cost of return of the accused to his unit, 27 Oct 45.

The evidence is read back to the witness.

E.A.D. Simons, Capt/Adj
"A" Wing, 2 Cdn Repat Dep

The accused declines to cross-examine the witness.

A. Dzedzora.....

SECOND WITNESS: L-92145 Bdr, GRAVES, J. on strength Permanent Establishment 2 Cdn Repat Depot, having been sworn states:-

"I am Bdr. Graves, J., employed as general duty corporal in "A" Wing, 2 Cdn Repat Depot. On 19 Oct 45 at about 0915 hrs on orders from BSM Brown, G.F., I was sent to the NAAFI to look for the accused, whom I now recognize, but I could not find him. I went to his quarters in "A" spider, but the accused was not there. I reported this to BSM Brown. On 20 Oct 45 I made further enquiries at the NAAFI where the accused is employed, but he had not been there.

J.R. Graves.....

The evidence is read back to the witness.

The accused declines to cross-examine the witness.

A. Dzedzora.....

THIRD WITNESS: D-14490 L/Cpl MORRISON, J.R., 17 Cdn Provost Coy.
Pursuant of Overseas R.O. 957 (4) and R.P. 4 (G) a statement of this witness' evidence purporting to be signed by him has been read over and shown to the accused and is included in this Summary as Appendix 1.

I certify that owing to the exigencies of the service and the expense and loss of time involved the attendance of this witness cannot readily be procured.

The accused does not demand the attendance of this witness for cross-examination.

G.S. Murray Lieut
G.S. Murray, Lieut.
Offr. detailed to take Summary.

FOURTH WITNESS: H-1253 Tpr. STONHAM, R.R.C., on strenth Permanent Establishment, 2 Cdn Repat Depot, XXXXXX(22 Cdn Gen Hospital).
Pursuant of Overseas R.O.957 (4) and R.P. 4 (G) a statement of this witness' evidence purporting to be signed by him has been read over and shown to the accused and is included in this Summary as Appendix 2.

I certify that owing to the exigiencies of the service and the expense and loss of time involved the attendance of this witness cannot readily be procured.

The accused does not demand the attendance of this witness for cross-examination.

G.S. Murray Lieut
G.S. Murray, Lieut.
Offr. detailed to take Summary.

FIFTH WITNESS: M-6090?0 L/Cpl KWIATKOWSKI, M. , 17 Cdn Provost Coy.
Pursuant of Overseas R.O. 957 (4) and R.P. 4 (G) a statement of this witness' evidence purporting to be signed by him has been read over and shown to the accused and is included in this summary as Appendix 3.

I certify that owing to the exigiencies of the service and the expense and loss of time involved the attendance of this witness cannot readily be procured.

The accused does not demand the attendance of this witness for cross-examination.

G.S. Murray Lieut
G.S. Murray, Lieut.
Offr. detailed to take Summary.

SIXTH WITNESS: A-104409 L/Cpl DOWN, H.F., 17 Cdn Provost Coy.
Pursuant of Overseas R.O. 957 (4) and R.P. 4 (G) a statement of this witness' evidence purporting to be signed by him has been read over and shown to the accused and is included in this Summary as Appendix 4.

I certify that owing to the exigiencies of the service and the expense and loss of time involved the attendance of this witness cannot readily be procured.

The accused does not demand the attendance of this witness for cross-examination.

G.S. Murray Lieut
G.S. Murray, Lieut.
Offr. detailed to take Summary.

The accused is cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

I certify that the foregoing Summary of Evidence consisting of three typewritten pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(G.S.Murray) Lieut
Officer Detailed To Take Summary

In the Field
5 Nov 45

Exhibit "A" Statutory Declaration

ABSENTEE REPORT

19 Oct 45

19

P.E. A/Wing { Squadron / Battery / Company } 2 Cdn Repat Depot

Regt No.	Rank and Name	When Absent	Hour of Return	In What State	Remarks
H21077	Pte Dzedzora, A.	0830 hrs 19-10-45			

"Certified True Copy from Original"

(E.A.D.Simons) Captain
Adjutant - "A" Wing
2 Cdn Repat Depot

J.E. Graves Orderly-Sergeant

3/60

Exhibit "B" 9 Sept 46 L.A.

I Capt. R.P. Harrison, D.A.P.M. (C.M.H.Q.)

Rank't. No. H-21077 Pte. Dzadzora, A.

No. 2 Cdn. Repat Depot

No. D-14490 Rank L/Cpl. Name Morrison, J.A.

No. 17 Cdn. Provost Company --Canadian Provost Corps

22 day of Oct. 1945. at Brighton Hours 2100

XXXXXXX.

R.P. Harrison
(R.P. Harrison)

24-Oct.45.

Expense Voucher Re—

Ref: KR & O (Can) 539

Exhibit C
Witness

Reg No. H.21077 Rank D/C Name Ozedzora, A. Unit 2 Repat Depot

The following expenses were incurred in apprehending and returning the M/N Soldier to his ~~Unit from~~ London from Brighton

Date	Particulars	Amount		
23 Oct 43	Escorts return fare from LONDON To Brighton	—	7	11
	Prisoners single fare to LONDON From Brighton	—	4	—
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	—	11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R.C.M.P.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

Capt

CMHQ 100-55
40/P & S. 483 (6762)

Exhibit "D" Supplementary Sheet

ABSENTEE REPORT

F.E. A/Wing { Squadron / Battery / Company } 2 Cdn Repat Depot 27 Oct 45 19

Regt No.	Rank and Name	When Absent	Hour of Return	In What State	Remarks
E21077	Pte Dzedzora, A.	0700 hrs 25-10-45			

"Certified True Copy from Original"

(E.A.Simons) Captain
Adjutant - "A" Wing
2 Cdn Repat Depot

3/60 MFE 273

R.Bockus, Cpl Orderly Sergeant

Exhibit E
Dzedzora

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I certify that No. H-21077 Rank Pte. Name Dzedzora, A.

Unit No. 2 Cdn. Repat Depot Was arrested at Brighton (Place)

at 2045 (Hour) On 26-Oct.45. (date) and that at the time of his arrest he was wearing (Military Uniform) or ~~(civilian clothes)~~, Signature of Provost-Marshal, Asistant Provost-Marshal, or other officer or the commanding officer of the protion of His Majesty's Forces or the Officer, Warrantofficer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest (Strike out part inapplicable.)

London
28-Oct.45.

(G.A. Rose) RCPC, Lieut
P.A.P.M. -- C.M.H.Q.

Expense Voucher Re—

Ref: KR & O (Can) 539

Exhibit "F"
Gerbrandy
WS

Reg No. H/21077 Rank Pte Name Obyrzora, A. Unit 2 Repat Depot

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ London from Brighton

Date	Particulars	Amount		
27 Oct. 45	Escorts return fare from LONDON To Brighton		7	11
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	—	11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

Capt

5 CMHQ 100-55
40/P & S/483 (6762)

Appendix (6)
Evidence

STATEMENT OF EVIDENCE IN THE CASE OF

H-21077 Pte Dzedzora A.
No 2 Cdn, Repat Depot.

Sir;

At Brighton, on the 22 Oct, 45. at approx 2100 hrs, while on duty at the SHERRY DANCE HALL in company with L/Cpl Kwiatkowski M. I checked the a/m soldier for a pass which he could not produce, and he admitted being A.W.L. as of the 19 Oct, 45.

I placed the a/m soldier under close arrest and escorted him to the 17 Cdn, Provost Hdq, and handed him over to the N.C.O. i/C. where he was detained.

Brighton
Oct, 22, 45.

D-14492 L/Cpl Morrison J.R.
17 Cdn, Provost Company.

Sir;

I have read the above statement and Corroborate the same.

M-609070 L/Cpl Kwiatkowski M.
17 Cdn, Provost Coy,

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

No 2 Cdn, Repat Depot. Regiment

Battery / Squadron / Troop or / Company

CHARGE against No. E-21077 Rank Pte

Name Dzadzora A.

Place Brighton Date of Offence Oct, 22.45.

OFFENCE (1). A.W.L.

DAPM CMHQ

Names of Witnesses:—

D-14490 L/Cpl Morrison J.B. 17 Cdn, Provost Coy

M-609079 L/Cpl Kwiatkowski M. 17 Cdn, Provost Coy

Squadron, Troop or Company Signature of O.C. Battery,

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Appendix (2) Statement of Lieut

THIRD WITNESS: H-1253, Tpr. STONHAM, R.R.C., on strength Permanent Establishment, 2 Cdn Repat Depot, having been duly sworn states:-

"I am Tpr. Stonham, R.R.C., employed in the Regimental Police, 2 Cdn Repat Depot. On the morning of 25 Oct 45 I was on duty in the guard room. I woke the prisoners at about 0615 hrs. The accused whom I now recognize was present. The prisoners went to wash at about 0645 hrs. I saw the accused at that time. The wash room is attached to the rear end of the guard room; it is not necessary to go outside to enter it. When the prisoners were being paraded for breakfast at 0705 hrs, I noticed that the accused was missing. Pte Jackson searched the guard room, including the ablution room but could not find the accused.

BRC...Stonham.

The evidence is read back to the WITNESS.

Appendix (3) Gelliwray 60

STATEMENT OF EVIDENCE IN THE CASE OF

H-21077 Pte DZIEDZORA, A.
"A" Wing 2 Cdn Repat Depot

Sir:

At Brighton, on the 26 Oct 45, at approx 2045 hrs I was on duty in company with L/Cpl Gay, L.W., at the Regent Dance Hall, when I had the occassion to check the a/m soldier for a pass which he could not produce.

I placed him under close arrest and escorted him to 17 Cdn Provost Coy Det and handed him over to the NCO i/c to be detained awaiting escort back to his unit.

Brighton ..... M. Kwiatkowski ... L/Cpl
26 Oct 45 M-609070 L/Cpl Kwiatkowski, M.
Brighton Det 17 Cdn Pro Coy

Sir:

I have read the above statement and corroborate the same.

Brighton ..... L. Gay ..... L/Cpl
26 Oct 45 M-[illegible] L/Cpl Gay, L.W.
Brighton Det 17 Cdn Pro Coy

REMARKS

117

CHARGE

Army Form B 252
(See King's Regulations)

2 Cdn Repat Depot — Regiment

"A" Wing RESERVE — Battery / Squadron / Troop or Company

CHARGE against No. H21077 Rank Pte

Name DZIEDZORA, A.

Place Brighton Date of Offence 26 Oct 45

OFFENCE

(1) A.W.L.

Names of Witnesses:—

K-600070 L/Cpl KWIATKOWSKI, M.

K-100114 L/Cpl GAY, L.W.

Squadron, Troop or Company / Signature of O.C. Battery,

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

3 3.46 G.H.Q.P.P. 2008

Appendix (A)
Gale Murphy W

STATEMENT OF **EVIDENCE** IN THE CASE OF

H-21077 Pte DZIEDZORA, A.
"A" Wing 2 Cdn Reppt Depot

Sir:

At the 17 Cdn Provost Coy Brighton Detachment, on the 27 Oct 45 ~~xx~~ at approx 1230 hrs, I was on escort duty for the a/m soldier who was detained at this Det awaiting escort back to his unit. He was having his mid-day meal and when he had finished he ran out the back door of the billet and on to Rock Street, which is directly behind the billet, he ran down the street for four or five blocks before I apprehended him.

I escorted him back to the Detachment Guard Room and handed him over to the NCO i/c to be detained awaiting escort back to his unit.

Brighton
27 Oct 45

H. Doan .....L/Cpl
A-104409 L/Cpl Doan, H.F.
Brighten Det 17 Cdn Pro Coy

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

2 Cdn Repat Depot ..... Regiment
"A" Wing ..... Battery / Squadron / Troop or / Company

CHARGE against No. H-21077 Rank Pte

Name Dzedzora, A.

Place Brighton Date of Offence 27 OCT 45

OFFENCE

(1) Attempting to escape from Military Custody

Names of Witnesses:

A-104409 L/Cpl Dorn, H.F.

Squadron, Troop or Company / Signature of O.C. Battery,

Punishment Awarded

By whom Awarded

Adjutant.

F.T.O.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-21077	Pte	DZEDZORA, A.	"A" Wing, No.2 Cdn Repat Depot

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispersed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not enclosed in the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For AA Sec 15(1)	One	times	Four	times.
For AA Sec 40		times	Two	times.
For AA Sec 22	One	times	One	times.
For AA Sec 11	One	times	One	times.
For		times		times.

2. Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 16 days in military custody, making a total of 16 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his attestation paper is 31

6. The date of his attestation specified in his attestation paper is 30 Jan 42

7.

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 11 mos 11 days service.

9.

10. is in possession of or entitled to (*state any military decoration or reward*). CVSM and Clasp

11.

12.

EXD

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. H-21077 Rank Pte Name DZEDZOFA, A. of 2 Cdn Repat Dep Regiment (or as the case may be).

(INSTRUCTION. A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
Civil Court	15 Aug 44	Larceny Act - stealing and receiving stolen goods.	12 months imprisonment with H.L.	116 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~8th~~ 8th day of November 1945

H. Bracey Capt.
Adjt

M.F.M. 6

H.21077 No. Name DZEDZORA, A. Sqn., Battery, or Company Corps RCASC Date of enlistment 30 Jan 42 G.C. Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature G.C. Company, etc. J.H. Stewart Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Apr 43	Pte		A.A.Sec.40 - Conduct to the prej Unauthorized use of WD Vehicle etc.	Cpl Forrester	14 days CB 14 days pay	15 May 43	Major G. Gibb	
Field	16 May 43	Pte		A.A.Sec.15(1) AWL from defaulters parade 1900 hrs 16 May 43 until 2330 hrs 16 May 43	Sgt Irwin	14 days CB	17 May 43	Major G. Gibb	
Field	31 Oct 43	Pte		WOAS AWL from 2359 hrs 31 Oct 43 until 0700 hrs 1 Nov 43 (absent 7 hrs 1 min) AA.Sec.15(1)	Sgt Holway WA	Admonished	1 Nov 43	Major W.G. White	Auto forfs 1 days pay FR&I 149(1)a
Field	29 Nov 43	Pte		AA.Sec.40 - Conduct to the prej causing an alteration to be made in his MBM 1 Part II Paybook increasing his credit balance an amount of $10.00	Capt J.G. Leefe B.26417 Sgt Harrington J.V.M.	Deprived of 5 days pay	29 Nov 43	Maj T.H. Jermyn Coy Comd 1 Cdn Wksp & Pk Coy RCE	Forf 5 days pay FR&I 149 (2)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order quashing sentence with trial	By whom awarded	Remarks
Field	31 May 44	Pte		A.A.Sec.15(1) AWL from 2215 hrs 31 May 44 to 0020 hrs 6 Jun 44 (absent 6 dys 1 hr 45 mins)	Documentary	28 days detn Forf 28 days pay FR&I 149 (1)(b)	7 Jun 44	Capt J.H. Stewart	Forf 7 dys pay FR&I 149(1)(a)
Field	19 Jul 44	Pte		Larceny Act - stealing and receiving stolen goods - in civil custody from 2130 hrs 19 Jul 44 to 2359 hrs 14 Aug 44 - 26 days 2 hrs 29 mins.	Documentary	12 months imprisonment with H.L. Released on 21 Apr 45 and granted remission of sentence of 116 days.	15 Aug 44	Civil Ct	Forf 26 days pay FR&I 149(1)(c)(i) Forf 365 days pay FR&I 149(1)(b) Total forf 391 days pay
Field FIRST CHARGE	4 Jun 45	Pte		WOAS AWL from 1000 hrs 4 Jun 45 until 1330 hrs 9 Jun 45 Time absent 5 dys 3 hrs 30 min AA Sec 15(1)	Documentary	21 days detn FR&I 149(1)(b)	14 Jun 45	DH Keeler	Forf 6 dys pay FR&I 149(1)(a) Cost of appn £0.8.0
SECOND CHARGE	9 Jun 45	Pte		AA Sec.22 at Brighton Sussex when under escort broke away and attempted to escape at 1330 hrs.	Documentary				

M.F.M. 6

No. H.21077 Name DZEDZORA, A. Sqn., Battery, or Company — Corps RCASC — Date of enlistment 30 Jan 42 — C.C. Badges — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra line N/A — Sheet No. 2 — Signature O.C. Company, etc D.H. Keeler Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	22 Sep 45	Pte		A.A.Sec.11 - Neglecting to obey Camp Order on 22 Sep 45 at about 2230 hrs in Area, Out of Bounds, LONDON	Documentary	1 days pay FRAI 149(2) 7 days CB	24 Sep 45	WH Copeland Lt-Col	

"CERTIFIED TRUE COPY FROM THE ORIGINAL HELD IN MY POSSESSION"

(H.A.D. Simons) Capt
Adjt
"A" Wing
No 2 Cdn Repat Depot

P.T.O.

5 Nov 45

LIST OF EXHIBITS IN THE CASE OF H.21077 Pte DZIEDZORA.

FOR THE PROSECUTION

1. Exhibit "A" - Certified True Copy of MFB-273 Absentee Report.
2. Exhibit "B" - Certificate under Army Act Sec 163 (i) (j).
3. Exhibit "C" - Expense Voucher for cost of return of the accused.
4. Exhibit "D" - Certified True Copy of MFB-273 Absentee Report
5. Exhibit "E" - Certificate in Accordance with P.C. 2797 d/10 Apr 42.
6. Exhibit "F" - Expense Voucher for the cost of the return of the accused.

FOR THE DEFENCE

Nil

5 Nov 45

LIST OF WITNESSES IN THE CASE OF H.21077, Pte DZEDZORA.

FOR THE PROSECUTION

1.	Capt E.A.D. Simons - P.E.	-	"A" Wing - 2 Cdn Repat Depot
2.	L.92145 Bdr. Graves, J. P.E.	-	"A" Wing - 2 Cdn Repat Depot
3.	D.14490 L/C. Morrison, J.R.	-	17 Cdn Provost Coy.
4.	H.1253 Tpr. Stonham, R.R.C. PE	-	"A" Wing - 2 Cdn Repat Depot
5.	M609070 L/C. Kwiatkowski, M.	-	17 Cdn Provost Coy
6.	A104409 L/C. Doan, E.F.	-	17 Cdn Provost Coy

FOR THE DEFENCE

NIL

I H.21077 Pte Dzedzora, A. do desire ~~do not desire~~ the services of

an Officer to defend me at my trial by Court Martial.

I desire the services of _____ if this Officer

is available.

A Dzedzora.

H.21077 Pte Dzedzora, A

I acknowledge having duly received a copy of the Charge Sheet and copy of the Summary of Evidence and a List of Witnesses and Exhibits at 1600 hrs 5 Nov 45 date.

A Dzedzora

M.21977 Pte Dzedzora, A

Date 5 Nov 45

HC-19
PTE DZIADYK WF

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-65120 Pte Hg iadyth, W.F. 5th Cdn Hy Regt Sec. 2 Cdn Rest Coy RCEME

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2. RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~Inf~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 120 days.

(Sgd) Gordon W. Jermyn — Judge-Advocate, if any. 4 Oct 44 — Date awarded. (Sgd) G Barclay Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"I confirm the finding and sentence of the court but remit 30 days detention".

~~I direct that the accused be not committed to prison or detained in custody until further orders (1).~~

(1. AA 57A. Delete if not used.)

(Sgd) A Bruce Matthews

Date 10 Oct 44 — Commanding C C R A — (A Bruce Matthews) Brigadier 2 Cdn Corps — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
H 65120 Pte Hg iadyth W.F.	15 Oct 44	E Hutchinson Capt O.R. 5 Cdn Hy Regt Sec.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 OCT 1944 JAG BR...OTT. C.M.H.Q.

RECORDED AT CMHQ IN AS 160 HC-19

FIELD GENERAL COURT-MARTIAL

CFAB6 (1st Revn. of AFA3) KR & R, R. 12006 (3664)

Convened by Order of Brig A.B. Matthews Comd CCRA 2 Cdn Corps dated 30 Sept 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/E or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-65120	Pte		William Frank	Hg iadyth	5th Cdn Hy Regt. 2 Cdn Hy Rest Coy RCEME

PROCEEDINGS REVIEWED

R. Livermore Lt

30 Oct 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS VIEWED GHQ 2 Army Gp Date

PROCEEDINGS OF TRIAL.

Held in the Fd in (country): Belgium on (date(s)) 4 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under Instr. if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Instr ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(if)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(if)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(if)~~ brought before the Court. At 1500 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(if)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 90 fn 1. ~~For rights of accused see KR Con 557(2).~~ Delete, if not applicable.)

A5. President to accused: Do you object to ~~Lt~~ as interpreter? Ans

~~The Interpreter~~ is sworn.(1) Do you object to as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 88(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under Instr. if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	Guy Barclay	HQ RCEME 2 Cdn C Tps
Member	Capt	W.K. Clay	Sigs HQ 2 Cdn Corps
Member	Lt.	E.F. McKnight	HQ 2 Cdn Corps
Judge-Advocate	Capt	G.W. Jermyn	HQ 2 Cdn Corps
Prosecutor	Lt.	A.W. Burgess	7 Cdn Lt. Rec. Sqn 2 Cdn Rest Coy
Defending Offr	Lt.	J.M. Roxburgh	4 Cdn Hy Rest Sqn. 2 Cdn Rest Coy

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO. (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) (his) ~~(if)~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly as to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(if)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(if)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 895 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~a closed Ct~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

2 Copies Book III p. 32

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Tables (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 37(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President~~ JA, ~~to~~ ~~fy~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s). If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No SIR (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p. 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (5) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) (has)(have) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if " a " is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charge(s) dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and marking an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans.....

Do you intend to call witnesses on your behalf ?

Ans.....

Are they witnesses as to character only ? Ans.....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA where RP 42, 103(c).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated, and signed.(2)

(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No SIR

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 146(2) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or MFB 296* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans. You can buy me a Stepenberg Hofein.(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 70(b). One sentence only, comprised of one punishment or punishments (not drawn in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 360(3)-(6), Overseas RO 309, 1223, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2)(b), MEMG p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

43

The Accused R.65120 Pte William Frank Daladyk, 5 Canadian Heavy Recovery Section, 2 Canadian Recovery Company, R.C.E.M.E. a soldier ofthe Canadian Army Overseas is charged with.

First Charge
Army Act
Sec. 9(2)

When on Active Service Disobeying a Lawful Command Given By His Superior Officer,

in that he

in the Field at about 1700 hours 1st Sept. 44 when ordered by R.57209 S/Sgt. Morby R.E., 5 Canadian Heavy Recovery Section to help erect Lieut. Thomas' tent did not do so.

In the Field
14 Sept. 44

V. B. Mattson Major

(V.B. Mattson) Major
Commanding Officer,
2 Canadian Recovery Company
R.C.E.M.E.

In the Field
3 Oct 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

A.B. Matthews Brig

(A.B. Matthews) Brig
C.C.R.A. 2 Cdn Corps

CFAAG (In lieu of AFAS) 40/FAN/1697 (5m08)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
H.65120	Private		William Frank	DZIADYK	5 Cdn Hy Rec Sec 2 Cdn Rec Coy RCEME

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (date) 3 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~) " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior convening offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I appoint the Senior Offr present to be President of the Court, (b) each Offr as President for the respective accused persons.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(F). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	Guy Barclay		Hq RCEME 2 Cdn C Tps

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	W.K. Clay		Sigs Hq 2 Cdn Corps
Lieutenant	E.F. McKnight		Hq 2 Cdn Corps

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
	N/A		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Captain	G.H. Jerwyn		Hq 2 Cdn Corps

On Active Service in the Fd

In FRANCE (Country.)

Date 3 Oct 44

A Mathews Brig.
(Signed personally. RP 105 fn 2.) (Rank.)

(A.B. Matthews) Brig
Commanding C.R.A. 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 62 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 2, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8,12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to *facts*, or if accused whose has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Con 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admissibility in evidence a certified copy in lieu of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(8), RP 118(C), MML p 759.*)

4. The Presidem or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIVICATE

K. R. (Can) Para 557

I certify that I have this morning examined No. H63120

Pte DYMOCK, W.F. of 3 CDN HVY REG. RCAME and in my opinion he is

{fit / ~~unfit~~} to undergo trial by court-martial.

Station [illegible]

Date 4 OCT 1944

(Medical Officer)

4 Oct. 1944

E-3.

Plea for Mitigation of Punishment

H65120 Pte. W.F. Dziadyk.

Pte. Dziadyk is 22 years old and was born in Inwood Manitoba of Ukranian and Polish parentage. He joined the army in June 1941 and came overseas in Nov 1941 ready and willing to fight for Canada. Since joining the army he has dealt for various Officers and has always got along very well. Pte Dziadyk feels that he has had rather rough treatment from his present unit, for although she is a qualified driver i/c he had very little opportunity of getting away from camp during the day while batting. He asked his o.c. if it wouldn't be possible to get on the road with one of the recovery crews for even a week or two until his boredom had worn off a little, but was turned down. He finally became very discontented and restless and when he complained that he no longer wanted to bat was put on sanitary and general duty fatigues and kept there.

In connection with the charge laid against Pte Dziadyk, he feels that Sgt. Morby might have given him the opportunity to finish shaving before going to arrest the tent. He also resented having to raid the present batman in his duties when he didn't request or expect help when he was doing the job. I therefore asked the court to consider these points in this case of Pte Dziadyk.

EXHIBIT A 43

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No. H.65120 Pte. Dziadyk W.F. 5 Canadian Heavy Recovery Section, 2 Canadian Recovery Company, RCEME, C.A.O., Charged with disobeying a lawful command given personally by his superior officer (A.A. Sec. 9(1).

The accused demands that the evidence be taken under oath.

First Witness:- B.57209 S/Sgt. Morby, B.S., 5 Canadian Heavy Recovery Section, 2 Canadian Recovery Company, RCEME., sworn, states:-
"At approximately 1700 hours 1st Sept. 1944, I was instructed by Captain Palmason to get two men to help erect a tent for Lieut. Thomas, who had just arrived in camp with the remainder of the section. Seeing Pte. Dziadyk standing by the Orderly Room truck having a wash, I walked over and told him to help erect the tent, which already was at the proper location. I then went on to find a second man, succeeded and returned. I noticed that Pte. Dziadyk had not done as he was told so I spoke to him again, saying "Pte. Dziadyk go and help erect Mr. Thomas' tent" or words to that effect. He answered, "There is a batman for that job. Fuck you, I am not going to do it." I then said, "Are you refusing that order?" He answered, "Yes!" I immediately reported this to the Sgt/Major, and found another man to erect the tent. When the tent was erected I told Pte. Dziadyk that he was on charge for having disobeyed a command given by a superior officer. During the interval I ensured that Pte. Dziadyk was not prevented from following my order by any regimental duties or orders from any other source.
Cross-examined by accused:-
Q. When did I say "Fuck you"?
A. Just as the statement shows.

B. S. Morby S/Sgt

The accused was cautioned as follows:-
Q. "Do you wish to make any statement or to give evidence on oat You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evide

A. I wan t to make a statement.

Q. On oath or not on oath?

A. On oath.

B. S. Morby S/Sgt

The accused, sworn, states:-
S/Sgt. Morby was not properly dressed when he came up to tell me about the job which he brings me up to do for Mr. Thomas. I asked him "Where did the Batman go that I got to do batmen's work for the officers?" "Then S/Sgt. Morby told me that I should go to help put Mr. Thomas' tent up. I was still shaving when he told me the first time. He returned to order me. He still wasn't dressed properly for me to take orders from a sergeant who was Orderly Sergeant for the day. Just before I finished clearing up the shaving equipment S/Sgt. Morby came up from the orderly room and warned me that I was on charge and C.B. to the camp area. I did not understand either the first or second order was definite. I said, "There's a batman for this job." S/Sgt. Morby said, "Come on, Come on," without letting me finish my shaving.
I did not recognise S/Sgt. Morby until we came to the point where he put me on charge. S/Sgt. Morby was improperly dressed when he spoke to me at the last moment and put me on charge.

W.F. Dziadyk

The accused does not call any witnesses.
Rules of Procedure 4(c), (d), (e), and (f) have been complied with.

I certify that the foregoing Summary of Evidence, consisting of One page, we taken down by me in writing in the presence and hearing of the accused this 14th day of September 1944.

E. H. Lamond ..... Capt.

WITNESSES FOR THE PROSECUTION

1. B.57209 S/Sgt. Morby, B.S. 5 Cdn Heavy Recovery Sect, ACEMS.

The accused has not indicated his intention to call any witnesses.

E.H. Sherman Capt

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

D. F. Dimock

EXHIBIT B #3

Accused

M.F.B. 358
225M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.65120	Pte.	Dziadyk, W.F.	5 Cdn Heavy Reg Sect RCEME

1. The following is a fair and true summary of the entries in the ~~Service and General Regimental and Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Failing to obey orders	1 times	Failing to obey orders	1 times
For	Traffic Violations	1 times	Traffic Violations	7 times
For		times		times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement awaiting trial on the present charges, for ..... days in civil custody, and 21 days in ~~Air Force~~ military custody, making a total of 21 days in custody, of which Nil. days were spent in hospital. 11 days Close arrest 10 " open "

5. The present age of the accused according to his record of service is 27

6. The date of his ~~enlistment~~ attestation specified in his record of service is ~~attestation paper~~ 10-6-41

7. ~~The service which the accused is allowed to reckon towards discharge is .....~~

8. ~~The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.~~

9. The accused is in possession of ~~or entitled to an air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward~~ ~~military~~ Cdn Vol Service Medal and Clasp.

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer was held the regimental rank of .....~~ ~~Air Force~~

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Air Force ~~the rank of~~ Permanent Force unit dated ..... and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this seventeenth day of September, 1944.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

EXHIBIT C 13

(Certified True Copy)

MFM 6 (AFB 122) 60/P&S/136 (9458)

No. M65120 Name Dziadyk W F | Sqn, Battery or Company [redacted] | Corps RCOC | Date of enlistment 10-6-41 | OC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc

Place	Date of offence	Rank	Cause of detachment	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
									CA BF
									District Depot MD 10 CE
									G R G Mowney
[redacted] Field	On 10-12-41 26-6-42	Pte	-	this soldier completed six months service with W.O.A.E. neglect to the prejudice of good order & military discipline in that he did leave a W D vehicle unattended. A A Sec 40	no entries. M17069 Pte [redacted]nex L/C Bunstons L/C Bernardski 7 Cdn Prov Coy (2)	one day forfeture of pay FRI 149	5 Oct 42	R A Simms-Bell Lieut.	
Field	19-1-43	Pte		A A 40 Driving a Mil Veh at approx 40 MPH contrary to M T Regls	MC0275 L/C Young F29937 Pte Sears E W 4 Prov Coy (1e)	2 Days Forfeture of pay FRI 149	27-1-43	R A Simms-Bell Lieut O C M.C.A.M.C.	
Field	7-10-43	Pte		WOAS neglect to the prejudice of good order and military discipline in that he was negligent in the performance of his duties by improperly on MD Veh C24206108, 2 cwt 4X2 in such		6 days time F.R.& I 149(2)	17.10.43	Capt H.C. Deans	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				a manner as to cause injury to a civilian, Mr. George J. Arthur of Dorking, Surrey.					
Field	12.1.44	Pte		A.A. Sec 40 WOAS Neglect, to the prejudice of good order and military discipline in that he when ordered to prepare and proceed on bath detail, failed to do so.	Cpl. Proctor Sgt Cornwall F.P. Sgt Polkocnir	14 Days	17.1.44	Capt. H.P. Deans, O.C.	Forf. 14 days pay FR&I 149(e)(1)

CERTIFIED A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY.

E.R. Falmason

(E.R. Falmason) Captain,
O.C. 5 Cdn Heavy Recovery Section,
2 Cdn Recovery Company, RCEME.

AA 33

PTE EDWARDS A.E.

O. H. M. S.

1

9m
NOHI

M. F. B. 270

Correspondence to be PINNED here.

AA-33

Army Form A.3.

QUARTERS ... Infantry

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 2nd day of MARCH, 1943.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE CANADIAN ARMY ACTIVE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit when Convening Officer is of Command of Division or Brigade in Field.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

Proceedings Reviewed / Major Capt / 29 Mar 43

27

President.

Rank.	Name.	Regiment.
Major	J.C.H. Anderson MC	H Regt C

Members.

Rank.	Name.	Regiment.
CAPT	One ~~Major~~ to be detailed by OC RHLI	
	One Capt or Lieut to be detailed by OC Essex Scot	
	Waiting Member One Capt or Lieut to be detailed by OC RHLI	

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (M.H.S. PENHALE) Brigadier

Commanding 4 Cdn Inf Bde.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B37980 Private Allen Earnest EDWARDS, Royal Hamilton Light Infantry	FIRST CHARGE A.A. Section 15 (1) "Absenting himself without leave". (see charge sheet attached)	Guilty	Guilty 70 days. de.w. J.C. Anderson Major 1 R.	Cmg. mtd. K.M.S.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) K.M.S. Dunlop (M.M.S. DUNLOP) Brigadier, *Commanding* 4 CDN. INF. BDE. *Convening Officer* (*e*)

(Signed) J.C. Anderson Major 1 R. Regt C *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of Mar 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers named underneath)~~
were duly sworn.

* Omit if not applicable.

Signed this 3rd day of Mar 1943.

J.C. Anderson Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*f*) on page 762 M.M.L. 1929.

~~* I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

~~Signed this~~ J.C.A. ~~day of~~ ~~19~~

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further order.)~~

* To be omitted unless the sentence of imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 12th day of March 1943.

K.M.S. Dunlop Brig.
Comd 4 Cdn Inf Bde

Promulgated and extracts taken in the case of B ~~37980~~ Pte Edwards A.E.

(*a*) (Dated) 12 March 43 (Signed) J.C. Anderson Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET.

The accused B37980. Pte. EDWARDS A.E., 1st Bn., Royal Hamilton Light Infantry, Overseas, a soldier of the Canadian Army, Overseas, is charged with;

FIRST CHARGE.
Section 15 (1)
Army Act.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1400 hrs 14 Feb 43 until 2100 hrs 26 Feb 43.

In the Field
27 Feb 43.

(J.J.Hurley) Lt-Col.
Commanding, 1st Bn., R.H.L.I., C.A. O/s.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field.

Re
2 Feb 43.

Fourth Canadian Infantry Brigade.

3 May 42

I hereby certify that I have examined B 27980 Pte Edwards A E. and found him free from contagious disease & hernia.

J. M. Anderson
Major R.A.M.C.

J.P. Hetherington Capt
M.O. / 2 H.G.I

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ R.H.A. in the field.
on the 3 day of March 1943 by order of Brigadier
W.H.S. Penhale Commanding 4 Cdn Inf Bde.
dated the 2 day of March 1943

President. Major J.H.P. Anderson M.C. R. Regt C.

Members. Capt J. H.B. Stinson R.H.A.

Capt J. E. Farncomb Cdn. Fus. Coy. Essex Scot

Judge Advocate.

Trial of* B 37980 Pte Allen Edwards R.H.A.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ ~~to serve owing to~~

R.H.A.

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut R.H.G. Bull. RHA.

R.H.A. ~~Counsel or~~ defending officer† Capt J.L. Fiset RHA

At 1500 o'clock the Trial commences.

The order convening the Court is read, and is marked F1 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Forms B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

R.H.A.

CHARGE SHEET.

The accused B37980. Pte. EDWARDS A.E., 1st Bn., Royal Hamilton Light Infantry, Overseas, a soldier of the Canadian Army, Overseas, is charged with;

FIRST CHARGE.
Section 15 (1)
Army Act.

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1400 hrs 14 Feb 43 until 2100 hrs 26 Feb 43.

In the Field
27 Feb 43.

(J.J.Hurley) Lt-Col.
Commanding, 1st Bn., R.H.L.I., C.A. O/s.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field.

Rec'd 2 Feb 43

Comd Fourth Canadian Infantry Brigade.

I desire the Adjutant of the R.H.L.I. to detail an Officer to defend me at my trial by Field General Court Martial.

A.E. Edwards

Pte. 37980. Pte. Edwards. A.E.

3 Mar 43

I hereby certify that I have examined B 27980 Pte Edmond A.E. and found him free from contagious disease & hernia.

J.P. Fletcher Capt
M.O. / 2 H.G.I

J.A. Henderson
Major. R.A.M.C.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at in the field on the 3 day of March 1943 by order of Brigadier W.H.E. Findlay Commanding 11 Cdn. Inf. Bde. dated the 2 day of March 1943

President. Major J.C.H. Anderson, R. Regt C.

Members. Lieut. G.H.B. Stinson R.H.A.

Capt J.E. Farncomb Cdn. Fus. (M.G.) Bde

Judge Advocate. R.H.A.

Trial of* B 37980 Pte Allen Edwards R.H.A.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut R.H.G. Bull. RHA.

~~Counsel or~~ defending officer† Capt J.L. Fish RHA

At 1500 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M.—3-41 (9670)
H.Q. 1772-39-224

B

The President, members and judge-advocate are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again~~ J.C.H.A.

The accused B 37980 Pte Allen Ernest Edwards is found guilty of the charge. J.C.H.A.

J.C.H.A.

*The summary (~~or abstract~~) of evidence is read, marked "G", signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes Sir

Answer. The accused in mitigation of punishment says:—

[~~or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings~~]

"I had a girl in trouble and I should be with at that time. I know I should have asked permission but I didn't like to.

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

J.C.H.A.

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

No Sir. *Answer.*

Evidence as to character.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is cleared for the consideration of the finding.~~ Jcda.

~~The Court find that the accused~~ Jcda.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut R. H.G. Bull RHA. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes. AFB 296 and MFM 6.

Jcda.

The above statement [~~with the schedule of convictions and of cases in which trial has been dispensed with~~] is read, marked No 0, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes sir.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No sir they are certified by the adjutant

Question.

~~Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?~~ *Answer.*

Jcda

~~Cross-examined by the accused.~~

(Intimation, by reason of the nature of the sentence, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* Yes sir through my defending officer

The Court is closed for the consideration of the sentence.

Jcda.

F

Sentence

The Court sentence the accused B. 37980 Pte Sentence.
Allen Ernest Edwards
1st Bn Royal Hamilton Light Infantry
to undergo detention for a period
of 70 days. 70 day detention

3 Mar, 1943

J.C.H. Anderson
Major - Pres.

SUMMARY OF EVIDENCE

"Y"

In the case of B37980, Private ALLAN ERNEST EDWARDS, 1st Bn., Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas.

THE ACCUSED IS INFORMED OF HIS RIGHTS.

THE C.O. DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS FOR THE PROSECUTION.

Major J.T.Bell, R.H.L.I. having been duly sworn states;

" On Sunday morning 14 Feb 43, at approx 1200 hrs I went to my room in the Broadmark and discovered that my batman, Pte Edwards, whom I now recognize, had failed to make up my bed. After lunch I instructed ~~t/Sgt Moffat~~, C.O.S. of "SP" Coy to find Pte Edwards and have him clean up my room. He reported back to me ~~(t/Sgt. Moffat)~~ at 1400 hrs, stating that he was unable to find Pte Edwards. I therefore told him to place Pte Edwards on the absentee report of that day. Pte Edwards has been continiously absent as of that date until 26 Feb 43.

THE ACCUSED DECLINES TO CROSS EXAMINE.

J. T. Bell
.....
Major. J.T. Bell.

SECOND WITNESS FOR THE PROSECUTION.

B37002. Pte Marcy H.C. R.H.L.I. having been duly sworn states;

" On 26 Feb 43 at 2000 hrs at Littlehampton, I met the accused, whom I now recognize, near the Odeon Theatre. He said he was on his way back to the billets. It was my duty to see that he ~~got back~~ put him in the Guard House, under close arrest at 2100 hrs and reported the accused in.

THE ACCUSED DECLINES TO CROSS EXAMINE.

H. Marcy H.C.
.....
B37022. Pte Marcy. H.C.

THIRD WITNESS FOR THE PROSECUTION

B36929. Sgt Hatch. N.F. having been duly sworn states;

" On the morning of 14 Feb 43, Major Bell asked me, as COS of Sp Coy to find his batman Pte Edwards. I made enquiries and searchd the billlets myself, and could not locate him. I reported back to Major Bell, that I was unable to locate him. I was instructed to put him(Pte Edwards on the absentee report of that day. and he has been continiously absent from duties and parades as of that date until reporting back at the unit on 26 Feb 43.

THE ACCUSED DECLINES TO CROSS EXAMINE.

N.F. Hatch
.....
B36969. Sgt. Hatch. N.F.

"Y"

R.H. Anderson
Major Cmdg.

THE ACCUSED HAVING BEEN DULY CAUTIONED IN ACCORDANCE WITH R.P. 4 (E) says;

" I do not wish to make any statement"

THE ACCUSED DOES NOT WISH TO CALL WITNESSES IN HIS DEFENCE AT THIS POINT.

Cetified that R.P. 4 complied with.

In the Field.

27 Feb 43.

H.E.G. Bull Lieut

(H.E.G.Bull) Lieut.

Officer detailed to take the Summary.

(Substitute for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No B37980. Pte ALLAN ERNEST EDWARDS. Unit 1 Bn. R.H.L.I.

Age 32 Married or Single M No of Dependents 4

Date of Attestation 2 9 Jun 40

No of days spent in Close arrest(to date of trial) 5

Civil Nil Military Hospital Nil Total 5

Dates of PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

NIL

A certified true copy of M.F.M. 6 must accompany this form.

Officer i/c Records

[signature] Unit.
(G.R.B.Stinson) Capt. & Adjt.
1st Bn., R.H.L.I., CDN A O/S.

Dated at: the field
This day of 3 day of March 1943
(to be dated and signed as of date of trial)

"N" [signature] Maj. Pres.

OLD SHEET DESTROYED 7-7-42.

No. B37980 Name Edwards A/Eg/ | Sqn., Battery, or Company: SP | Corps: R.H.L.I. | Date of enlistment: 29-6-40 | G.C. Badges | Service or Proficiency Pay | Character

M.F.M. 6 (A.F.B. 122) (75M—7-41 (1215-303) H.Q. 1771-39-1652)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Laurentide	11-4-42.	Pte.		Conduct to the Prej, etc. A.A.40	Lt Sharpe Cpl. Briggs	5 Dys CB.	13-4-42	Maj Pirie.	
Laurentide.	29-4-42.	Pte.		AWL. from 1630 hrs 29-4-42 to 2215 hrs 30-4-42 A.A. 15	Cpl. Easterby.	Admonished.	1-5-42	Maj Pirie.	
Laurentide.	1-7-42	Pte.		AWL 1800 hrs 1-7-42 to 2330 hrs 1-7-42. A.A.15	Sg Gibbons. Cpl Corbett	7 dys CB	3-7-42	Lt-Col Pearson.	
Field.	21 Aug 42			A.W.L. 0800 hrs 21 Aug 42 to 08015 hrs 2 Sep 42.	C.S.M. Wilcox.	2 dys FP	4 Sep 42	Lt-Col Hurley.	

CERTIFIED TRUE COPY

(C.H.S. Stinson) Capt & adjt.

(P.T.O.)

AA-51 (Case #3)

GNR ELKERTON JR

See C-319 for 1st case

See K-116 for 2nd case

O. H. M. S.

M. F. B. 270

AA-51

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this sixteenth day of March, 19 44

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, First Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer;]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1.) Three Officers to form the Court;

*(2.) A Field Officer as President.

for the following reasons, namely :—]

* Omit if not applicable.

12

Lt. Col. Major. R.C.A.

President.

Rank.	Name.	Regiment.
Maj	D.S. Ely	1 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	R.V. Wilby	1 Cdn Fd Regt
Lieut	F.W. Drewry	1 Cdn Fd Regt
Lieut	[illegible] MEMBER E.W. Radcliffe	1 Cdn Fd Regt

Note.—The President must be named. The members and waiting reserves (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed A. Bruce Matthews Brigadier,
(A. Bruce Matthews) 1 Cdn Div
Commanding CRA *Convening Officer.*

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A 28159 Gnr John Ross ELKERTON, 2 Cdn Fd Regt	1st Charge Sec 15 (1) AA	Guilty	Guilty	I confirm the finding and sentence of the court— A Bruce Matthews Brigadier 19 Mar 43
	2nd Charge Sec 15 (1) AA	Guilty	Guilty	
	3rd Charge Sec 15 (1) AA	Guilty	Guilty to undergo detention for a period of 1 months and forfeit 2 pays in the amount of $1.17.10 being cost of apprehension R Ley Maj. R.C.A. 19 Mar 43	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer to be recorded on separate sheet if necessary.

(Signed) A Bruce Matthews
(A. Bruce Matthews) Brigadier,
Commanding CRA 1 Cdn Div
Convening Officer (c)

(Signed) R Ley
Major R.C.A.
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be ATTACHED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of March 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~
4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 19th day of March 1943.

R Ley Maj R.C.A.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 19 day of Mar 1943.

A Bruce Matthews
Confirming Officer. Brigadier

Promulgated and extracts taken in the case of A 28159 Gnr John Ross Elkerton 2 Cdn Fd Regt.

(*a*) (Dated) 22 Mar. 43 (Signed) R Reid Major A/Adc 2 Cdn Fd Regt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

82
& R Sey
Bai L.C.A

THE ACCUSED No A28159, GNR HOHN ROSS ELKERTON, 7 Canadian Field Rty, 2 Cdn Field Regiment, a soldier of the Canadian Army Overseas,

While on Active Service

is charged with

FIRST CHARGE — ABSENCE WITHOUT LEAVE

Sec 15(1) AA

in that he

In The Field, absented himself without leave from 2359 hrs 29 Nov 42 till apprehended in London at 0030 hrs 7 Dec 42, thereby incurring costs of apprehension and return in the amount of eleven shillings and six pence (11/6) Total absence 8 days 31 minutes.

Second CHARGE — ABSENCE WITHOUT LEAVE

Sec 15(1) AA

in that he

In The Field, while under open arrest absented himself without leave from 2300 hrs 23 Dec 42 until apprehended in London at 2325 hrs 30 Dec 42 thereby incurring costs of apprehension and return to his Unit in the amount of seven shillings and eight pence. (7/8) Total Absence 7 days 25 minutes.

THIRD CHARGE — ABSENCE WITHOUT LEAVE

Sec 15(1) AA

in that he

In The Field, while under close arrest absented himself without leave from approximately 1345 hrs 6 Jan 43 until he surrendered himself in London at 1730 hrs 6 Mar 43 thereby incuring expenses in the amount of eighteen shillings and eight pence. (18/8). Total absence 58 days 3 hrs and 45 minutes.

In The Field
15 Mar 43.

.....Lt-col.
(H.M. Hague) Commanding,
2 Canadian Fd Regiment.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

Date 16th March 1943

.....Brig
(A.B. Mathews)C.R.A.,
1 Canadian Division.

MEDICAL OFFICER'S CERTIFICATE

K.R.(C&M) PARA 559

I certify that I have this morning examined

No. A28159 Gnr. Elkerton, J.R.

of the 2 C&M Field Regiment and in my opinion he is fit

xxx to undergo Trial by Court Martial.
xxxx

Station. Field

Date. 18/3/42

Medical Officer

Lieut. R.C.A.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ in the Field on the 18th day of March 1943 by order of Brig A Blue Matthews Commanding 6 Bde 1 Can Div. dated the 16th day of March 1943

President.

Major D R Ely 1 Can Fd Regt

Members.

Capt K W Milby 3 Can Fd Regt

Lieut F W Drewry 1 " " "

, Judge Advocate.

Trial of* A29189 Gnr Slinkey E Jerboa, 2 Can Fd Regt

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

The Court satisfy themselves that ~~is not available~~ to serve owing to ~~sickness~~

, waiting member ~~takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23. ★

The accused is brought before the Court.

Prosecutor,† Capt [illegible] 7 Fd Reg't.

~~Counsel~~ or defending officer† Lieut W R Mackenzie 3 Fd Reg't.

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

---

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

★ I have satisfied myself that none of the officers appearing as members of this Court were members of any previous Court of Inquiry or took part in any other investigation in connection with this case. D. R Ely Maj. 1 Can Fd Regt

Mil. Form B. 271
16M—8-42 (1213)
H.Q. 1573-39-224

B

All The President, and members ~~and judge-advocate~~ are duly sworn.

All ~~The following officers under instruction are duly sworn.~~

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N/a *Answer.*

The accused having pleaded Guilty to All charges the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the *Instruction.* Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty," has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused A78189 Gnr Jhukoo Chhetri
is found guilty of all charges

*The summary ~~(or abstract)~~ of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. ~~The accused~~ In mitigation of punishment says:—
(see Marked)

~~[or hands in a written statement, which is read, marked signed by the President, and attached to the proceedings.]~~

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his pleas of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character.

SUMMARY OF EVIDENCE

in the case of
A-28159 GNR. ELKERTON, J.R.
a soldier in the Canadian
Army Overseas.

- - - - - - - - - - - - - -

By direction of Major R. Reid Acting Commanding 2 Cdn Fd Regt RCA the evidence was taken under Oath.

FIRST WITNESS: C-758 L/Bdr. Gallagher, E.J., 7 Cdn Fd Bty RCA having been duly sworn states:

On the night of Nov 28th. 1942 I was 2 i/c the 7 Cdn Fd Bty Wagonline guard. Gnr. Elkerton, the accused whom I recognize did not hand in any pass at the guardroom that night. I reported to Sgt. Haines (N.C.O. i/c H.Q. Tp) that he was absent at approximately 0800 hrs 29 Nov 42.

E.J. Gallagher
(C-758 L/Bdr. Gallagher, E.J.)

The accused declined to question the Witness.

SECOND WITNESS: Capt. F.B. Rolph. 7 Cdn Fd Bty RCA having been duly sworn states:

I am Bty Capt of 7 Cdn Fd Bty and on 26 Nov 42 when Major Murdoch left for Scotland I was acting Bty Comdr. On the 27 or 28 Nov 42 Gnr. Elkerton, whom I now recognize and who had just joined the Bty, came to me with a request for a 48 hr. pass. I informed him I would look into it, which I did and found that on that day the full quota of 48 hr. passes were used up, and the men going on them had been notified so it was impossible to grant an additional pass. He said he particularily wanted to get away on that day, so I said he could have a pass from either 1700 hrs. or after duty, I do not remember which, until 2359 hrs. that night. He was granted this pass. It was reported to me at the 1st. 29 Nov 42 that Gnr. Elkerton was AWL. The next information I had about this man was that he had been returned to the Unit and was under arrest.

F.B. Rolph
(F.B. Rolph) Capt. RCA

The accused declined to question the Witness.

THIRD WITNESS: D-6646 B.Q.M.S. Dixon, V.W. 7 Cdn Fd Bty RCA having been duly Sworn states:

A am BQMS of 7 Cdn Fd Bty RCA and I was N.C.O. i/c rear party of the 7 Cdn Fd Bty RCA while the Unit was at practise camp from 12 Dec 42 to 23 Dec 42. On the 17 Dec 42 Gnr. Elkerton returned from hospital to the Unit. I was present in the Orderly Room on his return, and that from the nominal roll left in my care by the 7 Cdn Fd Bty RCA I obtained the infromation that Gnr. Elkerton was still under close arrest. R.Q.M.S. Harrison who was present ordered A-28159 Gnr. Elkerton, J.R. to be placed under close arrest. I recognize the accused as A-28159 Gnr. Elkerton present at this hearing.

.....
(D-6646 BQMS. Dixon, V.W.)

The accused declined to question the Witness.

FOURTH WITNESS: D-6649 R.Q.M.S. Harrison, S.T. 2 Cdn Fd Regt RCA having been duly Sworn states:

I, RQMS Harrison was Senior Warrant Officer i/c rear party of the 2 Cdn Fd Regt RCA while the Unit was at practise camp from 12 Dec 42 to 23 Dec 42. On 17 Dec 42 I entered the Orderly room 8 Cdn Fd Bty RCA and I found Gnr. Elkerton, Sgt. Patterson and BQMS Dixon discussing whether Gnr. Elkerton should be placed under close arrest on his return from A.D.S.. But owing to the fact that no notification had been sent to the Unit I immediately placed him under close arrest and ordered him to the guardroom. Sgt. Patterson carrying out these orders. Later Mr. VanGorder released the accused.

.....
(D-6649 RQMS Harrison, S.T.)

The accused declined to question the Witness.

FIFTH WITNESS: D-6669 Bdr. Walsh, J.F. 7 Cdn Fd Bty RCA having been duly sworn states:

I was an N.C.O. on the rear party of the 7 Cdn Fd Bty RCA while the Unit was at practise camp from 12 Dec 42 to 23 Dec 42. And at 2300 hrs on 23 Dec 42 I called the Tattoo Roll Call of the rear party. A-28159 Gnr. Elkerton, J.R. was absent. On the morning of 24 Dec 42 he was absent at 0600 hrs. Reveille Roll Call. I reported his absence to BQMS Dixon. I recognize the accused as Gnr. Elkerton, J.R.

.....
(D-6669 Bdr. Walsh, J.F.)

The accused declined to question the Witness.

SIXTH WITNESS: B-93756 L/Sgt. Kipp, V.M. 7 Cdn Fd Bty RCA having been duly sworn states:

I recognize the accused as A-28159 Gnr. Elkerton. I gave evidence that I was in charge of the Regimental Guard on 6 Jan 43. My instructions were to allow the prisoner, Gnr. Elkerton, out of the guardroom for a period of one hour, for exercise, with an escort.

I turned over the guard to L/Bdr. Gazley, my 2 i/c of the guard at approximately 1250 hrs. as I had to report to the M.O. for treatment.

Upon my return to the guardroom at approximately 1310 hrs. L/Bdr. Gazley informed me that he had allowed the prisoner out with an escort, namely Gnr. Lavigne, and I assumed command of the guard.

At approximately 1415 hrs. I was informed that I was to obatin permission from the Acting R.S.M. to turn the guard over to my 2 i/c as I was wanted for a Recce.

At 1430 hrs. I obtained this permission and turned the guard over to L/Bdr. Gazley.

At this time Gnr. Elkerton and the escort, Gnr. Lavigne, had not returned. I did not report this fact for the reason that I knew neither the accused or the escort had any means of telling the time.

Upon returning from the recce I was informed by L/Bdr. Gazley that Gnr. Elkerton had escaped from Gnr. Lavigne who reported this fact to the Regimental approximately 1450 hrs.

V. M. Kipp L/Sgt
(B-93756 L/Sgt. Kipp, V.M.)

The accused declined to question the Witness.

SEVENTH WITNESS: B-6416 L/Bdr. Gazley, C.W. 7 Cdn Fd Bty RCA having been duly sworn states:

I recognise the accused as A-28159 Gnr. Elkerton. On 6 Jan 43 I was the 2 i/c of the Regimental Guard at approximately 1245 hrs. L/Sgt. Kipp turned the guard over to me. About 1300 hrs. the prisoner A-28159 Gnr. Elkerton asked if he might go out for exercise. I ordered Gnr. Lavigne to escort the prisoner for exercise. At approximately 1450 hrs. I was informed by Regiment that the accused A-28159 Gnr. Elkerton, had escaped. At approximately 1630 hrs. Gnr. Lavigne returned to the Regimental guardroom but did not have the prisoner with him. He had reported to Regiment that the prisoner had escaped.

C. Gazley
(B-6416 L/Bdr. Gazley, C.W.)

The accused declined to question the Witness.

KHC

EIGHTH WITNESS: G-48919 Gnr. Lavigne, P.G. 7 Cdn Fd Bty RCA having been duly sworn states:

I recognize the accused as A-28159 Gnr. Elkerton J.R.. I submit that on the 6 Jan 43 I was Regimental guard around 1300 hrs 6 Jan 43 I was ordered by L/Bdr. Gazley to take A-28159 Gnr. Elkerton for exercise. We walked to the waterfront, walked towards the town and turned up by Winter Gardens. I walked into the news shop to buy a paper, before I went in Gnr. Elkerton asked my permission to walk to the corner totelephone. I gave my permission. When I came of the newshop I walked to the phone booth, but the accused A-28159 Gnr. Elkerton was not there. I went to the Devonshire baths and made enquiries there but he was not there. I then waited near the phone for sometime for his return. When he did not return I then walked to the railway Station and checked the London train, but I could not find him. I warned the Civil Police to be on the lookout for the accused. I then went to the police H.Q. and telephoned the 2 Cdn Fd Regt RCA and reported that the accused had escaped. I reported by telephone at approximately 1450 hrs. I have not seen the accused A-28159 Gnr. Elke ton, since till he was brought to the 7 Cdn Fd Bty RCA 11 Mar 43. The prisoner escaped at approximately 1345 hrs.

4 P.G. Lavigne
(G-48919 Gnr. Lavigne)

The accused questioned G-48919 Gnr. Lavigne.

Q. I, A-28159 Gnr. Elkerton, J.R. asked G-48919 Gnr. Lavigne, P.G. that when he went for his newspaper, if he was certain that he gave me permission to make the telephone call.

A. G-48919 Gnr. Lavigne answered 'Yes I am sure I gave permission to make the telephone call'

The accused declined further to cross examine the Witness.

NINTH WITNESS: D-118168 L/Sgt. Copeland, W. 7 Cdn Fd Bty RCA having been duly sworn states:

I recognize the accused A-28159 Gnr. Elkerton, J.R.. I further submit that I am a L/Sgt. of H.Q. Troop 7 Cdn Fd Bty RCA since 29 Dec 42. I have been calling the Roll for Segt.-Major Turner. The accused A-28159 Gnr. Elkerton, J.R. has not answered the daily roll call nor attended any parade since 6 Jan 43.

J D Copeland
(D-118168 L/Sgt. Copeland, W)

The accused declined to question the Witness.

TENTH WITNESS: D-6541 A/Sgt. MacLean, M.A. 7 Cdn Fd Bty RCA having been duly sworn states:

I recognize the accused A-28159 Gnr. Elkerton J.R.. On 28 Nov 42 I was Bty Orderly Sgt. at 2359 hrs. I received the absentees report from H.Q. Troop Billets, to the fact that Gnr. Elkerton was absent at that time. I entered this information on the orderly Sgt's report. At the conclusion of my tour of duty 29 Nov 42 at 1800 hrs he was still absent.

(D-6541 L/Sgt. MacLean, M.A.)

The accused declined to question the Witness.

ELEVENTH WITNESS: D-6646 B.Q.M.S. Dixon, V.W. 7 Cdn Fd Bty RCA having been duly sworn states:

I am BQMS of the 7 Cdn Fd Bty RCA and I checked the kit of A-28159 Gnr. Elkerton, J.R. and found shortages ~~xx~~ on 29 Jan 43. His kit is now complete. I compppleted it on 11 Mar 43.

.....V.W. Dixon.....
(D-6646 BQMS Dixon, V.W.)

The accused declined to question the Witness.

TWELVETH WITNESS: D-11524 BSM Turner, E.C.. 7 Cdn Fd Bty RCA having been duly sworn states:

I am B.S.M. of the 7 Cdn Fd Bty RCA and I recognize the accused as A-28159 Gnr. Elkerton, J.R. The above named has not answered his name on roll call or attended a parade in the 7 Cdn Fd Bty RCA from 29 Jan 43 to 10 Mar 43 at approximately 1430 hrs when he was brought in under escort and turned over to Bdr. Furey N.C.O. i /c 7 Cdn Fd Bty Guard on that date. I further give evidence that on the Bty Parade at 0830 hrs 29 Nov 42 Gnr Elkerton J.R. was not present and did not answer his name.

.....E.C. Turner.....
(D-11524 BSM Turner, E.C.)

The accused declined to question the Witness.

THIRTEENTH WITNESS: Capt. G.A. Eaton, 2 Cdn Fd Regt RCA having been duly sworn states:

I am the Adjutant of the 2 Cdn Fd Regt RCA As such I wish to submit in evidence certain documents in relation to the accused, A-28159 Gnr. Elkerton, J.R. whom I recognize. I submit as Exhibit A, B & C 3 certificates in accordance with the Army Act Sec. 163 Subsection I (jj).

Exhibit A certifying that the accused was arrested in London at 0030 hrs. 7 Dec 42.

Exhibit B certifying that the accused was arrested at Lower Regent Street London 2325 hrs 30 Dec 42.

Exhibit C certifying that the accused surrendered to the Civil Police at Cartright Gardens, London at 1730 hrs. 6 Mar 43.

I also produce in evidence as exhibits D, E, F & G. expense vouchers in regard to the accused A28159 Gnr. Elkerton, J.R.

Exhibit D certifying that expenses in the amount of 11s and 6d were incurred in returning the accused to his Unit on 7 Dec 42.

Exhibit E certifying that expenses in the amount of 7s and 8d were incurred in returning the accused to his Unit 31 Dec 42.

Exhibit F certifying that expenses in the amount of 11s were incurred in the accused on 9 Mar 43.

Exhibit G certifying that expenses in the amount of 7s and 8d were incurred in returning the accused to his Unit 10 Mar 43.

I further submit in evidence as Exhibit H Army Form B 115, which is a certified copy of the record of the declaration of the Court of Inquiry assembled in the 2 Cdn Fd Regt RCA 29 Jan 43 in regard to the accused, A28159 Gnr. Elkerton J.R. which exhibit certifies that the accused, Illegally absented himself from the 2 Cdn Fd Regt RCA at approximately 1330 hrs 6 Jan 43 and on the 29 Jan 43 he was still so absent. I further

A.P.

THIRTEENTH WITNESS: Capt. G.A. Eaton (Continued)

certify that the above mentioned AFB 115 is a true copy of the entry in the Regimental Books 2 Cdn Fd Regt RCA of which I have the custody.

.....
(G.A. Eaton) Capt. Adjt
2 Cdn Fd Regt RCA

The accused declined to question the Witness.

The accused having been cautioned in accordance with R.P. 4(e) declined to make any statement or to give evidence on Oath.

I Certify that R.P. 4 (c) (d) (e) and (f) have been complied with.

Taken down by me, in writing, in the presence and hearing of the accused at Firle Park and at Aldro School, Eastbourne, Sussex. on this 14th. day of March 1943.

.....
(B.S. Higgs) Lieut. RCA
7 Cdn Fd Bty R.C.A.

Exhibit "B"

Certificate in accordance with the Army Act, Sect.153(1)(ii).

I certify that No A 28159 Rank GNR. Name BLEKSTON J.

7th BTY 2nd FIELD REGT R.A. Unit, was arrested at LOWER REGENT STREET.

at 23.25 hrs. on 30 DEC.1942.

C.I.B.,
Whitehall, S.W.1.
Date 30 DEC.1942.

Assistant Provost Marshal,
London District,

into whose custody the above-named person was taken on arrest.

Exhibit "A"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR 42

I CERTIFY that No [redacted] Rank [redacted] Name [redacted]

Unit [redacted] was arrested at London (Place)

at 0[redacted] (Hour) on [redacted] (Date) and that at the time of his arrest he was wearing (Military Uniform) or [redacted].

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable).

[redacted] Lieut

Officer i/c Detention Room,
No. 6 Coy., Canadian Provost Corps

I CERTIFY that the man whose personal description is given below surrendered himself to* Cpl Kennedy

at Eastnight Gardens sot at (hour) 5.30pm on the 6th day of March 1943 as being No. A 25159

(Rank and Name) Gunner John Ross ELKERTON

a deserter (or absentee without leave) from 2nd Field Regiment R.C.A.

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22 Height 5' Feet 11" Inches

Complexion fresh Hair dark brown Eyes brown

Marks NIL

In uniform or plain clothes uniform

Probable Date and Place of Attestation	Guelph Ontario.
Probable Date of Desertion or beginning of absence, and from what place	29th January 1943 Eastbourne

Signature of Officer of Police in charge of A. Thaxton P.S.E.

Grape Lane Road Station.

6th March 1943 Date of Signature.

Army Form O.161.
R.A.F. Form 1017

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Exhibit "C"

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(34872) W.1567/4/38 15,000 6/41 A.&E.W.,Ltd. Gp.899 Forms/O.1617/11

Exhibit D

Ref: K.R. & O. (Can) 539 Exhibit "D"

Expense Voucher Re—:

Reg. No. A 78459 Rank Pte. Name Eckert J.R. Unit 2 Fd R. at

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
7 Dec 40	Escorts return fare from LONDON To Lewes		2	8
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Lewes		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

D B Lewis Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/44
40/P & S/683

Exhibit "E"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No A28159 Rank Pte Name Elkerton, J.R. Unit 2 Fd Rft

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
31/Dec 42	Escorts return fare from LONDON To Lewes (½ portion		3	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Lewes		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		7	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J G Ferguson Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

CMHQ 1000 3/6
40/P & S/483

Expense Voucher Re—: Shelter F — Ref: K.R. & O. (Can) 539

Reg. No. A 2818 9 Rank Gnr Name Elberton, J R Unit 1 C H A C

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
9 M 61	Escorts return fare from LONDON To Brdo		7	4
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Brdo		3	8
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S/480

Exhibit "4"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. [illegible] Rank Pte Name Eckerton, J.R. Unit 2 Fd Bty RCA

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
10 Mar 41	Escorts return fare from LONDON To Kingston (1 person)		3	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Kenora		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		7	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-43
40/F & S/481

"EXHIBIT "H"

Army Form B 115.

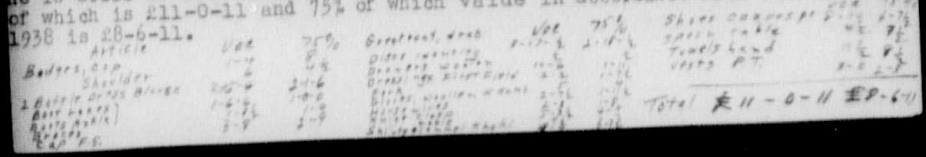
Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at 2 Cdn Fd Regt R.C.A.

on the 29 day of January 19 43, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A.28159 Gnr. Elkerton, J.R.

DECLARATION.

The Court declare A.28159 Gnr. Elkerton, J.R. illegally absented himself without leave at Eastbourne at approx 1330 hrs 6 Jan 43 and that he is still so absent and that on the 29 Jan 43 he was deficient and that he is still so deficient the articles listed hereunder the vocabulary price of which is £11-0-11 and 75% of which value in accordance with R.O. (Overseas 1938 is £8-6-11.



Names of President and Members

President - Capt. G.C. Harbour

Members - Lieut. W.A. Campbell
Lieut. W.R. Childers

Signature of Commanding Officer R Reid Major A/O.C. 2 Can Sig Regt

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Capt:
Adjt. 2nd Can Sig Regt. R.C.A., C.A.S.F.

(1939-41) WS.58092/156. 120,000 1/41 A.F.H./S.151. Gp.699 Forms/D115/37.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused so guilty of all charges

1st Guilty

2nd Guilty

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut B.E. Riggs 72nd Regt is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* I produce a certified copy of the conduct sheet of the accused.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes sir

[Instruction.—If by reason of the nature of the crime of the accused in a foreign, penal corps, or otherwise the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

~~Cross-examined by the accused.~~ No

Do you wish to address the Court? *Answer.* Yes sir

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused *Sentence.*

(see Schedule)

No. A28159 Name ELKERTON JOHN ROSS | Sqn., Battery, or Company 297 Fd. Bty. | Corps A.A. | Date of enlistment 23-9-39 | G.C. Badges | Service or Proficiency Pay N/A | M.F.M. 6 A.F.B. 178

Date of last entry in Company Conduct Sheet N.A. | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of earlier charge(s) sent with trial	By whom awarded	Remarks
Fort Gres Point	3-4-	Gnr.	--	Sec. 15 (1) A.A.	BOMS Williams	Admonished	4-4-40	Maj. Fowler	Forfeits 5 days pay
Fort Gres Point	28-4	Gnr.	--	Sec. 40. A.A. Neglect etc.	L/Sgt. Pomery L/Bdr. Mont	14 days C.B.	29-4-40	Lt. Conaboon	
Fort Gres Point	28-4-	Gnr.	--	Sec. 15. (1) A.A. AWL 16 hrs.	L/Sgt. Pomery L/Bdr. Mont		29-4-40	Lt. Conaboon	Forfeits 1 days pay
Fort Gres Point	28-4-	Gnr.	--	Sec. 15. (1) A.A. AWL 63 hrs.	Gnr. Gaudet	21 days		Major	21 days pay AA 1 ays
Ives Point	12-6- 40	Gnr.	--	Sec. Disobeying a lawful command.	A/L/Sgt. Hossel	detention Melville Island	13-6-40	Fowler	F.R.&I.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Halifax	1-7-40	Gnr.	--	Sec. 15 (1) AWL 4 days 14 hrs 45 min.	C.S.M.Reeves L/Cpl Wright	5 days C.B.	7-7-40	Lt. Col. Fulford	Forfeits 5 days pay
Petawawa Ont.	12-10-1940	Gnr.	--	Sec. 15 (1) A.A. AWL 7 days 6 hrs.	Bdr. Guy N.A.	7 days det.	26-10-40	Col. A.V. Tremaine	Forfeits 8 days pay F&A I
Petawawa	18-11-1940	Gnr.	--	Sec. 15 (1) A.A. 19 days 12 hrs. 25 min. whilst under open arrest breaking out of camp.	BSM Bevvan Bdr. Guy N.A.	19 days detention	18-11-40	Col. A.V. Tremaine, O.C.RCASC	Forfeits 20 days pay under F.R.&I.
				Sec. 15 (1) A.A. 19 days 12 hrs. 25 min. Obtaining a pass under false pretences	Sgt. Skinner, W.H. BSM Bevvan, B.E.				

No. A28159 Name Elkerton, J.R. Sqn., Battery, or Company 29th Fd. Bty RCA CASF Date of enlistment 23-9-39 G.C. Badges Service or Proficiency Pay K2

Date of last entry in Company Conduct Sheet N.A. No. and date of last drunk N.A. Period not reckoning towards freedom from extra fine N.A. Sheet No. 2 Signature O.C. Company, etc. Signed Character

M.F.M. 6 (A.F.R. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	9-1-41	Gnr.	---	Sec. 40. A.A. failed to comply with an order given by a NCO Sec. 15 (1) A.A. AWL 12 hrs.	Bdr. Guy, N.A. Gnr. Langlois Sgt. Hamilton	10 days C.B.	10-1-41	Col. A.V. Tremaine, OC RCATC	Forfeits 1 days pay F.R&I.
Petawawa	15-1-41	Gnr.	---	Breaking out of camp whilst a defaulter	Documentary	3 days det.	21-1-41	-do-	
Pembroke	20-1-40	Gnr.	---	Disorderly conduct and resisting arrest - tried by civil powers		Suspended sentence and Fined $10.00 and costs		Extract from RCATC Orders #19 d/23-1-41	

(P.T.O.)

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
on board Duchess	12-2-41	Gnr.	---	Sec. 15 (1) A.A. AWL from place of parade for 13 hrs. 30 min.	Sgt. Foley Lt. W.L. Scandut	7 days C.B.	13-2-41	Maj. H.A. Jones	Forfeits one days pay
Field	29-4-41	Gnr.	---	Sec. 15 (1) A.A. AWL 19 hrs. 25 min. after being warned for dreft.	Sgt. Clarke H.E. Sgt. Benstead G.	7 days C.B.	2-5-41	Maj. R.M. Jones, OC "C" Bty.	Forfeits one days pay F.R.&I.
		T.O.S.		77th Fd Bty 3 Cdn Fd Regt. RCA from #1 CAHU auth. demand #2924 w.e.f. 9 May 41					
Field	18-6-41	Gnr.	---	Sec. 40. A.A. conduct etc., failed to get out of bed when ordered to do so.	L/Sgt. Labow, J.L.	7days C.B.	25-6-41	Maj. R.M. O.C. 77th	Dyer Fd Bty.
		S.O.S.		77 Fd Bty, 3 Fd Regt. RCA Having been declared illigally absent for a period of 21 days by a Court of Inquiry 19 July 41.					

No. A28159 Name Elkerton, J. R. | Sqn., Battery, or Company: 29th Fd Bty R.C.A. | Date of enlistment: 23-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signatures O.C. Company, etc. | Signed | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		T.O.S.	77	Fd Bty, 3 Cdn Fd Regt on being apprehended from desertion w.e.f. 14 Sep 41.					To be placed u
Field	28 Jun 41	Gnr.		(1) (Alternative) Sec. 15(1) AA Absenting himself without leave from 1830hrs 28 Jun 41 to 13 Sep41 77 days.	BSM Swaine	to undergo Sgt. Ingley detention for 6 months			under stoppage of pay to the amount of $1.13 to cover cost o articles lost by neglect los by neglect.
				(2) Losing by neglect his equip. (Sec 24(2) AA.	BQMS Savage	forfeits 77days pay Forfeits 6 monthspay			
						(149)(1) (b) 3 days close arrest 149(1)(c)			
S.O.S.	77 Fd Bty 3 Canadian Field Regiment to No.1. CARU on being awarded 6 months detention by FGCM.								
T.O.S.	SPECIAL INCREMENT 3 Cdn Fd Regt. w.e.f. 30 Jan 42 Auth SPL INC 140d/ 25 Jan 42.								
T.O.S.	77 Bty 3 Cdn Fd Regt. from SPL INC 3 Cdn Fd Regt. w.e.f. 2 Jun 42 Posting Order 1-74								

(P.T.O.)

No A28159 Name Elkerton, J.R. Sqn., Battery, or Company 77 Bty Corps 3 Fd Regt. RCA Date of enlistment 25 Sept 39 C. Badges Service or Proficiency Pay A2

M.F.M. 6 A.F.B. 122 (75M—7-41—(215-39) H.Q. 1772-99-1502

Date of last entry in Company Conduct Sheet N.A. No. and date of last drunk N.A. Period not reckoning towards freedom from extra fine Sheet No. 4 Signature O.C. Company, etc. Signed Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 May 42	Gnr.	---	(1) Sec 15(3) A.A. -WOAS being found beyond limits fixed by Regtl Orders without a pass. (2) Sec 22 A.A. -WOAS AWL from 0900 hrs. 30 May 42 to 1330 hrs 6 July 42 (37) days 4 hrs. 30 Min.) (3) sec. 13 A.A. WOAS & escaped custody escaping	L/Sgt.Leckie Lieut. R.R. Elliot Lieut.A.C. Patterson	120 days detn.	22 July 42	Field General Court Martial	Forfeits 58 days pay F.R&I 149 (1) (a) Forfeits 120 days pay F.R.&I.149 (1) (b) Total 178 days pay and £0:14:3
Field	2 Nov.	Gnr.		A.A. Sec. 15(1) A.W.L.	Sgt.Galbraith Bdr. Serres	16 days F.P.	11 Nov 42	(C.T.INCH) Lt. Col	Total Forf 24 days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				C.B. Relief	True & exact copy of Regimental Records				
				15 Mar 43 [illegible]	[illegible] Capt				
				17 Feb 43. [illegible]	Adjt 2nd Field Regt. R.C.A. C.A.S.F.				
				16 Mar 43 [illegible]					

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A28159	GUNNER	ELKERTON, J.R.	2 Cdn Field Regiment.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this statement may be supplied from the field conduct sheet.

The number shewn mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The statement herein required should commence with the date of entry of the first entry in the conduct sheet which is relevant to the proceedings, and is not required to be carried back more than two years from the date of the trial.

Declaration.—In the absence of the commanding officer, sworn before the officer by whom the statement is signed.

	* Within last 12 months.	*Since Enlistment.
For SECT. 15 (1)	2 times	12 times.
For Sec 40 A.A.	Nil times	4 times.
For Sec 9 (2) A.A.	Nil times	1 times.
For Sec 10 (4) A.A.	Nil times	2 times.
For	times	times.

[redacted]

or

[redacted]

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for Nil beginning on the N.A. day of N.A.

4. The accused has been in confinement, awaiting trial on the present charges, for Nine Nil days in civil custody, and Nine days in military custody, making a total of Nine days, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 22 yrs

6. The date of his attestation specified in his attestation paper, 23/9/39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of Nil service.

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, *or* entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated

and in his regiment (*or corps or department*) the rank of dated

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A38159 Rank GUNNER Name ELKERTON, JOHN ROSS of 2 Cdn Field Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Field Gen Court-Martial	18 Sep 41	(1) Awl from 1830 hrs 28 Jun to 13 Sep 41 Tot 77 days. (2) Losing by neglect his equip. Sec 24 (2)	6 mos detn 6 mos pay placed under stoppage of pay to the amount of $1.13.0	
Civil Court	24 Jan 41	Disorderly Conduct and resisting arrest.	Suspended sentence $10.00 fine.	
Field General Court-Martial	23 May 42	(1) Sec 15(3) A.A. WOAs BEING found beyond limits fixed by Regtl Orders w/o a pass. (2) Sec 22 A.A. WOAS AWL from 0900 hrs 30 May 42 to 1330 hrs 6 Jul 42. 27 days 4 hrs 30 mins (3) WOAS in lawful custody, escaping.	120 days detn.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of Mar 43.

Capt. & Adjt.
2 Canadian Field Regiment.

If the accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... years,

In the rank of ..... years,

In the rank of ..... years.

Date of Promotion

NOT APPLICABLE

(Insert words—If any matter in any of the above paragraphs ceased to exist from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information must be collected from such sources as are available, and the words inserted accordingly.)

HF-18
Bdr. Elkin J M

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 11068 Bdr JOHN MITCHELL ELKIN

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. See 15(2)	Not Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to Findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for: / beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

He be reduced to the ranks

(Sgd) ..... Judge-Advocate, if any. Date awarded. (Sgd) ..... President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to [illegible] Bde

(1. AA 57A. Delete if not used.)

(Sgd) ..... Commanding

Date 27 OCT 44

BRIG COL
COMMANDER
1 CDN BASE RFT GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr
B 11068 BDR ELKIN J.M.	30 Oct 44	(A.E. Davidson) Captain, A/Adjt, for Officer Commanding, Base Depot Company

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 27 NOV 1944 JAG Ottawa

RECORDED AT CMHQ IN AB 160

4F-18

(Page [1st line of AFA2] 40/P.W. & D./1068 10/43)

4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col L.S. FRYMER Cond Ltr No [illegible] dated 27 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B11068	Bdr	JOHN MITCHELL	ELKIN	[illegible]

PROCEEDINGS REVIEWED 27 Nov 1944

J.C. Roach

REVIEWING OFFICER, JA

JC4C

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 28 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2D 53

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Errs ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741c to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A45, for points and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 22, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0915 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(6). Delete, if not applicable.)

A5. President to accused: Do you object to ~~an interpreter~~ / Ans ~~Obj~~

The Interpreter is sworn.(1) Do you object to ~~a shorthand writer~~ / Ans ~~Obj~~

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 21, RP 23, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	CAPT	R.B.S. ROBERTSON	RCA 4 Fd Regt
Member	CAPT	F. CRACCO	Winn R. Inf Bde
Member	CAPT	W.H. EDWARDS	RCA 4 Fd Regt
Judge-Advocate			
Prosecutor	CAPT	R.R. BROWN	HQ 1 CDN BASE
Defending Offr	CAPT	D. DION	R22eR 1 CDN INF

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See DI p 3.)

A8. The accused B 11068 Bdr ELKIN J.M. RCA before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2)(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rule cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~(1) on all charges in the charge sheet.(2) The accused does (~~do~~) not object to any charge.(3) There is no amendment to be made to the Charge Sheet.(4) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A56 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-assembles and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro-ceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

L91

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* D3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If one plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr ~~submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ charge(s).(2) The Court ~~is closed, and considers the submission.~~(3) The Court is re-opened, and the President announces that the submission ~~is disallowed on the~~ charge(s), and allowed on the ~~charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Neither

Do you intend to call witnesses on your behalf? Ans. Yes

Ans. Yes. Are they witnesses as to character only? Ans. No

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 45(*A*) *fn* 1; 84(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) (Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.) and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This executive announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~progress~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for ~~cross~~ examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(3); (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. P.1 and Ex. P.2 respectively.(3)

(1. *MPB* 233 *or MPB* 296. 2. *MPM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if done, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*B*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas RO* 309, 3103, *MML p* 162, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(5), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RMP.

CHARGE SHEET

THE ACCUSED, B11068 BOMBARDIER JOHN MITCHELL ELKIN, R C A "B", ON STRENGTH 4 CDN RFT BN, 1 CDN BASE REINFORCEMENT GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, ALLIED ARMIES IN ITALY, IS CHARGED WITH:

1ST CHARGE
4a X Sec 15 (1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy, after having been duly warned for Cam, Fioquet, did absent himself without leave from 1745 hrs 11 Oct 44 until 2130 hrs 11 Oct 44.
(Total time absent: 3 hrs, 45 min).

L J Flynn

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

In the Field
21 Oct 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

L J Flynn

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

In the Field
21 Oct 44.

FIELD GENERAL COURT-MARTIAL

(FA95 (In lieu of AFA8) 40/FA8/1497 (2008))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 326, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B11068	Bombardier	John Mitchell	ELKIN	RCA"B" on strength 4 Cdn Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[x] named above as the accused, being subject to military law, has ~~[have]~~ committed the offence[x] set forth in the Charge Sheet[x] attached and on (date) 21 Oct 44 endorsed by me, ~~[or by whom or by each of whom]~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[x] should be tried by an ordinary General Court-Martial; ~~[and that it is not practicable that the accused should be tried by a superior competent authy]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[x], and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) ~~[the Offr who ordinarily tries]~~ (b) a Fd Offr as President, for the reasons I have attached hereto. ~~[NONE AVAILABLE]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[I appoint as Judge Advocate the Offr mentioned hereunder]~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Captain (Rank.)	R F S Robertson (Must be named. RP 106.)		PPCLI X-4 on strength 4 Cdn Rft Bn (Unit.)

MEMBERS.

Captain	F	Peacock	Westmr R X-4 on strength 4 Cdn Rft Bn
Captain (Rank.)	W H	Roberts (Named or detailed. RP 106.)	R C A X-4 on strength 4 Cdn Rft Bn (Unit.)

WAITING MEMBER.

Lieut (Rank.)	C W	Tompkins (Named or detailed, if any. RP 106.)	Lorne Scots X-4 on strength 4 (Unit.) Cdn Rft Bn

JUDGE-ADVOCATE.

(Rank.)		nil (Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 21 Oct 44

L. J. Flynn

(L J Flynn) (Signed personally. RP 105 fn 2.)

Lt-col (Rank.)

Commanding 4 Cdn Rft Bn, 1 Cdn Base Rft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 49-62 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) *Opening address by Defending Offr.* (*RP 80(C), 87(C), 92(C) (D).*)

(ii) *At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or J.A. (RP 46 fn 1(b)), or evidence by accused, as to facts or his character or both.* (*See RP 45 fn 3, 46 fn 1, 80.*)

(iii) *Evidence of witnesses for accused as to facts or his character or both.* (*See RP 46 fn 1.*)

(iv) *Evidence for prosecution in rebuttal or on new matter, if allowed by Court* (*RP 86(B)*), *or to prove previous convictions when accused has called witnesses as to character.* (*RP 94(C).*)

(v) *Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused.* (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) *Closing address by Prosecutor.* (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) *Summing up by J.A., if any.* (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. if any. RECORD FORMS B, C OR D MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 1 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(2), RP 118(C), MML p 750.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

24 Oct 1944

K.R. (CAN) Para 557

I hereby certify that I have this morning examined No B11068

Bdr Elvin J.M. on strength 4 Cdn

Rft Bn, 1 C B R Gp, and in my opinion he is FIT/~~UNFIT~~ to undergo

trial by Court Martial

Capt

Medical Officer 4 Cdn Rft Bn.

~~Concerning~~ ~~Order read~~ RWR RWR
~~Court sworn~~ in RWR
~~Charge read~~ RWR
~~Plea~~ RWR

Prosecution

1st Witness D94935 Sgt Barrie, J. B.
4 Bn 1 C B R G. having been duly
sworn ~~states~~ Jam D94935 Sgt Barrie, J.B.
Examined by the accused as being
Pte Elkin, J. M.

On 11 Oct 44 I was acting C S M
of D Coy 4 Bn. At 1400 hrs I detailed
Pte Elkin to be in charge of a piquet
which was mustered at 1745 hrs. I did
not see the accused during the day.
~~he~~ RWR
He did not ask permission to be excused
from the piquet. He did not approach
me in any way to be relieved of piquet duty
I detailed Pte Elkin personally.
2 Nil defending officer declines to
cross examine the witness

2nd Witness 4 11056 Sgt McLean, N.
4 Bn 1 C B R G. having been duly sworn
states I am Sgt McLean, N.
Examined by the accused to be
Pte Elkin.

On 11 Oct 44 I was acting as D Coy
orderly Sgt. At approximately 1600 hrs
on that day Pte Elkin came to the
orderly room and asked if he could be
excused from piquet duty for a short
time. He told me he had Pte ~~Sturgeon~~ to RWR
take his place. I told the accused that
you had Sgt major had detailed him
I could not excuse him permission to
be absent from piquet. At approximately
1745 hrs I fell in the piquet Pte Sturgeon

RSAR — 2 — CHR 26 accused was present
was in charge of the prisoner's & reported
the incident to Lt Rowe the following
morning at about 1100 hrs.

Cross examination —

Q. When you are acting as Orderly Lt
do you report to CS M when he is
not at the Camp Office

A. Not if the CS M is in the lines.

Q Did Rdr Elkin ask you to see
the C S M or his representative at that time?

A. Yes, his RSAR

~~I Count~~ RSAR

3rd Witness

D/ 01 42 Rdr Sturgeon, R B, s-a-h-a-d-y-
X-y Cit 4 Bn 1 C M R G, having been duly
sworn, states: I am Rdr Sturgeon, R B
RSAR ~~[illegible]~~ I occupy a room with
Rdr Elkin.

On 11 Oct 42 at about 1630 hrs
Rdr Elkin asked me if I would take
his prisoner. I said yes and asked
if he had permission. He said no,
but that he would get permission.
He accused me ~~[illegible]~~ RSAR at 1st I presumably
was but that he had permission. I took
his prisoner but handed at 1700 hrs.
I was relieved by him at about 2130 hrs.
The accused was not present when
the prisoner was handed.

Cross examination

Q. Did the accused explain to you
from whom he had obtained permission
to be relieved from prisoner duty?

A. He told me he was going to get
permission from the CS M. He returned
after that & C S M was not out, but said
he got permission from the Orderly Sgt.

Q What kind of prisoner was he?
A He was a ~~[illegible]~~ prisoner in the camp ~~[illegible]~~ area.

Q Did you make any arrangement with Pvt Elkins so that he could at any time during the evening take his turn of duty?
A When I was ordering the men to I told him I would stop by the tent where we were living.

Q Did you make any arrangement for ~~RAR~~ ~~making~~ Pvt Elkins ~~RAR~~ so that Pvt Elkin could relieve you?
A Only at the tent when I stopped in.

Q Did you know Pvt Elkin before?
A Yes sir I served in the same platoon with him.

Q Had you exchanged duty with him before.
A Yes sir.

Re examination

Q Have you ever made an exchange of duty with the men before without first having obtained permission to do so.
A No sir.

The accused Bkt 068 Bob Elkins, RA USMC
having been duly warned, testified:

I am Bob Elkins, USMC. On 11 Oct 44 at approximately 0745 hrs I went to see Sgt McLean in the orderly room and asked him if I could get permission for Bob Stinson to relieve me of present duty for a short while. Sgt McLean said having as the CSM detailed me for this present he could not definitely give me the permission. I asked him if the CSM was around and if I could see him. Sgt McLean replied that the CSM was around somewhere but he didn't know where. I then said to him that if I can't find the CSM, is it O.K. for Bob Stinson to relieve me. Sgt McLean replied it is O.K. as far as I'm concerned.

After I left the orderly room I tried to locate the CSM but could not do so. By reason of the fact that this type of incident is common in my previous regiment and is accepted as an understood fact as long as the duty is properly performed & unknown to me from the understanding with Sgt McLean that it was O.K. I then told Bob Stinson it was all right for him to relieve me because the CSM could not be found. At 1745 hrs 11 Oct Sgt McLean knew of my absence from this present. No action was taken on the subject before 0745 hrs 12 Oct by Sgt McLean. [redacted]

I understood that it was granted in order for me to make a telephone call to take place after the fact that the NCO who relieved me [illegible] & unknown to me.

my period of absence I was under
many reasons I held to necessity
arise. I was at no time in camp and
when at my tent

Cross examination

[illegible]

No Q

Second witness for the defense

D10150 Sgt Nelson, R. A.

having been duly sworn states

I am Sgt Nelson, R.A.

I recognize the accused to be
Bdr Elkin.

On 11 Oct 44 at about 1845 I
saw Bdr Elkin in the tent with
Bdr Sturgeon sleep. He asked me
if Bdr Sturgeon had left any message.
No cross examination

Third witness for the defense

Lt A A Sgt Curtis, R.C.A., 4 Fd Regt RCA

having been duly sworn
I am Lt A.A. Sgt Curtis.
About a week ago I was attached
to the 4th A/Tk Regt I met Bdr Elkin
at the Regt and worked with him for
three or four weeks. While Bdr Elkin
was with us always fulfilled his
duty very well and I am sorry
to see him leave that unit. As never had
any trouble with Bdr Elkin

Second Witness for Prosecution Recalled

Direct Examination by Court -

Q. When Rob Tilden came to ask you for permission to be relieved from jury duty did you or he have definite permission to be absent

A I did not give him definite permission I told him what the C.S. instructed him I would not give him permission to be relieved

Q Did you say it would be O.K by you for him to get permission to be relieved from guard

A No sir

RACK.

closing address for the defence in
the case of Pte. Rack.

Gn. the President, gentlemen of the
court, the charge that bears the accu-
sation against the accused, that
he was not present at his picket
duty, we agree that he was not
there for a while. But we have shown
that this was due to some kind of
a misunderstanding and that every
effort has been done by the accused
to be able to face any enquiry. The
whole chain of circumstances
that envelopes the action of the
accused, by habits of normal
regimental life, minimizes so
much the strength of the accusa-
tion that the charge itself seems
to disappear completely.

a) The man made all the researches
possible to be relieved properly
from his duty for a very short
while.

b) Due to some kind of a misunder-
standing or facts understanding
he met a friend of his, from the
same regiment, performed his
duty.

c) The accused took all the possible
precautions to be able to resume
his tour of duty at any moment in
the evening.

d) He did not even go out of the
country, but in a ground
at very well known places.

e) A witness, to the details
told you what was the good

standing of Mr Albin injurious
in the last weeks.
For all those reasons we ask
to the Court justly Mr Albin
is guilty. We are convinced
of the contrary.

Prosecution Address

Mr. President and Members of the Court. Rebk.

The accused is charged with deserting himself without leave after being duly warned for picquet duty from the time the picquet mounted, i.e. 1745 hrs. until the time the accused would be appointed duty, i.e. 2130 hrs.

I call the attention of the court to Sec 15 (1) (1) of the Army Act P. 441 of M.M.L. (Para 3 of Rules under it) "Note" "The desire - - - without leave"

Upon this rule the case of the accused is we submit a breach of the wording of the picquet, as it was his duty so to be.

R7SR.

Plea of mitigation of sentence
in the case of S/Sgt. C. Allen.

1- Married man with three children.
2- Joined The Army voluntarily on
11. 9. 41. M.
3- 4½ years active service
4- 4 years abroad
5- Action from Orbetello to Fresnone.
6- N. C. O. since Sept 1941.
7- Present rate of pay £1.7 per diem.
with £25 per month assignment
of pay.
8- Slight financial difficulties
at home right now.
9- Character proven good.

EXHIBIT "F" RMR

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 11068	BDR	ELKIN J.M.	R.C.A. "E" on strength 4 Bn.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA Sec 9 (2) ..... one times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet ..... N/A .....

Date of last entry in Field Conduct Sheet ..... 14 Aug 44 .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused is at the present time under sentence for .....

beginning on the ..... day of ..... from 1416 hrs 11 Oct 44

4. The accused has been awaiting trial on the present charges for .....

days in civil custody; and for 13 days in military custody, *i.e.*, ... days in open arrest, 12 days in close arrest; of which N.I days were spent in hospital.

5. The present age of the accused is 27 yrs. 4 mos.

6. The date of his attestation / calling up for military service is 4 Jun 40

7. The service which the accused is allowed to reckon is N/A

8. The accused is in possession of N/A

†State the military decorations if any held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Bdr	1 Sep 42
In the war establishment rank of A/Sgt	16 Oct 43
In the acting rank of Sgt (Acting)	1 Apr 42
	Bdr (At own Request) 2 Feb 44

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W. 8896/1693 35,000 3/44 H.-C. 4711. Forms/B.296/W.a./2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N.L.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 19 day of Oct 44

A.E. Saunders Capt

EXHIBIT "B"

M.F.M. 6
(A.F.B. 11,122)
40/P & (S)136 (2965)

No. B 11068 Name BDR ELKIN J.M. Sqn., Battery, or Company — Corps R.C.A. — Date of enlistment 4 Jun 42 — R.C. Badges — Service or Proficiency Pay R&R

Date of last entry in Company Conduct Sheet 18 Jan 42 — No. and date of last drunk 2 12 Jan 42 — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc. ??????? — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				SHEET DESTROYED 28 May 1943 (DATE LAST ENTRY 18 Jan 42) (CASES OF DRUNKENNESS)					
Field	14 Aug 44	Bdr	2	A.A. Sec 8 (2) Insubordinate language to his superior officer	Lieut I.L. Rosenbaum Sgt Burton	Severe Reprimand	14 Aug 44	Lt.Col E.W. Steuart-Jones	

Certified true copy.

(N.S. Davidson) Captain,
Adjutant,

15 Oct 44. 4 Cdn Rft Bn - 1 Cdn Base Rft Group - C M F

PTO

EXHIBIT "A"

SUMMARY OF EVIDENCE IN THE CASE OF B11068 BDR JOHN MITCHELL ELKIN OF THE R.C.A., ON STRENGTH 4 CDN RFT BN 1 CBR Gp, WHO IS CHARGED WITH: ABSENTING HIMSELF WITHOUT LEAVE, A A SEC 15 (1)

By direction of the Commanding Officer, the evidence is taken on oath.

1st WITNESS: D91935 Sgt Barry J.B. of 4 Bn 1 CBR Gp, having been duly sworn state:

I am D91935 Sgt Barry J.B. P.E. Sgt of "D" Coy 4 Bn, 1 CBR Gp.

At approximately 1400 hrs on 11 Oct 44, I was acting CSM of "D" Coy, I detailed the camp picquet naming the accused, whom I now recognize to be Bdr Elkin, as the picquet commander. The accused did not come to me to ask to be relieved or to be exchanged from this duty.

J B Barry
(J B Barry) Sgt.

The accused declines to Cross-examine this witness.

2nd WITNESS: L11056 Sgt McLean W. of 4 Bn, having been duly sworn, states:

I am L11056 Sgt McLean W. P.E. Sgt of "D" Coy, 4 Bn 1 CBRGp.

On 11 Oct 44, I was acting as Coy Ord Sgt. At approximately 1600 hrs, the accused, whom I recognize to be Bdr Elkin, came into the orderly room and asked if he could be excused from picquet duty. He informed me that he had Bdr Sturgeon to take his place. I told the accused that as the Sgt Maj had detailed him, I could not give him permission. At approximately 1745 hrs, I fell in the picquet. Bdr Sturgeon mounted with the picquet. The accused was not present.

On 18 Oct 44, I reported the incident to Sgt Barry who was acting Sgt Maj of the Coy.

W. McLean
(W. McLean) Sgt.

The accused declines to Cross-examine this witness.

3rd WITNESS: D10142 Bdr Sturgeon R.B. of 2 LAA Regt, on strength 4 Cdn Rft Bn 1 CBR Gp, having been duly sworn states:

I am D10142 Bdr Sturgeon R.B. 2 LAA Regt, on strength 4 Cdn Rft Bn, 1 CBR Gp.

At approximately 1630 hrs on 11 Oct 44, the accused, whom I recognize as Bdr Elkin, asked me if I would take over his guard early in the evening. I asked Bdr Elkin if he had permission to make this exchange. He said "No" but that he would get permission. The accused assured me at 1700 hrs that he had this permission. I took his guard for him and mounted with it at 1800 hrs. The accused relieved me at 2130 hrs.

R B Sturgeon
(R.B. Sturgeon) Bdr.

EXHIBIT 2.

Cross-examination by accused:

Question 1. Did I explain to you what sort of permission I had obtained to effect the exchange?

Answer 1. You did mention that you had obtained permission from a Sgt, because the Sgt Major was out.

Question 2. Did you arrange for me to meet you and to relieve you, upon my return?

Answer 2. Yes. I told you I would leave word where I could be located, with the other members in our living quarters, i.e., in our tent.

Question to the accused:

Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do som but anything you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused:

I have nothing to say at this time.

I certify that R.F. 4 (C) (D) (E) & (F) have been complied with.

I certify that this summary of evidence was taken down by me in the presence of the accused.

(R.R. Brown) Captain,
Officer taking Summary.

In the Field
21 Oct 44.

RECEIPT FOR CHARGE SHEET & SUMMARY OF EVIDENCE

I hereby certify that I have this date 22 Oct 1944 received from 4 Cdn Rft Bn, 1 C B R Gp, 1 copy of Charge Sheet and Summary of Evidence referring to charge (s) of

AWL 96 15(1)

for which I was remanded for Court Martial.

(Sig of Accused)

REQUEST FOR DEFENDING OFFICER

I hereby request that Capt D Dion if available, act in my defence. If this officer is not available I request that the Commanding Officer of 4 Cdn Rft Bn, 1 C B R Gp appoint an officer to act in my behalf.

(Sig of Accused)

Pursuant to Chap V Sec V Sub Sec 3 of MML, I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

(Sig of Accused)

1/J 145

PTE ELIGH LJ

RECORDED AT CMHQ IN AB 160, 43-145.

RECEIVED 1-JAN 1945 JAG BRANCH EMBASSY

FIELD GENERAL COURT-MARTIAL

Convened by Lt Col V R Jones Comd HQ 1 Cdn A dated 8 Dec 44 Tpt Coln

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused C11811 Pte Lloyd James ELIGH 63 Cdn Army Tpt Coy

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA40	Guilty	Guilty	
2nd	AA15(1)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 120 days

(Sgd) ..... Judge-Advocate, if any. Date awarded 27 Nov 44 (Sgd) A O Allan Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 34(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence of the Court as set forth in Part I.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) ..... (V. R. JONES) LT COL.

Date 8 Dec 44 Commanding COMD. 1 CDN ARMY TPT COY R.A. Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. C-11811 Pte Eligh, L.J. 63 Cdn Army Tpt Coy RCASC

Date. 9 Dec 44

Signature of Offr. ..... a/c

The charge, finding, sentence and confirmation were promulgated to the accused and extracts taken 9 Dec 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

No illegalities or irregularities such as would warrant withholding confirmation

PROCEEDINGS REVIEWED by Lt Col J.A. Ede Dpty Dir Jus Br 21 Army Gp Date 2 Jan 45

PROCEEDINGS OF TRIAL.

Partie in the NORTH-WEST EUROPEAN THEATRE OF WAR Belgium on (date(s)) 27 Nov 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~and~~, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation on procedure will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans ..... ~~The Interpreter is sworn.~~(1) Do you object to G-7346 Pte Robertson G as shorthand writer? Ans No The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 72, MML p 742.)

A7. The President, Members, ~~JA~~, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A. O. Allan	HQ 1 Cdn A Tpt Coy
Member	Capt	V. L. Marshall	47 Fd Amb A Tpt Coy
Member	Lt.	R. H. Smith	48 Fd Amb A Tpt Coy
Judge-Advocate			
Prosecutor	Capt	C. H. Wilson	63 Cdn A Tpt Coy.
Defending Offr	Lt.	A. R. Ramsay	63 Cdn A Tpt Coy.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See DI p 3.)

A8. The accused C 11811 Pte Eligh L. J. before arraignment make(s) (no) ~~(a)~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 128), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B and E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 70-71(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(H), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~of a GCM~~, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. N/A.(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement(1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is/are (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. RP 155. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(2). See Notes to Part I of Schedule. 2. RP 44(E).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. YES.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)

(1. MFB 352 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on such anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 88, 118, 119(A), KR Can 308, 330, Sch 3-566. Overseas AO 109, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

the accused, C1581l Private Lloyd James ELIGH, 62 Cdn Army Tpt Coy RCASC., a soldier of the Cdn Army Overseas, WHILST ON ACTIVE SERVICE,

IS CHARGED WITH:

FIRST CHARGE
A.A.SEC 40

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the Field, while on tpt detail (T429 ser 868) on 8 NOV 44, did without authority take CM veh No 4206163 from his section's veh pk and did use it for personal recreation.

SECOND CHARGE
A.A. SEC 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he

in the Field, while on tpt detail (T429 ser 868) did absent himself without leave from 1900 hrs 8 NOV 44 to 0800 hrs 10 NOV 44.

(Total time Absent: 1 day, 13 hrs)

(G.E. Eagle) Capt.,
A/Offr Comd
62 Cdn A Tpt Coy RCASC

IN THE FIELD
20 NOV 44

To be tried by FGCM

(W.R. Jones) Lt Col
Comd 1 Cdn Army Tpt Colm

Field
25 Nov 44

FIELD GENERAL COURT-MARTIAL

CFA 65 (26 lbs of AFA 33)
40/PAM/1697 (2048)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C11611	Pte		Lloyd James	ELIOT	63 Cdn A Tpt Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 20 Nov 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not practicable to delay the trial for reference to a superior qualified offr.]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [I am unable to appoint: (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached thereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	A C ALLAN	HQ 1 Cdn A Tpt Coln

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	V L MARSHALL	45 Cdn Army Tpt Coy
LT	R H SMITH	4 Cdn Armd Div Tpt Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
LT	W S DRINKWATER	47 Cdn Army Tpt Coy

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

(Signed personally. RP 105 fn 2.) (Rank.) Lt Col

Date 28 Nov 44

Commanding HQ 1 Cdn Army Tpt Coln
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 50, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 569. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 55(8), RP 114(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

63 Cdn Army Tpt Coy RCASC

27 NOV 44

This is to certify that I have examined C11811 Pte ELIGH, L.J. this date and find him ~~fit or unfit~~ fit to undergo trial by FGCM

G.Y. Stillwell Capt

Signed (G.Y. Stillwell) Capt.,
Fmn MO
HQ 1 Cdn A Tpt Coln

THE CASE OF C11611 Private ELIGH, L.J. of 63 CDN ARMY TPT COY RCASC.

FIRST WITNESS: Cpl Farris A.L. of 63 Cdn Army Tpt Coy RCASC having been duly sworn is questioned by the defence.

Q.1 Cpl Farris, will you give evidence as to the accused Pte Eligh?

A.1 I have known Pte Eligh since July 1944. He was in the section when I came. He has worked very hard and has always been very tidy. He has done a lot of work on his own and travelled by himself. He has never caused me any trouble what-so-ever.

Q.2 Have you anything to add to that?

A.2 No, Sir.

SECOND WITNESS: D.127085 Cpl Gardin, G.A. of 63 Cdn Army Tpt Coy RCASC, being duly sworn is questioned by the defence:

Q.1 Cpl Gardin will you make a statement to the court about Pte Eligh?

A.1 I have known him ever since I entered this 63 Coy shortly after it was formed. As a Cpl Instructor in #1 weapons I have had to train among other men Pte Eligh, his reaction of my instruction convinced me that he was willing and benifited by what ever training I attempted to give him. Again when I was a Sgt in HQ Pl of the same coy, Eligh was in the said platoon during which time I have had occasion to ask him to carry out certain duties. He was always obident and complied with my orders willingly. Since coming to France, having again contected him in "B" Platoon even though he is not in my section he has been co-operative and gives me the impression generally that he is a patriotic soldier. This is all, Sir.

PROSECUTION appears as witness I hereby submit M.FM, 6 certified true copy. I have checked the entries against the regimental books and found that they are correct. I also submit M.F.H. 355 which has been checked by Capt. Eagle of this coy and he has signed it.

Q.1
Defending Officer Do you wish to address this court in connection with the M.F.M. 6 and M.F.H. 355 or on behalf of the soldier?

A.1 Yes, Sir the accused wishes me to make a statement in mitigation.

PLEA IN MITIGATION

Sir, Members of the Court

The accused admits his guilt on both charges. He admits that he used a military vehicle for personal recreation. He admits that he was A.W.L. for a period of 1 day and 1½ hrs.

Will the court remember that this admission refers to the fact that he took a vehicle for 3½ hours to go a distance of twenty to thirty miles? He declares this in his evidence given under oath. In the second charge that he admits, will the court in passing sentence, remember that it would have been 4½ hours not 1 day and 1½ hours if he had not stopped for for 1 day and 8½ hours to attempt to recover a vehicle that had been stolen from him; because he realised his responsibility and duty to make an effort to regain it. This he admits in his evidence given under oath. The court is requested to take into consideration the unfortunate train of circumstances which led the accused astray, his bed roll in another lorry because his was full, his steps to recover his bed roll because he did not want to spend another night without it, the unfortunate chance of meeting with a man whom he thought was his friend, a man who pressed him to do a favour for past favours, a man who talked him into carrying out an act contrary to military law. These facts the accused has pointed out in his evidence given under oath. Finally I would ask the court to remember that the accused is a man who has given four (4) years and (9) nine months of service to the army, who has carried out his duties in action in this theatre of war consientously without a single point against him until this happened. He is not a man who has wilfully and malignantly committed an act detrimental to the discipline of the Cdn Army, but is a man who has allowed himself to be mislead.

Ex A

SUMMARY OF EVIDENCE

In the case of C-11811 Pte ELIGH, L.J., 63 Cdn Army Tpt Coy RCASC, a soldier of the Canadian Army Overseas.

FIRST WITNESS B-112464 A/Cpl FARIS, A.L., 63 Cdn Army Tpt Coy RCASC, having been duly sworn, states:

"I am B-112464 Cpl FARIS, A.L., NCO in charge of #2 Section, B Pl, 63 Cdn Army Tpt Coy RCASC. On the 8 Nov 44 I was in charge of my section on a tpt detail moving 2 Cdn Gen Hosp. We had arrived in Ghent at approximately 1600 hrs 7 Nov 44 and Pte Eligh was present with us at that time. At approximately 1200 hrs on the 8 Nov 44, when I checked my section, Pte Eligh was present. I checked my section again at approximately 1700 hrs and found that Pte Eligh was absent and that his vehicle #4266163 was also missing. I did not see Pte Eligh again until approximately 1000 hrs on the 10 Nov 44. Pte Eligh's vehicle is still missing. When I saw my Pl Offr Lt. D.M. Irvine on the morning of 10 Nov 44 I reported the circumstances to him. I had not reported it before as I had not seen Lt. Irvine on the 8 or 9 Nov 44."

Witness cross-examined by Capt Eagle

Q 1 While your vehs were parked in town, was there a guard on them ?

A 1 Yes, the vehs were parked in the veh park of 9 CBRG which is under guard.

Q 2 When you discovered Pte Eligh's absence, did you check with the guard as to a veh having gone out ?

A 2 No sir, I took no check at all.

Q 3 Did you, or anyone else to your knowledge on the 8 Nov give Pte Eligh permission to leave your sec lines ?

A 3 No, sir.

Q 4 Was any general order given allowing the men on the detail to leave their vehs while parked in Ghent ?

A 4 No, sir.

Q 5 Did you give Pte Eligh permission to use his lorry on the 8 Nov to pick up his bedroll at #1 sec or for any other purpose ?

A 5 No, sir.

Cpl A.L. Faris
(A. L. Faris) Cpl

(The accused declines to cross-examine this witness)

SECOND WITNESS D-127085 A/Cpl GARDIER, C.A., 63 Cdn Army Tpt Coy RCASC, having been duly sworn, states:

"I am D-127085 Cpl GARDIER, C.A., #1 Section, B Pl, 63 Cdn Army Tpt Coy RCASC. On 8 Nov 44 my Section was employed on a tpt detail moving 2 Cdn Gen Hosp. On the afternoon of 8 Nov 44 my vehicles were parked on Leopold Blvd in Ghent. At approximately 1900 hrs 8 Nov 44 I saw Pte Eligh in my Section lines and found that he had come to fetch his bed roll. On the 9 Nov I learned from Cpl

...../2

FARIS that Pte Eligh was absent from #2 Section veh park which was at a different place to that of my Section. At approximately 0800 hrs 10 Nov 44 I saw Pte Eligh again in my Section lines and I immediately reported the matter to the convoy comd, Lt. D.M. Irvine.

Second witness cross-examined by Capt Eagle

Q 1 When you saw Pte Eligh on the evening of the 8 Nov, did he have his lorry with him ?

A 1 I do not know, sir.

Q 2 When you saw Pte Eligh on the morning of the 10 Nov, did he at that time have a lorry with him ?

A 2 No, sir.

(C. A. Gardiner) Cpl

(The accused declines to cross-examine the witness)

THIRD WITNESS Lieut. D.M. Irvine, 63 Cdn Army Tpt Coy RCASC, having been duly sworn, states:

"I am Lt. D.M. Irvine, Pl Comd of "C" Pl, 63 Cdn Army Tpt Coy RCASC. I was convoy comd of 24 vehs from this Unit, employed on a tpt detail #T439/858 moving 2 Cdn Gen Hosp. These vehs included Nos. 1 and 2 Sections from "B" Pl of 63 Cdn Army Tpt Coy RCASC. On the afternoon of the 7 Nov 44 the vehs under my charge arrived in Ghent and were split into four groups and sent to different parts of the City. #2 Sec containing Pte Eligh's veh was parked under guard in the veh park of 9 CBRG. On the evening of 7 Nov and the morning of 8 Nov I checked with the NCOs in charge of the four sections and was informed that all vehs were present. On the morning of the 9 Nov I returned to my unit HQ near Antwerp to report the progress of the detail and I did not return to Ghent until the morning of 10 Nov. On my return to Ghent I was informed by Cpl GARDIER that Pte Eligh and his veh had been absent the previous day but that Pte Eligh had returned on the morning of 10 Nov without his vehicle. I immediately checked with Cpl FARIS, NCO i/c of Pte Eligh's section and found that Pte Eligh had been absent from approximately 1900 hrs on the 8 Nov to 0800 hrs on the 10 Nov. At approximately 1000 hrs on the 10 Nov Pte Eligh reported to me stating that he had taken his veh on the evening of 8 Nov and gone to Menin. He also stated that Pte Daniels, a cook in "C" Pl had been with him and that they had become separated and that Pte Daniels had taken the lorry away at approximately 2230 hrs on the evening of 8 Nov. I placed Pte Eligh on charge immediately, and on return to my Coy HQ, reported the circumstances to my O.C."

Third Witness cross-examined by Capt Eagle

Q 1 Did you or anyone else to your knowledge give any general order permitting the men on tpt detail in Ghent to leave their sec lines on 8 Nov 44 ?

A 1 No, sir.

...../3

Q 2 Did you or anyone else to your knowledge give Pte Eligh permission to leave his sec lines in Ghent on 8 Nov 44 ?

A 2 No, sir.

Q 3 Did you or anyone else to your knowledge give Pte Eligh permission to use a lorry to pick up his bed roll at #1 Sec lines or for any other purpose ?

A 3 No, sir.

(D. M. Irvine) Lieut.

(The accused declines to cross-examine the witness)

The accused elects to make a statement as evidence under oath, having been duly cautioned in accordance with R.P. 4 (e) as follows;

"Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

C-11811 Pte ELIGH, L.J., 63 Cdn Army Tpt Coy RCASC, having been duly sworn, states:

"I am C-11811 Pte ELIGH, L.J., a driver in #2 Section, "B" Pl, 63 Cdn Army Tpt Coy RCASC. On 8 Nov 44 I was in Ghent with my section which was employed on a tpt detail moving 2 Cdn Gen Hosp. I had during the previous nights on this detail been sleeping in Pte Prescott's lorry and my bed roll had been left in that vehicle. As our section had been split up on arrival in Ghent, Pte Prescott's vehicle had been sent to a different location from mine. I found out where that was, and at approximately 1700 hrs on 8 Nov I took my veh #4266163 and went to the other parking place to get my bed roll. I stayed there for supper and afterwards was in conversation with Pte Daniels of "C" Pl. He asked me to drive him to Menin to visit a lady there whom he had known in Canada. As he told me it would only take about 20 minutes, I consented to do so. On arrival in Menin the lady concerned invited us in for tea and also gave us several drinks. While we were there, Pte Daniels asked me if I would go with him to Lille but I told him I would not and that I was going to return to Ghent. Shortly after 2100 hrs I was in the kitchen of the house we were in, helping the lady dry the dishes. Pte Daniels was not there with us. I missed him and went to look for him but found that he was not around the house and discovered also that my lorry was gone. As I did not want to return to camp without my lorry, I hitch-hiked to look for Pte Daniels. On the way to Lille, I stopped at Roubaix and looked about there for Pte Daniels and my vehicle. As I did not find them I went on to Lille and spent all night looking in the places I thought Pte Daniels might be. I continued my search until the evening of the 9 Nov but, though I found traces of him, I was unable to catch him. At approximately 2200 hrs on 9 Nov, I gave up the search and hitch-hiked back to Ghent where I arrived early in the morning of 10 Nov. At approximately 1000 hrs on the 10 Nov I reported to Lt. Irvine and told him the circumstances of the case."

(L. J. Eligh) Pte.

...../4

Certified that the above evidence was taken down by me in the presence of the accused.

Certified that R.P. 4 (c),(d),(e) & (f) have been complied with.

G E Eagle

(G E Eagle) Capt
2 i/c Adm
63 Cdn Army Tpt Coy RCASC

No of Pages

No C11811 Name ELIGH, L.J. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 19 FEB 40 | OC Badges | Services or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/138 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | J. FitzRandolph, Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ON 19 FEB 42 HAVING COMPLETED TWO CONSECUTIVE YRS OF SERVICE CLEAR OF ANY ENTRIES IN FD CONDUCT SHEET. PREVIOUS SHEET DESTROYED									
Field, 19 JUL 43		PTE		am SEC 15 (1) AWL from 0500 hrs 19 JUL 43 to 2345 hrs 20 JUL 43 Absent; 1 day, 18 hrs, 45 mins	Sgt Scott Cpl Murray	3 days pay FR&I 149(2)	21 JUL 43	Lt-Col RW Frost	2 days pay FR&I 149(1)a
Field, 2 AUG 43		PTE		am SEC 40 Improper use of WD MC	Lt Lawson	28 days F.P. 28 days pay FR&I 149(2)	21 AUG 43	Capt E. Porter	
Field, 29 JAN 44		PTE		am SEC 19 DRUNKENESS	Documentary	28 days pay FR&I 149(2)	2 FEB 44	??????????	
Field, 29 JAN 44		PTE		am SEC 40 Illegal poss of Veh					
Field, 30 JAN 44		PTE		am SEC 22 Escaping Confinement	Documentary	see previous charge	2 FEB 44	Major RA Walker	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field,	16 MAY 44	PTE		A. SEC 40 did fail to appear on coy Comdr's parade	Sgt Lockerbie	1 days pay FR&I 149(2)	17 MAY 44	Major J. FitzRandolph	
Field,	23 JUN 44	PTE		A. SEC 15 (1) AWL from 0900 hrs 23 JUN 44 to 1345 hrs 23 JUN 44 Absent: 4 hrs, 45 mins. Close arrest 1 day 35 mins	Documentary	14 days F.P. 14 days pay FR&I 149(2)	26 JUN 44	Major J. FitzRandolph	Stop of pay O/S/3 cost of appr

Certified true copy

(A.J. Drew) Lt, a.C.,
63 Cdn Army Tpt Coy RC.SC

Ex B

M.F.B. 358
SSM—5-42 (1942)
H.Q. 1777-99-6/20
A.F.H. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G11811	PTE	KLIGH, Lloyd, James	63 Cdn A Tpt Coy

1. The following is a fair and true summary of the entries in the Service and Conduct Regimental and Squadron Records Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Attendance Roll of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA Sec 40	2 times	3 times
For AA SEC 19	1 times	1 times
For AA Sec 15 (1)	1 times	2 times
For AA Sec 28	1 times	1 times

~~Numbers of previous absolute or conditional release~~

XX

~~There are no entries in the conduct sheet of the accused~~

~~NOTE.—If the charge is for drunkenness one entry for the previous year must be stated separately.~~

2. ~~The accused has not been previously convicted~~

XX

~~Previous convictions of the accused by a court-martial or a civil court, or of summary awards under~~ ATTACHED
~~REFERENCE NO.~~
~~Section 47 of the Army Act, in connection with which the record has not yet been published in the Records~~
~~Orders, is as follows:~~

3. The accused is not under sentence at the present time.

XX

~~The sentence of the present charge is to be carried into execution immediately after the sentence~~
~~the date of~~

4. The accused has been in confinement awaiting trial on the present charge, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is TWENTY FOUR YEARS OLD

6. The date of his attestation specified in his record of service is 19 FEB 40

7. The service which the accused is allowed to reckon towards discharge is FOUR YRS & NINE MONTHS

8. The accused is entitled to reckon 57 DAYS service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~no authority to wear any~~ military decoration, ~~other than those entered on~~ ATTACHED
~~the~~ ~~State any~~ military decoration ~~authority~~ CDN VOLUNTARY SERVICE MEDAL WITH CLASP

10. ~~The accused is a married man. The usual notice to the wife of the accused's arrest has been~~
~~sent. Proof~~
~~the original is attached.~~

~~In the case of an officer. The record [illegible] to the Royal Canadian Air Force, the rank~~

Permanent Force
unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number..... Rank.....
Unit
Name..... of.....Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge (or charges) upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract [illegible]

Signed this 27th day of NOVEMBER 1944 [illegible] Capt.,
A/Offr Comd
[illegible] Sqdn

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

BB-113

PTE ELLERBRUN C.W.J.

Correspondence to be PINNED here.

"A" Address Unit BB-113

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this ---------First---------- day of--------April---------; 1943.

Whereas it appears to me, the undersigned, an officer in Command of 9th Canadian Infantry Brigade----------, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

Proceedings Received 21 Apr 43

110

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C.A. Scott	Lanark & Renfrew Scottish Regt.

Members.

Rank.	Name.	Regiment.
Lieut.	F.C. Fraser	Nth.N.S. Highrs
Lieut.	A.E. Calkin	Nth.N.S. Highrs

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E.W. Haldenby

Commanding E.W. Haldenby Brig. Comd 9 Cdn Inf Bde *Officer.*

SCHEDULE.

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.78071 Pte. C.W.J. Ellerbeun HLI of C	First Charge Conduct to the prejudice of good order and military discipline. A.A.Sec.40	guilty	28 days detention and forfeit 7 days pay. C.M. Field Sqn. 4230335	Confirmed Cuttle.
	2nd Charge Neglecting to obey Canadian Army Overseas Routine Orders A.A.Sec. 11	guilty		
	3rd Charge Neglect to the prejudice of good order and military discipline A.A. Sec. 40	guilty		
	4th Charge Absence without Leave. A.A.Sec 15(1)	guilty		

A78071Pte.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have had sufficient opportunity for preparing your defence?"
Answer (to be recorded as separate sheet if necessary):—

(Signed) Cuttle (Signed) A.A.Scott major
Commanding [illegible] President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 2nd day of April, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses Cas.
~~3. The interpreter~~ Cas.
~~4. The officers under instruction~~ Cas.

were duly sworn.

* Omit if not applicable.

Signed this 2nd day of April 1943.

A.A.Scott major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (i) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 5 day of April 1943.

Cuttle Brig
Confirming Officer.

Promulgated and extracts taken in the case of A78071 Pte Ellerbeun C.W.J.

(a) (Dated) 6 April 43 (Signed) [illegible]
The Highland Light Infantry of Canada

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2 (Addt major)

CHARGE SHEET

The accused No. A.36071 Private Clair Wilford Joseph KLEINBRUN The Highland Light Infantry of Canada, a Canadian soldier on active service is charged with:-

1ST CHARGE SEC 40 ARMY ACT

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, on the night of 20-21 March 1943 did improperly use W.D. car 5 cwt 4 X 4 No. CM.483038 and W.D. petrol for private purposes.

2ND CHARGE SEC 11 ARMY ACT

NEGLECTING TO OBEY CANADIAN ARMY OVERSEAS ROUTINE ORDERS

in that he

in the Field, on the night of 20-21 March 1943 did have a female civilian in a W.D. vehicle contrary to C.A.O.R.O. 2315 dated 22 July 1942.

3RD CHARGE SEC 40 ARMY ACT

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, at approximately 0045 hrs 21 March 1943 did negligently operate a W.D. vehicle causing it to strike a traffic island and did thereby damage the said vehicle in the amount of $7.7.0.

4TH CHARGE SEC 15 (1) ARMY ACT

ABSENCE WITHOUT LEAVE

in that he

in the Field, at 2230 hrs 20 March 1943, absented himself without leave until apprehended by Military Police at Hove, Sussex at 0045 hrs 21 March 1943. (Absent 2 hours, 15 minutes).

in the Field
22 Mar. 43

J. Nicholson Maj.

A/C.O. The Highland Light Infantry of Canada

G.W. Hardwicke Brig.
Comd. 9th Canadian Infantry Brigade.

THE HIGHLAND LIGHT INFANTRY OF CANADA

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA. 557

I certify that I have this morning examined

A38071 (Number) Pte (Rank) ELLERBRUN C.W.J (Name) and in my opinion he is fit to undergo trial by Court Martial.

2 APR 43 (Date)

Medical Officer
H.L.I. of Canada

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A
Field General Court Martial

**Form of Proceedings for General ~~and District Courts-Martial~~

Proceedings of a Field Genl Court-Martial held at in the Field
on the 2nd day of April 1943 by order of
Brigadier E.W. Holdenby Commanding 9 Inf. Bde.
dated the 1st day of April 1943.

President.
Major C.A. Scott Lanarks & Renfrew Scottish Regt
Members.
Lieut J.C. Fraser N.S. Highrs
Lieut A.E. Calkin " "

~~Judge Advocate~~ Q.A.S.

Trial of* A 58011 Pte Clair Wilford Joseph Ellenburn

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ~~ ~~is not available~~ ~~to serve owing to~~ ~~waiting member takes his place as a member of the Court.~~ Q.A.S.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut Polzin C.J. N.F.S. of C

Counsel‡ or defending officer† Lieut J.S. Allen N.F.S. of C.

At 1410 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Forms B. 271
1936—9-39 (21287)
H.Q. 1772—39-238

The President, and members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 45 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Guilty *Answer.*

The accused having pleaded Guilty to all charges the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused A 38071 Pte Clair Wingford Joseph Ellenburn is found guilty of all four charges.

*The summary (or abstract) of evidence is read, marked CF-1, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— that he took the W.D. returns, purely to keep out the civilian women, who had no other means of proceeding to Brighton, and for whom it was most necessary that she get to Brighton.

[~~or Hands in a written statement, which is read, marked~~ , ~~signed by the President, and attached to the proceedings.~~]

Instruction.

*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No Sir

Answer.

No Sir

Evidence as to character.

SUMMARY OF EVIDENCE in the case of

No. A.38071 Pte. MILNERRUN, C.W.J., The Highland Light Infantry of Canada.

The Commanding Officer directs that all evidence be taken on oath.

First Witness for Prosecution — A.37328 A/Sgt. Cawthorpe, F.J. The Highland Light Infantry of Canada having been duly sworn states:-

"I was Coy. Orderly Sgt. of Support Coy. The Highland Light Infantry of Canada for the week 15 to 21 March 1943. The accused did not have a midnight pass for the night of 20 March 1943."

The accused declines to cross examine the witness.

F.J. Cawthorpe A/Sgt.

Second Witness for Prosecution — Lieut. J.A. Ferguson, The Highland Light Infantry of Canada having been duly sworn states:-

"I am Transport Officer of The H.L.I. of Canada and as such authorize all journeys for Bn. HQ., HQ. Coy and Support Coy vehicles. I did not authorize the use of car 8 cwt 4 X 4 for any journey on the night of 20 March 1943.

The accused declines to cross examine the witness.

J.A. Ferguson Lieut.

Statement of L/Cpl. Maskell, A., Brighton and Hove Military Police is attached hereto, in accordance with R.P. 4 (G).

Cabeau major

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e) is duly sworn and makes the following statement:-

"I was returning to billets after leaving the Fletchers Arms at Angmering when I met Pte. Braniff, J. and a civilian woman. She pleaded that she had to be in Brighton the same night whereupon I agreed to take her there. After having removed the jeep from the billets I picked up both the soldier and the above mentioned woman. I then started for Brighton and this side of Worthing I picked up Pte. Keffer, E. whom I was going to give a lift back to billets. I then proceeded towards my original destination and was flagged down by a Military Policeman and through trying to stop I hit a pylon. While being questioned I then stated I had no authority to be there and told the provost my reason for having removed the jeep. C. Ellenbrun

The accused declines to call any witnesses on his behalf.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

In the Field
11 March 43

.....Captain
The R.C.I. of Canada

STATEMENT OF EVIDENCE IN THE CASE OF

A-38071 Pte. Ellerbrun, C.W.J., The
Highland Light Infantry of Canada
3 Cdn Div.

Sir:

At Hove on the 21 March 1943 about 0045 hrs. I was on duty in Kingsway where I saw a vehicle approaching towards me at a very fast speed on the wrong side of the road. I signalled with my torch for the driver to stop. He applied his brakes and swerved across the road colliding with a traffic island in the centre of the road, and was unable to stop until he had proceeded about 100 yards past me. I approached the vehicle (W.D. Jeep No. CM 4230335) and found it contained a female civilian passenger. I asked the above named who was the driver, the nature of his duty, and the authority to carry a female civilian passenger. He replied that he had taken a gun to be repaired and was on his way back to and was giving a girl a lift. I examined his Work Ticket, and found it made out to a Pte. Myers, L.J. of the same unit, and dated 27 Feb 1943. He was unable to produce his M.B.M. 1, and stated it was at his billet. He further stated that he should not be here, and was giving the girl a lift home from Angmering. He admitted to me that he was absent from his unit from 2359 hrs. 20 March 1943.

I placed the soldier under arrest and he was taken to Brighton Police Station where he was handed over to the Station Sergeant to be detained awaiting an escort.

DAMAGE TO W.D. JEEP NO. CM 4230335 Near side wheels dented, and tyres punctured. This vehicle awaits collection at H.Q. Brighton and Hove Military Police.

(A. Maskell) L/Cpl.
Brighton and Hove Military Police

Certified true copy:

I certify that due to loss of time involved, it was not considered necessary to compel the attendance of L/Cpl. Maskell, A., Brighton and Hove Military Police, for the summary of evidence.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~ C.O.S.

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~ C.O.S.

Lieut C.J. Palzin, N.L.B. q.c. is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes Sir

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked $\frac{E}{E}\frac{1}{2}$, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes Sir

Cross-examined by the accused.

No cross examination

Illustration.—If by reason of the nature of the offence of the accused in a deserter, mutiny, corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the matter and award of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No Sir

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused

~~ninety days detention~~

~~Adopted~~

A 38071 Pte Ellerbeck C.W.S.
H.L.I. of C.

Sentence.

90 days detention and
Stoppage of pay £7:1:0: cost of
report & W.D. Vehicle
CM4230335 (1) Razor
2 Apr 45

APPLICATION FOR DEFENDING OFFICER

Precedent

To: Officer Commanding
The Highland Light Infantry of Canada

With reference to my pending trial by Field General Court Martial.

(a) I wish that an officer be assigned to act as defending officer.

(If Lieut. F.S. Allen, The Highland Light Infantry of Canada, is available, I wish that he may be assigned for this purpose).

In the Field

Signed: C. Ellerbrun

(A-36071 Pte. Ellerbrun C.W.J.

E 1 Cadogan
Army

M.F.R. 355
12M—8-40 (6433-6)
H.Q. 1772-39-610

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-38071	Pte.	Ellerbrun, G.".J.	R.L.I. of Can.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery / Conduct Sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, / Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.A. Sec. 9 (2) One times		Two times	
For	times	A.A. Sec. 40	One times	
For	times	A.A. Sec. 15 (1)	Four times	
For	times	A.A. Sec. 10 (4)	One times	

~~Number of occasions on which convicted~~
~~and~~
~~Nature of offence in respect of which convicted~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of accused by a court-martial or civil court, exclusive of summary awards under / Army Act / Air Force Act / Section 47 of the Army Act, the details of which are as follows:~~

~~3. Previous convictions of the present type~~

or,

~~The accused has the following convictions for~~ ~~during~~ ~~the~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and TWO days in military custody, making a total of TWO days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of ~~service~~ attestation paper is Twenty four years

6. ~~The date of his enlistment specified in his attestation paper is~~ The date of his attestation specified in his attestation paper is 10 Jun 1940

7. ~~The service which the accused is allowed to reckon~~

7. The service which the accused is allowed to reckon towards discharge is 2 years

8. ~~The accused is entitled to reckon~~ ~~for the purpose of discharge~~ 9 months

9. The accused is in possession of or entitled to no air force decoration or air force reward military / ~~Nature of air force decoration or reward~~

10. ~~If the accused is entitled to~~ The accused has no good conduct badge ~~or has~~ ~~the approximate date of~~

11. (In the case of an officer.) The statement should state the Royal Corps, Regiment, Battalion, Corps or Department in which he is serving, and in the regiment or corps in which the rank is held.

12. (If any ground for remission or mitigation of punishment is stated, the statement should state)—

Date of promotion

(In the case of) ..... (Rank) ..... (Name) .....

(In the case of) ..... (Rank) ..... (Name) .....

(In the case of) ..... (Rank) ..... (Name) .....

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A2807 Rank Pte

Name Ellerbeck E. W. J. of R. C. A. F. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Awarded
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd day of March 1943

Adjutant/Major

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

E 2 Cascoe wag

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
The Field	1941 26 Oct	Pte.		Breaking out of barracks i that he on 26 Oct 41 broke out of barracks when C.B. A.A. Sec. 10 (4) AWL from 2215 hrs 26 Oct 41 to 0600 hrs 27 Oct 41 (7 hrs 45 min) A.A. Sec. 15 (1)	Sgt. Plumstead Cpl. McAvoy	2 days F. of P.	1 Nov 41	Lt.-col. J.A. McIntosh	Forfeits 2 days pay by FR&I 149 (2) and 1 days pay by FR&I 149 (1) (a) Total 3 days forfeit of pay
The Field	1941 31 Dec	Pte.		AWL from 2200 hrs 31 Dec 41 to 1645 hrs 2 Jan 42. (1 day 18 hrs 45 min) A.A. Sec. 15 (1)	Sgt. Guil	8 days F. of P.	3 Jan 42	Major McPherson	Forfeits 8 days pay by FR&I 149 (1) (a)
The Field	1942 27 Jan	Pte.		Disobeying a lawful command given by his superior officer, in that he at 1700 hrs 27 Jan 42 did not move in order to make more room in the Messing Hall when ordered to do so by Sgt. Plumstead A. A. Sec. 9 (2)	Sgt. Plumstead	10 days F. of P.	28 Jan 42	Lt.-col. J.A. McPherson	Forfeits 10 days pay by FR&I 149 (2)
The Field	8 Jul 42	Pte		Disobeying a lawful command given by his superior officer in that he failed to get up at reveille on 8 Jul 42 when ordered by Cpl. Francis A.A. Sec. 9(2)	Sgt. Coyston	10 days F. of P.	9 Jul 42	Lt.-col. R.J. McPherson	Forfeits 10 days pay by FR&I 149 (2)

CERTIFIED TRUE COPY.....

No. A.38071 Name ELLERBEUN, W.J. Sqn., Battery, or Company Spt. Corps H.L.I. of C. Date of enlistment 10 Jun 40 G.C. Badges Service or Proficiency Pay

M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				SHEET NO. 1 DESTROYED 10-DEC- 40					
Quebec	1941 12/2/41	Pte.		Conduct to the prejudice etc. in that he refused to obey the order of his N.C.O. A.A. Sec. 40	L/Cpl. Cawthorpe	3 days F. of P.	13 Feb 41	Lt.-col. J. McIntosh	
Camp Debert	1941 16 Mar	41 Pte.		A.W.L. from 2359 hrs 16 Mar 41 to 2359 hrs 26 Mar 41 (10 days) A.A. Sec. 15 (1)	L/Sgt. Cooper	15 days Detn	27 Mar 41	Lt.-col., J.A. McIntosh	Forfeits 15 days pay under FR&I 149 (1) (b) and forfeits 10 days pay under FR&I 149 (1) (q)
The Field	1941 24 Oct	Pte.		AWL from place of parade appointed by his C.O. in that he was absent from duty (piquet) from 1800 hrs 24 Oct 41 to 2215 hrs 24 Oct 41 (4 hrs 15 min) A.A. Sec. 15 (1)	Sgt. Plumstead	2 piquet and 2 days C.B.	25 Oct 41	Capt. Durward	

5K-38

The Elliott, A.D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-56917 Pte Andrew Olsen ELLIOTT Nth Nova Scotia Highrs 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(c)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~[illegible]~~ beginning on (date) ~~[illegible]~~
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Nine months detention.

(Sgd) _____ 25 Feb 45 (Sgd) J.C. Lovat-Fraser RCE
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) Ralph Bellamy
Date 26 Feb 45 Commanding 2 CBRG
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

F56917 Pte Elliott, A.O. 1 Mar 45 _____ Lt-Col
Comde, 1 Cdn Disciplinary Centre

CR 160
2-8 Mar 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 JUN 1945 CMHQ OTTAWA

RECORDED AT CMHQ IN AB 160 5K 29

FIELD GENERAL COURT-MARTIAL

CPAMR (Tp. Issue of AFAS) 40/P & R/1000 (6/44) 4/38B

Convening Officer Brigadier G.S.N. Gostling, ED Comd 2 CBRG dated 24 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-56917	Pte	Andrew Olsen	ELLIOTT	NHS Highrs att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED
[illegible] Lt-Col
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 25 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 493, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 61-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1425 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (not) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO.~~
(1. KR Can 557. 2. AA 46(3), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

As President to accused: Do you object to _____ as interpreter? Ans _____
The Interpreter is sworn.(1) Do you object to _____ as Shorthand writer? Ans _____
The Shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A5. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Brig	J.C. Lovat-Fraser	RCE 13 CBR Bde
Member	Captain	S.G.G. Robichaud	CIC " "
Member	Lieutenant	J.L.A. Gautier	CIC 10 "
Judge-Advocate			
Prosecutor	Lieutenant	J.M.A. Patenaude	CIC 12 "
Defending Offr	Lieutenant	J.W.R. Hubert Reg't Chaplain	10

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 2.)

A8. The accused F-56917 Pte Andrew Olsen ELLIOTT before arraignment make(s) (no) (a) plea _____ (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (first) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 493 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3 A E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Nfld R 24.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (a) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 39, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your pleas and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (N). The Court decides (that) to advise accused to change his (their) Record of Guilty to Not Guilty on ——— charge(s). The accused is (are) so informed, and he (they) change(s) his (their) pleas to ——— charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... .(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ——— charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ——— charge(s), and allowed on the ——— charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ——— Do you intend to call witnesses on your behalf ?

Ans ——— Are they witnesses as to character only ? Ans ———

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 (ins 2, 9.)*

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. Bas(C). Make the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(H).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes on Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ——— charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3), (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans YES.

(1. *If evidence has already been given by accused or his witnesses as to his character, declare this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 14(3)(f) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex ——— respectively.(3)

(1. *MFB 353 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything less or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and then JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 3091, 3301, 363-366, Overseas RO 309, 2322, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), (d)(i), KR Can Sect. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Can Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F-86917	Pte		Andrew Olsen	ELLIOTT (WNSH)	1 Can Mechanical Transport Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 Feb 48 endorsed by me, (~~or by an offr of my staff for me~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated hereon~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J. C. LOVAT-FRASER		RCE 13 CBR Bn.

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by OC 13 CBR Bn.		13 CBR Bn.
Lieutenant	To be detailed by OC 10 CBR Bn.		10 CBR Bn.

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in KOREA (Country.)

Date 24 Feb 48

(Signed personally. RP 105 (b) 2.)

(G. N. Gostling)

Commanding 2 Can Base Rec Dp

Brigadier (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

4/38A (Page 1 to 2nd of 4pp) 40-7 & 8-1947 (4611)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(v) Exhibits numbered Ex A, Ex B, *etc.* (*As to admitting in evidence a certified copy of an exhibit see KR Can 560.*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 1 of Schedule on p 4 after minute of sentence awarded. (*AA 53(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S REPORT

I certify that No. 5247178 Pvt. Elliott A.C.
of A.D.B. is in a good state of health,
and fit to undergo Trial by Court martial.

W.M. Capt.
Medical Officer

Station. A.D.B.

Date 25/2/45

M. F. B. 246
20M—6-41 (793)
H.Q. 1772-89 600

(9)

F-56917 Pte ELLIOTT- accused sworn. NNSH. having been duly sworn states, that:-

I- F-56917- Pte Andrew Alexander Elliott, NNSH. at about 1215 hours 30 Nov 44, when on my way to lunch, Capt Bennett, of NNSH. O.C. "A" Echelon, stopped me, and asked me what I was doing there. I replied that Capt. Campbell, had told me to stay, until I was called for. He then told me to get out of there & that he did not want to see my face, any more & then he walked away.

C.S.M. Grant was standing near by & heard what I said. C.S.M. Grant winked at me, but did not say anything.

I then went & had my lunch & after lunch, I thought things over & decided if that was the way they felt about it, & that I was not wanted, there was no use in staying there.

I have never had any other crimes before, since enlisting in May 43 & have always tried to do my best.

I wish to go back to a fighting Unit, but not the NNSH, as there might be more trouble there.

Elliott AO

J.

EXHIBIT "D" (P).

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F.56917 Pte Andrew Olsen ELLIOTT, MNSH, presently attached to 1 Cdn Disciplinary Centre, charged with, absent without leave (AA Sec 15(1)).

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit 'A': Certified true copy of Extract from MNSH Part II Order No.5 dated 26 Jan 45.

Exhibit 'B': Certified true copy of Extract from MNSH Part II Order No.11 dated 10 Feb 45 showing record of Court of Inquiry.

Exhibit 'C': Certification of Apprehension dated 8 Feb 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I wish to give evidence on oath.

The accused, being duly sworn, states:

"I am F.56917 Pte Elliott, Andrew Olsen of the MNSH, Cdn Army Overseas. At about 1215 hrs on 30 Nov 44 I was on my way to dinner at the cookhouse at Regimental A Echelon when Capt Burnett of MNSH stopped me and said "What are you doing here?" I replied, "Capt Campbell told me to remain here until I was called for". Capt Burnett then said, "Get out of here, I don't want to see your face any more" and walked away. C.S.M. Grant was there at the time and heard what Capt Burnett said to me. I then went and got my dinner, thought things over and decided that I was not wanted so went absent."

(sgd) "Elliott, A.O."

The accused does not call any witnesses.

I certify that the foregoing summary of Evidence consisting of two (2) pages was taken down by me in the presence of the accused and that RP 4(a) (d) (e) (f) and (g) have been complied with.

(sgd) "J.F. Rutherford, Capt"
H.C. Sigs
Offr detailed to take Summary of Evidence.

Dated in the Field,
19 Feb 45.

EXHIBIT A

PART II ORDER EXTRACT FORM

TO Officer Commanding,
NORTH NOVA SCOTIA HIGHLANDERS,
Canadian Army Overseas.

99/20/NNS/1 (A5c)

13 FEB 1945

EXTRACTS FROM: UNIT NORTH NOVA SCOTIA HIGHLANDERS

Part II Order No. 5 dated 26 JAN 45

ABSENT WITHOUT LEAVE

AWL from 1500 hrs 20 NOV 44 Still absent 1500 hrs 12 DEC 44 (22nd day)
F56917 Pte ELLIOTT A C

This is exhibit A referred to in Summary of Evidence in the case of F56917 Pte Elliott A.C. taken before me this 19th day of Feb 45
J B Rutherford Capt

Certified to be a true extract from the regimental books or documents in my custody.

Officer IC Records
Cdn Sec GHQ 2 Ech 21 A Gp.

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials

Officer in Charge for
Canadian Section, GHQ, 2nd Echelon

70 HQS—6

EXHIBIT B.

PART II ORDER EXTRACT FORM

99/20/ NNS/1 (A5c)

TO Officer Commanding,
NORTH NOVA SCOTIA HIGHLANDERS,
Canadian Army Overseas.

13 FEB 19 45

EXTRACTS FROM: UNIT NORTH NOVA SCOTIA HIGHLANDERS

Part II Order No. 11 dated 10 F EB 45

STRENGTH DECREASE

SOS as des wef 11 JAN 45 having been dec illegally absent by A CT INQ from 1500 hrs 20 NOV 44 Deficiencies in kit £24-3-11
F56917 Pte ELLIOTT A C

This is exhibit B referred to in Summary of Evidence in the case of F56917 Pte Elliott taken before me this 19 day of February 1945

J. Rutherford Capt.

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Cdn Sec GHQ 2 Echn 21 A Gp

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials

for Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70 M.P.&S.

EXHIBIT C

CERTIFICATE UNDER ARMY ACT, SECTION 162 (1) (i)

Certified that No. F.56917 Rank Pte Name Elliot A.O.

of the N.N.S. Highlanders 3 Div Regt, ~~xxxxxxxxxx~~ No. L.55206

Rank L/C Name Laurie W. was apprehended by 2 Can LofC Pro Coy

at Ghent at 0200 hrs, on the 8

day of Feb 45 as an absentee without leave.

He was wearing ~~Civilian Clothes~~ Military Uniform at the time of his ~~xxxxxxx~~ arrest.

Place Field

Date 8 Feb 45

(H.W. Maheffy) Lieut.
Canadian Provost Corps
i/c Ghent Detachment

EXHIBIT "E"

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.56917	Pte	Andrew Olsen ELLIOTT (HNSH)	1 Cdn. Disciplinary Centre

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not delivered to the prosecutor.

† See para. 617, K.R., 1940.

* The numbers inserted should correspond with the number of entries in the conduct sheets, pursuant to the final direction to the court without offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	nil times	nil times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

*Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the ____ day of ____

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 151 days in military custody, making a total of 151 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 21

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 19 MAY 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ____

8. The accused is entitled to deferred pay or gratuity in respect of ____ service.

9. The accused is entitled to reckon ____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of ____

12. (*In the case of an officer.*) The accused holds in the army the rank of ____ dated ____ and in his regiment (*or* corps *or* department) the rank of ____ dated ____

(73336) W.L.24838/1756 30,000 10/43 A.G.R.H.W.Ltd. Gp.698
(28836) W.L.24814/1499 15,000 5/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (*or as the case may be*).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of FEBRUARY, 1945.

(J.E. Dibb) Capt
Adm Offr 1 Cdn Disciplinary Centre

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of	
In the rank of	years,
In the rank of	years,
In the rank of	years,

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a Peak by field general court-martial the information may be obtained from such sources as are available and the paragraphs concerned amended accordingly.)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F-56917 Pte Andrew Olsen ELLIOTT, Nth Nova Scotia Highrs 1 Cdn Disciplinary Centi

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

[redacted] (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court :

NINE MONTHS DETENTION

(Sgd) ..... Judge-Advocate, if any. 25 Feb 45 Date awarded. (Sgd) "J C Lovat-Fraser" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

I, [redacted] (1. AA 57A. Delete if not used.)

(Sgd) "GSN Gostling" Brigadier

Date 26 Feb 45 Commanding 2 CBRG Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F-56917 Pte ELLIOTT, A O	1 Mar 45	"A O Hood" Lt-Col Comdg 1 Cdn disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5K-27

FIELD GENERAL COURT-MARTIAL

CPA86 (To prec of APA3) 40/P & S/1898 (40/1) 4/38B

Convened by Order of Brigadier GSN Gostling, ED Comd 2 CBRG dated 24 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-56917 Pte		Andrew Olsen	ELLIOTT	NNS Highrs att 1 Cdn Disciplinary Centre

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 25 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 25/19

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fme RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation or procedure will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs as how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [redacted] attached thereto. The Court is satisfied that it is properly convened and constituted(1), accused is [redacted] amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [redacted] brought before the Court. At 1425 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [redacted] fit to undergo trial by court-martial.(1)

[redacted]

(1. KR Con 557. 2. AA 46(B), RP 50 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. [redacted]

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 50(B). If objection, see procedure AA 31, RP 25, 71, 10, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J C LOVET-FRASER	RCE	13 CBR Bn
Member	Captain	S G G ROBICHAUD	CIC	" " "
Member	Lieutenant	J L A GAUTIER	CIC	10 " "
Judge-Advocate				
Prosecutor	Lieutenant	J M A LALONDE	CIC	13 " "
Defending Offr	Lieutenant	J W R HUBERT	Reg de Chaud	10 " "

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Dr p 2.)

A8. The accused F-56917 Pte Andrew Olsen ELLIOTT before arraignment make(s) (no) [redacted] plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or on to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is [redacted] arraigned [redacted] on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 495 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

The Court ~~overrules the accused's statement.~~ (1) The Court decides (not) to advise accused to change his plea to Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) (~~elects to plead~~) ~~pleads~~ Guilty to Not Guilty on charge(s). Part I of the Schedule is amended accordingly.

charge(s). His (their) plea(s) to ~~the~~ charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. D initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by employing with paras D1 to D8 inclusive on Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 355. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AR5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Make the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A).* 2. *RP 44(B).* *See Notes in Part I of Schedule.*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (c), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)

Ans. NO

(1. *If evidence has already been given be accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. E and Ex. respectively.(3)

(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 358. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(2) Ans. NO

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purpose, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 185, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-344, Overseas AO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 344.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 347. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F-5[illegible]917 Pte Andrew Olsen ELLIOTT, North Nova Scotia Highlanders, presently attached to 1 Cdn Disciplinary Centre, a soldier o the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, HOLLAND, did absent himself without leave from 1500 hrs 20 Nov 44 until apprehended at 0200 hrs 8 Feb 45. (Total time absent: 79 days 11 hrs)

In the field
16 Feb 45.

"A O Hood" Lt-Col
Commanding Officer
1 Cdn Disciplinary Centre

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
24 Feb 45.

"GSN Gostling" Brigadier
Comd
2 Cdn Base Rft Gp

CD.

CFA95 (In lieu of AFA5)
40/FAR/1097 (2nd)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-56917	Pte	Andrew Olsen	ELLIOTT	(NNSH) 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[s] named above as the accused, being subject to military law, has [~~xxx~~] committed the offence[s] set forth in the Charge Sheet [~~x~~] attached and on (date) 24 Feb 45 endorsed by me, [~~xxxxxxxxxxxxxxxxxx~~] " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence[~~x~~] should be tried by an ordinary General Court-Martial ; [~~xxxxxxxxxxxxxxxxx

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40–42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 80(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn* 1(6)), *or* evidence by accused, as to facts or his character or both. (*See RP 41 fn* 2, *46 fn* 1, *80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*B*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 81.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in the following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95 (D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 114(C), MML p 752.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.



CHARGE SHEET

The accused, F.56917 Pte Andrew Olsen ELLIOTT, North Nova Scotia Highlanders, presently attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, HOLLAND, did absent himself without leave from 1500 hrs 20 Nov 44 until apprehended at 0200 hrs 8 Feb 45. (Total time absent: 79 days 11 hrs)

In the Field,
16 Feb 45.

(A.C. Hood) Lt-Col
Commanding Officer
1 Cdn Disciplinary Centre.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field,
17 Feb 45.

(C.S.F. Costling) Brig,
Comd
2 Cdn Base Rft Group.

CMO.

MEDICAL OFFICER'S CERTIFICATE (KR(Can) Para 557)

I certify that I have this day examined F-56917 Pte ELLIOTT ,A.O.

of 1 CDC is in a good state of health and in my opinion he is fit xxxxxx to undergo

trial by Court Martial.

"M Sama" (?) Capt

Medical Officer

Station 1 CDC

Date 25/2/45

Unit

F-56917 Pte ELLIOTT, Andrew Olsen, NNSH having been duly sworn states that:

I , F-56917 Pte Andrew Olsen ELLIOTT, NNSH, at about 1215 hrs 20 Nov 44 when on my way to lunch, Capt BENNETT, of NNSH, OC "A" Echelon, stopped me, and asked me what I was doing there I replied that Capt Campbell had told me to stay, until I was called for. He then told me to get out of there and that he did not want to see my face, any more and then walked away.

CSM GRANT was standing near by and heard what he said. CSM GRANT winked at me, but did not say anything. I then went and had my lunch and after lunch I thought things over and decided if that was the way they felt about it, and that I wasn't wanted, there was no use in staying there.

I have never had any other crimes before, since enlisting in May 43 and have always tried to do my best.

I wish to go back to a fighting unit, but not the NNSH, as there might be more trouble there.

"Elliott A O"

Exhibit "D"

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F-56917 Pte Andrew Olsen ELLIOTT, NNSH, presently attached to 1 Cdn Disciplinary Centre, charged with, absent without leave (AA 15(1)).

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" Certified true copy of Extract from NNSH Part II Order No.5 dated 26 Jan 45.

Exhibit "B" Certified true copy of Extract from NNSH Part II Order No.11 dated 10 Feb 45 showing record of Court of Inquiry

Exhibit "C" Certification of Apprehension dated 8 Feb 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I wish to give evidence on oath.

The accused, being duly sworn, states:

"I am F-56917 Pte Elliott, Andrew Olsen of the NNSH, Cdn Army Overseas. At about 1215 hrs on 20 Nov 44, I was on my way to dinner at the cookhouse at Regimental A Echelon when Capt Burnett of NNSH stopped me and said "What are you doing here?" I replied, "Capt Campbell told me to remain here until I was called for." Capt Burnett then said, "Get out of here, I don't want to see your face any more" and walked away. C.S.M. Grant was there at the time and heard what Capt Burnett said to me. I then went and got my dinner I thought things over and decided that I was not wanted so went absent."

(Sgd) "Elliott A O"

The accused does not call any witnesses.

I certify that the foregoing summary of Evidence consisting of two(2) pages was taken down by me in the presence of the accused and that RP 4 (c) (d) (e) (f) and (g) have been complied with.

(sgd) "J F Rutherford, Capt"
R.C. Sigs
Offr detailed to take Summary of Evidence

Dated in the Field,
19 Feb 45.

EXHIBIT "A" -C-

PART II ORDER EXTRACT FORM

NMS/1)A5c) 45

TO: Officer Commanding, NORTH NOVA SCOTIA HIGHLANDERS Canadian Army Overseas. 13 Feb

EXTRACT FROM: NORTH NOVA SCOTIA HIGHLANDERS dated 26 Jan 45

Part II order No. 5

ABSENT WITHOUT LEAVE

AWL from 1500 hrs 20 Nov 44 until absent 1500 hrs 12 Dec 44 (22nd day)
F-56917 Pte ELLIOTT, A O

This is an Appendix to an Affidavit of Evidence in the case of F 56917 Pte Elliott, A.O. taken before me this 14th day of Feb 45 at [illegible]

"J R Fenelon" Capt "C"

The following documents are [illegible]

originating clerks initials

EXHIBIT "B"

PART II ORDER EXTRACT FROM

NNS)1(A5c)

Offider Commanding
NORTH NOVA SCOTIA HIGHLANDERS
Canadian Army Overseas.

13 Feb 45

NORTH NOVA SCOTIA HIGHLANDERS

10 Feb 45

11

STRENGTH DECREASE

SOS as des wef 11 Jan 45 having been dec illegally absent by a CT INQ from 1500 hrs 20 Nov 44 Deficiencies in kit $24-3-11

F-56917 Pte ELLIOTT, A O

This is ex B referred to in Summary of Evidence in the case of F 56917 Pte Elliot, A.O. taken before me this 19th day of Feb 45

"J R Fenedon" Capt

EXHIBIT 'C'

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARTICLE OF SECTION 103(1)(j)

I certify that No. F-56917 Rank Pte Name ELLIOTT, A.D.
was apprehended by L-55026 L/C Laurie W of
of HNS Highlanders 3 Div
2 Cdn L of C Pro Coy at GHENT 0200 hrs on 8 Feb 45
(place) (date)

He was dressed in uniform

Place Field
Date 8 Feb 45

Signature of Provost Marshal, APM, or other officer into whose custody the a/m person was taken on arrest.

"H W Mahaffy" Lieut
Canadian Provost Corps
i/c GHENT Detachment

Signature & Rank

Unit or appointment

Exhibit F-2

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or at the case may be).*
F-56917	Pte	Andrew Olsen ELLIOTT	(NNSH) 1 Cdn Disciplinary Centre

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be summed to the proceedings. The numbers herein stated should correspond with the number of days in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special act of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For NIL — NIL times.

For _____ — _____ times.

For _____ — _____ times.

For _____ — _____ times.

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the _____ day of _____

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 17 days in military custody, *i.e.*, NIL days in open arrest, 17 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 21

6. The date of his attestation [illegible] is 19 May43

7. The service which the accused is allowed to reckon is _____

8. The accused is in possession of† _____

†State the military decoration (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of _____	_____
In the war substantive rank of _____	_____
In the acting rank of _____	_____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(47855) 20,000 8/44 SL-4755. Forms/B.296/War/5

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 23rd day of FEBRUARY 1945

"J Dibb" Capt
Adm Offr 1 Cdn ~~Disciplinary~~ Centre

BK-94.

Mr. Elliot E.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 135488 Pte. Elliot E.R.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	CHARGE	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(4). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(4) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E.2.)

Sentence Awarded by the Court:

To undergo DETENTION FOR 1 (ONE) YR.

(Sgd) ..... Judge-Advocate, if any. 14 May 45 Date awarded. (Sgd) D F Kennedy President. (RP 45, 50.) N/A

(See back of Convening Order as to disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 45. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed for trial or detention before a court further (or)~~ (1. AA 57A. Delete if not used.)

Date 15 May 45 (Sgd) ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
B135488	19 May 45	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 150 5K-94

FIELD GENERAL COURT-MARTIAL

CFA68 (in lieu of AFA81) 40-P & D/1698 (5-45)

4/38B

RECEIVED 5 JUN 1945 JAG Br

By Order of Brig F N Cabeldu Comd 4 CDN INF BDE Dated 12 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B135488	Pte	Edgar Ryerson	ELLIOT	Essex Scot

PROCEEDINGS REVIEWED

PROCEEDINGS REVIEWED

J H Riordon Capt 12 June 45

REVIEWING OFFICER, JAG BRANCH CMHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 14 May 45 Odn, Sec 1 CDN Inf Bde

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 131.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ an interpreter? Ans ~~The Interpreter is sworn.(1). Do you object to~~ the shorthand writer? Ans ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No, Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D.F. KENNEDY	R.H.L.I
Member	CAPT	R.D. McNALLY	R.R.C
Member	LIEUT	R.W. MADEN	R.R.C.
Judge-Advocate			
Prosecutor	LIEUT	E.R. THOMPSON	~~Essex Scott Regt~~ R.R.C
Defending Offr	CAPT	J.R. LEARN	Essex Scott Regt

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (2) and fn 2 were not followed. See D4 p 83.)

A8. The accused ..... before arraignment make(s) (no) ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(5), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the submissions made on support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full nature and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is (no) amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, discuss and make appropriate record per Notes.) (3. When more than one Charge Sheet see RP 52; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings.)

A10. The Court is closed and, considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. Book

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Forms C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83.85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nil.(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para C3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty as to charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) as to charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. X, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by vce of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds as complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (b), 90. 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 485. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)

(*1. MFB 355 or MFB 294. 2. MFN 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 6 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, in Mitigation of Sentence. (Ex C)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-344, Overseas AO 309, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 367. As to assembly and dispersal of relevant other trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D.F.K.

CHARGE SHEET

B135488 Pte Edgar Ryerson ELLIOTT, 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army Overseas, on Active service, is charged with:

FIRST CHARGE
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, on 29 MAR 45, absented himself without leave from 0800 hrs 29 MAR 45 until he reported in at 1630 hrs 25 APR 45 (Absent 27 days, 8 hrs, 30 min.

(K.W. MACINTYRE) Major
A/Commanding Officer
THE ESSEX SCOTTISH REGIMENT.

In the Field

26 APR 45

To be tried by Field General Court Martial.

Brig
Comd
4 Cdn Inf Bde

In the Field

12 MAY 45

D.F.K.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B135488	Pte		Edgar Ryerson	ELLIOT	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 May 45 endorsed by me, [illegible] " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(L). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	D F Kennedy		RHLI

MEMBERS.

A Capt or Lt to be detailed by R Regt C

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
A Capt or Lt	to be detailed by R Regt C		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
A Capt or Lt	to be detailed by RHLI		

[illegible]

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (Country.)

Date 12 May 45

(R. C. Keeldu) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Commanding 4 CDN INF BDE Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FA38 / To amend AFA3 of 9 Feb 43 / 1000)

(See overleaf for points and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2892.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to *RP 95(A)* and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1450 hrs on 16 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or, None.*)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to *RP 95(A)*, be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, *RP 83(B)* should be complied with. If taken verbatim, *RP 83(C)* will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA. (RP 46 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), KR Can 562(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 562. As to certified copies of regimental books see AA 163 (1) (g) (ix).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 55(9), RP 119(C), MML p 709.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

DFK.

I hereby certify that I have this morning examined B135488 Pte. ELLIOTT, H.F. of 1st Bn., The Essex Scottish Regiment and in my opinion he is fit to undergo trial by Court Martial

In the Field
~~17~~ APR ~~45~~

14 MAY 45

C.A. RICHARDSON CAPT.

(C.A. RICHARDSON) Captain,
R.C.A.M.C.

Ex C.

D.A.R.

Statement in mitigation of Sentence in the case of #135488 Pte. Elliot C.R.

Defending Officer:- Capt. J. R. Learn.

Pte. Elliot was in my B. in this Unit from July 44 until March 45, during which time he discharged his duties as a soldier to my satisfaction. The time Pte. Elliot took it upon himself to go A.W.L. the Unit was out of the line and had been in that state for over a week. Further Pte. Elliot has had no other crime, since leaving Canada and no major crimes during his service in the army. Finally this soldier was not apprehended but did make his own way back to his Unit, which took a period of four days, inasmuch as the Unit was some distance from the Reichswald forest, where he had left it.

Taken down this 14th day of May 45., by

J. F. Kennedy Major.

Ex (X)

DSK

Summary of evidence in the case of No. B135488 Pte R. Sgt R[illegible]son Elliott, 1 Bn The Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights

The CO directs that the evidence be taken on oath.

First witness for the prosecution: A-21533 Sgt Olsen C.R. 1 Bn The Essex Scottish Regt (sworn) states:

"I am A 21 533 Sgt Olsen CR, pl sgt of No 3 Pl (mortars) Sp Coy, The Essex Scottish Regiment At approximately 0800 hrs 29 March 45 I called the Pl roll and B-135488 Pte Elliott, E.R. failed to answer his name. I searched the pl and coy area but could not find him. I did not see him again until approx 1630 hrs 25 Apr 45 when I told him to report to the BQR D Echn.

The accused declines to cross-examine.

Carl R. Olsen

Second witness for the prosecution: A-82003 A/Sgt Munro R.D. 1 Bn The Essex Scottish Regt (sworn) states:

"I am A 82003 A/Sgt Munro RD. Bn Orderly Room Sgt. 1 Bn The Essex Scottish Regt. At 1815 hrs on 25 April 45, B-135488 Pte Elliott E.R. whom I recognize reported to me stating that he had returned from being AWL. I placed him in close arrest and turned him over to the Unit Provost at D Echelon.

The accused declines to cross-examine.

R. D. Munro.

The accused having been duly cautioned in accordance with R.P. 4(E) says:

"I do not wish to make a statement at this time"

E. Elliott. S.R.

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 4 complied with
In the field
26 Apr 45

LT.
OFFICER DETAILED TO TAKE
THE SUMMARY

I wish to have Capt. J. R. Learn to defend me in case of Court-martial.

E. Elliott. S.R.

D.O.K.

Ex (W)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

B135498 Pte Edgar Ryerson ELLIOTT ..... of THE 1st BN.,

THE ROYAL SCOTTISH REGIMENT.

1. The following is a fair and true summary of the entries in the Regimental and Company conduct sheets of the Accused, exclusive of convictions by a Court Martial or a Civil Court, of summary of awards under Section 47 of the Army Act and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment
Absence without leave	nil times	one times
Neglect to the prejudice	nil times	one times
Conduct to the prejudice	nil times	five times
	..... times	..... times
	..... times	..... times

(2) Number of instances of gallantry or distinguished conduct.

nil

~~There are no entries in the Conduct Sheets of the Accused~~

2. The accused has not been previously convicted.

~~Previous convictions of the accused by a Court Martial or a Civil Court, summary awards under Section 47 of the Army Act, or dispensations with trial under Section 55 of the Army Act, are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence as follows:~~

~~.....beginning with the ..... day of~~

4. The accused has been in confinement, awaiting trial on the present charges for ..... day in civil custody and ...17..... days in military Custody. Total .....17..... days, of which ...nil..... days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is ...21 years...

6. The date of ~~his Commission~~ specified in his ~~attestation paper~~ record of service is ...17 NOV 42...

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ...Nil...

8. The accused is entitled to reckon ...Nil... years' service for the purpose of determining his pension, etc.

9. The accused is entitled to deferred pay or gratuity in respect of ....Nil... years service.

10. The accused ~~is in possession of, or entitled to, no military decoration or military award/ or~~ is in possession of or entitled to ...CVSM and Clasp...

11. (If the ~~accused is a warrant officer,~~) The accused before ~~he~~ was a warrant ~~officer~~ ~~last held the provisional rank of~~ _____

12. (In ~~the case of an officer,~~) The accused holds in the army the rank of _____, dated _____, ~~and in his regiment (or corps~~ or department) ~~the rank of~~ _____, dated _____

13. The ~~accused has served as a non-commissioned officer~~ _____ continuously, without reduction, ~~to the present date.~~

~~Date of Promotion~~

~~In the rank of~~ _____, ~~years~~, _____

~~In the rank of~~ _____, ~~years~~, _____

~~In the rank of~~ _____, ~~years~~, _____

(Instruction.--- If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the President, and annexed to the proceedings.

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF SUMMARY AWARDS UNDER SECTION 47 of the ARMY ACT UNDER WHICH TRIAL HAS BEEN DISPENSED WITH

Army Number, Rank and Name ...B-13547 Pte. Elliott Edgar Ryerson...of the 1st Bn., THE QUEEN SCOTTISH REGIMENT.

Note: A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Offr disposing of the charge or dispensing with trial	Date and Place of Trial, or summary award, or of order dispensing with Trial.	Charge upon which convicted, or in respect of which trial was dispensed with.	Sentence of the Court, or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		nil		

I HEREBY CERTIFY that the foregoing Schedule of Convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of May 1945

R.S. Macdonald Capt & Adjt

(A.F.B. 296)

No B135488 Name Tpr. Elliot,RE Sqn., Battery, or Company | Corps CIC | Date of enlistment 16-11-42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 2 (A.F.B. 1327)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. ??? Major | Character

Place	Date of offence	Rank	Cases of drunkenness	ORIGINAL SHEET DESTROYED 5-6-43 RFM	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Meaford, Ont.	3-7-43	Tpr.		Sec40 AA"An act to the prejudice of Good order & military discipline"whilst on duty at Meaford Ont. did improperly use DND vehicle for private purposes.	RB TIMMERMAN Capt	168 hrs Det.	5-7-43	GY Masson Lt-Col RFM	
Camp Borden, Ont.	6-11-43			Sec40 AA"Neglect to the prejudice of good order and military discipline"in that he neglected to do a last parade on his vehicle."	QMS Belan	Awarded summary Perf. 2 dys pay 5-11-43 under Sec46 AA		HW Steel Lt-Col RFM	
Camp Borden, Ont.	8-11-43			Certified last entry to date 8Dec43		???????? Major			
Camp Borden, Ont.	25-2-44	Tpr.		Sec15(1)AA AWL from 0600 hrs. 25 Feb44 until 2030 hrs 28 Feb44 Absent 2 days 14hrs 30 min "Open arrest"	DOCUMENTARY	5 days C.B.	29-2-44	Capt FH WHEELER	3 days pa & Allow FRI 149 i.a.

Certified True Copy

SUMMARY OF EVIDENCE

In the Case of B135488 Pte Edgar Ryerson ELLIOTT, of the 1st Bn., The Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: For the Prosecution

A21533 Sgt Olsen, C.R., 1st Bn., The Essex Scottish Regiment, having been duly sworn, states:

"I am A21533 Sgt Olsen, C.R., Pl Sgt of No 3 Pl(Mortars) Sp Coy, The Essex Scottish Regiment. At Approximately 0800 hrs 29 MAR 45 I called the Pl roll and B135488 Pte ELLIOTT, E.R., whom I recognize, failed to answer his name. I searched the Pl and Coy area but could not find him. I did not see him again until approximately 1630 hrs 25 APR 45 when I told him to report to the BOR 'A' Ech."

The accused declines to cross-examine the witness.

Sgd. "Carl R. Olsen"

The accused having been duly cautioned in accordance with R.P.4(c) says,

"I do not wish to make a statement at this time."

Sgd. "Elliott, E.R."

The accused does not wish to call witnesses in his defence at this point.

Certified that R.P. 4 complied with.

In the Field
26 APR 45

Sgd.(H.A. SECORD) Lt
Offr detailed to take the Summary.

SL-123

Mr. Elliott, E. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	Not Guilty	guilty	
2nd	A A Sec 40	Not Guilty	guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 30 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of One (1) year

(Sgd) [illegible] 9 May 45 (Sgd) [illegible] President. (RP 45, 50)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(4), RP 125(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Can 562-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(3), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 52, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 27, 27A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 27A. Delete if not used.)

Date 9 May 45 (Sgd) [illegible] Lt Col
Commanding C.R.C.A.S.C. 4 Cdn Armd Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A-88706 Pte. MOORE, W.J.	14 May 45	[illegible] (A/A.P. Salaire) Major 60 A Cdn Armd Div Tps Coy RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 18 JUN 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ AS AD 150 - 52-123.

FIELD GENERAL COURT-MARTIAL

4/38B

Convened at HQ 4 Cdn Armd Div dated 7 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or war substantive rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 88706	Pte	William James	Moore	4 Cdn Armd Div Tps Coy RCASC

PROCEEDINGS REVIEWED [illegible] Capt
27 June 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 9 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 32/134

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Contains as NOT include all relevant fms ROS. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. "as back of Convening Order, CF AFO, for duties and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 103-107. 3. RP 11-12, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(2), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 72, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major R.M. Longbotham	4 Cdn Armd Bde Coy RCASC
Member	Capt A.A. Garland	4 Cdn Armd Bde Coy RCASC
Member	Capt E.M. Hughes	10 Cdn Inf Bde Coy RCASC
Judge-Advocate	Major E.E. Wasson	DJA 1st Cdn Armd Div
Prosecutor	Lieut P.W. Dunne	4 Cdn Armd Div Tps Coy RCASC
Defending Offr	Lieut B.T. Moore	Winnipeg Motor Transport Co

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans N.D.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment makes(s) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by use of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) plead to each charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF AFOs to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

AB166 Oct 14/57.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty to* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will thereto, or,* (iii) *proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; assisting and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whichever part is not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not charged the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here: Loose Sheets of Record. - 3 -

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO, SIR.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans NEITHER Do you intend to call witnesses on your behalf ?
Ans YES Are they witnesses as to character only ? Ans YES - ONE
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 695. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 113(a). See Notes in Part I of Schedule. 2. RP 44(A).*)

~~D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s)~~ of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, ~~and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (5), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative pronouncement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES witness as to character
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex X and Ex Y respectively.(3)
(*1. AFB 255 or AFB 296. 2. AFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by my Defending Officer.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 44, 138, 182, RP 46-50, 99, 118, 119(A), KR Can 308, 330, 363-364, Overseas RO 809, 2323, MML p 66, 733-738. As to sentences consequent for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accussed A-55706 Pte Edward James ELLIOT, [redacted] Group, TCV Det. 4 Canadian Arm'd Div Troops Coy, RCASC, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

-in that he-

in the field, in Germany, on 10 April 1945 did fraternize with German civilians, inhabitants of Germany, by entering their homes and drinking with them.

Second Charge
Sec 40
Army Act.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

-in that he-

in the field, on 10 April 45 due to previous indulgence in intoxicating liquor was incapable of carrying out his duty.

Field,
2e April 1945.

(D.E.Lewis)Capt.,
O.C. TCV Det. RCASC,
4 Cdn Arm'd Div Troops Coy.

f. & found by Field General Court Martial

8 May 45

Court Exhibit

FIELD GENERAL COURT-MARTIAL

CFAO 35 (In lieu of AFAO 40/FAN/1097 (SD&E))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-55786	Private	Edward James	ELLIOT	TCV Det, 4 Cdn Armd Div Tps Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~been~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 May 45 endorsed by me, (~~as the Offr Commanding~~) To be tried by Field General Court-Martial ";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~AND WHEREAS IT IS NOT PRACTICABLE TO DELAY THE TRIAL FOR REASONS OF SUPERIOR MILITARY EFFECT~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason that no such Officer~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	C.M. Longbotham	4 Cdn Armd Bde Coy
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

Capt	A.A. Garland	4 Cdn Armd Bde Coy
Capt	E.J.K. Hughes	10 Cdn Inf Bde Coy
(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

Capt	J.R. Chisholm	HQ RCASC 4 Cdn Armd Div
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

Capt	E.E. Wasson	HQ 4 Cdn Armd Div
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (Country.)

(H.E. Miller) (Signed personally. RP 105 fn 2.)

Lieut-Col. (Rank.)

Date 7 May 45

Commanding RCASC, 4 Cdn Armd Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for outline and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Con) 2693.)*

Je jurs, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(E)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A), Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 98 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn, or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute awarding sentence. (*AA 53(3), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", unless otherwise directed.

4TH CDN ARMD DIV TPS COY, A.C.A.S.O. 4 DTC 4-6

Date 9 May 1945

MEDICAL OFFICER'S CERTIFICATE A55766

I certify that I have this morning examined No.

Rank Pte Name ELLIOTT, E.J.

of 4 Cdn Armd Div Troops Coy RCASC

and in my opinion he is fit to undergo trial by Court-Martial

Station Field

Date 9 May 45

Medical Officer

2. The correct endorsement on the NPW 6 and Statement of Cha
ract[illegible] and Particulars of Service is as follows:-

F for Witness for the Prosecution.

Lieut. F. P. Gasocque, R [illegible] Pro-Div Pros. Sec. WCIS C,
having been duly sworn states:-

I am Canad by Frs. TCVS 4 Cdn Armd Div

9 Apr 45 I attended and Frs rendered by H. Coll C
Volkman OC Unit & Wed Regt. Particulars of TCV Frs
is attached. Later I came into OC Frs with my aide to
effect removal of non-prisoners & surrender
17 Apr 45 an order by Lance Wed Regt from Corps,
17 Apr 45 was read & Regt in process, the accused
was in charge of the Regt at the time (Order
Marked by Prosecutor, marked Exhibit A
and signed by the Frs.)
Subsequently Ex A was proved by accused
and filed later as part of files he maintained
as Regt Clerk.
10 Apr 45 we were in Regt, Germany, when the
Germans counter-attacked the Town and all troops
were ordered to stand to.
About 1 pm I was standing by the POW Cage and
saw the accused, walking down the street with two
German women and one German man. I called to
him and asked where he was going. His reply was
that he was taking these people to the doctor because
they were afraid of the firing. I ordered him to
return to his area and let them go alone.
About ½ hr later, I went into my kitchen which
was located at the rear of the Battn's stores
and glancing thru a glass door saw the
accused sitting in a room with a number
of German civilians. I went into the room
and ordered him to leave the house and
told him he must not go back in that area as
was fraternizing.

The accused went out of the house but when I returned at about 1030 hrs I saw 2 soldiers in same room, one of whom was the accused. I went into the room and saw that there were some German civilians and the 2 soldiers accused and other soldier were sitting among them with bottles and glasses at their side.
I placed the accused and other soldiers under open arrest and told them they would be charged with fraternising also.
Later on I saw the accused lying sprawled on the sidewalk asleep. I ordered Cpl. Quadros V.R. & Rumani the accused & the house and then turned right Cpl. Quadros walked with me in my presence, and the accused had his dinner. At this time the accused's face was flushed and he walked unsteadily.
Later - may be ½ hr - I went behind the house where we were billeted where there was a garden separated from POW cage by a hedge and there through this hedge I saw the accused speaking with a female civilian who was in the cage.
I then called two soldiers and placed him in close arrest.
I state that by my instruction there was a distribution of cards warning against fraternising also of April 45
I do not think it was duty of accused to walk on street with German civilians.
The liquor was not issued by the Troops. I don't know where it came from.
When I had accused put under close arrest he had to be assisted by his escort
After being placed under close arrest he was put in a house - about 4 to 5 hrs as I came off

Otta heard - he shut his head out the window and said - "What is this - an invitation to fuck off!"
When placed under close arrest he was not in condition to carry out his duties.
In this case orders were that anyone would be ready to stand too. Some soldiers were posted as adjacent sentries. I assume
The accused's duty was as herb by Cpl. Madsen stand-to that not given any special duty.
X-examination -
Accused did return immediately to area when ordered to do so.
The detention cell was not used by our people - if it was used by them it was without my knowledge or consent.
I did not actually see accused talking with Corleans at any time.
I doubt even if lorries were shuttling.
Accused was shuttling in any Corleans.
If a human resource tries to make statements it were official matter I would report them to him - otherwise I would discreet them
I have power to return about official matters which is not pertaining my.
Cpl Madsen would presumably warn accused.
At stand-to, accused would normally remain in the office
In case of stand-to, accused job is to do what his superior tells him to do.
I did see Elliott without his weapon - the only time I saw him with it was when he was escorted by civilians down the street.
I was reliably sure that accused was drunk by the time he was in the street.

I doubt knows nationality of female POW in cage of whom accused was speaking.
Civilians were rounded up that morning as a detail rescued by civilian surgeon.

By the Court.-

I had a long discussion by Lt Schutt of "with my troops. I don't know accused was there - I silently take up duty and was there.
We had had food to before, accused knew what he was to do - stay in Orderly Room with me.
I don't know if accused spoke German.

Judge advocate.

The accused was with German civilians, in habitant by Germany in the kitchen.
In my opinion the accused was drunk from the time I put him under open arrest.
He seemed to get more drunk after dinner.
He was improving by time I put him
O "B" Echo approx. 1400 hrs.

(RP 83 B complied with)

Second Witness for The Prosecution

H 92044 Pte Warren C.E. of 4th Can Armd Div
Tpt Coy A.C.A.S.C having been duly sworn states
I am a member of "E" Tpt. PCV's and have been
such since it started.
10 Apr 45 I was in Vogel. At that time I
knew about 100 prisoners of whom accused
Little and had come out just before that.
I have no personal knowledge of action of
accused on that day. I saw accused after
he had been put under close arrest.
I heard Lt Lessigne say - "Where are you
going Elliott" I remember Elliott but I
heard him say something about going to Lt C.

X - examination.
I was posted at A.O.W. Cage as a guard. I couldn't see or hear accused from where I was.
I don't know anything about accused taking [illegible] articles in the cage.
I think accused was taking part in a fight - in my opinion he was not drunk - he was under influence of liquor I suppose.
I would say a man was drunk when he didn't know what he was doing and was laying out in the ground. (RPS 3 B complied with)

Third Witness for the Prosecution.
H 52083 Cpl. Meadows V.R. 4 Coy Armd Div. Type Coy R.C.A.S.C. having been duly sworn states.
I am a member of the Type TCVS.
10 April 45 we were in Vogel. I was standing at Pl Hqrs I couldn't find accused to warn him by Standing. I have no knowledge of accused having with civilians.
He was placed under arrest at about 1100 hrs.
I saw accused lying down by Kitchen - he was asleep - not carried on a stand - To whom I would hand for dinner he got might up. I'd say he had been drinking. I wouldn't say he was drunk.

X - examination.
When I was in was accused he staggered.
He could not have carried out his duties on stand to. (RPS 3 B complied with)

Fourth Witness for the Prosecution.
H51783 Cpl Hoag L.R. 4 Can Armd Div Type Coy R.C.A.S.C. having been duly sworn states -
I am a member of the Type TCVS. and know accused 10 April 45 we were in Vogel I observed

— in Royal Canning Jeffreys. I saw accused
— in our club room to — in and — met room
Obans a drink of wine. There was Mr. Elliot
and some civilians and — my self. Accused
accused poured out half a glass of wine for
me. I got half way through drink
when the Sergeant-Major took it as
under arrest. Neither I nor accused had
any conversation with civilians.
I then went to room I was staying in.
I didn't see accused again. I was charged
before Coy Comd and my case was read
by me in respect of theft of prize about 14th Oct
45.
X-examination.
When I went into room with accused it
was just time that we were there. I thought
it was under our charge.
Accused poured me liquor to civilians.
I did not think I was committing a crime
having a drink.
I would not say accused was under influence of
liquor at the time nor incapable of carrying
out his duties.
By the Court.
Accused was in room with civilians he
opened the door and asked me in.
The civilians were around there and accused
was sitting at a table away from them.

(RP 8 & 13 consolidated)

Fifth Witness for the Prosecution.
H87544 Pte Merritt R.D.4 Cdn Army Cdn Ammo Fpo
Coy RCASC having been duly sworn states.
I am a member of "E" Coy. JCVs and know
accused.
10 April 45 we were in Legal. There was a couple
attached. We were also Guard To.
Cpl Fassiqua appointed me one of guards
to look after accused. When I went for him
he was leaning against the fence of the POW Cage
I had to help him. He was under the
influence of liquor. I can't say he was
drunk. Tables a doctor's cert. He was
incapable of carrying out his duties on
a Guard To I would not take charge of
setting in a room bound and having
drinks.

X-examination.
He could walk alone when I was his
escort. He was staggering a bit. I don't
know of him talking to POWs.
I don't think talking to German civilians in
course of duty would be prejudicing.
(RP 83 B complied with)

Sixth Witness for the Prosecution
H51739 Pte/Cpl McMahon W. 4 Cdn Armd Div
Fpo Coy RCASC having been duly sworn
states.
I am in "E" Coy JCVs accused was clerk
and handed paper Exh "A" was read out
Witness on parade. ~~He was~~ accused
was not on parade. Exh "A" was then handed
in (Not taken either by ~~the~~ accused or
myself. The accused would take pile same.
(RP 83 B complied with)

Judge & advocate summing up.

1. General Principles.
   Accused innocent until proven guilty
   Beyond & reasonable doubt.
2. Witnesses & Counts.
3. Witnesses & Id.
4. Charges read.
5. Evidence to jury to be applied each & both good under each directions.
6. Now Explaining Law —
   (a) Murder.
   (b) Manslaughter
   (c) R. S. 74
7. Alibi witnesses - little to be said

End.

Character wit
D/26899 Sgt Brandow WH. 4 Can
Armd Div Res Coy RCASC. having
been duly sworn states;-
I have known accused for 4 yrs in
Canada and U.S. I was his Pl. Sgt. for
1½ yrs. I've always found him to be
an efficient soldier and carried out
jobs in efficient manner. We worked
as friends as well as men - his wit + actions
kept up Pl. morale. (R.P. 63B complied with)

Ewd

Plea in extenuation.

I wanted to review the evidence of P/O Elliott during his time in the Army.

He is 27 yrs old He enlisted in RCAF (O 1080 41). He trained in Canada while the time he landed in Eng in Aug 42 where he underwent further Trng. He landed in France with unit 24 July 44 and he has served faithfully & most creditably. He has had one & a half years service during this period of time and has had only a very few petty crimes in the last year.

I am confident that the good & adequate Court will arrive at the correct sentence to be imposed.

Fin.

Ex "A"

TCVs

LINCOLN & WELLAND REGT

PART I ORDERS

BY

LT-COL R C COLEMAN, MC - OFFICER COMMANDING

Last Issue No 15, d/12 Feb 45 148 - 154 Issue No 16, 17 Feb 45

148. RELATIONS WITH THE GERMANS

1. The relations adopted by the Allied Armies of Liberation towards the GERMANS will have great bearing upon the peace planning and upon the whole future of Europe. In order that the standards of behaviour and method of approach should be the same amongst all the Allied Forces, the Supreme Commander has laid down the policy which is outlined below.

2. German Attitude and Propaganda

(a) The German mental attitude during the previous occupation of Germany ranged from hatred, through friendliness, to fawning subservience. In the coming occupation, all attitudes of mind may be encountered, differing with persons and localities, and changing from time to time. However, because of this war's greater air-bombing damage and possibly ground combat within Germany, and because of the intense Nazi indoctrination, German hatred may be far deeper and more universal than in 1918. Also, the whole country will be occupied, as compared to only a small fraction in 1918.

(b) The German conception of themselves as a "Master Race" has been too deeply implanted to be eradicated outright; many Germans will accept defeat as only a temporary phase of a continuing struggle, and strong efforts will no doubt be directed towards regaining a commanding position in Europe. Plans for underground continuation of the struggle are believed to exist.

(c) Aside from initial resistance by any German mil forces not immediately under control, the occupying forces must be prepared for civil disorders, incl sniping and assaults on individuals, sabotage, provoked riots, perhaps even organized raids. Hidden arms will undoubtedly be available.

(d) Later there is likely to be deliberate, studied and continuous effort by the Germans to influence the sympathies and thoughts of the occupying forces, with a view to minimizing the consequences of defeat and preparing the way for a resurgence of German power. Propaganda in widely differing forms may be expected. It will probably endeavour to weaken the Allied solidarity; to undermine the Allied determination to exercise supervision and enforce the surrender terms; to induce a reduction in the occupying forces; and to lower Allied morale and mil effectiveness.

While open propaganda through press and radio will probably be ineffective because of Allied supervision, it is expected that word-of-mouth propaganda, under the direction of underground agencies, will be attempted unceasingly by the population wherever it contacts Allied personnel. Its methods will incl attempts at fraternization by civilians (especially by children, women, and old men); attempts at "soldier-to-soldier" fraternization; and social, official, and religious contacts. The propaganda may incl appeals to generosity and spirit of fair play; appeals to pity for victims of devastation; appeals to racial and cultural similarities between Germans and Anglo-Saxons; organization of

Certified true copy of Part I Order Issue No 16 of the Lincoln & Welland Regiment, dated 17 Feb 45.

[illegible] Capt.
Actg. Lincoln & Welland Regt.
[illegible]

148. RELATIONS WITH THE GERMANS (Cont)

2. German Attitude and Propaganda (cont)

(c) (cont) sympathy for an allegedly misled and oppressed people and its starving children; sowing of discord between British and American forces and between them and the Russians; and attempts to prove that Nazism was an alien idea implanted against the general will in the cultured and unaggressive minds of Germans. The propaganda will be universal, insidious, and dangerous, and will require extensive means to avoid and combat it.

3. General Conduct

(a) Allied personnel will so conduct themselves in their relations with the inhabitants of Germany as to command respect for themselves and for the countries which they represent.

(b) The Germans, as a nation, hold the armed forces and all things military in deep respect. A high standard of conduct and discipline must therefore be maintained by Allied personnel.

(c) Acts of violence committed when not in the lawful course of mil duty are forbidden, as are acts of pillage and oppression. If such transgressions occur, offenders will be severely punished.

4. Drunkenness

Strict measures will be taken to control the consumption of liquor by Allied Personnel. Cases of drunkenness will be firmly dealt with.

5. Non-Fraternization

(a) Definition: "Non-Fraternization" is the avoidance of mingling with Germans upon terms of friendliness, familiarity or intimacy, whether individually or in groups, in official or unofficial dealings. However, non-fraternization does not demand rough, undignified or aggressive conduct, nor the insolent overbearance which has characterized Nazi leadership.

(b) There will be no fraternization between Allied personnel and the German officials or population.

(c) This policy of non-fraternization is necessary in order to emphasize the relationship between the occupation forces and themselves and to encourage their efforts to defeat the objects of the occupation. They must learn this since that their supp[illegible] and allegiance of militaristic leaders, their acceptance and furtherance of racial theories and [illegible] this [illegible] in Europe have brought them to complete defeat and have caused the other people of the world to look upon them with [illegible].

6. Attitude towards German officials

(a) Allied personnel dealing with Germans on official business will be just but firm. They will adopt an attitude of [illegible] stay. They will make it clear by words and attitude that immediate compliance with orders and instrs will be required and enforced. In official, as in personal matters, there must be no fraternization. The definition laid down in para 5 above applies to both.

/148. RELATIONS WITH THE GERMANS

143. RELATIONS WITH THE GERMANS (cont)

6. Attitude towards Germans in Official Contacts

(b) Contacts on official matters with Germans, both military and civilian, will be restricted to the minimum necessary to ensure adequate supervision of execution of the surrender terms and other official business. There will be no entertaining, "official" or otherwise.

(c) Germans holding or appointed to official positions, such as police, administrative or mil positions, will be made to understand that they hold office by consent of Allied authorities, and only so long as they conform to Allied instructions and requirements.

7. Implementation of Policy of Non-Fraternization

The policy of non-fraternization will be implemented by the adoption of the following measures:

(a) Segregation in Quarters. The billeting of offrs or men in the homes of the population is forbidden. Separate quarters for tps will be obtained by the use of permanent barracks, schools and other public bldgs, by requisition of hotels, private bldgs and houses, or by the use of hutted or tented camps. Permanent quarters will be so located as to minimize contact with the German population.

(b) Marriage. Marriage with Germans or personnel of other enemy countries is prohibited.

(c) Religious Services. Whenever possible, church services conducted by Allied chaplains will be provided. Where this is not possible, attendance at German churches will be permitted; in such cases, separate seating will be provided for the tps.

(d) Restrictions on Contacts. The following must be prohibited: visiting German homes, drinking with Germans; shaking hands with them; playing games or sports with them; giving or accepting gifts; attending German dances or other social events; accompanying Germans on the street, in theatres, taverns, hotels or elsewhere (except on official business); discussions and arguments with Germans, especially on politics or the future of Germany.

(e) Execution and Enforcement. Commanders will take energetic action to implement and execute the policies and instrs contained in this section. Uniform enforcement of non-fraternization is especially important throughout the zones of the Allied armies.

8. Application to all Allied Personnel

The provisions of this memorandum apply to all personnel of the Allied Expeditionary Forces [illegible] Army, Navy, Air Forces, and all civilians under military control.

'21 A Gp/791/Ops(S) 4/20 Sep 44

/143. [illegible]

149. DAILY C & S STATES

(a) C & S States are necessary each day for 3 purposes:
(1) To show the actual str of the Bn to the offrs who are responsible for reinforcing it--these are the figures on which rfts are demanded from the UK.
(2) To notify those concerned of casualties due to battle, sickness, and other causes, so that Records (and, where necessary, next of kin) may be infm.
(3) To allow rations to be divided correctly to ensure fair distribution.

(b) C & S States are made out daily to reach the Adjt by noon each day on the pro-forma already published. During recent operations, the daily C & S State was ignored or submitted with false figures by clerks who had not positioned themselves so as to ensure that they would collect the maximum of correct infm. The effect of this was to falsify the actual str of the Bn: cas were over-estimated by higher fmns and rfts were sent fwd greatly in excess of what was actually needed. This situation might easily have occurred in reverse, so that coys would have fought greatly under strength. Correct cas reports can be made without holding a muster parade on the battle-field: the CQMS usually knows how many he feeds, the SBs can usually remember individuals they have helped, and the RAP can usually state who has passed through. It is the duty of the coy clerk to utilize all these resources to secure a true picture of the state of affairs.

(c) Accuracy is of the greatest importance. Names, numbers, rank, and initials are required, together with the DATE of the occurrence, and the exact nature of the casualty. "Evacuated to hosp" is not sufficient: always state, "Evacuated wounded", "Evacuated sick", "Evacuated injured", as the case may be. Personnel who are SOS on committal to Detn Barracks, posting to another Unit, etc, should be so shown.

(d) For the purpose of calculating the ration str, attached personnel should be listed on the reverse of the form, by name except in the case of large numbers.

(e) It is the particular duty of the CSM to see that the Coy Clerk receives the maximum co-operation in this regard, and that it is properly recorded.

(f) Part I Orders No 91 para 2, 102 para 13, 117 para 5, of 1944, are CANCELLED.

150. SHORT LEAVE ALLOTMENTS

Short leaves to BRUSSELS are allotted as follows:

27 Feb - 1 Mar 45: 2 Offrs to be detailed later; Each rifle coy 5 OR; Sp Coy, 5 OR; Scout Pl, 2 OR; Sigs Pl, 2 OR; Regt Police, 1; A Ech, 2.
1 Mar - 3 Mar 45: Each rifle coy & Sp Coy, 4; BnHq 1.

Coys will forward names to Adjt and paybooks to Pay Office by 1000 hr 26 Feb and 28 Feb respectively. Personnel will be paid at 1400 hr 26 Feb and 28 Feb and will proceed to A Ech in TCVs to be sup by QC M Gp TCVs and leaving from the Pay Office at 1430 hr 26 and 28 Feb. QC A Ech will tpt personnel to reach OISTERWIJK Leave Camp by 0730 hr 27 Feb and 1 Mar, from which point they will be despatched to BRUSSELS by train. QC A Ech will pick up personnel at OISTERWIJK at 2130 hr 1 Mar and 3 Mar respectively. Accn in BRUSSELS is in billets.

(10GR/6-9-2 d/14 Feb 45 (LAW/6-2-3))

151. MARCH DISCIPLINE AND DRESS

Coy Comds are reminded that troops must march in single file facing the flow of traffic, i.e., on the left side of the road. Coy Comds will ensure that there is proper spacing and standardization of dress, on the march and at all other times during trg. Dress will be either battle-dress alone, or leather jerkins over battle dress on the march, in trg areas, or in any area in rear of Bn HQ; offrs will dress like their men. Jerkins leather with sleeves sewn in may continue to be worn, but new ones will NOT be made; shortened greatcoats will NOT be worn. Parties will wear either steel helmets or berets but head-dress will be uniform throughout. Troops on the march will NOT smoke.

152. NOTICE BOARD INFORMATION

Attention is directed to extracts from Cdn RO (21 A Gp) published as NBI and distributed down to Coys with this Order.

153. OUT OF BOUNDS

The following establishments in DONGEN are out of bounds:

Cafe EUFORIA	Josephstraat
Cafe VAN ROOIJ	Tramstraat
Cafe HET GRIJZE WOUD	Wilhelminastraat
Cafe GERRITSEN	Tramstraat
Private House	Wilhelminastraat

(10CIB/5-4 d/15 Feb 45 (IAW/5-44)

154. POSTINGS

(a) Inter-Coy

A109802	Pte	BRYCE	GF	to BnHq from "B" Coy
A354	Pte	CHAMBERS	AR	to D Coy from Sp Coy
A2172	Pte	CLARK	JW	to D Coy from Sp Coy
B143550	Pte	CRAWFORD	WJK	to BnHQ from "B" Coy
B21983	Pte	HAROLD	JV	to BnHq from "C" Coy
U2074	Pte	MacDONALD	HE	to BnHq from "C" Coy
C60621	Pte	McMACKIN	TJ	to BnHQ from "B" Coy
K51288	Pte	PAINTER	HA	to C Coy from Bn HQ
F65523	Pte	SPUHR	FR	to HQ Coy from "B"Coy

(b) On TOS from 5S Fwd Hft Coy wef 13 Feb 45:

B8487	Pte	BROWNE	E	to Sp Coy

(R L ROGERS) CAPT
Adjutant

RLR/HOB
Loon op Zand

Ex "X" Court Pros.

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
A-25196	Pte	Edward James ELLIOT	TCV Det. 4 CAD Troops Coy / RCASC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	* Within last 12 months.	*Since Enlistment.
For A.A. 15 (1)	two times	three times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[illegible] or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or [illegible]

3. The accused is not under sentence at the present time, or [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 30 days in military custody, making a total of 30 days, of which no days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 21 years 19 days

6. The date of his [illegible] specified in his record of service / attestation is 10 Nov 41

7. [illegible]

8. [illegible]

9. [illegible]

10. The accused is [illegible] entitled to (*state any military decoration or reward*) CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated

and in his regiment (or corps or department) the rank of N/A dated N/A

Note.—At a trial by field general court-martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) produced should be prepared in accordance with this memorandum and annexed to the proceedings.

† See para. 617, K.R., 1940.

* The conducts herein stated should correspond with the number or entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

(70000) W1-24000/1732 25,000 10/40 A.A.F.W.1.1.c. Gp.698
(25000) W1-24000/1088 12,500 5/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

INSTRUCTION—A verbatim extract from the regimental books, stating there convictions and dispensations with trial, must be inserted.

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9 day of May 1945

W. S. Lewis
2/Lt. TCV

Set 4 CAB Typed by Reade

In the rank of _____ years _____

In the rank of _____ years _____

In the rank of _____ years _____

(Date of Promotion)

13. The accused has served in a non-commissioned officer continuously, without reduction, to the present date.

3/17 MFM 6 (AFH 122) 40(PAM)138 (5418)

No. A55786 Name Elliott, E J | Sqn. Battery, or Company | Corps RCASC | Date of enlistment 10-11-43 | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 30-6-43 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET DESTROYED ON COMPLETION OF TWO YEARS SERVICE (15 Nov 43) (two entries)					
				Awarded Canadian Volunteer Service Medal and Clasp 1 CASCRU DO 13/8/17-1-44					
Field	14-10-43	Pte		AWL 1 day and 1 hr AA Sec 15(1)		28 days pay	16/10/43	Maj Stevenson	
Field	5/5/44	Pte		AWL 25 hrs and 45 mins AA Sec 15(1)	Cpl Roy	28 days pay	8/5/44	Maj Stevenson	
Field	4/10/44	Pte		AWL 24 hrs 15 mins AA Sec 15(1)	Documentary	28 days FF and forf 28 days pay 149(2)	17 Oct 44	???	forf 2 days pay 149(1)(a)

EX "Y"

CERTIFIED TRUE COPY

O.C. 1st Draft RCASC

(PTO)

Summary of Evidence in the case of A55786 Pte. Edward Hagues ELLIOTT, "E" Group T.C.V., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C. The Commanding Officer has directed that the evidence be taken on oath.

1st Witness Lieut. F.C. Gascoigne of 4th Cdn. Armd Div. Tps. Coy, R.C.A.S.C. having been duly sworn states:
I am Lieut. F.C.Gascoigne, Cmd. "E" Group T.C.Vs., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C.
On the night of 9th April, 1945, following a meeting with the Officer Commanding the Lincoln & Welland Regt. I warned the personnel of "E" Group that the orders regarding fraternization must be regarded as serious and would be enforced.

On the morning of 10th April, 1945 the enemy counter-attacked the town of Sögel and there was fighting in the streets. "E" Group T.C.Vs. personnel were ordered to stand by with their weapons. At about 0900 hrs. I saw A55786 Pte. Elliott, E.J. whom I now recognize, walking down the street outside the Group area with three civilians. I asked him where he was going and he said that he was accompanying them to the doctor because they were afraid of the firing. I ordered him to return to his area and let ~~him~~ them go alone. About 30 minutes later I went to my cookhouse which was located in the rear of a German' baker's house in Sögel, and through a glass door saw Elliott sitting inside with civilians. I went in and ordered him out of the house and re-iterated my warning against fraternizing. I recognized the civilians whom he was visiting as the same people he had been accompanying down the street earlier. About an hour later (approximately 1030 hrs.) I again went to the cookhouse and looking in saw two soldiers there. These soldiers were Cpl. Roy, L.N. and Pte. Elliott, E.J., they both had bottles and glasses by their sides and there were some six civilians in the room with them. I placed both of them in open arrest, warned them that they would be charged with fraternization, and ordered them to leave the house and not to return. Shortly afterwards I returned to the cookhouse and found Elliott sprawled on the pavement on his back in an ungainly attitude. I ordered Cpl. Meadows, V.R. to remove Elliott to the house and to tell him he must stay there until he had sobered. Some minutes later I went to the rear of the house in which I was billetted and where the office was located. Adjoining the garden at the rear of this house was a prisoner of war cage, and I saw Elliott speaking to a female civilian who was being detained by the Provost Detachment. I then ordered him placed in close arrest, but allowed him to sleep on the lawn close to the house with his escort. ~~Shortly after~~ ~~[illegible]~~ He had to be assisted by his escort ~~to~~ the rear of the garden as he was unable to walk unaided. In my opinion this was because he was drunk. About this time the Germans began to shell the town and rounds were dropping within 50 yards of the Group area, therefore I ordered that Elliott be taken into the house and confined for his own protection. Sometime after dinner I was walking towards the house when Elliott opened the windows of the room in which he was held and leaning out said "hey! whats this supposed to be, an invitation to fuck off" I then decided that he was sufficiently recovered to be removed and I released him from close arrest and sent him to the Lincoln & Welland Regt. "B" Echelon, as I did not want a non-effective in the Group while conditions were so unsettled.

The following questions were asked by the accused:

Q-1. Did you see us talking to the civilians Sir?
A- No! I did not, but as I had been told earlier that these people were being taken to the doctor because they were afraid I knew that there had been some conversation.

(continued)

Q-2 Did you see more than one bottle sir?
A-2 I am not certain, but it is my ~~x~~ impression that there was a bottle beside each man.

F.C. Gascoigne

Lieut: F.C. Gascoigne

2nd Witness H52044 Pte. Warren, C.E., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C., having been duly sworn states:

I am H52044 Pte. Warren, C.E., a member of "E" Group T.C.Vs., 4th Cdn. Armd. Div. Tps Coy, R.C.A.S.C. On the morning of the 10th April, 1945 when "standing to" in the Group area, I heard Lieut. Gascoigne say "where are you going Elliott"? Elliott said "I am taking these three people to the doctor".

C.E. Warren (Pte. C.E. Warren)

The accused declined to cross-examine this witness.

3rd Witness H52083 Cpl. Meadows, V.R., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C., having been duly sworn states:
I am H52083 Cpl. Meadows, V.R., a member of "E" Group T.C.Vs., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C. On the morning of the 10th April, 1945 I was standing near the P.W. Cage behind the house where I was billetted. I went into the house and Lieut. Gascoigne told me that Cpl. Roy and Pte. Elliott were under arrest. I walked over to the kitchen and saw Pte. Elliott lying on the floor. I went to the Admin. lorry, and a few minutes later returned to the kitchen and called Pte. Elliott for dinner.

V.R. Meadows

Cpl: Meadows, V.R.

The accused declined to cross-examine this witness.

4th Witness H51783 Cpl. Roy, L.N., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C. having been duly sworn states:
I am H51783 Cpl. Roy, L.N., a member of "E" Group, T.C.Vs., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C. At approximately 1030 hrs. 10th April, 1945, Elliott invited me to a drink of wine in the kitchen of the house in which our cooker was located. ~~The kitchen was in the room next to the kitchen.~~ The cooker was in the room next to the kitchen. I went into the kitchen to have a drink, shortly after Lieut. Gascoigne came in and ordered us both to leave the room, which we did.

The following questions were asked by the accused:

Q-1 Did you hear me speaking with the civilians?
A-1 No.

Q-2 How many bottles of spirits were there in the room?
A-2 I only noticed one.

L.N. Roy

Cpl: Roy, L.N.

Statement made by the Accused.

On the morning of the 10th April, 1945 I was in the cookhouse which was located in a German house. A civilian called to me from the kitchen door and asked me if I would escort a sick man to the doctor as they were afraid to be alone on the streets amongst the soldiers. I agreed to do this, as I certainly did not think it would be fraternizing. I did not at any time do any drinking with any German civilians.

E.J. Elliott

Pte: Elliott, E.J.

(continued)

Certified that the foregoing Summary of Evidence was taken in the presence and hearing of the accused, and that Sec. 4, Rules of Procedure, R.M.I. has been complied with.

In the Field,
14th April, 1945.

...J.S.Melbourne.....
(J.S.Melbourne)Lieut., R.C.A.S.C.
Officer detailed to take Summary of Evidence.

Additional Summary of Evidence in the case of A55786 Pte. Edward James ELLIOTT, "B" Group T.C.V., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C. The Commanding Officer has directed that the evidence be taken on oath.

2nd witness H52044 Pte. Warren, C.E., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C., was recalled, and warned that he was still under oath. He was asked the following question:

Q-1 Did you see Pte. Elliott with the civilians?
A-1 No! A brick wall and hedges prevented me from seeing them.

...C.E.Warren.....
Pte. Warren, C.E.

The accused declined to cross-examine this witness.

3rd Witness H52083 Cpl. Meadows, V.R., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C. was recalled, and warned that he was still under oath. He was asked the following questions:

Q-1 In your opinion was Elliott drunk when you saw him lying on the floor?
A-1 I would say that he had been drinking.
Q-2 What made you think he had been drinking?
A-2 When he got up he was unsteady on his feet, and staggered around a little.
Q-3 When you called Elliott for dinner, how did he respond?
A-3 He got up, shook himself, got his mess tin, and came to dinner.

...V.R.Meadows.....
Cpl. Meadows, V.R.

The accused declined to cross-examine this witness.

5th Witness H87544 Pte. Skerritt, E.D., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C. having been duly sworn states:

I am H87544 Pte. Skerritt, E.D., a member of "B" Group, T.C.Vs., 4th Cdn. Armd. Div. Tps. Coy, R.C.A.S.C.
On the afternoon of the 10th April, 1945, I was at the rear of the house where I was billetted. Lieut. Gascoigne came through the house, and detailed me to act as escort to Pte. Elliott, whom he had just placed in close arrest.

Q-1 Was Elliott drunk when you escorted him?
A-1 He was under the influence of liquor.

Q-2 What made you think he was under the influence of liquor?
A-2 He was staggering when he was walking alone.

...E.D.Skerritt.....
Pte. Skerritt, E.D.

The accused declined to cross-examine this witness.

The following statement was read to the accused:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declined to make any statement.

Certified that the foregoing Additional Summary of Evidence was taken in the presence and hearing of the accused, and that Sec. 4, Rules of Procedure, R.M.I. has been complied with.

...J.S.Melbourne.....
(J.S.Melbourne)Lieut.,
Officer detailed to take the Summary of Evidence.

In the Field,
20 April, 1945

Exhibits

Part 1 Orders Linc & Welland Regt dated 12 Feb 45

Under rule of procedure 76 notice is hereby given that the prosecutor intends to call H 51733 L/Sgt. McLean D. RCASC who will introduce Linc & Welland Reg't Part L Order dated 12 Feb and say that the acc saw and had read to him the above order and as grp clerk filed the order after thoroughly making himself familiar with its contents.

(D.E.Lewis)Capt.
O.C. TCV Det.

I desire the services of Lieut. G.T. Moore of the Lincoln and Welland Regt, if he is available, at my forthcoming Court-Martial.

E J C Elliott

(Pte Elliott, E.J. A-55786

FFF 129

PTE ELLIOTT E L

Correspondence to be PINNED here.

ENTERED IN RECORDS OF C.M.

FFF-129

D137

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty-Second day of February, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~I am unable to appoint~~

*~~Three Officers to form the Court;~~

*~~A Field Officer as President~~

~~for the following reasons, namely:~~

PROCEEDINGS REVIEWED
R. Desaulniers - Capt.
29 Mar 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	E A Kennedy	Carlt & York R

Members.

Rank.	Name.	Regiment.
Captain	G A Crutcher	Carlt & York R
Captain	A Nicholson	West NSR
~~Captain~~	~~W H P Davis~~	West NSR
Waiting		

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J. Whitson Brigadier

Commanding 3 Cdn Inf Bde
Convening Officer.

D137

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D244 Pte Edgar Lawrence ELLIOTT West NSR	First Charge Sec 15(1) AA	Guilty	Guilty 160 Days. F.P. ~~Add to Forfeit 160 Days (a)~~ BAK 23rd Feb 1944 2 months Detention for a period of 160 Days BAK 23 Feb 44	Confirmed Illegible

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet, if necessary*):—

(Signed) Illegible Brigadier (Signed) B.K. Kennedy Major

Commanding 3 Cdn Inf Bde
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23rd day of February 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) BAK
*(4. ~~The officers under instruction~~) BAK

*Omit if not applicable.

were duly sworn.

Signed this 23rd day of Feb 1944

B.K. Kennedy
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (i) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 670 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 24 day of Feb 1944

A.L. Gibson Brig
Confirming Officer.

Promulgated and extracts taken in the case of D244 Pte Edgar Lawrence Elliott West Nova Scotia Regt

(*a*) (Dated) 25 Feb 44 (Signed) Illegible Capt A/Adjt West Nova Scotia Regt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a ~~F.G.~~ Gen Court-Martial held ~~at~~ In the Field on the 23 day of February 1944 by order of Brigadier J. G. Gibson Commanding 3 Cdn. Inf. Bde.

Dated the 22 day of February 1944

President.

Major B. A. Kennedy, Can. R. of York R.

Members.

Capt. G. A. Cantelon, Can. R. of York R.

Capt. A. Nicholson West N.S.R.

~~Judge~~ Advocate.

Trial of*

D244 Pte. EDGAR LAWRENCE ELLIOTT West N.S.R.

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

The Court ~~satisfy themselves that~~ is duly ~~available to serve owing to~~ ~~, waiting member takes his place as a member of Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court

Prosecutor, † Capt. J. W. Browne, West N.S.R.

Counsel or defending officer ~~†~~ Lieut. E. H. Holloway West N.S.R.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked H signed by the President, and attached to the proceedings.

The names of the President and members of the Court read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B. — If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.

* Here insert No., Rank, full Name, Regiment, and Appointment (if any)

† Here state Rank and Name, and Regiment (if any)

§ Qualification to be stated.

(M2) (P.M.2) 5,000 - 5-43

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction~~ are duly sworn.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (3), the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the (first) charge against you, which you have heard read? *Question to the accused*

Answer. Guilty

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question*

N/A. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

N/A *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

N/A *Answer.*

The accused having pleaded Guilty to *the* charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of Not Guilty, the Court will not proceed upon the record of a plea of Guilty, until after the finding on that other charge. *Instruction.*

The accuse[d] elects trial by Fiel[d] General Court Martial

CHARGE SHEET

D. 244 Pte Edgar Lawrence ELLIOTT, West Nova Scotia Regiment, a sol[d]ier of the Canadian Army Overseas - CMF, on Active Service is charge[d] with:-

1st Charge
Sec 15 (1)
Army Act

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Fiel[d], at approx 1330 hrs 6 Feb 44 did absent himself without leave, and remained absent until surrendering himself to the Military Police at VASTO at approx 1430 hrs 9 Feb 44. (Total time absent - 3 days 1 hr).

In the Fiel[d]
18 Feb 44

(R S E Waterman) Lt col.,
Com[d] West N S R.

To be tried by Fiel[d] General Court Martial.

In the Fiel[d]
22 Feb 44

Officer Commanding, 3 C[d]- I-f B[de].

D 244 Pte Elliott E

West Nova Scotia Regiment

Field

23 Feb 44.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

~~*(The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.)~~

The accused D244 Pte EDGAR LAURENCE ELLIOTT is found guilty of Absence without leave

†The summary (or abstract) of evidence is read, marked "B" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says: Nil

~~(or hands in a written statement which is read, marked , signed by the President, and attached to the proceedings.)~~ Nil

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No

Answer.

Evidence as to character.

E

Findings.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty"

~~The Court is closed for the consideration of the findings.~~

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction before Sentence

~~*The Court being re-opened, the accused is again brought before the~~

Capt F. M. Crowe, West N.S.R. duly sworn

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by Witness.*

I have copy of M.F.M.6 and Statement of Character

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "C" signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused.

The accused declines to examine this witness.

Instructions.—If by reason of the nature of the service of the accused in a determinate corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to this fact, and the Court must inquire into the nature and amount of that additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence

F

Sentence.

The Court sentence the accused D244 Pte ~~Elliot~~ Bdr Elliot EDGAR LAWRENCE

Sentence

Elliot to undergo ~~Field Punishment~~ for a ~~period of 160 Days.~~ ~~(One Hundred and Sixty)~~ (ONE HUNDRED AND SIXTY) ~~and to Forfeit 160 Days Pay~~ Detention for a period of 160 Days

"A"

CERTIFICATE OF SURRENDER UNDER A.A. SEC. 163 (1) (j)

I, CAPT A.F.B.KNOCK. certify that No D 244

Rank PTE Name ELLIOTT.E.

Unit WEST NOVA SCOTIA REGT Surrendered himself to

No. 7490411 Rk CPL Name McKAY.N.,

Unit 509 Ind. Mob. Pro. Coy at VASTO on the 9TH day

of FEB 1943 at 2400 hrs as a ~~deserter~~/absentee without

leave. He was dressed in Uniform/~~Civilian Clothes~~.

Captain, DAPM.

Date 9TH FEB 1943. O.C. 509 Ind.Mob.Pro. Company.

446/509 IMPC

LIST OF WITNESSES in the case of: ~244 Pte Edgar Lawrence Elliott
West Nova Scotia Regiment.

PROSECUTION: F-41588 Sgt Chalmers, E D
Capt A.J.W. Dwyer,

DEFENCE: Nil

LIST OF EXHIBITS: Certificate of apprehension under A.A. Sec 163 (1) (jj) marked exhibit "A"

Statement by the accused as to a defending officer:

If I am to be tried by Court Martial on charges now pending against me, I wish to have Lt. Holloway to act in my behalf.

E L Elliott
(Signature of Accused)

In the Field
18 Feb 44

This is to certify that I, P244 Pte. Elliott, E.L. Regt NSR, have been given free of charge, a copy of the Summary of Evidence, Charge Sheet, documents, etc., relative to my trial by Court Martial.

E L Elliott
(Signature of Accused)

In the Field
18 Feb 44

Exhibit "B"
Belgium Gp

SUMMARY OF EVIDENCE in the case of D-244 Pte Edgar Lawrence ELLIOTT, a soldier of the West Nova Scotia Regiment, Canadian Army Overseas, C.M.F. stationed in the Field.

By the order of Lt-col R.S.E. Waterman, Officer Commanding, the West Nova Scotia Regiment.

Evidence taken on oath.

First Witness for Prosecution

F-41588 Sgt Chalmers, E.D. of the West Nova Scotia Reg't having been duly sworn states :-

On or about the 6 Feb 44 I was platoon Sgt of No 9 platoon "A" Company, West N.S.R of which platoon the accused, D244 Pte Elliott, E L. was a member. I warned my platoon that the platoon would be ready at 1330 hrs, 6 Feb 44 as we were moving up to the front. Pte Elliott was present at the time I warned the platoon. At 1330 hrs 6 Feb 44 I made a check and found Pte Elliott was absent He was still absent at 1630 hrs when the platoon was warned it was confined to company area and was still absent the following day when the company moved off at 1315 hrs. I did not see him again until he was brought in to the Regimental Guard Room under arrest.

Signed. E D Chalmers Sgt.

The accused declines to cross examine this witness.

Second Witness for Prosecution

Capt. A.J.W. Dyer, of the West Nova Scotia Regiment having been duly sworn states :-

I produce Certificate of Apprehension under A.A. Sec 165 (1) (jj) (said certificate produced marked exhibit "A" and attached to Summary of Evidence.) showing D 244 Pte Elliott E of the West Nova Scotia Regiment surrendered himself to 7690811 Cpl McKay, N of 509 Ind. Mob. Provost Company at VASTO on the 9 Feb 44 (at 1430 hrs) as an absentee without leave, dressed in uniform.

Signed [signature] Major Capt.

The accused declines to cross examine this witness.

The accused having been duly cautioned as follows :- "Do you wish to make any statement of to give evidence on oath ? you are not obliged to say anything or give evidence unless you wish to do so, but what ever you say or any evidence you give will be taken down in writing and may be given in evidence," declines to make a statement or give evidence on oath.

Certified that Rule of Procedure 4 (c),(d),(e) and (f) has been complied with.

Taken down by me, in the Field, this 18 Day of Feburary 1944, in the presence and hearing of the accused.

In the Field
18 Feb 44

(J.R. Cameron) Capt
Officer taking Summary

M.F.M. 6
(A.F. B.122)
40/F & /8136 (2068)

No. W 244 Name Elliott, E.L. Sqn., Battery, or Company — Corps C.I.C. — Date of enlistment 19-9-41 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Farnham P.Q	7 Feb 42	Pte		(1) Breaking barracks while under quarantine, A.A. Sec 40 (2) A.W.L. from 2359 hrs 7 Feb 42 until 2215 hrs 8 Feb 42 A.A. Sec 15(1)	L/Cpl Rowe,	Summary forf. of 5 days pay	9 Feb 42	Major F.M Barclay	forf 1 days pay 149 (1)(a
Farnham P.Q	6.10 42	Pte		Conduct to the prejudice of good order and military discipline A.A. Sec 40	S/Sgt Carrigan	3 days C.B.	7.10.42	Major C.E Broadeur	
Field	5.5.43	Pte		A.A. Sec 15 (1), WOAS- AWL from 2200 hrs 5 May 43 until 2300 hrs 5 May 43 - Total 1 hr.	Sgt Thompson W.J.	3 days C.B	6.5.43		

(OVER)
(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (dispensing with trial	By whom awarded	Remarks
				Certifie[d] true copy from the regime-tal books in my custo[d]y					

Officer i/c recor[d]s.

"C" Battalion

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. D224 Rank Pte Name Edgar Lawrence ELLIOTT Regiment West Nova Scotia Regiment

1. The following is a fair and true summary of the entries in the regimental Conduct Sheet of the accused:

Within last 12 months		Since Enlistment	
A.A. Sec 15 (1)	- 1 entry	A?A. Sec 15 (1)	- 2 entries
A.A. Sec 40	- Nil.	A.A. Sec 40	- 2 entries

No. of instances of gallantry or distinguished conduct - Nil

The accused is NOT under sentence at the present time.

The accused has been under Close Arrest awaiting trial on the present charge for 10 days of which NO days were spent in hospital.

The present age of the accused is: 20 years.

SCHEDULE

Convictions by a Court Martial, of a summary award under Sec 47 of the Army Act, and of cases in which trial has been dispensed with of accused, No. D244 Rank Pte Name Elliott, E L of the West Nova Scotia Regiment.

N/A

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18 th day of February 1944

(Officer i/c regtl record)
West Nova Scotia Regiment

The above statement (with schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

SP-151

Cpl. Elliott, J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 143704 Cpl. JAMES ELLIOTT. H.L.I. S.C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st SEC 15 (1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 6.)

At present under sentence for: ~~[illegible]~~ beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: ~~To forfeit five days pay, & not more~~ To be reduced to the ranks. To be reduced to the ranks & to forfeit all drawing pay for a period of seven days.

(Sgd) ..... 21 July 45 (Sgd) M Braden Maj
Judge Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is:
Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) (W H Gemmell) Lt-Col
Date 22 Jul 45 Commanding Cond 9 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B143704 Cpl James Elliott	before promulgation	
extracts taken	22 July 45	H Harley Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 30 JUL 1945 JAG BRANCH G.H.Q.

PROCEEDINGS REVIEWED D. Cdn. Sec. & Gp. 21 Army Gp. 27 Jul 45

COPY AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CP486 (In lieu of AFW3) 40/P & S/1606(16144) 4388

Convened by Order of N.M. GEMMELL Comd 9 CDN INF BDE dated 21 JUNE 45

ACCUSED.

(Where trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 320, 330.)

No.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-143704	CPL		JAMES	ELLIOTT	H.L.I. of C.

PROCEEDINGS REVIEWED
W. Linemore Capt
REVIEWING OFFICER, JAG BRANCH G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 21 DAY OF JUNE, 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 35/140-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 335, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0945 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~[illegible]~~ as interpreter? Ans ~~[illegible]~~
~~The interpreter is sworn.(1)~~ Do you object to ~~[illegible]~~ as shorthand writer? Ans ~~[illegible]~~
~~The shorthand writer is sworn.~~ (1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans N.O.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 22, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ.	JAMES W BRADEN.	H.L.I. of C.
Member	CAPT.	G E FRANKLIN	N.S. Cdn. Inf. Bde
Member	LT.	D W McDONALD	N.S. Cdn. Inf. Bde
Judge Advocate			
Prosecutor	CAPT	R B MENZIES	H.L.I. of C.
Defending Offr	CAPT	G W POLLARD	H.L.I. of C.

Questions by President: Is the Prosecutor a lawyer? Ans N.O. Is the Defending Offr a lawyer? Ans N.O.(1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B 143704 CPL JAMES ELLIOTT before arraignment make(s) (no) ~~[illegible]~~ plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 486 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB160 C2 P47

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) ~~and~~ call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : Do you wish to make a statement ? Ans. NO (3)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~ (1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on ~~1~~ charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to one of Not Guilty to charge(s).~~ Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 17(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(C), (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B3 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds in accordance with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 80(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. .....

Do you intend to call witnesses on your behalf ?

Ans. .....

Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF #95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(B).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. YES THEY
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service(1) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 2146. 2. MEM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 546-566, Overseas RO 309, 1323, MML p 66, 732-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. B.143704 Corporal James ELLIOTT, The Highland Light Infantry of Canada, a soldier of the Canadian Army Overseas, is charged with:-

CHARGE SEC 15 (1) ARMY ACT

WHEN ON ACTIVE SERVICE,

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, on 3 July 45, absented himself without leave from 2300 hrs 3 July 45 until 1445 hrs 8 July 45. (Absent 4 days, 15 hours, 45 minutes).

In the Field
17 July 45

(H.B. Hodgins) Lt.-Col.,
C.O. The H.L.I. of Canada

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
19 Jul 45

(N M Gemmell) Lt-Col
Comd 9 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V pores 20 and 21, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-143704	Cpl		James	ELLIOTT	HLI of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Jul 45 endorsed by me, (~~or by an offr of my authority~~). "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reasons connected with operations~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint any Offrs from the CASF (1) & Fd Ord Workshops to be members of the Court~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed Judge-Advocate to the Court mentioned hereunder~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Maj (Rank.)	J W A BRADEN (Must be named. RP 106.)	SD & G Highrs (Unit.)

MEMBERS.

Capt	G S FRANKLIN	HQ 9 Cdn Inf Bde
Lt (Rank.)	D M MacDONALD (Named or detailed. RP 106.)	HQ 9 Cdn Inf Bde (Unit.)

WAITING MEMBER.

Lt (Rank.)	W K MOORE (Named or detailed, if any. RP 106.)	SD & G Highrs (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)	(Signed personally. RP 105 fn 2.)	Lt-Col (Rank.)
Dat 19 Jul 45	Commanding (E W Gemmell) Lt-Col Comd 9 Cdn Inf Bde Convening Officer.	

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RQ (Can) 2692.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply *so far as* practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 80(C), 87(C), 92(C) (*D*).)

(ii) All unsworn of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by *JA, if any.* (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or *JA, if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *JA, if any*, and then pinned by top left corner to p 3 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 562. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 116(C), MML p 759.*)

4. The President or *JA, if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

THE HIGHLAND LIGHT INFANTRY OF CANADA

Date 21 Jul 45

B-143704 Cpl. Elliott, J.

This is to certify that the U/M is fit/~~unfit~~ to undergo a Field General Court Martial.

Medical Officer

1st Character Witness for the Defence — Lt. C.J. Tancock, HLI of C, having been duly sworn states:

About 27 Mar 45 I became Pl Comd in the HLI of C. About 25 Mar 45 Cpl. Elliott returned from the NCO's school as one of my NCOs. From the Div. school he had a favourable recomendation. I immediately employed him as Section Leader. Cpl. Elliott did a very fine job and as soon as vacancy permitted I had him promoted to full Cpl. Cpl. Elliotremained with me till the end of hostilities and was always ready to do any job I asked him to do. When volunters were called for C.F.E.F. Cpl. Elliot and four of his sect. submitted their names. A separate platoon of C.F.E.F. personel was formed and Cpl Elliot left my platoon. In my estimation Cpl. Elliot did a very fine job and saw plenty of action.

Q. Do you know any reason that might contribute to Cpl. Elliot absenting himself?

A. Yes. When C.F.E.F. draft was called out Cpl. Elliot was one of the men not called on Draft. He was very keen to go C.F.E.F. and every day he used to ask me if there was any word on his going to the East. I think when his four men left on draft and the expectation of going home tended to get him a little browned off.

NO CROSS EXAMINATION

RP 83(B) complied with.

2nd Character Witness for the Defence — A.37833.L/Sgt L.A. Carty, HLI of C - "A" Coy, having been duly sworn states:

I have known the accused since last August and he has always been in my section and he has always carried out his duties efficiently. He has never been in any trouble. He was a very good man in action. He has always done his duty with good spirit.

Q. Do you know any reason why Cpl. Elliot might have absented himself?

A. He had voluntered for the Far East Forces and he got fed up with hanging around and they didn't seem to be doing anything about it.

NO CROSS EXAMINATION

QUESTION BY THE COURT

Q. You made a statement, Cpl. Elliot was in your section since with the unit. Did you ever know him to be AWL before?

A. No, sir.

RP 83(B) complied with.

Statement in mitigation

I would first of all like to call your attention to the M.F.M. that while there are a few marks on them you will find them clean since accused left Canada.

I would also like to your attention that it is very unusual for a case of this kind (4 days absence) to be remanded for 2 M.M. as it could have been disposed of as usually the case by reducing accused to the ranks, so I ask that you keep this in the for in considering this case.

(Contd)
On next page.

Mr. President + Members of the Court,

I would like to say a few words on behalf of the accused, Cpl. Elliott. He came to the unit last July just after Caen and since that time has served steadily and well.

During the Falaise Campaign last fall, throughout the winter on the flats below Nijmegen, and in the campaign leading up to the Rhine, the accused was a member of my platoon serving as a Bren gunner and latterly [redacted].

I might say that he was an excellent fighting man and at all times proved steady, dependable and efficient.

After the cessation of hostilities in Europe, he volunteered for service in the Far East but as yet has not been called for draft. He apparently found the period of waiting very monotonous and in that spirit deserted himself for a few days.

That he is guilty of absence is quite evident, but I would ask what ~~as~~ you consider punishment you will do so in the light of this statement, bearing in mind that ten months in the front line was his contribution to victory.

G.W. Pollard Capt.

"A"

SUMMARY OF EVIDENCE in the case of
No. B.143704 Corporal James ELLIOTT, "A" Company, The Highland Light Infantry of Canada:-

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness

B.74715 Sgt. Hunt, S.V., The Highland Light Infantry of Canada, sworn, states:-

"On the night of 3 July 45, at approximately 2310 hrs I checked "A" Company lines and found Cpl. Elliott to be absent from his quarters. On the 4th of July 45 at approximately 0830 hrs I checked "A" Company again and found Cpl. Elliott to be absent from parade. On 5 July 45 at approximately 1446 hrs A.104546 Pte. Murray, D.S. whom I recognize reported to me that Cpl. Elliott had returned."

The accused declines to cross-examine the witness.

....S.V. Hunt Sgt.....
The Highland Light Infantry of Canada

Second Witness

A.104546 Pte. Murray, D.S., (Coy Clerk), The Highland Light Infantry of Canada, sworn, states:-

"On the afternoon 5 July 45 at approximately 1446 hrs Cpl. Elliott reported to me at "A" Company Orderly room after his absence."

The accused declines to cross-examine the witness.

D.S. Murray.....
The Highland Light Infantry of Canada

The accused was cautioned as follows:-

Q. Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have no statement to make.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (c), (d), (e), (f) and (g)(13) have been complied with.

In the Field
16 July 45

.....
The Highland Light Infantry of Canada

Summary of Evidence on charge of
No. B143704 Gnr. Elliott J. "A" Coy
The Highland Light Infantry of Canada, charged
with:- A.A. Sec 15 (1), in that he, W.O.A.S
in the field, did absent himself from 2300
hr. 3 July 45 to 1445 hr. 8 July 45.
By direction of the Commanding Officer, the
evidence is taken on oath.

Staff Nelson. B. 74715 Sgt. Pnl. A.V.
The Highland Light Infantry of Canada
sworn states:-
"On the night of 3 July 45, at
approximately 2310 hr. I checked A. Coy
lines and found Gnr. Elliott to be
absent from his quarters.
On the 4 of July 45 at approximately
0530 hr. I checked A. Coy again and
found Gnr. Elliott to be absent from parade
On 8 July 45 at approximately 1445 hr.
A104546 Pte Murray D. [illegible] reported to me
that Gnr Elliott had returned.
The accused declined to cross examine the
witness
S/Y Hunt. Sgt

Second Witness A 104546 Pte Murray.
D.L. (Coy clerk) The Highland Light
Infantry of Canada accused states:-
On the afternoon 8 July 45 at approx
1445 hr. Cpl. Elliott reported to me
at Coy orderly room
after his absence.
The accused declined to make a statement
at this time.
D Murray Pte.
The accused was cautioned as follows:-
Q. Do you wish to make a statement or
to give evidence on oath. You are not
obliged to say anything or give evidence
unless you wish to do so, but whatever
you say or any evidence you give will
be taken down in writing and may be given
in evidence.
A. I have no statement to make.
J. Elliott
I certify that the foregoing Summary
of Evidence, consisting of two pages, was
taken down by me in the presence of
the accused and that R.P. 4 (c) (d), (e) (f)
and (g) (13) have been complied with.
In the field
14 Aug 45
W.W. Morgan Capt.

Exhibit "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.143704	Corporal	ELLIOTT, James	The H.L.I. of Canada

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this statement may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not exercised to the prosecutor.

† See para. 477, K.R., 1940.

* The numerals having stated should correspond with the number of each or in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness, the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For AA Sec 10 (3)	Nil	times	one	times.
For AA Sec 15 (1)	Nil	times	four	times.
For AA Sec 24 (2)	Nil	times	two	times.
For AA Sec 40	Nil	times	one	times.
For		times		times.

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~The previous conviction of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and cases in which trial has been dispensed with, are those set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 10 days in military custody, making a total of 10 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service attestation paper is 20 years

6. The date of his ~~enlistment~~ attestation specified in his record of service attestation paper is 9 Mar 43

7. The service which the accused is allowed towards discharge or transfer to the reserve is .....

8. The accused is entitled or allowed pay or gratuity in respect of ~~.....~~ service.

9. The accused is entitled to reckon ~~.....~~ service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military badge, *or* is in possession of *or* entitled to (*state any military decoration or reward*) The C.V.S.M. & Clasp

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer had held the substantive rank of .....~~

~~12. (In the case of an officer.) The accused holds in the Army the rank of ..... dated .....~~

~~and in his regiment (or corps or department) the rank of ..... dated .....~~

(Publication No. 111/2000/1942) 75,000 12-42 A.F.W. 3162. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B.143704 Rank Cpl. Name Elliott, F. of HQ 1 of G. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 st day of July

A Harley Capt Adjt

(Officer having custody of Regimental Books)

If the present has served as a non-commissioned officer continuously, without reduction, to the present date,

	Date of Promotion.
In the rank of L/Cpl.	years 1 month 26 Feb 45
In the rank of Cpl.	years 4 months 26 Sep 45
In the rank of	years

Observation.—If any matter in any of the above paragraphs needed be stated, here the regimental books the foregoing must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

No B143704 Name Elliott James | Sqn, Battery or Company | Corps C.I.C. | Date of enlistment 1943 | Trade | Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine NIL | Sheet No ONE | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed with effect 9 Sep 43 - Certified no entries									
Camrose Alberta	5 Feb 1944	Pte.	--	(1) Conduct to the Prej of good order and Mil. Discipline at approx 1700 hrs 5 Feb(Urinated on a public street) AA 40	Lt Okes L/C Spence L/C Dorscheid L/C James	Major A.16 CITO CA - 168 hrs detn	7 Feb 1945	2 June 1944 Lt Col P Fleming	Placed under stop of pay to make good cost of repairing door 50¢
				(2) Resisting an escort at approx 1715 hrs 5 Feb 44 whose duty it was to place him under arrest Sec 10(1) AA	Cpl Defore				
				(3) Wilfully injuring public property at approx 1715 hrs 5 Feb 44 damaged Guard Room door to the value of 50¢ AA 24(2)					
Camrose Alta	15 Feb 1944	Pte		AWL from 2130 hrs 15 Feb 44 to 2330 hrs 15 Feb 44 (Absent 2 hrs Sec 15(1) A.A.	Cpl Garn Cpl Robertson	7 days C.B.	16 Feb 1944	Major G.E. Gleave	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camrose Alberta	5 Mar 1944	Pte	--	AWL from 0130 hrs 5 Mar 44 to 0300 hrs 5 Mar 44 (Absent 1 hr 30 mins) A.A. 15(1)	L/C Howarth Documentary	7 days C.B.	6 Mar 1944	Major G.E. Cleave MM	
Camrose Alta	21 Mar 1944	Pte.	--	AWL from 2130 hrs 21 Mar 44 to 0030 hrs 22 Mar 44 (Absent 3 hrs) AA 15 (1)	Cpl Campbell Cpl Robertson L/C Howarth	48 hrs detn	22 Mar 1944	Lt Co P Fleming	
Calgary Alta	26 Jun 44	Pte.		A.W.L. from 2200 hrs 26 Jun 44 until 0020 hrs 30 Jun 44 (Absent 3 days, 2 hrs, 20 mins) AA 15 (1) (2) Losing by neglect articles of kit to the value of $1.80 AA 24 (2)	A/Cpl. Tiefenbach G.W.	108 hrs detn	30 Jun 44	Colonel Louis Scott CBE DCM	Forfeits 4 days pay FR&I 149(1)(a) Stop of pay $1.80 FR&I 158 (2)

CERTIFIED TRUE COPY H. Harley Capt

LF Jul 45 (H. Harley Capt & Adjt
Officer having custody of original

30-155

Bdr. Elliott, Jr.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 35465 Bdr (A/Sgt) Jim Charles Elliott

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 4/1	Guilty	Guilty	with the exception that the words accused state "533 guilders" "instead of" "1000 guilders in 10 guilder notes" and "approx 750 guilders in Silver" The prosecution accepting the same and convicting the accused of the offence RP 44 (4)
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for ——— beginning on (date) ——— (*)
(*. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on AF B.235 or AF B.296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on AF B.235 or AF B.296 or other appropriate evidence.)

Sentence Awarded by the Court: To be returned to his unit & to undergo detention for one year

(Sgd) A. Lawson Capt — Judge Advocate, if any. — Date awarded: 22 Nov 44 — (Sgd) [illegible] — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 768.)

Date ——— (Sgd) ——— Commanding ———

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(7), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed for trial or further dealt with on the charge(s) on which the finding is quashed.~~ (*)
(*. AA 57A. Delete if not used.)

(Sgd) [illegible] Comd

Date 24 Nov 44 — Commanding ROA 4 Cdn Armd Div — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. — Date. — Signature of Offr.

M 35465 Bdr (A/Sgt) Jim Charles Elliott 26 Nov 44 — Promulgated and extracts taken. — J Berry Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 150 [illegible]

CF A96 (To be used APAM) 40/P & S/1-44 (40010)

FIELD GENERAL COURT-MARTIAL

4/38B

RECEIVED 15 MAR 1945 JAG BRANCH CMHQ

Convening Order of Maj Gen H.W. Foster Comd 4 Can Armd dated 21 Nov 44 Div

ACCUSED.

(Trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
M35465	Bdr	A/Sgt	Jim Charles	Elliott

Rank: Gnr Can Fd Regt RCA; Bdr 15 Can Fd Regt RCA; A/Sgt Res.

PROCEEDINGS REVIEWED

11 Jul 45 [illegible] Lieut

PROCEEDINGS OF TRIAL.

HELD OFFICER, JAG BRANCH C.M.H.Q. issued on (date) 22 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 14/69.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. This Schedule referred to throughout is on p. 4. Captions do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding form number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(4) J.

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1400 hours trial commences. J.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The ~~Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO~~.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ——— as interpreter? Ans ——— J.

The ~~Interpreter is sworn~~.(1) Do you object to ——— as shorthand writer? Ans ———
The ~~shorthand writer is sworn~~.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 18, 96(B), p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc.:

President	Maj	B.C. Churchill	5 Can A Tk Regt
Member	Capt	A.S. Nelson	8 Can R.A.A. Regt
Member	Lt	D.T. Burton	4/8 Can Fd Regt
Judge Advocate	Capt	H.A. Lawson	H.Q. 4 Can Armd Div
Prosecutor	Lt	R. Coates	15 Can Fd Regt
Defending Offr	Capt	H.H. Griffin	18 Can Fd Regt

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes.

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.) J.

A8. The accused ——— before arraignment makes(s) (no) ——— plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or (in one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is (~~no~~) application for the Court to be ~~separated~~ so that the description of the ~~crime~~ in Part I of the Charge Sheet (3) The President records the plea of accused to each charge in Part I of the Charge Sheet as follows: 1. Guilty except that the words "1000 guilders in 10 guilder notes" and "approx 750 guilders in Silver" 2. The charge is dismissed. 3. The accused is found guilty of the charge as altered by the exceptions and substitutions.

(1. RP 26, 27, 109, 111. Delete if not applicable. Insert p 2. When more than one Charge Sheet see RP 71(C), when several accused to be tried either separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p. 2. The proceedings are continued on Record Form. B & C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Yes (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 1 *para* 3, *MML p* 54 *para* 47. *4. See para* L3 *of Record Form* E.
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, ~~and he (they) change(s) his (their) plea(s) on ..... charge(s). Part 1 of the Schedule is amended accordingly.~~
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 37(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Con* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will only carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 8, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf RP* 85. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para* E3 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, *117(A). See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA* 54(*3*) (*d*), *RP* 45, *120(A). 2. AA* 54(*3*), *RP* 45, *117. This alternative pronouncement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Could witnesses as to character only.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *B* and Ex *C* respectively.(3)
(*1. MFB* 355 *or MFB* 296. *2. MFM* 9. *3. RP* 46. *KR Con* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, through my Def Offr. (2)
(*1. RP* 37(*C*), 46(*B*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*4*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and* 45 *proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 108, 119(*A*), *KR Con* 308, 330, 343-346, *Overseas RO* 309, 2323, *MML p* 60, 732-739. *As to sentences assigned for civil offences by the law of England see AA* 41(*1*), *MML p* 180. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 98(*1*), *KR Con* 344. *2. RP* 50. *As to remission from arrest by Confirming Offr see KR Con* 367. *As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

a Fine amount does not appear to give sufficient punishment. AP 2/5/45
fn 3

FIRST CHARGE

AA Sec 41

CHARGE SHEET

The accused, M.35465, (Lance Sergeant) Jim Charles ELLIOTT, 95 Cdn Fd Bty, 15 Canadian Field Regiment RCA, a soldier of the Canadian Army place on Active Service, is charged with :

WHEN ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

in that he, at STEENBERGEN, HOLLAND, on the night of 4/5 November 1944, stole

1 EXACTA Camera complete in leather case
1 Gold Watch
1 Gold Watch Chain
1 Gold Diamond Ring
1 Gold Signet Ring
1000 Gulden in 10 Gulden notes
Approx 750 Gulden in Silver

the property of Mr Peter Vogelaar, B 172 Wouryscheistraat, STEENBERGEN.

In the field
18 Nov 44

(R.H.E.Walker) Lt-Col RCA
CO 15 Cdn Fd Regt

Approved for trial, KR (Can) 54c
In the field
20 Nov 44

ADJA 4 CDN ARMD DIV

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
21 Nov 44

(R.W. FOSTER) Maj-Gen.,
GOC 4 Cdn Armd Div.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA8)
40/PAM/5697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
M35465	Bdr (L/Sjt)	Jim Charles	ELLIOTT	98 Cdn Fd Bty 15 Cdn Fd Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 NOV 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial", ~~and requires I am of opin i any that it is not practicable that such offence(s) should be tried by or before the accused be tried by an duly Convened Court Martial~~

2. ~~And whereas I am of opinion that it is not practicable that such offence(s) should be tried by or before a General Court-Martial, and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (at least) Offrs before the Court, (specify) Offrs I consider, for the reasons I have attached hereto,~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	B E CHURCHILL	5 Cdn A Tk Regt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A H WILSON	8 Cdn LAA Regt
Lt	D T DENTON	23 Cdn Fd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	F W VICKERS	15 Cdn Fd Regt

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	H A HANSON	Rear 4 Cdn Armd Div

On Active Service in the Fd

in HOLLAND (Country.)

(Signed personally. RP 105 fn 2.)

Maj-Gen. (Rank.)

(H.W. FOSTER)
Commanding 4 Cdn Armd Division
Convening Officer.

Date 21 Nov 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 98 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 93(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 90(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 98, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(F)*), or to prove previous convictions where accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused elects has given evidence on such as to facts, whether any evidence as to his character has been given or not. (*Where accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 86(E), KR Can 565(c).*)

(vii) Summing up by JA, if any. (*RP 82.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS D, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 2 of CF A 98 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to submitting in evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1)-(3) (A).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 98 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(9), RP 114(C), MML p 739.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Hdqr HQ 4 Cdn Armed Div

22 Nov 44 Date

M35465 L/Sgt ELLIOTT JC

C 3. Plea in Abatement
(Elliott)

The circumstances of the
case review -

The accused has discharged
his duties as an Aide
efficiently -

Learning requested.

M3546 Sgt Elliott, J.C. 8 May 1944
18 Fld. Regt R.C.A.

I have been cautioned by Sgt Frost No 1 C.I.C. that I need not say anything I wish to do but that anything I do say will be taken down in writing and may be given in evidence. I understand this caution & wish to make the following statement. J.C. Elliott.

Last Saturday I moved into billets in Steenbergen. I was in charge of the Sigs vehicle. There was a safe in these billets. We had been working in the evening and at about 2000hrs Matheson, Bouchard & Rauh and I decided to try to open the safe. I don't know who got the tools out of the truck but we forced the door open & shattered the bottom out of it. I got about 200 Swiss and a watch and a ring. I have hidden them but will try to recover it all. The rest of the cigars were given away. We had 3 or 4 boxes altogether. I would like to straighten this out as best I can and will repay any loss incurred.

J.C. Elliott.

Witness
J.R. Frost

"A"

SUMMARY OF EVIDENCE

Summary of evidence in the case of M35465 LANCE SERGEANT JIM CHARLES ELLIOTT of 95 Cdn Fd Bty, 15 Canadian Field Regiment RCA. By direction of the commanding officer this summary is taken under oath.

First Witness

F.75799 Cpl W.P. Forbes, 8 Canadian Provost Company, Canadian Provost Corps, having been duly sworn, states :

I am F.75799 Cpl W.P. Forbes, 8 Cdn Pro Coy, Cdn Pro Corps. On Sunday night, 5 Nov 44, I was instructed by my commanding officer to proceed to 15 Cdn Fd Regt and interview Capt Saunders in order to establish which troop of the 15 Cdn Fd Regt occupied certain billets - B172 WOUWSEHEESTRAAT, STEENBERGEN. This was done and I found that these billets were occupied by the wagon lines of "D" troop. I then made arrangements for a complete check of men and equipment. This was set for the following morning at 1000 hrs. The following morning with RSM Wilson, one or two sgt-majors and two officers, I proceeded to the area then occupied by "D" troop wagon lines. The men and their kits were brought out and while I questioned a number of the men, an officer inspected the kits in turn. These men were questioned in the presence of Capt J.H. Forbes. While I was questioning one of these men RSM Wilson came to me and asked me to follow him. He went to a vehicle and he pointed out a box of tools which had been found in a truck close by. During the questioning the vehicles were being searched as well as the kits of the men. The tools in the box, that is the hammer, the file, the rule, the chisel and the wire cutters were covered with a white powder. This white powder, to my knowledge, is the same as that found in the room where a safe had been found broken open. I had examined this room on Monday morning, 6 Nov 44, as a result of a complaint by PIETER VOGELAAR of STEENBERGEN that a safe belonging to him and kept in a room at his residence at B172 WOUWSEHEESTRAAT had been broken into and certain articles belonging to him removed. I was detailed to make an investigation. The white powder referred to is found between the lining of the safe and the outer wall. It serves as an insulator to render the safe fire-proof.

(A box of tools is shown to the witness marked Exhibit "A"), I identify this exhibit as the box of tools which I examined at the vehicle. On a further search of the truck a number of cigars in a box hidden in the camouflage netting were found. A number of DUTCH bank notes were also found concealed in various places about the truck. All these articles were taken to Provost HQ and kept until delivered to the Adjutant, 15 Fd Regt RCA. On 8 Nov 44, seven members of M.T vehicle, being the whole crew, were called to Provost HQ for questioning by Sgt Frost of SIB, First Cdn Army. As a result of this questioning four soldiers - Sgt Elliott, and Gnrs McAlister, Rank and Moullett-admitted participation in the removal of property from this safe. Sgt Frost, the four soldiers and I then went to B172 WOUWSEHEESTRAAT where a camera was produced by Gnr McAlister in the presence of Sgt Frost. We then went to a farmhouse about four miles further on in an area where the troop had been billetted later. I accompanied Gnr McAlister to a nearby farm where he produced a roll of money from a rafter of an out-building. Then Rank made a search in the garden of the same place assisted by me. There we found buried a cup containing a number of Dutch notes. We then left the area and went back to WOUWSEHEESTRAAT and there Sgt Elliott went into a yard where a tank was parked. I followed for a distance but he asked to be allowed to retrieve the goods by himself. This was granted by the SIB Sgt. Sgt Elliott returned with some money, a watch and chain and two rings and delivered them to

Sgt Frost. We then returned to 15 Cdn Fd Regt where we delivered the four soldiers to the RSM

The accused declines to cross-examine this witness.

Second Witness

No. B.21172 Sgt J.R. Frost of No 1 Special Investigation Section, Canadian Provost Corps, First Canadian Army, having been duly sworn, states :

I am B.21172 Sgt J.R. Frost of No 1 SIS, Cdn Pro Corps, First Cdn Army. On 9 Nov 44 I investigated a complaint by a civilian living in STEENBERGEN which involved the breaking open of his safe and the theft of a quantity of jewelry and money. At thattime I interviewed H.34951 Gnr McAlister, D.; H.56009 Gnr Houllett, J.; M.35465 Sgt Elliott, J.O. and B.122569 Gnr Rank, W.J., all of 15 Cdn Fd Regt, at which time they made and signed voluntary statements after being duly cautioned. Cpl Poirier was present. These statements I now produce in evidence (marked as Exhibit "S"). The following day I accompanied the four accused to the billet area where I was present with Gnr McAlister when he recovered 120½ Gulden in cash from a rabbit hutch and when he recovered 60 Gulden in cash from an out house and a camera, No 817940, from the ground near a barn at the scene of the offence. Also at that time Gnr Rank recovered 48½ Gulden in cash buried in a cup in the garden. I was also present when Sgt Elliott produced 514 Guldon in cash, one diamond ring, one signet ring, one gold watch and chain. (Witness is shown articles corresponding to the above and identifies them)

The accused declines to cross examine this witness.

I certify that in my opinion the attendance of PETER VOORHAAN cannot be readily procured owing to the expense and loss of time involved and a written statement of his evidence, purporting to be signed by him, has been read to the accused and is included in this summary. The accused does not demand the attendance of this witness for cross-examination.

Question to the accused --

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused -- No Sir.

I certify that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Taken down by me in the presence of the accused in the Field, Holland, this 17th day of November, 1944.

(R.H. Evans) Lt Col.

12 Nov 44

Statement of Mr. Peter Vogelaar.
B 17 Hoenderstraat Steenbergen

I am Peter Vogelaar. and have resided at the a/m address until 4 Nov 44.

On the 4 Nov. 44 Can Soldiers arrived on my premises and billeted three for the night leaving early Sunday morning 5 Nov 44.

I left my premises at about 4.30 pm 4 Nov. 44. but before leaving I examined a safe. I had on my premises as I had some important papers placed in it. I also checked other contents which included 1000 Gulden in paper money. (100 ten Gulden notes) a small bag containing approx 150 Gulden in silver, a camera two rings one a diamond ring. and the other a signet ring, in Gold. a Gold Watch and chain. a table set. Knives forks and spoons all in silver and a number of cigars After checking all these articles I closed the safe and locked it. leaving the premises at about 4.30 pm.

The Can Soldiers had already occupied the town on my premises for billets

In the morning of the 5 Nov 44 at about 7.30 am I returned to my premises and was refused admittance but when I made them understand I was the owner they then allowed me to enter.

I went to the barn and noticed that the fuse was removed and was lying about near the Army truck that was in there. I complained about this saying that I had already been ruined and they should at least leave some for me. During this conversation the soldiers were preparing to move.

After examining the barn I went to the house and found that the safe had been turned upside down and broken into. The bottom lining cut out with a chisel. I did find the table set complete & eight forks one knife and a number of spoons that were lying around.

I immediately went to the town hall

and reported the matter to Capt
Valk of the Dutch Army who at
that time was talking to other
Army Offices. on hearing my story
He accompanied by three other offices
came with me to my home where
they examined the damage done.
after this examination they went
to the barn and spoke to the soldiers
who were still around ordering them
to stay out of the house. a few
minutes later all these soldiers
left the premises this was about 10 o'clock
or 10 30 pm Sunday morning 5 Nov. 44
Later in the afternoon about 3 o'clock
four Offices came to my premises and
examined the damage. they spoke to
me. but I could not understand
them. as they left the place.

After I entered the house in the
the morning. at about. 7 30 am 5 Nov 44 I saw
blankets and raincoats laying around in one of
the rooms leading me to believe
that the room had been used as
sleeping quarters. in the afternoon I
saw soldiers come to the house and
remove these blankets and coats

I couldn't recognize a
third soldier.

Later on I discovered the
(40 Kilos each)
of big bags containing sugar also
several small bags containing from
1/2 Kilo to one Kilo of sugar. altogether
100 kilos valued at about 58 Pesos
Charles immediately failed to reveal
the. Item was any other thing taken.

J. Vogelaar

Interpreter
Jack Kestelaar.
8 Cdn Prov Coy.

Witness
Lt Cmdr RCN
Regt #1/6799.
8 Cdn Prov Coy.

12 Nov 44

Re Complaint of Felix Vagelaar
B1/4 Houwaartsstraat Meerlo

I have been interviewed by Gde Police of the Can Provost Corps and have been advised that some of the articles taken from the safe at my residence at the a/m address have been recovered.

I have been shown these articles and have examined them. I positively identify the camera, the two small purses, two rings Gold Watch and chain as belonging to me. which were placed in the safe at my residence. The money submitted with this complaint is in different denomination my money was 100 ten Guilder notes but the money shown to me was of various denomination.

However. I appreciate every thing that has been done in order to recover my property. and I thank you very much, but would appreciate very much if I could be spared the necessity of appearing at the trial.

F. Vagelaar

Interpreter
Mark Kesteloot
8 Can. Prov. Coy.

Witness
[illegible]
Pte 5[illegible]
8 Can Prov Coy.

12 Nov 44

Re: Complaint of Pâter Vegelaar
B 172 Nouvelleestraat, Steenbergen

I have been interviewed by Cpl Poirier of the Cdn Provost Corps and have been advised that some of the articles taken from the safe at my residence at the a/m address have been recovered.

I have been shown these articles and I have examined them . I positively identify the papers, the two small purses, two rings, gold watch and chain as belonging to me which were placed in the safe at my residence. The money connected with this complaint is in different denomination. My money was 100 ten guilder notes, but the money shown to me was of various denominations.

However I appreciate everything that has been done in order to recover my property and I thank you very much but would appreciate very much if I could be spared the necessity of appearing at the trial.

(sgd) P. Vegelaar

Interpreter:
Jack Kesteloot
8 Cdn Pro Coy

Witness:
W.F.Poirier, Cpl
Reg # 78752
8 Cdn Pro Coy

Certified True Copy.

In the Field
17 Nov 44.

J.H.Casey Capt RCA

COPY

12 Nov 44

Statement of: Mr. Peter Vogelaar, B 172 Woudveshestraat, Steenbergen.

I am Peter Vogelaar and have resided at the a/m address until 4 Nov 44. On the 4 Nov 44 Cdn soldiers arrived on my premises and billetted there for the night leaving early Sunday morning 5 Nov 44.

I left my premises at about 4.30 pm 4 Nov 44 but before leaving I examined my safe I had on my premises as I had some important papers placed in it. I also checked other contents which included 1000 Gulden in paper money (200 ten gulden notes), a small bag containing approx 750 gulden in silver, a camera, two rings, one diamond ring and the other a signet ring, in gold, a gold watch and chain, a table set, knives, forks and spoons, all in silver, and a number of cigars. After checking all these articles, I closed the safe and locked it leaving the premises at about 6.30 PM. The Cdn soldiers soldiers had already occupied the barn on my premises for billets.

On the morning of the 5 Nov 44 at about 7.30 AM I returned to my premises and was refused admittance but when I made them understand I was the owner they then allowed me to enter.

I went to the barn and noticed that the preserves I had in my house were removed and were lying about near the army trucks that were in there. I complained about this saying that I had already been ruined and they should at least leave some for me. During this conversation the soldiers were preparing to move.

After examining the barn I went to the house and found that the safe had been turned upside down and broken into, the hooter being cut out with a chisel. I did find the table set complete except for one knife and a number of cigars that were lying around.

I immediately went to the town hall and reported the matter to Capt Valk of the Dutch Army who at that time was talking to other army officers. On hearing my story he, accompanied by these other officers, came with me to my house where they examined the damaged safe. After their examination they went to the barn and spoke to the soldiers who were still around ordering them to stay out of the house. A few minutes later all these soldiers left the premises. This was about 10 o'clock or 10.30 AM Sunday morning, 5 Nov 44.

Later in the afternoon, about 3 o'clock, four officers came to my premises and examined the safe. They spoke to me but I could not understand them so they left the place.

When I entered the house in the morning at about 7.30 AM 5 Nov 44 I saw blankets and raincoats laying around in one of the rooms leading me to believe that the room had been used as sleeping quarters. In the afternoon I saw soldiers come to the house and remove these blankets and coats. I couldn't recognise any of these soldiers.

Later on I discovered that 2 big bags (40 kilos each) containing sugar also several small bags containing from ½ kilo to one kilo of sugar, altogether 100 kilos valued at about 50 guldens. Further investigation failed to reveal that there were any other things taken.

(sgd) P. Vogelaar

Interpreter:
Jacq Kastelhoot
6 Cdn Pro Coy

Witness:
W.F. Tobler, Capt
Reg #F-70790
6 Cdn Pro Coy

Certified true copy.

In the Field
17 Nov 44.

Statement of - M56009 Gnr. Noullett, J 15 Cdn Fd Regt RCA

I have been cautioned by Sgt. Frost, No. 1 S.I.S. that I need not say anything unless I wish to do so, but, that anything I do say will be taken down in writing and may be given in evidence. I understand this caution and wish to make the following statement.

Signed J Noullett

Last Saturday I moved in to billetts in Steenbergen. There was a large safe there which was locked. Sgt. Elliott, McAlister, and Rank and myself broke the safe open by forcing the bottom with a cold chisel. We used the tools out of the Mike 5 truck. The money was split four ways. I got about 200 Guldens. I am sure there was only one ring. Sgt. Elliott had the ring and the watch. I don't know who had the camera. This was not done in a sense of crime but more out of curiosity as the money was no use to us anyway. I am willing to repay any damage done if possible.

Witness J.R. Frost. Sgt.

Signed J. Noullett.

CERTIFIED TRUE COPY J H Greig Capt RCA.
(J.H. Greig) Capt RCA

Statement of- M 54851 Gnr McAlister, D.L. 15 Cdn Fd Regt. RCA

Last Saturday Mike 5 crew moved in to billetts at Steenbergen. The house was unoccupied having been damaged by battle action. There was a large safe on the premises. We were drinking during the course of the evening and someone suggested we open the safe. Sgt. Elliott (Cautioned here) I have been cautioned by Frost, No 1 S.I.S. that I need not say anything unless I wish to do so but that anything I do say will be taken down in writing and may be given in evidence. I understand this caution and wish to continue this statement.

Signed D.L. McAlister

Sgt. Elliott, Gnr Noullett, Gnr Rank and myself proceeded to force the safe open. We turned it bottom up and chisselled the bottom out of it. We started about 2230 hrs and finished about 0100 hrs. We used the tools out of the truck, I think that we got about 200 Gulden each. I don't know who had the cigars. I only saw one ring which looked like a diamond. I am not sure if I saw a watch or not. Sgt. Elliott had the ring. I did the camera in the building. I will do all in my power to recover the stolen money and property.

Witness J.R. Frost, Sgt.

Signed D.L. McAlister

CERTIFIED TRUE COPY J H Greig Capt RCA
(J.H. Greig) Capt RCA

Statement of - M-55466 L/Sgt Elliott, J.C. 15 Cdn Fd Regt RCA

I have been cautioned by Sgt. Frost, No. 1 S.I.S. that I need not say anything unless I wish to do so, but, that anything I do say will be taken down in writing and may be given in evidence. I understand this caution and wish to make the following statement.

Signed J.C. Elliott

Last Saturday I moved in to billetts in Steenbergen. I was in charge of the Sigs, behicle. There was a safe in these billetts. We had been drinking in the evening and at about 2300 hrs McAlister Noullett and Ra nk and I decided to try to open the safe. I don't know who got the tools out of the truck but we turned the safe upside down and chisselled the bottom out of it. I got about 200 Gulden and a watch and a ring. I have hidden them but will try to recoverit all. The rest of the cigars were given away. We had 3 or 4 boxes altogether. I would like to straighten out this as best I can and will pay any loss incurred.

Signed J.C. Elliott

Witness J.R. Frost.

CERTIFIED TRUE COPY (J.H. Greig) Capt RCA

Statement of B-146869 Gnr. Rank, W.J. 15 Cdn Fd Regt RCA

I have been cautioned by Sgt Frost, No. 1 S.I.S. that I need not say anything unless I wish to do so, but, that anything I do say will be taken down in writing and may be given in evidance. I understand this caution and wish to make the following statement.

Signed W. Jas Rank

Last Saturday our wagon lines moved in to billetts in Steenbergen There was a safe in the house. It was locked. During the evening we drank quite a bit. I remember someone trying to harmer the safe but was not present when it was finally opened. The following mornign either Sgt. Elliott, Gnr McAlister or Gnr Noullett handed me some money. I figured it was money taken from the safe. I don't know how much there was as I hid it before counting it. I will try to recover this money. I would like to pay my share of any damage done or loss incurred. I am not a criminal and hope I will not be treated as such. This offence was committed more with a sense of bravado than crime.

Signed W. Jas Rank

Witness J.R. Frost Sgt.

CERTIFIED TRUE COPY (J.H. Greig) Capt RCA

DESCRIPTION OF EXHIBITS

1 Tool box containing the following articles covered with white powder:

1 ball, peen, hammer, large

1 cold chisel

1 folding rule

1 pair wire cutters

1 spoon

1 file (half round)

1 screwdriver large

1 monkey wrench

1 pair pliers

4 two end wrenches

1 roll of wire

1 wrench holder

1 screwdriver, small

1 punch

1 roll electric wire
5 keys (car)

Several miscellaneous, nuts, bolts, washers and cotter pins.

1 hat badge, RCA

2 Champion Spark Plugs (in case)

3 bulbs new - two broken (in case)

5 miscellaneous wrenches.

1 bar of solder.

Certified true description

[signature] Major
President FCCM

The tool box and articles contained therein, as described above, being of a bulky nature are returned to 15 Cdn Fd Regt. The money and valuables described above are returned to Mr. Peter Vogelaar, the owner thereof, while he still can be found.

[signature] Major
President FCCM

and

1 Exacta Camera complete in leather case Serial No. Nr. 817940

1 Gold watch (Antoine Freres)

1 Gold watch chain

1 Gold diamond ring

1 Gold signet ring (initials PV)

533 Guilden in notes and silver

B2. Statement by L/Sgt Elliott.

I report that this Co
Squadron. we had been drinking
duty wine mistress. we had
retired the safe and opened
it through curiosity. we
realized we made a mistake
and hid the money. afterwards
we wanted to get the money
back to the owner. we confessed
same offr. and the following
day took the whole story to
Co of S/S.

81/ witness as to charge
L/Sgt McKillop.

Capt J W B Kabane 1st F.C. Regt duly sworn.

Known accused for considerable time and worked with him 1½ yrs. During this time he has obtained first Class L/Sgt. He has been i/c Signal crews. It was a shock when I heard he was in trouble, but I am sure this happened on the spur of the moment without thinking.

To my knowledge he has had no crimes.

No X Exam.

RP 15 (B) complied.

#60701 B.S.M. Berry F.S. 1st Can Fd Regt sworn

Known accused 1st met -
He has been sober, conscientious and hard working. He has been very efficient and his discharge is entirely as an N.C.O. any fault.

No X Exam.

RP 15 (B) complied with.

"B"

ARMY FORM B.196.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
M.35465	Lance Sergeant	Jim Charles ELLIOTT	

1. The following is a fair and true summary of the entries in the regimental and [redacted] battery [redacted] conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	times	times
For	times	times
For	times	times
For	times	times
For	times	times

[redacted]

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or* [redacted]

3. The accused is not under sentence at the present time, *or* [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and nil days in military custody, making a total of nil days, of which nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 22 yrs 9 mos

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 23 May 41

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of, or entitled to, no military decoration or military award [redacted]

11. [redacted]

12. [redacted]

W.1787/1459 80M. 3/44. P. Ltd. T51-1

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ *Rank* _____ *Name* _____ of _____ Regiment (or as the case may be).

(*INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or of summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or ordered by the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18 day of November 1944

J. R. Young Capt RCA

(O.C. Regt'l Pay RCA)

In the rank of Lance Bombardier 4 mos XXX 25 Oct 43

In the rank of Bombardier 4 mos XXX 22 Feb 44

In the rank of Lance Sergeant 5 mos XXX 8 Jun 44

(INSTRUCTIONS.—*If any entry in any of the above paragraphs cannot be copied from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the reference to the confirming officer should be inserted accordingly.*)

15. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of _____ Date of Promotion _____

In the rank of _____ _____

In the rank of _____ _____

(INSTRUCTIONS.—*If any entry in any of the above paragraphs cannot be copied from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the reference to the confirming officer should be inserted accordingly.*) The foregoing statements in paragraphs 14 and 15 hereof, as to the character and service of the accused, are extracted from the regimental books in my custody, and are available and correct as on the date hereof.

Signed this _____ day of _____ 19_____

_____

(_____)

MFM 6
(AFB 1217)
40/P&S/136 (3460)

No M35465 Name ELLIOTT, J.C. Sqn, Battery or Company | Corps R.C.A. | Date of enlistment 23 May 42 | CC Badges | Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | Signature OC Company, etc J.H. Moore Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 30 May 41 No entries					
In the Field	31 May 43	Gnr		Sec 40 (1) An Act to Prej of Gd mil discipline when on duty as a sentry was sitting down & smoking (2) Failing to salute an offr.	Order & Lt. N.T. Johnson	7 days C.B. Forfiets 4 days pay FR&I 149 (2)	2 Jun	Maj H.L. Armstrong	

CERTIFIED TRUE COPY of Regt Books in my possession

(J.H. Greig) Capt RCA

(PTO)

2521 Pte. Elliott, J.D. 10/E/10411
118th Highlanders.

INF 31
20 FEB 19
5-4-1
166
Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 5th day of February, 1915.

Whereas it appears to me, the undersigned, an officer in Command of 1st. Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—]

President.

Rank.	Name.	Regiment.
Major	T.C. Ketchenson	Gent. R.F.

Members.

Rank.	Name.	Regiment.
Capt.	D.A. Mackenzie	15th. Highlanders
Lieut.	H.I. Maloney	1st. Field Coy. R.C.E.
Lieut.	W.B.C. Price	Royal Can. Regt.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed F.L. Lessard (C.B., D.S.O.) Major-General,
Commanding 3rd. C.D. 1 Can. Div.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.73762 Pte. Elliott, J.D., 16th. Highlanders of Canada.	See Charge Sheet Attached			
	Army Act 6(2)(f).	not guilty	Guilty 60 days detention	
	Army Act 15(1).	not guilty	Guilty 28 days detention	
	Army Act 19.	guilty	Guilty 28 days detention	
	[illegible]	not guilty	Not Guilty	
	Army Act 28.	guilty	Guilty 28 days detention	
	Army Act 15 1).	guilty	Guilty 28 days detention	
			60 days detention	

Confirmed

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G.L. Pearkes. (Signed) T.S. Coleman Maj.
(G.L. Pearkes) Major-General,
Commanding 1 Canadian Division. *President.*
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of February, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers ~~under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 19th day of February 1918.

T.S. Coleman Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (2) on page 702 M.M.L. 1919.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further order.)~~ G.L.P.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 22nd day of February 1918.

G.L. Pearkes. Maj.G.
Confirming Officer. 4OC 1 Cdn Div

Promulgated and extracts taken in the case of

(a) (Dated) 25 Feb 1918 (Signed) T. Coleman Capt. 16 Highrs

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Certified True Copy.

No. B/73762 Name Elliott J.B. Squ., Battery, or Company D Corps 48th Highrs. of Canada Date of enlistment 8 Jan 40 Sheet No. 1.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc. (SGD) Jas S. Johnston, Major

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ON 8 JULY 40 THIS MAN COMPLETED 6 MOS. SERVICE AND IN ACCORDANCE WITH R.O. 71. C.A.S.F. (OVERSEAS) THE PREVIOUS SHEET WAS DESTROYED - 16 Nov 40									
Smith Shield	14 Oct 40	Pte	Nil	(1) W.O.A.S., G.W.L. from 1400 hrs. 14 Oct. 40 until 1600 hrs 24 Oct. 40, (10 days 2 hrs.) A.A. 15. (2) Absent from guard duty at 1600 hrs. 14 Oct 40. A.A. 15.	P.S.M. Samb. E.S.	17 days det'n.	26 Oct. 40	Lt. Col. Southam W.W.	Forfeits 17 days pay, entby F.R. & S. Reg (1) (a). Forfeits 11 days pay entby F.R. & S. Reg (1) (a) (i) (d) Total forfeiture 28 days pay.
Hemingwood	17 Nov. 40	Pte	Nil	W.O.A.S., G.W.L. from 2359 hrs. 17 Nov 40. until 1300 hrs. 27 Nov. 40. (9 days 14 hrs.) A.A. 15.	C/S. Chenney R.C.M.P. C/S. Randell, R.C.M.P.	28 days det'n. Placed on restricted pay for 6 mos. F.R. & S. 735.	30 Nov. 40	Lt. Col. Southam W.W.	Forfeits 28 days pay entby F.R. & S. Reg (1)(a). Forfeits 10 days pay entby F.R. & S. Reg (1)(a)(i)(d). Total - 38 days pay.

Army Form B.122

W.. 3074/1124. 800,000. 5/41. S.T.P. Ltd. 51-6559 Forms A2/45

Army Form A 2.

*N.B.—The Form being applicable to any Board, or Committee, or Court of Inquiry, this blank to be filled in accordingly.

The proceedings should be signed by the President and by each Member of the Board, etc.

Attention is particularly drawn to the Rules for Courts of Inquiry contained in Rules of Procedure 124—125a, and especially to Rule 125a(8); also to paragraph 751, et seq., King's Regulations, 1935.

PROCEEDINGS of a* FIELD GENERAL COURT MARTIAL

assembled at "Woodlands" KINGSWOOD, SURREY.

on the 19th day of February, 1941.

by order of H.Q.C. 1 Cdn Div

for the purpose of Trying S.78768 Pte. ELLIOTT, J.D.

PRESIDENT.

MAJOR T.S.RITCHESON - Hastings & P.E.Regt.

MEMBERS.

Capt. D.A.Mackenzie - 48th Highlanders of Canada

Lieut. J.O.Maloney - 1 Field Coy, R.C.E.

IN ATTENDANCE.

Lieut. H.E.C.Price - Royal Canadian Regt.

The COURT having assembled pursuant to order, proceed to try the Accused:

CHARGE SHEET

The accused No B/73768 Pte. Elliott, J. D. 48th Highlanders of Canada, a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
A.A. 6 (3) (f) When on active service, leaving his guard without orders from his superior officer, in that he at Lewes, Sussex, on 28 Dec 40 after being mounted as a member of the guard on Lewes House, left the guard room at 2000 hrs without orders from his superior officer.

2nd Charge
A.A. 15 (1) When on active service, Absenting himself without leave in that he at Lewes on 28 Dec 40 absented himself without leave from the guard room, from 2000 hrs to 2030 hrs.

3rd Charge
A.A. 19 When on active service, Drunkeness, in that he at Lewes on 28 Dec 40, when on guard duty on Lewes House, was drunk.

4th Charge
A.A. 40 When on active service, Conduct to the prejudice of good order and military discipline, in that he at Lewes on 28 Dec 40 called L/Cpl Keith who was in charge of the guard, "A Cocksucker and a Prick".

6th Charge
A.A. 40 ~~When on active service, Conduct to the prejudice of good order and military discipline, in that he at Kingswood Surrey, on or about 15th [illegible] applied for and obtained leave and compassionate funds, for the purpose of getting married, when he already has a wife in Canada, and had re-cently married a second wife in Scotland.~~

5th Charge
A.A. 42 When on active service, When in lawful custody escaping, in that he at Kingswood on 1st Jan when in arrest esc ped.

6th Charge
A.A. 15 (1) When on active service, absenting himself without leave in that he at Kingswood on 1st Jan 41 absented himself without leave, from 1500 hrs 1 Jan 41 to 2030 hrs 30 Jan 41.

William Brown Hendrie Maj-a

James N. Worthington
(~~Acting~~ Confirmed) Major C.A.
48th Highlander of Canada

28 Jan 41.

T. D. Kitchener Maja
Pres. F.G.C.M.

48TH HIGHLANDERS OF CANADA

Battalion Orderly Room,
19 February, 1941.

This is to certify that H.73762 Pte.
ELLIOTT, J.D. is FIT to undergo trial
by Court Martial.

(C.D.GOSSAGE) Major, RCAMC
M.O. 48th Highlanders of Canada.

Proceedings of a Field General Court Martial held at "Woodlands", KINGSWOOD, Surrey on the nineteenth day of February, 1941 by order of Major-General G.R.Pearkes Commanding 1 Canadian Division, Canadian Army (Overseas) dated fifth day of February, 1941, composed as under:

PRESIDENT

Major T.E. Ketcheson, Hart. R.E.R.

MEMBERS

Captain D.A.Mackenzie, 48th Highlanders

Lieut. J.S. Moloney, 1 Field Coy, R.C.E.

Lieut. H.B.C.Price, Royal Canadian Regt.

The Court satisfy themself that Capt. D.A.Mackenzie is not available to serve owing to being detailed to attend Brigade Conference to give information which he alone could supply, waiting member, Lieut. H.B.C. Price, R.C.R. takes his place as a member of the Court.

The Court is satisfied that Rules of Procedure 23 and 28 have correctly conformed with.

PROSECUTOR: Lieut. P.L.Wood

DEFENDING OFFICER: Lieut. H.C.Cayley

The Trial commenced at 0930 hrs.

Court: Do you object to being tried by any of these officers present, or by me as President?

Accused: No sir.

The President, members and Shorthand Writer are duly sworn in.

The Accused is arraigned on each charge as follows:

Court: 1st Charge, When on Active Service, leaving his guard without orders from his superior officer, in that he at LEWES, Sussex, on 28 Dec 40, after being mounted as a member of the guard on Lewes House, left the guard room at 2000 hrs without orders from his superior officer. How do you say you wish to plead on this charge, Guilty or not Guilty?

Accused: Not guilty.

Court: What do you plead on the second charge, under A.A.15?
Accused: Not guilty.

Court: What do you plead on the third charge, under A.A.19?
Accused: Guilty sir.

Court: What do you plead on the fourth charge, under A.A.40?
Accused: Not guilty sir.

Court: What do you plead on the fifth charge, under A.A.22?
Accused: Guilty sir.

Court: What do you plead on the sixth charge, under A.A.15?
Accused: Guilty sir.

The Accused, having pleaded Guilty to three (3) charges, the provisions of Rule of Procedure 25 (8) are complied with.

Court: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Accused: No sir.

OPENING ADDRESS BY PROSECUTION

I would like to make a few remarks to the Court, with regard to the first and second charges. The Accused was given permission to leave the guard room, for the specific period, but with the caution, 'to hurry back'. As this man ate neither hurry back nor make any attempt to get back until over 5 hours after, his conduct under the circumstances qualifies the permission to leave.

No.73256 L/Cpl. SMITH, J.E., 48th Highlanders of Canada, having been duly sworn, states:

Q.1 You have heard the charges read, will you please tell the Court in your own words, what you know with regard to the first and second charges?
A.1 On 26th December, 1940, I was commander of the guard on Lewes House, at [illegible], Sussex. I told Pte. Elliott that he must not leave the Guard Room, but he said he wanted to [illegible] trip. I said o.k., but hurry back. He did not return back to the Guard Room, and when I went to look for him, I found him in the Transport Lines, in the same building. Just after 2200 hrs.

Q.2 Did you find the Accused drunk at 2200 hrs?
A.2 Yes sir, I would say he was drunk.

Q.3 When the Accused said he wanted to go out and get a drag, you gave him permission, but told him to hurry back?
A.3 Yes sir.

Q.4 What time did you give him permission to leave?
A.4 At about 2000 hrs when he came off his tour.

Q.5 Did he hurry back?
A.5 No sir.

Questioned by the Defence:

Q.1 You were Guard Commander at Lovat on the 28th of December, 1940, and the Accused was a member of that Guard?
A.1 Yes sir.

Q.2 When he got permission from you to go for a crap, he was on his 4 hours off?
A.2 Yes sir

Q.3 When did he come off?
A.3 At 2000 hrs.

Q.4 Did the men on your Guard take off their equipment, and lie down when they came off their beat?
A.4 Yes sir.

Defence: I submit to the Court that under K.R.(Can) 927 An officer or soldier will not take off any article of clothing or accoutrements while on guard, unless this is authorized by the officer commanding the station in the interests of the men's health, and taking this into consideration, corporal Keith was lax in his duty to allow men to take off their equipment and lie down while on guard. I should also like to point out the following excerpt from K.R.(Can) 936 quote, A commander will never quit his guard except to visit his sentries, and will then inform his next in command of the probable time he will be absent. I would point out that Cpl. Keith quitted his guard to look for Elliott.

Q.5 Did you give the Accused permission to leave the Guard Room?
A.5 I did sir.

The Defence rests.

Witness
xecution

B.79302 Pte. Adams, E.D., 48th Highlanders of Canada, having been duly sworn, states:

Q.1 You have heard the charges read, what do you know about the first and second charge?
A.1 Pte. Elliott did leave the Guard Room. I was the only Guard left, other than the n.c.o. in charge of the guard. Pte. Elliott went out and he was out for about 2 hours, and was drunk when he returned. He was in my estimation, too drunk to carry on as a guard.

Q.2 When did he leave the Guard room?
A.2 at about 2000 hrs.

Questioned by the Defence:

Q.1 Pte. Adams, You were a member of this Guard?
A.1 Yes sir.

Q.2 Did L/Cpl Keith give the Accused permission to leave the Guard room to go for a crap?
A.2 Yes sir.

The Defence rests.

B.73236 L/Cpl. KEITH, J.T. 1st witness for the Prosecution, is recalled:

Q.1 Please give the Court your evidence as regards the second charge?

A.1 I was in charge of the Guard, and Pte. Elliott finished his shift at 0000 hrs and came in to the Guard Room. As soon as he came in he went for a crap, and did not return until 2220 hours.

Q.2 You gave him permission to leave the guard room to proceed to the toilet with the specific instructions to hurry back?
A.2 Yes sir.

Q.3 Where did you find him?
A.3 In the Transport Lines, in the same building.

Q.4 Was the Accused in the guard room at any time from 0000 hrs to 2220 hrs?
A.4 No sir.

Questioned by the Defence:

Q.1 The accused was absent without leave from the guard room for 2 hours and 20 minutes?
A.1 Yes sir.

Q.2 You were in charge of the guard, of which he was a member, and you gave him permission to go to the toilet, and to leave the guard room, and he was gone for 2 hours and 20 minutes?
A.2 Yes sir.

Q.3 What do you think's reasonable time for a man to have a crap?
A.3 About 20 minutes.

Q.4 The Accused is charged under A.A.15 in that he was absent without leave, while on page 440 of the Manual of Military Law, quote: "A soldier absent from parade owing to drunkenness should be charged under A.A.19 and not under this paragraph." The Accused has pleaded guilty to a charge of drunkenness, so it would seem that the A.W.L. charge is out of order.

Q.5 Where did you find the Accused?
A.5 In the Transport Lines.

Q.6 You definitely gave him permission to leave the guard room?
A.6 Yes sir, but I told him to return in a hurry.

Q.7 Sir, I now submit that the Accused is charged with absence without leave, while the witness definitely states that he gave him permission. I would like you to take note of that.

Address by the Prosecution:

Sir, I would like to point out to the Court that the Accused was given permission to leave the guard room to do a specific job and to hurry back, and further that he did not return for 2 hours and 20 minutes, yet 20 minutes is conceded to quite a reasonable time to allow for the job in question. His tardiness in returning would, nullify any permission granted to him in this case, as he was definitely cautioned to return immediately. Therefore the fact he was granted permission does not alter the case.

Page 6

5. Pte. Adams, D.F., was sworn for the Prosecution, and recalled:

Questions by Prosecution:

Q.1 When you came off Guard duty was the Accused in the Guard Room?
A.1 ~~Yes~~ sir. No sir.

Q.2 What time did you come off guard duty?
A.2 2200 hrs.

Q.3 Have you any idea what time the Accused returned to the guard room?
A.3 About 20 minutes after 8 p.m.

Q.4 Are you sure of your time?
A.4 Yes sir, I was on Guard from 2000 hrs to 2200 hrs.

Q.5 You said he returned at 2020 hrs, and you were on guard at that time?
A.5 Sorry, sir, I meant that the Accused returned to the Guard Room at 20 minutes after 10 p.m.

Q.6 When you went on duty, you were in the guard room, was the Accused in there also?
A.6 No sir.

Q.7 When you came off duty 2 hours later, was the Accused there then?
A.7 No sir.

Q.8 What time was the Accused brought in?
A.8 About 2220 hrs.

Questions by the Defence:

Q.1 Pte. Adams, when you went on duty at 2000 hrs you say the Accused was not in the guard room at that time?
A.1 That's right sir.

Q.2 He had permission to go and have a drop at that time?
A.2 I don't know what time he got permission to leave, I can only guess that he was not in the guard room when I went on Guard.

Q.3 This 2000 to 2200 hrs was part of you 24 hour tour of duty, and you had spent 4 hours off just before~~that~~?
A.3 Yes sir, our guard took over at 1800 hrs.

The Defence rests.

6. Acting L/Cpl. KEITH, D.C. 1st Witness for the Prosecution is recalled:

Questions by the defence:

Q.1 Under what circumstances did Pte. Gillett called you a "Cockcrucker and a Prick" as laid down in Charge Sheet?
A.1 After I found him in the Transport Lines, I put him under close arrest, at which time he started to used abusive language, and while doing this he used the words Cockcrucker and Prick.

Q.2 You are sure he called you a Cockcrucker and a Prick?
A.2 Yes sir.

Q.3 The Accused has already pleaded guilty to a charge of being drunk, and Cpl. Keith put him under close arrest as soon as he found him in this inebriated condition, and then he ~~he~~ used the abusive language to you, is that right?
A.3 Yes sir.

Q.4 Did you use any abusive language to him?
A.4 No sir, I kept quiet and ignored hi talk.

Q.5 I would like to submit to the Court Page 28 of the Manual of Military Law, and para 47 of that page states: Mere abusive and violent language used by a drunken man, as the result of being taken into custody should not be used as a ground for framing a charge of using threatening or insubordinate language to a superior officer."

1st Witness
Defence S.73762 Pte. ELLIOTT, J.H., 48th Highlanders of Canada, the Accused, having been duly sworn, stated:

Q.1 Pte. Elliott, you were intoxicated when you used this language to Cpl. Keith, that you are accused of?
A.1 Yes sir.

Q.2 You were put under close arrest by Cpl. Keith?
A.2 Yes sir.

Q.3 Pretty strong language, did Cpl. Keith curse you in any way?
A.3 No sir, but he did make some remarks.

Q.4 What remarks?
A.4 When I had been saying something to him, I don't quite remember quite the words, he said, "Some of the boys in the Regiment think you are a prick too."

No questions by the Prosecution.

2nd Witness
Defence

S.73382 Pte. ADAMS, E.G. 48th Highlanders of Canada, is recalled by the Defence:

Q.1 What do you know about the charge of calling L/Cpl. Keith a 'cocksucker and a prick'?
A.1 On the night in question, there was an Imperial soldier delivered from the civil police to our unit guard room for us to keep till his regiment sent for him. I was detailed to look after him, and this language must have been used while I was out to the washroom with this man. I heard quite a bit of profanity from the guard room at that time.

Q.2 Did you hear L/Cpl Keith used profane language to the Accused?
A.2 No sir.

Q.3 You say you were in the washroom when this took place, then you could hardly be in a position to say that the Accused was the only one to use abusive language?
A.3 No sir, not really, as I was out of hearing ~~~~ for a while.

Q.4 Yet you say it was not L/Cpl. Keith who was using profanity?
A.4 I would swear to that sir.

Q.5 Yet you were out of hearing for a short while?
A.5 I mean while I was in hearing up in the guard room.

Q.6 You could not really swear that the Accused used profane language to L/Cpl Keith, as you were not there?

A.6 No sir.

Q.7 Who was in the Guard room when you left?
A.7 Just L/Cpl. Keith and Pte. Elliott.

Q.8 Did you not assume that the profane or abusive language was being used by Pte. Elliott, rather than know for sure?
A.8 Yes sir, I guess that is it.

The defence rests.

Court: Do you wish to give evidence yourself or to call any witnesses as to character?

Accused: No sir

Court: Please call the Adjutant.

Lieut. J.C.Clarke, A/Adjutant after having been duly sworn, proceeds to read Statement of Character and Service of the Accused.

26 Jan 41.

C E R T I F I C A T E.

If available, I desire the services of Lieutenant H.C. Cayley, 48th Highlanders of Canada, as Defending Officer at my trial by Field General Court Martial.

J.D. Elliott ---Pte

B 7378 Pte Elliott, J.D., 48 Highrs.

02 January 1941

Summary of evidence in the case of B/73703 Pte. Elliott, J.D. 48th Highlanders of Canada.

1st Witness for prosecution

B/73035 L/Cpl Keith, J.T.- 48th Highrs of Canada having been duly sworn states:

"

On 08th Dec 40 I was commander of the guard on Lewes House, Lewes Sussex. I told the accused that he must not leave the guard room, but he said he wanted to have a crap, So I said hurry back. He did not return to the guard room, and in my search fo him, I found him in the Transport lines.

He was not drunk while actually on Sentry duty, it was after his tour of duty that I saw him drunk. That is to say in between shifts. I cannot say that I saw the accused drunk while on guard. I dont think he would have been capable of going on his next shift.

I was in charge of the guard on 08th Dec 1940, and the accused called me a "Cocksucker and a Prick"

Question. Was the accused drunk when you found him in the Transport lines?

Answer. Yes Sir, in my opinion he was.

Question by Accused.

Q.1. One of the charges says that I left the guard room without permission, while the evidence of L/Cpl Keith says I had permission.

A.1. Yes I gave him permission to have a crap, and said hurry back.

Q.2. When it became known that I was absent from the guard room, what was the action of L/Cpl Keith?

A.2. I had the other man, who was off duty at the time, stay in the guard room while I looked for Pte Elliott. I only looked in the buildings.

Q.3. Approximately how much time elapsed during this search?

A.3. I looked at 2030 hrs., at 2100 hrs. and eventually found him at 2220 hrs.

Q.4. Did L/Cpl Keith report my absence to PSM Lamb at any time?

A.4. I did not report the incident to PSM Lamb, but I did mention it to him.

. . . . L/Cpl Keith . . . . . 48th Highlanders of Canada. (L/Cpl Keith)

R/79886 P.S.M. Lamb, E.S., 48th Highrs of Canada having been duly sworn states:

2nd Witness for prosecution.

"Cpl Keith reported to me that he had found Pte. Elliott in the Transport lines, and that he was under the influence of liquor, at the time Cpl Keith placed him under close arrest.

Cpl Keith reported to me at 0300 hrs. 28th Dec 40., that Pte Elliott was absent from the guard room."

Q.1. Have you seen the accused marriage certificate of his marriage in Scotland?
A.1. Yes Sir, the accused showed it to me. He was married in the Gaelic Church, Inverness Scotland between the 14th and 24th Oct 1940.

The accused declines to cross-examine this witness.

P.S.M. Lamb . . . . . 48th Highrs
(PSM Lamb, E.S.)

3rd Witness for prosecution.

R/79360 Pte. Adams, E.S. 48th Highrs of Canada having been duly sworn, states:

"When I came off my guard duty, the accused was not in the guard room. I came off my guard duty at 0300 hrs. It was shortly after I returned from my guard duty, that the accused was brought into the guard room. And he was too drunk to continue on his duty. The time elapsed since I went to the guard room and the time, the accused was brought in was between 15 minutes to half an hour."

Questioned by Accused.

Q.1. What were the number of men on this guard?

A.1. Three men and one N.C.O.

Q.2. At the time I was placed under arrest, how many members of the guard were present?

A.2. I was the only one.

R. C. Y. Adams . . . . . 48th Highrs.
(Pte. Adams, E.S.)

4th Witness for prosecutor.

Major I.S. Johnston. Having been duly sworn, states:-

"On the 14th of Oct 1940 the accused was reported A.W.L. He was reported returned to duty on the 24th Oct 1940. He was paraded before me as his Coy Commander, when he told me that the reason for going absentwas, that he had got a woman into trouble in Scotland. He was paraded to the O.C. 48th Highrs. who awarded him 17 days' detention. I had a talk with the man when the question of marriage was brought up, and I told him that he must apply to the C.O. for leave, before getting married. At a subsequent date the accused sent a message to me from the detention room, stating that he wished to apply to the O.C. for permission to marry. He was paraded to the O.C. who granted him permission to marry.

On release from detention the accused applied for a week-end leave, for the purpose of getting married. I made it clear to the accused, that in view of his recent absence I would only grant leave because he wanted to get married, and I granted him leave over the week-end 15-17 of Nov. which leave he overstayed 2 days, 14 hours.

I produce a letter addressed to the O.C. 48th Highlanders of Canada, from a Dependents Allowance Board Ottawa, which indicates that this man was married to a woman in Canada, in approimately 1938, and this woman is still alive and there has been no dissolution of marriage.

The accused's pay book on examination on 29 Jan 41. states that he is single and that his next of kin is, Mrs Emma Elliott, Dutton Ontario. (Mother)"

The accused declines to cross-examine this witness.

J. and S. Johnston . . 48th Highlanders of Canada (major)

5th Witness for prosecution

B/73197 Pte. Patterson, F. 48th Highrs - Having been duly sworn, states:-

"Pte Hamilton paraded the accused back to the guard room. He took the accused back about 1400 hrs on Jan 1.41."

Q.1. Who took the accused from the guard room?

A.1. I dont know Sir.

Q.2. What time did the accused arrive at the kitchen.

A.2. About 1000 hrs Sir.

The accused declines to cross-examine this witness.

F. Patterson . . 48th Highrs
(Pte. Patterson, F.)

6th Witness for prosecution.

B/75170 Pte. Hamilton. 48th Highrs Having been duly sworn states:-

" The accused was brought to the Cook house at approximately 1000 hrs 1 Jan 41, I dont know by whom. He was returned to the guard room at 1400 hrs by myself. I was at the guard room until 1500 hrs and the accused was still there. Pte. Clatterly was there at the same time, I took them to the guard room together."

The accused declines to cross-examine this witness.

R.A. E. R. Hamilton . . 48th Highrs
(Pte. Hamilton.)

7th Witness for prosecution.

B/73043 Cpl McIntyre, 48th Highrs, Having been duly sworn, states:-

"At 0000 hrs on Jan 1st I took over the guard. I posted the guards, I came upstairs Pte. Patterson came to the guard house and said. "Elliott the cook house for you" I told Pte. Patterson that if he took the accused from the guard room, he would be held responsible for him. He took the accused away and the accused did not report back to me at the guard room. Pte. Mines was in the guard room and Pte. Moore was on guard and saw Pte. Patterson take the accused away."

Q.1. To the best of your knowledge as guard commander, did the accused return to the guard room after Pte. Patterson had taken him to the kitchen?

A.1. No Sir, to the best of my knowledge he did not return.

The accused declines to cross-examine this witness.

Corporal. David M. McIntyre 48th Highrs
(Cpl McIntyre)

8th Witness for prosecution.

B/70558 Pte. Mines, 48th Highrs, Having been duly sworn, states:-

" I was in the guard room on Jan 1st 1941, when Pte. Patterson came and took the accused to the kitchen. I did not see the accused return to the guard room."

Q.1. To the best of your knowledge as a member of the guard, did the accused ever return to the guard room that day.

A.1. I dont know Sir.

The accused Declines to cross-examine this witness.

Pte. P. Mines . . . 48th Highrs
(Pte. Mines)

9th Witness for prosecution.

B/70607 Pte. Moore, T. 48th High... been duly sworn, states:-

" I was on guard from 0900 hrs till 1100 h... took the accused away. I do not know the cooks' name s... ok came and from the back, but I could see that he had an apron on. I ... saw him the prisoner return.

The accused declines to cross-examine this witness.

Pte Moore. T 070607. 48th Highrs
(Pte. Moore, T.)

10th Witness for prosecution

B/70666 Sgt Edwards, R. 48th Highrs, having been duly sworn, states:-

" The accused arrived at Welton Rivall at about 0050 hrs 30 Jan 41. I sent him to detention, Cpl Smith took him."

The accused declines to cross-examine this witness.

Sgt R.A. Edwards. 48th Highrs
(Sgt Edwards, R.)

The accused elects to reserve his defence. Certified that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with. Taken down by me in the presence and hearing of the accused these 22nd and 23rd days Jan 41.

Fred. L. Wood. Lieut
(F.L. Wood) 48th Highrs of Canada

In lieu of Form A.B.296

STATEMENT OF CHARACTER OF THE ACCUSED

Accused: B.73762 Pte. ELLIOTT, J.D.

1. Previously convicted of 2 cases of Absence without Leave within the last 6 months.

2. Is not entitled to wear any decoration or received any awards for gallantry, etc.

3. Date of attestation, according to attestation papers 2 Jun 40 and is entitled to reckon 1 year, 42 days service towards pension, gratuity, etc.

4. Has spent 33 days 4½ hrs under military custody, (in close arrest), and no days in hospital.

5. Has not held any N.C.O. rank or appointment since enlistment.

6. Has not been previously convicted by Civil Court, or Court Martial, both previous convictions having been dealt with by C.O. summarily.

I hereby certify that the above is a true statement of Character and Service of the Accused, as taken by me from the documents in my possession.

19 Feb 41.

J.G. Clark 2/Lt.
for (J.G. WARREN) Capt. & Adjt.
48th Highlanders of Canada.

XXX-125

Pete Elliott JM.

DPK

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.93449 Pte. Elliott, J.M. RCEME att. N.N.S. Hiltons

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY.	Guilty	
2nd	GUILTY.	Guilty	
3rd	GUILTY.	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At ~~present under sentence for~~ DPK ~~beginning on (date)~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NO days, of which NO days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
(1) To undergo detention for a period of twenty eight days
(2) To forfeit all ordinary pay for a period of ~~twenty eight~~ fifteen days DPK

(Sgd) _____ 8 Sep 1944 (Sgd) D P Kennedy A/Maj
Judge Advocate, if any. Date awarded. President. (RP 41, 42)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-741, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
I confirm the findings and sentences of the court.

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1. AA 57A. Delete if not used.)

Date 9 Sept 44 (Sgd) Jos Rockingham Brig
Commanding 9 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. F.93449 Pte. Elliott, J.M. Date 14 Sept 44 Signature of Offr

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AG 13. XXX-125.

FIELD GENERAL COURT-MARTIAL

CFA56 (To West of AFA51)
40/P & R 1698 (1944)
4/388

Convening Order of Brig. J. H. Rockingham Comd 9 C I B dated 7 Sept 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed ~~temporary~~, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.93449	Pte	John MacDermott	Elliott	RCEME

PROCEEDINGS REVIEWED 10th HH
JAG C Lieut. Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
RECEIVED 1 OCT 1944 JAG BRANCH C.M.H.Q.
PROCEEDINGS REVIEWED Date 27 Army Gp
Can. Sec. G.H.Q. 2 Echelon

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 8 Sept 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (p 1 of 4)

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns, RQs. For guidance on procedure where a variation in the form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number for ready reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 16, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1640 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(s).~~ DPK
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NA as interpreter? Ans NA.
The Interpreter is sworn.(1) Do you object to NA as shorthand writer? Ans NA.
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	A/Major	D P Kennedy	HLI of C
Member	A/Capt	J A HATT	SDG Highrs
Member	Lt.	D C Stewart	SD & G Highrs
Judge Advocate	—	—	—
Prosecutor	A/Capt	D Eastman	NNS Highrs
Defending Offr	A/Major	A H Jefferson	NNS Highrs

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See Qs p 2.)

A8. The accused F.93449 Pte Elliott J.M. before arraignment makes(s) ~~not guilty~~ NO (further) plea(s). DPK
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 32. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B DPK

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, as may, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. "I have Plea Guilty" (5)

(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3. *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (~~not~~) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on three charge(s). ~~The accused is (are) so informed, and he (they) changes (~~their~~ plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*c*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "Yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP* 39(*B*), 39(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans.....Do you intend to call witnesses on your behalf ?

Ans.....Are they witnesses as to character only ? Ans.....

(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* AP1. *Evidence for accused as to his character should, if on his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. Yes.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 43 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *B* and Ex *C* respectively.(3)

(*1. MFB* 355 *or MFB* 294. 2. *MAM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nil (2)

(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and the proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 192, *RP* 46-50, 99, 108, 119(*A*), *KR Can* 358, 336, 343-344, *Overseas AO* 309, 2323. *As to sentences assigned for civil offences by the law of England see AA* 41(*3*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*1*) (*b*), 48(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest before MML p* 46, 737-739. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*) *Confirming Offr see KR Can* 567.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B2

CHARGE SHEET

The accused, No. F93449 Private John MacDermott ELLIOTT, North Nova Scotia Highlanders, attached within War Establishment from Royal Canadian Electrical and Mechanical Engineers, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Section 19
Army Act

When on Active Service, Drunkenness

in that he

in the Field, on the 23rd July 1944, at approximately 2200 hours, was drunk.

Second Charge
Section 11
Army Act

When on Active Service, Neglecting to obey camp orders

in that he,

in the Field, on the 23rd July, 1944, at approximately 2200 hours, contrary to this unit's Part I Order No 170 dated 17th July 1944, did enter the lines of the 7th Canadian Infantry Brigade without being in possession of proper authority.

Third Charge
Section 40
Army Act

When on Active Service, Conduct to the prejudice of good order and military discipline

in that he

in the Field, on the 23rd July, 1944, at approximately 2200 hours, did create a disturbance in the lines of 7th Canadian Infantry Brigade.

(D.F. Forbes) Lt. Col.,
Commanding,
North Nova Scotia Highlanders

In the Field
6 Aug 44

To be tried by FIELD GENERAL COURT-MARTIAL.

In the Field
7 Sep 44

(J M Rockingham) Brig
Comd 9 Cdn Inf Bde

D P Kennedy Maj

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy: AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
F-93449	Pte	John MacDermott	Elliott	NNS Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above, the accused, being subject to military law, has (~~since~~) committed the offence(s) set forth in the Charge Sheet attached and on (date) 7 Sep 44 endorsed by me, ~~(or by an offr of my staff for me)~~ To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior (initial offr)~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am entitled to appoint (as) three Offrs to form the Court, (b) a Pd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
A/Major	D.P. Kennedy	HLI of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.A. Watt	SD & G Highrs
Lt	D.C. Stewart	SD & G Highrs

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	C. Boulton	HLI of C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in France (Country.)

Dat 7 Sep 44

J.M. Rockingham (Signed personally. RP 105 fn 2.)

Brig. (Rank.)

Commanding 9 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(E), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a sgt of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: His did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades "

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (on *matters other than on mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)

(vii) Summing up by J.A., if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On Sup.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting an exhibit a certified copy of registered books see AA 162 (1) (g) (A).*) *As to certified copies of registered books see AA 162 (1) (g) (A).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(8), RP 114(C), MML p 759.*)

4. The President or J.A., if any, will return proceedings promptly with covering letter and in an envelope marked "*Confidential*", or as otherwise directed.

8 Sep 44

I certify that No. F93449 Pte Elliott, J.L., RCEME attached to North Nova Scotia Highlanders, is fit to undergo trial by Court Martial.

.....
Signature of the Medical Officer

DPM

Statement by the accused

F.93479 Pte. Elliott J.M. ; R.C.E.M.E. attached to N.N.S. Highrs. makes the following statement:

On the night the 23rd July, I just moved into "A" Echelon that noon. Got settled around in the afternoon, coming on evening I had a few drinks and after that I don't know what happened. That is all sir.

J. M. Elliott

D.P. Kennedy A/Maj

DPK

Mitigation of Sentence. DPK

F. 93449 Pte Elliott. J. M.

Pte Elliott joined the Can army on the 11th May 1940. (R.C.O.C.). On the 26th of Aug. 1940 he was attached to the 4th. M. G. Highrs and has been with this unit ever since.

Since his first day of Enlistment he has never had a charge against him as his records show. (M.M.6) and has done a good job throghout this time.

I would like to point out that although Drunkness is no excuse for crime the hqrs in this county is apparently much stronger than you get in England and sailors are so cautioned against its effects they might consume to much and do things which they would not ordinarly do.

Pte Elliott is doing a pt which calls for a lot of extra work at night along with his regular work as he is a mechanic. Throghout the time he has been with the unit he has always done his work cheerfully and well.

I would ask the Court to

Consider this case in view of the
Accused's record which up until this time
has been ~~very good~~ one to be proud of.

A.W. Jeffers Major.

APK

EXHIBIT A9 D.P.K.

SUMMARY OF EVIDENCE IN THE CASE OF Number F 93449 J. M. Elliott, Nth. N. S. Highrs., a soldier of the Cdn. Army Overseas, charged with:

First Charge
A.A. Section 19 — When on active service is charged with drunkedness

Second Charge
A.A. Sec. 11 — When on active service is charged with being out of bounds.

Third Charge
A.A. Sec. 40 — When on active service is charged with conduct to the Prejudices of Good Order and Military Discipline.

The accused is informed of his rights.

The accused does not demand and the C.O. does not direct the evidence to be taken upon oath.

States:

First Witness
Capt. R. A. Couche, R.C.R.
Camp Commandant, 7 C.I.B.

I am Capt. R. A. Couche, R.C.R., Camp Commandant, 7 C.I.B. at approximately 2200 hrs., 25 July, 1944, Maj. MacDonald 4th Cdn. A/Tk Bty., informs me that a fight was taking p lace in the Brigade Area. I gathered together two sections of the Lorne Scots, Defense Platoon and proceeded at once to t he scene of the fracas. I found a bitter arg uement taking place and attempts to break it up were unsuccessful. I therefor ordered the four men to be taken into custody and removed to the Brigade Guard Room. The four men were: Ptes. Elliot, Dominique, Mills, and Wheaton. All appeared to be drunk. They remained in custody until an escort arrived from their unit and removed them to their unit locality.

Whilst awaiting arrival of the unit escort one of the accused soldiers, Pte. Wheaton broke away from his escort and smashed his fist through a window, severing the artery of his right hand. He was removed to the C.C.P. under escort.

The accused declined to cross-examine the witness.

R A Couche Capt.
(R. A. Couche) R.C.R.
Camp Commandant, 7 C.I.B.

States:-

Second Witness
Capt. W.R. Burnett, Nth. N. S. Highrs.
O.C. H.Q. Coy.

I am Capt. W. R. Burnett, O.C. H.Q. Coy., Nth. N. S. Highrs. Personnel in "A" Ech. were acquainted with the rules and regulations which governed the actions in places in which Hon. was located. Among these rules was one which stated that personnel were not to leave their immediate area without first obtaining proper authority. This rule was based on Part Iorder dated 17 July, 44 with particular reference to para. 170 Pte Elliott, Dominique and Mills were picked up out of bounds.

The accused declined to cross-examine the witness.

W. R. Burnett Capt.
(W. R. Burnett)
Nth. N. S. Highrs. O.C. H. Q. Coy.

D.P.K.

Second Witness (Contd.)

The Part 1 Order referred to by the witness is produced, read over to the accused, marked Exhibit "A", signed by me and attached hereto.

(F. E. Sutherland) Capt.
Nth. N. S. Highrs.
Officer detailed to take Summary of Evidence.

Question to the Accused

Do you wish to make any statement xx or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and maybbe given in evidence.

Answer: No.

Do you wish to call any witnesses, etc., in your defence at this point.

Answer: No.

Rules of Procedure 4(C), (D), (E), (F), and (G) have been complied with.

I certify that the foregoing Summary of Evidence consisting of Two pages was taken down by me in writing in the presence and hearing of the accused this 3rd day of August, 1944.

(F. E. Sutherland) Capt. Nth. N. S. Highrs.
Officer detailed to take the Summary of Evidence.

D.P.Kennedy A/Maj

D.P.K.

Enclosed "A" to Battle Diary Aug 44

O.P.K.

Extract from Pt. I Order 170, d/17 July 1944

General Rules

5. All personnel quartered in the town will carry a pass stamped by the Unit.

6. All ranks will be back in billets by 2200 hrs unless they are on duty.

7. The permit for Establishments and Hotels to serve drinks will be 1200 hrs to 1400 hrs and 1800 hrs to 2100 hrs. Light wines and beers only may be served to O.R.s.

8. All brothels are out of bounds.

9. All Officers in the town will be prepared to establish their identity on the demand of Officer or member of the C.M.P.

(App to Div Order 45)

Certified true extract of Part I Order, No. 170 dated 17 July 1944.

W.R. Burnett Capt.,
[W.R. Burnett] O.C. "A" Coy;,
North Nova Scotia Highlanders.

Ex. e.

No. F93449 Name Elliott, J.M. Sqn., Battery, or Company | Corps CREME | Date of enlistment 11-5-40 | G.C. Badges one | Service or Proficiency Pay | A.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. J.W. Bennett | Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet					

Certified true copy of the original Conduct in my custody.

H.M. Cunningham

(H.M. Cunningham) Capt. Adjt,
North Nova Scotia Highlanders
(Custodian of regimental documents)

D.P. Kennedy A/Maj

(P.T.O.)

Ex. B.

D.P. Kennedy A/Maj

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
P93449	Pte	Elliott, J.M.	(CREME) Nth N.S. Highrs

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not accessed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Number of instances of gallantry or distinguished conduct. Nil

X

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted. X

[redacted]

3. The accused is not under sentence at the present time. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and no days in military custody, making a total of no days, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 34

6. The date of his [redacted] specified in his record of service is 11 May 40

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of [redacted] (state any military decoration or reward). Canadian Volunteer Service Medal

11. [redacted]

12. [redacted]

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F93449 Rank Pte Name Elliott, J.N. of ~~RNS~~ Highrs Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		------ N I L ------		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of August, 1944

H.M. Cunningham
(H.M. Cunningham) Capt. Adjt,
North Nova Scotia Highlanders.

[redacted]

(Insertion—If any entry in any of the above paragraphs cannot be copied from the regimental books the paragraph must be struck through and the reason why the information cannot be supplied from such source as are available should be stated. In the case of a trial by field general court-martial the information must be supplied from such records as are available.)

OK.

I, F93449 Pte Elliott, J.M., desire to have Major A.W. Jefferson defend me at my Court Martial.

.....J.M. Elliott.....
(Signature of accused)

222-5

SPR ELLIOTT J.W

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-27655 Spr John William ELLIOTT, X-4 List RCE, 9 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At ~~present under sentence for~~ beginning on (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 51 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo detention for 60 days and to forfeit the sum of £1-12-4 in respect of cost of apprehension

22 Sept 44 (Sgd) [signature] President. RP 45 for Major

(Sgd) ~~Judge-Advocate, if any~~ Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(O) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567 577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed for prison or detention barracks until further orders. (1)
(1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 25 Sept 44 Commanding 2 CBRG Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B27655 Spr John William Elliott RCE, 9 CBR Bn	26 Sept 44	[signature] CAPT. & ADJT., 9 BN. 2 C.B.R. GP.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED CMHQ file AG 160 ZZZ-5

12 OCT 1944

FIELD GENERAL COURT-MARTIAL

CRAMO (in lieu of AFA51) W.P. & S.P. 1696 (10/43) 4/38B

By Order of Lt-col H W RICK A/Comd ~~9 CBR~~, 2 CBRG dated 20 SEP 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-27655	Spr	John William	ELLIOTT	X-4 List RCE, 9 CBR Bn

PROCEEDINGS REVIEWED

[signature] 12 Oct 44

PROCEEDINGS OF TRIAL.

(Date of sheet in Secretary's hand) ~~OFFICE OF PROFESSIONAL~~ JAG BRANCH, CMHQ on (date) 22 SEP 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 10/152

A1. The President, Members, waiting ~~Member, Jrs~~ if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which duties are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ✓ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 10.00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ~~as interpreter~~? Ans

~~The Interpreter is sworn.(1)~~ Do you object to ~~as shorthand writer~~? Ans

~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)
(1. RP 110. 2. If no objection, waiting Offrs ~~Member~~ retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G L McDOUGALL	22 CMRR, 9 CBR Bn
Member	Capt.	E B. Dodgson	RHLI, 9 CBR Bn
Member	Lieut.	K. Kirby	NNSR, 9 CBR Bn
Judge-Advocate	Capt.	G.C. Clarke. CHC	9 CBR Bn.
Prosecutor	Capt.	A.R. Courtice CHC	9 CBR Bn.
Defending Offr	Lieut.		

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans NO (3)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused B-27655 Spr JOHN WILLIAM E. ~~are~~ before arraignment make(s) (no) ~~are~~ plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GE), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See paras 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is sworn and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 2 p 18

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA~~ Asst, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show prosecution or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Accd. (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~

(*5. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s); and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Notes the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. Accd.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified extracts from Conduct Sheet(s) of Convicting Authority~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B ~~and Ex .....~~ respectively.(3)

(*1. MFB 353 or MFB 294. 2. MFM 6. 3. RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the ~~(statement(s)) and Conduct Sheet(s)~~, and in mitigation of punishment?(1) Ans. Use through my Defending Offr. (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 9.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 142, RP 46-50, 69, 118, 119(A), KR Can 208, DD 563-566, Overseas HQ 308, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 138. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-27655, Spr. ELLIOTT, J.W., X-4 List R.C.E., on strength 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SEC 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 0630 hours, 18 Jul 44, until 1820 hours, 2 Aug 44. Total time absent 15 days, 11 hours, 50 minutes. Cost of apprehension and return to unit amounting to $1.12.4.

(H.W. Rick), Lt.-Col.
Commanding,
9 Bn, 2 C.B.R.Gp.

In the Field.

19 Sep 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(H W RICK) Lt-Col
A/Comd 9 Bn, 2 CBRD

In the Field
21 SEP 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-27655	Gnr		J W	ELLIOTT	X4 List NOE, 9 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person ~~~~ named above, the accused, being subject to military law, has ~~~~ committed the offences set forth in the Charge Sheet ~~~~ attached and on (*date*) 21 SEP 44 endorsed by me, ~~as by an offr of my staff for me~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offences ~~~~ should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person ~~~~ and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G L McDOUGALL	29 CBR, 9 CBR Bn

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 11 CBR Bn	11 CBR Bn
Lieut	To be detailed by OC 11 CBR Bn	11 CBR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	To be detailed by OC 9 CBR Bn	9 CBR Bn

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in FRANCE (Country.)

(Signed personally. RP 105 fn 2.) Lieut (Rank.)

(H W RICE)

Date 21 SEP 44

Commanding A/Comd, 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAMS (To Secs of AFAS) AG 7 & 8/1801 (4811))

(See overleaf for notes and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. *(or,* None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J A (RP 40 fn 3B)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by J A, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS H, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admitting in evidence a certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 153 (1) (g) (h).*)

(v) Exhibits numbered Ex A, Ex B, etc.

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 111(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this day examined B27655 (No.)

Spr. (Rank) Elliott J. W. (Name) and in my opinion he is medically

fit / ~~unfit~~ to undergo Court Martial.

Station Field

Date 22-SEPT-44

M. S. Clarke Capt RCAMC (Sgd)
Medical Officer

(Unit) 9 Bn. 2 C.B.R. Sp.

[redacted] J.M. has been with the Engineers field unit since 1941 and in 1942 came overseas with that unit, staying with them until July 1944 when he was sent to C.B.R.C. Spr. Elliott is an engine fitter 1/c and because he was a tradesman was sent to C.B.R.C as the unit had no call for his trade just at that time. Spr. Elliott spoke to his troop officer asking if he could go as a driver and relinquish his trades pay, because he had been with the unit so long that he never nearly saw them, and exactly how they worked. This failed and Spr. Elliott was sent to C.B.R.C. He just waited and another chap and myself would too. Elliott decided to go and see them [illegible] who were still with the unit and [illegible] began to feel that the unit had let them down so they decided to [illegible] go away. Spr. Elliott

E 3 p 2

is ready and anxious to go abroad
and do his bit and I feel sure that
if the Court sees fit to be lenient
with this soldier the Canadian army
will have one more good fighting man.

Exhibit "A" - B.S.

SUMMARY OF EVIDENCE

in the case of

B-27655, Spr. ELLIOTT J.W., X-4 List R.C.E., on strength 9 Bn, 2 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, who is charged with:-

(1) When on active service, Absenting himself without leave. (A.A. Sec 15(1)).

The Commanding Officer directs that evidence be taken on oath.

FIRST WITNESS Captain M.W. Garnett, R.C.E., O.C. 61 Coy, 9 Bn, 2 CBRGp, having been duly sworn, states:-

"I am Capt M.W. Garnett, R.C.E., O.C. 61 Coy, 9 Bn, 2 C.B.R.Gp. B-27655, Spr. Elliott, J.W. was taken on strength 61 Coy, RCE, in U.K. and posted as A.W.L. in our C.R. as being A.W.L. from 0630 hrs, 18 Jul 44, and was published again on the eight day as still being absent. On 19 Aug 44, I received a draft in the U.K. and present on the draft was the a/m soldier with a quotation on the nominal roll "returned to unit for disciplinary action". Upon receipt of this I had Spr. Elliott placed under close arrest.

I submit certified true copy of C.R., 61 Coy, 15 Bn 2 CBRGp, C.R. 12, page 2, dated 27 Jul 44."

Captain M.W. Garnett.

The above mentioned casualty return, produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me, and attached hereto.

(G.C. Clarke), Captain,
Officer detailed to take
the Summary of Evidence.

The accused declines to cross-examine the witness.

SECOND WITNESS B-1820, L/Cpl. Gray, W.H., H.Q. Coy, 9 Bn, 2 C.B.R.Gp, having been duly sworn, states:

"I am L/Cpl. Gray, W.H., H.Q. Coy, 9 Bn, 2 CBRGp. I present the following documentary evidence.

Certificate in Accordance with P.C. 2797 of 10 Apr 44, Army Form B.252, and CMHQ 1000:55, Expense Voucher covering cost of apprehension and return to Unit."

B-1820, L/Cpl. Gray, W.H.

Certificate in accordance with P.C. 2797, Army Form B 252 and CMHQ 1000:55, Expense Voucher, produced as documentary evidence, have been read over to the accused, marked Exhibits "B", "C" and "D" respectively, signed by me, and attached hereto.

(G.C. Clarke), Captain,
Officer detailed to take
the Summary of Evidence.

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath.

The accused declines to call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused, and that R.P. 4 (c), (d), (e), (f) and (g) have been complied with.

(G.C. Clarke), Captain,
Officer detailed to take
the Summary of Evidence.

Exhibit "H"

CERTIFIED TRUE EXTRACT.

61 COY 15 BN 2 CBRG CASUALTY RETURN 18 PAGE 2 DATED 27 JUL 44.

B-27655 SPR ELLIOTT JW A.W.L. from 0630 hrs 18 Jul 44 is still absent 0630 hrs 26 Jul 44 (8 days).

I hereby certify that I have compared this copy with the original or official document and that it is a true and exact copy in all material respects.

(M.W. GARNETT) Capt R.C.E.
Officer Commanding
61 Coy 9 Bn 2 C B RR.

"This is Exhibit "H" referred to in the Summary of Evidence on the case of Spr Elliott J.W. B 27655 taken by me this 19 day of Sept 1944

[illegible] Capt C.M.F.
2 C B R R.

Exhibit "B"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR. 42

I certify that No. B-87655 . Rank. Spr. Name. . Elliott, J.W. .

Unit. [redacted] C.M.H.Q. was arrested at. Manchester . (place)
No.1, Cdn. Rec. Depot.
at. 1830 . .(hour) on. 2-Aug-44 .(date) and that at the time of his arrest he was wearing (military uniform) or ([redacted]). Signature of Provost-Marshal, Assistand Provost-Marshal, or other officer or the Commanding Officer of the portion of Him Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
4-Aug-44

(R.J. Stinson) Capt.
D.A.P.M. C.M.H.Q.

This is Exhibit "B" referred to in the
Summary of Evidence in the case
of Bdr. Elliott of HQ Coy 9 Bn.
A.C.B.R. taken before me this 14th day
of Sept. 1944

G. Clarke Capt
D.A.A.G.
9 Bn A.C.B.R.

CHARGE Army Form B 252
(See King's Regulations)

C.M.H.Q. Regiment

R.C.A.M.C. No.2 C.M.H.C. Battery / Squadron / Troop or Company

No.1, Rec. Depot.

CHARGE against No. B-47655 Rank Spr.

Name Elliott.J.W

Place Manchester. Date of Offence 2 Aug-44.

OFFENCE W.O.A.S. was A.W.L.

CAPT.
R. J. STINSON, D.A.P.M.
C.M.H.Q.

Names of Witnesses:—

Cpl.Wilkinson.G.J. Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

Statement of **EVIDENCE** in the case of

B-27655 Spr.Elliott.J.W
R.C.E. # 2. C.B.R.G.

Sir;

At Manchester, at about 1820 hrs. 2 Aug-44. I was on patrol duty on Aytown Street when I saw the a/m soldier.

I approached him and requested his pass. He could not produce one. He was A.W.L.

I placed him under arrest and escorted him to Ardwick Green Guard Room where I handed him over to the N.C.O.i/c cells to be detained.

Field
2 Aug-44.

G.J. Wilkinson Cpl.
(A-218779 G.J.Wilkinson)
No.6 Detachment,
No.6 Cdn.(Area) Provost Coy.

This is Exhibit "C" referred to in the Summary of Evidence in the case of Spr. Elliott J.W. 61 Cy 4 Bn 2 CBRG taken by me this 19 day Sep 1944

REMARKS Lieut (C)
C.P.C.
4 B.R. 2 C.B.R.G.

Exhibit "E"

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No B17655 Rank Spr Name Elliott, J.W. Unit ~~2 C B A C~~ RCEME

The following expenses were incurred in apprehending and returning the M/N Soldier to his ~~Unit~~ From London from Manchester (Upton)

Date	Particulars	Amount
3 Aug 44	Escorts return fare from LONDON To Manchester	14 1
	Prisoners single fare to LONDON From Manchester	14 1
	Prisoners fare from To	
	Escorts & Prisoners expenses for Bed, Meals, Bus fares	4 2
	Total £	1 12 4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J.W. Elliott

LIEUT. Capt

Officer Issuing Railway Warrant and Expense monies R. E. BIRCH.
No. 6 Area Provost Company, Canadian Provost Corps. ADMIN. OFFICER - D.P.M's S.R.

CMHQ 100655
6/PAN/4/43(30)

Exhibit B - E2

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-27855	Spr	ELLIOTT, J.W.	9 Bn, 2 C.B.R.Gp

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For No MFM Cavalab ..... times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~*3. The accused at the present time is under sentence of imprisonment for ..... commencing on the ..... day of .....~~

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 51 (21) days in military custody, *i.e.*, NO days in open arrest, 51 (21) days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 21 yrs (22 in Sep)

6. The date of his attestation ~~calling up for military service~~ is 2 Jul 41

~~7. The service which the accused is allowed to count is .....~~

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp

~~(If the accused is a warrant officer or N.C.O.) The accused has served continuously without reduction to the present date.~~

~~Date of promotion~~

~~In the substantive rank of .....~~

~~In the war substantive rank of .....~~

~~In the acting rank of .....~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

A.S.R.W.Ltd. Gp.A83

Exhibit "E"

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No B27655 Rank Spr Name Elliott, J.W. Unit 2 C~~D~~ARU

The following expenses were ~~incurred~~ in apprehending and returning the M/N Soldier to his ~~Unit from~~ London from Manchester

Date	Particulars (Upton)	Amount
3 Aug 44	Escorts return fare from LONDON To Manchester	14 1
	Prisoners single fare to LONDON From Manchester	14 1
	Prisoners fare from To	
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares	4 2
	Total £	1 12 4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W. Birch LIEUT. Capt

Officer Issuing Railway Warrant and Expense monies R. E. BIRCH.
No. 6 Area Provost Company, Canadian Provost Corps. ADMIN OFFICER—D.P.M's Br.
C. M. H. Q.

HQ 100/55
P&S/453/39

This Exhibit is referred to in the
Summary of Evidence in the
case of The State of Ala. vs. Ely
Y Bk 2 C B 184 taken by said
Court the 19 day Sept 1844

J. C. Clark Clerk

C H-S C
Y Bk 2 C 184

Exhibit B - 12.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-27655	Spr	ELLIOTT, J.W.	9 Bn, 2 C.B.R.Gp

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Re MFM 6 cavalate ____ times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet ____

Date of last entry in Field Conduct Sheet ____

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence to~~ ____

~~beginning on the~~ ____ day of ____

4. The accused has been awaiting trial on the present charges for NO days in civil custody; and for 51 (31) days in military custody, *i.e.*, NO days in open arrest, 51 (31) days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 21 yrs (22 in Sep)

6. The date of his attestation is 2 Jul 41

~~enlisting or for military service~~

7. ~~The service which the accused is about to undertake is~~ ____

8. The accused is in possession of† CVSM & Clasp

†State the military decorations (if any) held by accused.

~~If the accused is a warrant officer or N.C.O. The accused has served continuously in the substantive rank of ____ without reduction, to the present date.~~

~~Date of promotion~~

~~In the substantive rank of ____~~

~~In the war substantive rank of ____~~

~~In the acting rank of ____~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

A.A.E.W.3.46. Gp.698 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

...cription of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of Sep 1944

[illegible]
9 Bn, R.C.B.R.Gp.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of Sep 1944

[illegible] Lt. Col.
[illegible]

9 Bn, 2 C.B.R.Gp.

WWW-65

Pte. Elliott, W.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 33557 Pte Elliott WA.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 18(2) alternative	Guilty	Guilty	Withdrawn by Prosecutor M
2nd AA 40			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn b.)

M/ As present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for Two (2) years.

1st August (Sgd) John M. Mercer President. (RP 45, 50.)
(Sgd) ..... Judge-Advocate, if any. Date awarded. Major
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(O) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attained before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding & sentence

(1. AA 57A. Delete if not used.) (Sgd) .....

Date ..... Commanding ..... (A. W. Bourne) Officer Commanding Line of Communication Area. Confirming Officer.

15 AUG 1944

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of OIC.
C33557 Pte Elliott WA.	17 Aug 44	C Cadell Capt. Registrar 7 Gen Hosp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 24 SEP 1944 JAG BRANCH G.H.Q.

ORDERED AT GMHQ IN AB 160

WWW-65

CPA66 (To lieu of AFA8) 40/P & R/1666 (40/D) 4/388

FIELD GENERAL COURT-MARTIAL

Order of Brig Cdr Reserve Cond Can Lor G.H.Q. dated 12 Aug 44
Bde 2 Army Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 33557	Pte	William Allan	Elliott	

PROCEEDINGS REVIEWED 24 Sep 44

(Wife informed) PROCEEDINGS OF TRIAL.

Held in [illegible] on (date(s)) 14 Aug 44

REVIEWING OFFICER, LINE OF COMMUNICATION AREA

PROCEEDINGS REVIEWED D.J.A. 24 Sep 44 See GHQ 2 Army Gp

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 10/51

M/ A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

M/ A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

M/ A3. The Court is opened. The accused is (are) brought before the Court. At 0940 hours trial commences.

M/ A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

M/ A5. President to accused: Do you object to ..... as interpreter? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

M/ A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

M/ A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E M Mercer EDRR	HQ C R in C [illegible]
Member	Major	N L Drew	[illegible]
Member	Capt	F A Barbargeon	[illegible]
~~Judge-Advocate~~			~~No. 2 Adv Corps~~
Prosecutor	Lieut-Col	W G Thompson	No. 2 Adv Corps
Defending Offr	Capt	Lt G D Hungerford	R Corps att 7 Gen Hosp [illegible]

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 2.)

M/ A8. The accused ..... before arraignment makes(s) (no) (1) plea.(2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

M/ A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) ~~There is no amendment to be made to the charge sheet.~~ The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B+E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. A 58

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-86 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 67.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No But Not Guilty Then Course (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 67. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not charged the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File both Local Courts of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 80(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and allowed on the charge(s), and that on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Do you intend to call witnesses on your behalf ? Ans. Are they witnesses as to character only ? Ans.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 137(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(*B*) (*6*), *RP* 45, 120(*A*). 2. *AA* 54(*B*), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. I Wish to give Evidence myself on oath.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and unit as the accused. Admitted as evidence and marked Ex and Ex respectively.(3) ~~Are Note E 2~~
(1. *MFB* 255 *or AFB* 296. 2. *MAM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court ~~on the Statement(s) and Conduct Sheet(s)~~, and in mitigation of punishment ?(1) Ans. By Defg Offr.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also J.A. if any~~(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 116(*A*), *KR Con* 308, 330, 563-566. *Overseas RO RPP.* 2323, *MAML p* 80, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MAML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*B*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see inserts on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No C 33557 Pte ELLIOTT, William Allan
Cameron Highlanders of Ottawa, a soldier of the Canadian
Army Overseas, is charged with att No 7 Cdn Gen Hosp

First Charge
AA Sec 15(2)

WHEN ON ACTIVE SERVICE WILFULL Y INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he
in the field on 30 Jul 44, by discharging his rifle, wilfully injured himself by shooting himself through the left foot in the region of the left heel with intent thereby to render himself unfit for service

Second Charge
(Alternative)
AA Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he
in the field on 30 Jul 44, while with his Regiment in the line, so negligently handled his rifle as to shoot himself through the left foot in the region of the left heel thereby rendering himself unfit for service

(V.O.Mader) Colonel
Officer Commanding
No 7 Cdn General Hospital

In the Field
12 Aug 44

To be tried by Field General Court Martial

(A.W. Bennett) Brigadier
OIC
Cdn Sec GHQ 1 Ech
21 Army Gp

In the Field
12 Aug 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 33557	Pte		William Allan	ELLIOTT	Cameron Highrs of Ottawa att No.7 Cdn Gen Hosp RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated herein.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~XX XXXX

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Con 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 95(C)), any objections (RP 95(D)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (RP 95 fn 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service, (RP 122), and the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Prosecutor. (RP 86(C), 87(C), 92(C) (D).)
(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor*. Court *or JA* (RP 40 fn 10)), or evidence by accused, as to facts or his character or both. (*See* RP 41 fn 2, 46 fn 1, 80.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See* RP 46 fn 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (RP 86(F)), or to prove previous convictions when accused has called witnesses as to character. (RP 86(C).)
(v) Closing address (on matters other than in mitigation of punishment) by Defending Offr or accused. (*See* RP 40 fns 6-12, 87(C), 92(C) (D).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged *jointly see* RP 61.)
(vi) Closing address by Prosecutor. (*See* RP 40 fn 7, 87(C), 92(C) (D). *Prosecutor has no right to address Court on subject of sentence* unless he proceeds by RP 46(E), KR Con 563(a).)
(vii) Summing up by JA, if any. (RP 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR* Con 547.)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered send on both sides when both sides used.
(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy as item of original see KR Con 560. As to certified copies of regimental books see AA 163 (1) (g) (h).*)
(vi) Summary of Evidence, if not already an exhibit.
(vii) Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not forms part of record of proceedings. (RP 95(D).) A recommendation for mercy will be inserted in Part 3 of Schedule on p 4 after minute of sentence awarded. (*AA* 53(3), *RP* 113(C), *MML p* 759.)

3. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL CERTIFICATE

I certify that I have this morning examined No C 33557 Rank Pte

Name Elliott, E.A. and he is fit to undergo trial by

Court Martial

Date 14 Aug 44

Medical Officer

I, C.33.3.37 Pte. Elliott W A desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt. W.B.D. Hungerford if he is available.

11 Aug. 44

W.B.D. Elliott
(Signature of accused)

SUMMARY OF EVIDENCE

Summary of evidence in the case of C 33557 Pte Elliott, W.A., Cameron Highrs of Ottawa, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service, alternative, when on active service neglect to the prejudice of good order and military discipline

By direction of the Commanding Officer the evidence is taken on oath

First Witness

B 133470 Pte Cook, M.J. Cameron Highrs of Ottawa

I certify that in my opinion the attendance of this witness, is, owing to the exigencies of the service, not readily procurable, and a written statement of his evidence signed by him, has been read to the accused and is attached hereto as Exhibit "A".

Officer taking summary

I do not require the attendance of B 133470 Pte Cook, M.J. for the purpose of cross-examination

Accused

Second Witness

D 140082 Pte McRae, A.D. Cameron Highrs of Ottawa

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily procurable, and a written statement of his evidence signed by him, has been read to the accused and is attached hereto as Exhibit "B".

Officer taking summary

I do not require the attendance of D 140082 Pte McRae, A.D. for the purpose of cross-examination.

Accused

Third Witness

C 42000 Sgt Gibbs, L.A., No. 1 S.I.S. First Cdn Army, sworn, states:-

"I am Sgt C 42000 Gibbs, L.A. no 1 S.I.S. First Cdn Army. On the 2nd of August, 1944 I interviewed C 33557 Pte Elliott, W.A., whom I now recognize, who was atthat time a patient at No 7 Cdn General Hospital. I interviewed him atthe hospital and I was accompanied by Cpl Cochrane of my section. We interviewed Pte Elliott in a tent. There were only the three of us there. I first informed Pte Elliott who we were and informed him he was classed as a self inflicted wound case. He was not under arrest at the time, he knew there had been no charges laid atthat time. I then informed him we intended to question him regarding how he received his wound. He was then cautioned in the following manner "You are not obliged to say anything but anything that you do say will be taken down in writing and may be used in evidence if you are charged". The caution was then explained to Pte Elliott and he assured us he understood he did not have to say anything unless he wished to do so. I then took down his Regimental particulars and particulars regarding his service. I then asked him to explain how he received his wound and this was re-enacted with the assistance of Cpl Cochrane with something representing the weapon. After re-enacting the incident, I asked the accused if this was how he received hiswound and he replied "I guess you have it pegged out". He then agreed to make a statement. He was again cautioned as follows, "You are not obliged to say anything but anything that you do say will be

taken down in writing and may be used in evidence if you are charged". We did inquire from the accused what it was like at the front but we used no threats and did not hold out any inducement or hope of reward and did not use any coercion. He then made the following statement.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "C".

L. A. Gibbs

Cross examined by the accused

Q.1 Did I or did I not actually say I shot myself?
A.1 You gave the same words as I have in your statement here, "I saw the muzzle of my rifle pointing at my left foot. I then decided to wound myself, I pulled the trigger. The rifle went off I felt a pain in my foot and I knew that I had shot myself."

Fourth Witness

Capt W.E. Armour, RCAMC, No 7 Cdn General Hospital, sworn states:-

"I am Capt W.E. Armour, Medical officer in charge of ward 6 No 7 Cdn General Hospital. This ward is reserved for the treatment of patients suspected of self-inflicted wounds. Pte Elliott was admitted to my ward on 30 Jul 44. He stated he had been wounded at 0440 hrs that morning. On examination he was suffering from a through and through wound of the left foot. Points of entry and exit were just inside of the instep just below the bone and on the sole below the middle point of the fifth metatarsal. I am not prepared to say which was the wound of entry and which the wound of exit. The X Ray shows no fracture. He was operated upon and the wound was cleaned and a plaster cast applied from toes to knee. His progress has been good. It is expected that he will be totally disabled for about two months. There should be no residual permanent disability. In my opinion the direction and nature of this wound render it possible that it could have been caused by a rifle bullet discharged from a rifle held in the man's own hands. There were no powder burns on the skin.

The accused declines to cross examine this witness

W. E. Armour Capt
Witness

Q. The accused was cautioned as follows:-
"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I want to make a statement.

Q. On oath or not on oath?

A. On oath.

The accused sworn, states:-

There is only one thing is when the actual thing was going on my mind was more or less a blank, I do not know really what happened as my nerves got to such a state under enemy fire. That was the way it was.

W. Elliott 24.
Accused

7

The accused does not call any witnesses

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that RP 4(C),(D),(E),(F) and (G) have been complied with.

[redacted]
Officer detailed to take summary of evidence

In the field
11 Aug 44

Reg. No. 6-1334 Co. - Pa - Cook. M.S. -
1st U. Mounted - Lt 'D' Reg. C.H. of G.
Pt: Elliott

I found Pt. Elliott, — I remember the night he received his wound, it was about a week ago. I was sleeping in a dirt trench that night, — I was awakened by the fire of a rifle shot closely. I heard Pt Elliott say he was shot in the foot. I got up, — found him at the side of the dirt trench. I took his boot off, — dressed the wound with a first field dressing. It would be about 11.20 P.M. it was dark.

I asked him what had happened, he said he slipped to step off, — was shot by a German sniper. That was about what he said he

Pte Elliot

[illegible] got his rifle & it went off
[illegible] hitting him in the foot.
He seemed to be in
pain, but otherwise alright.

M.J. Coote

Taken by [illegible] Lt
[illegible] Aug 44

This is Exhibit A referred to in the summary of evidence in the case of Pte Elliott, W.A. taken before me this 11th day of August, 1944.

[illegible]
Officer taking summary

Reg No. U-140082 - Pte - McRae, A.D.
13th platoon - 'D' Coy. C.M.R. of C.

Re: Elliot:

I remember the night Pte Elliot received his wound, it was about a week ago. I was on guard at the same time as Elliot, there was a few shells coming over from the enemy. I heard the 'Pop' and another shot fired, about 20 yards away from Elliot. This would be about 4.00 A.M. I then heard a shout Elliot shouted 'Jesus, I'm hit in my left hand'. I went to him, & he said he had been shot. I asked him where the shot came from, & he said from his own rifle, it went off accidently. I got him to explain how

it went off The Band fire
was obliging off Jerry
bobbed a few shells loose
he grabbed his rifle
let fly a shot through
his rifle went off when he
grabbed it shooting
him in the foot I asked
him how he got it in the
left foot with his rifle was
on the right side of him
He said he must have had
his left forward, left foot
right I left him there,
& called to Williams &
he Godard When I come
back Pte. Cook was putting
a dressing on the foot.

Taken by Lieut Gibbs Left
Flank

Statement of Reg No. C. 33337 - Pte
ELLIOTT, W. A. Cameron Highlanders of Ottawa.

I have been cautioned that I am not obliged to say anything, but anything I do say will be taken down in writing & may be used in evidence if I am charged. I fully understand this caution.

I enlisted in Frame pour, after 'D' day. I came as a reinforcement for the Cameron Highlanders of Ottawa. I joined the battalion about two weeks ago, & have since then been in action most of the time. From the time I went in action my work became steadily worse. When I was on Guard I felt the worst, but when in a slit trench I felt a little useful. Last at 0400 hrs, 30 Jul 44, I left my slit trench to go on Guard. After coming

it went off. The Bird he was closing off. Jerry dobbed a few shells loose, he grabbed his rifle & hit for a stiff branch, his rifle went off when he grabbed it shooting the end of the heel. I asked him how he got it in the left foot when his rifle was on the right side of him. He said he must have had his leg forward, left over right. I left him there, & called his fellows & he grabbed them & came back. He took was putting a dressing on the foot.

Taken by Lt. Gilbert Sept 1918

This is exhibit "B" referred to in the summary of evidence in the case of Pte Elliott, W.A. taken before me this 11th day of August, 1944.

Officer taking summary

Statement of Reg. No. C. 33557 - Pte
ELLIOTT, W. A. Cameron Highlanders of Ottawa.

I have been cautioned that I am not obliged to say anything, but anything I do say will be taken down in writing & maybe used in evidence if I am charged. I fully understand this caution.

I arrived in France four days after 'D' day. I came as a reinforcement for the Cameron Highlanders of Ottawa. I joined the battlion about two weeks ago, & have since then been in action most of the time. From the time I went in action my nerve became steadier by worse. When I was on Guard I felt the worst, but when in a shell trench I felt a little safer. Last night at 0400 hrs, as just as I put my shit trench to go on Guard. After coming

on guard during mortar fire started, & my nerves got so bad I did not know what I was doing. Gas Came close & I grabbed my rifle. I was lying down at the time. I felt that I had to get out of it some how, so I half sat up, & saw the muzzle of my rifle pointing at my left foot. I then decided to wound ~~myself~~ myself, & I pulled the trigger. The rifle went off, I felt a pain in my foot & I knew that I had shot myself.

I then called for the other fellow who was on guard. I don't know his name, but they call him 'Snuffie'. He went & got a Lieutenant, & another fellow who was in charge of us, came up & put a first field dressing on my foot. I was then taken to the C.D.S. & finally Came to Ld: J Canadian Gen. Hospital,

what I have been interviewed & made this statement.

This statement has been read over to me. It is the truth, & I have nothing more to say.

Pte W.A. Elliott

Witness: F.A. Gibby, Lt
No: 1 N.I.S. First Can. Army.
Witness: E.W. Cochrane, Col.
No: 5 I.S. First Can Army
Can General Hospital 2/8/44

This is exhibit "C" referred to in the summary of evidence in the case of Pte Elliott, W.A. taken before me this 11th day of August, 1944.

Officer taking summary

E1 Evidence by accused on oath:

C 33857 Pte William Allan Elliott Sworn States.

I was born Sept 19. 1925. 19 next month. Enlisted 25 June 43. Before that did odd jobs around factories in Oshawa. I Volunteered at Kingston Ont in C.H. of O. Did basic & 2 months A/T Sq weapon tg in Canada 5 mos. arr. O'Seas 22 Feby 44. to 5 C.I.R.U. 2½ weeks. trans to 6 C.I.R.U. for Mortar & Vickers MG Sq up to Apr 44 then to CBRG. with CBRG to France D+4. and to C.H of O. about a month ago. Went straight into action in assn position or outskirts of Caen. I was on Mortar about a week and then put on the Cookhouse for 4 or 5 days then transferred to 13 plen on the Mortars until I was wounded. On night 29-30 Aug 44 I was on guard. About 0200 hrs I was wakened to go on Guard. I had been wakened by our own arty gun. I got up put on greatcoat went to my post and lay down. Jerry was shelling but not coming close. I half dozed. One came down a few hundred yards. Startled by the noise I jumped up my nerves gave out I grabbed my rifle. Not knowing what I was doing I pulled the trigger with the muzzle across my leg while I was sitting on the ground. I was scared. I saw my rifle pointing at my foot and I pulled the trigger. We were in front of the Infantry and getting everything and my nerves gave out. I would like to get back and fight that's what I can answer for I think my nerves is rested enough now for to stand it.

I engaged with the enemy only with the mortar at from 1000 yds up + he was returning the fire all the time. Most of my friends are in M G of C.H of O. I know what I was doing but I want to go back and show I can take it like a soldier.

Xm by Pros. Offr.

Q. Do you know that it will be 2 months before you can go back?

A Yes Sir I was thinking of the time it would take for my foot to get better.

Q. Read from your Pay Book "Date of Birth 19 Sept 24"
What do you say about it?

A. I had to say my age a year in order to enlist.

Q. Why were you sent to Cookhouse

A. We were over strength 1 man in Mortar pln & I had cooked at C BRG and they needed a cook.

Q. Any other reason?

A. I told the No 1 I wanted about anyone (~~my records had given out~~) if ~~some ought not to be there~~ who was ~~not~~ where no one was supposed to be. My names had given out and next day I was put in the Cookhouse.

Q. What is mortar range?

A. 4500 yards. The highest.

Q. How far were you from the enemy.

A. I don't know.

Q. How long were you back in Mortar pln ~~from~~ before your inquiry?

A. About 3 days. The Cookhouse was with the pln.

The above was read over. (RP 83(B))

The Pros. offr. ~~off~~ states efforts have been made to obtain Nos 3 & 6 of Parts of Service but some are not available.

E2. Dfg offr recalled accused.

The only entry on reg 6 is 7 days C.B. for gambling. The rest is clear.

Dfg offr in Mitigation:

accused's only concern is to restore his honour for what he came O'Seas. told all about the incident. no cessation of any questions. Given a truthful picture. his appearance indicates his real age. asks the Court to exercise powers of suspension to give accused chance of showing he is a man which he feels he is equal to.

John Moore
Major
Pres.

W-46

Gen ELLIOTT, W.M

W-45

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 19th day of December 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 A.A.Brigade,R.C.A. , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial on reference to a superior qualified officer~~.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~It is impracticable to appoint—~~

*~~[ ] officers who have the Legal~~

*~~[ ] Field Officer as President~~

~~for the following reasons, namely:—~~

* Omit if not applicable.

Copy

Proceedings forwarded

Commanding Officer

3-Feb 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	B.J.Fisher	2 Hy.AA Regt(Mob)R.C.A.

Members.

Rank.	Name.	Regiment.
Lieut.	J.E.Howard	2 Hy.AA Regt(Mob) R.C.A.
Lieut.	W.Y.Sturdy RCCS	1 Lt.A.A.Regt.,R.C.A.
WAITING MEMBER Lieut.	W.G.McIlwraith	2 Hy.AA Regt(Mob)R.C.A.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed D.R.Agnew

(D.R.Agnew)Brigadier,
Commanding 1 A.A.Brigade,R.C.A.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F/40545 GNR. ELLIOTT, William Martel. 7 Lt.A.A.Regt. R.C.A.	1st.Charge A.A.Sec 15 (1)	Guilty	Guilty on Charge 1, 2, 3 & 4. 84 days Detention on combined charges	I confirm the finding and sentence of the Court but remit 24 days detention. D.R.A. Brigadier, Commanding 1 A.A. Bde., R.C.A. 26 Dec 42
	2nd.Charge A.A.Sec 15 (1)	Guilty		
	3rd.Charge A.A.Sec 15 (1)	Guilty		
	4th.Charge A.A.Sec.40	Guilty		
	5th.Charge A.A.Sec. 9 (2)	Not Guilty	Guilty	
	6th.Charge A.A.Sec 22	Not Guilty	Not Guilty	
	(see charge sheet attached)			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) D.R.Agnew (Signed) R.J.Fisher Major
(D.R.Agnew) Brigadier, 2 H.M.A.A. Regt R.C.A.
Commanding 1 A.A.Brigade, R.C.A. *Convening Officer* (e) *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendations to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of December, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this 21st day of December 1942.

R.J.Fisher Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barracks until further order.~~ D.R.A.

Signed this 26th day of December 1942.

D.R.Agnew
~~Confirming Officer~~ Brigadier,
Commanding 1 A.A. Bde., R.C.A.

Promulgated and extracts taken in the case of [illegible] Elliott W.M.

(a) (Dated) 28 Dec 42. (Signed) [illegible] Capt
7 Lt A A Regt R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W. 38492-1318 Nos. 2-43 W. & Co., Ltd. Cp. 742-2

CHARGE SHEET

The accused, Number F-40545, Gunner William Martel ELLIOTT, 42nd Light Anti-Aircraft Battery, 7th Light Anti-Aircraft Regiment, Royal Canadian Artillery, a soldier of the Canadian Army Overseas, is charged with:

1st Charge
Sec. 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he
at Beckenham, Kent, absented himself without leave from tattoo roll call at 2300 hrs on 11 December 1942 until reveille at 0630 hrs 12 December 1942: total absence 7 hours 30 minutes.

2nd Charge
Sec. 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he
at Beckenham, Kent, absented himself without leave from tattoo roll call at 2300 hrs on 12 December 1942 until reveille at 0630 hrs 13 December 1942: total absence 7 hours 30 minutes.

3rd Charge
Sec. 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he
at Beckenham, Kent, absented himself without leave from tattoo roll call at 2300 hrs on 13 December 1942 until reveille at 0630 hrs 14 December 1942: total absence 7 hours 30 minutes.

4th Charge
Sec. 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he
at Beckenham, Kent, on 14 December 1942, while being paraded at Battery Office, conducted himself in an unsoldierly manner.

5th Charge
Sec. 9 (2)
Army Act

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he
at Beckenham, Kent, on 14 December 1942, when ordered by No. B-22453 Sgt. Troughton, G.W., to report to his Troop Headquarters immediately after drawing new boots, did not do so.

6th Charge
Sec. 22.
Army Act

WHEN ON ACTIVE SERVICE: WHEN IN CONFINEMENT, ESCAPING

in that he
at Beckenham, Kent, on 14 December 1942, when under close arrest and being taken for a walk by his escort, escaped.

Field
16 Dec 42

.....
(H.J. Inns), Lt.-Col.
Commanding,
7 Lt.A.A.Regt., R.C.A.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(D.R.Agnew)Brigadier,
Commander,
1 A.A.Brigade,R.C.A.

Date: 19 Dec 42
Place: IN THE FIELD

F-40545, Gnr. ELLIOTT, William M.:

This man was examined by me to-day and found to be mentally fit to plead and to instruct his Defending Officer, mentally fit to understand and physically fit to undergo any sentence which may be passed if he is found guilty.

(S. M. Medine), R.C.A.M.C.,
R.M.O. 7th. L.A.A. Regt., R.C.A.

21 Dec 42.

PAGE 1.

PROCEEDINGS OF TRIAL

Accused F.40545 Gnr William Morlock Elliott 7 LAA Regt RCA
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in England on 21 Dec 1942
(Country)

	Rank	Name	Unit
President	Major	R.T. Fisher	2 HAA Regt RCA
Members	Lieut	J.A. Howard	2 HAA Regt RCA
	Lieut	W.Y. Sturdy RECS	1 LAA Regt RCA

Judge-Advocate (if any) —

Prosecuting Officer Lieut C.L.R. Estey Lawyer? Ans. Yes

Defending Officer Lieut W.M. Buck Lawyer? Ans. No

(The following procedure must be actually carried out.)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P. 17(E); 22(A))

The President, in closed court (R.P. 22 fn 1), reads the Convening Order and the Charge Sheet(s) to the members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.108)

The accused is (are) brought before the Court, and at 0930 hrs hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is (are) fit to undergo trial by court-martial. The certificate is initialled by the President, and attached to the proceedings.

President to accused

~~Do you object to~~ Do you object to Sgt Grant J.D. as interpreter? Ans. NF
as shorthand writer? Ans. No

The names of the President and Members of the Court are read to the accused (R.P. 110)

President to accused

Do you object to be tried by me as President or by any of the officers whose names you have heard read over? Ans. No.

The President, Members, Judge-Advocate, officers under instruction, interpreter and shorthand writer are duly sworn. (R.P. 26-27) (Forms of Oath, p.E)

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused ~~has~~ (~~has~~) elected trial by court-martial. (A.A. 46(8)) NE NOT

President to accused

Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans. No

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P. 62(B), 106); or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.30, R.P.57), record such plea and evidence (if any) on separate sheet(s) to be initialled by the President and attached to the proceedings.)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:-

First Charge	Second Charge	Third Charge	Fourth Charge
Guilty	Guilty	Guilty	Guilty

(For procedure on alternative charges, see R.P.37 fn 2.)

Further proceedings are recorded on Pages hereto attached. 6 to George

NF Not Guilty

4y

CASE "C"

(For Use When There Are Pleas of Guilty and Not Guilty.)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President.)

1. R.P. 35(B) is complied with, in respect to Guilty pleas, by the President ascertaining that accused understands the nature of the charge(s) (fn 3) and his plea thereto, explaining the difference in procedure by that plea (R.P. 39(B)), and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. President to accused:-
Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P. 39(A)).
A. No

3. The Prosecutor's opening address (if any) (R.P. 39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.

4. The Prosecution is closed [illegible] (R.P. 39(B)) that no prima facie case established, and R.P. 40 (fn 1) [illegible]

5. The accused is informed that he may [illegible] give evidence, but if he does so, he will be liable to cross-examination. (R.P. 40 fn 2)

6. President to accused:-
Q. Do you apply to give evidence yourself as a witness?
A. No
Q. Do you intend to call any other witness in your defence?
A. No
Q. Is the evidence of any character only? (R.P. 40(B))
A. [illegible] Nil

7. The evidence for the defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

8. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. For order of addresses, see R.P. 40, fn 1 and 42.

9. The Court is now closed to consider its finding. (R.P. 43 and 117) (Record finding on P.3.)

10. The Court being re-opened the accused is again brought before it and the findings of Not Guilty (if any) are announced. (R.P. 117(B))

11. The charge(s) to which the accused pleaded guilty, are read to the accused.

12. President to accused:-
Q. Do you desire to make any statement of the circumstances in reference to the charge(s) to which you have pleaded guilty? (R.P. 37(2)).
Ans. Yes.

(Statement (if any) [illegible] is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon.)

Hf.

13. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such Summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the Proceedings.) (R.P. 37(B))

14. President to accused:-
Q. Do you wish to make any statement in mitigation of punishment? (R.P. 37(C)) Ans. No
No cross-examination.
(Statement (if any) is recorded on separate sheet, initialled by the President and attached hereto.)

15. President to accused:-
Q. Do you wish to give evidence yourself or call witnesses as to character? (R.P. 37(C)) Ans. No

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto.)

16. Capt Kenneth Harold Brown 7 L AA Regt. sworn
(Rank) (Christian Names) (Surname) (Unit)
produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books. The said documents are read, marked " ", " ", initialled by the President and attached to the proceedings (R.P. 46).

17. President to accused:-
Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P. 46(D)). Ans. No
No Cross-Examination.
(Record address (if any) on separate sheet, initialled by the President and attached hereto.)

18. The Court is now closed to consider the sentence. (Record on p.3.)

(Punishments, A.A.44, (K.R.(Can) 563-566; one sentence only awarded, A.A.48; Jurisdiction of F.G.C.M., R.P.116.)

The sentence is not announced to the accused by the Court.

E Fisher Major
(Signature of President)

Re Court Martial: F-40545
Gnr Elliott, W.M.
7th L.A.A. Reg't R.C.A.

EVIDENCE FOR THE PROSECUTION

1st Witness: B-22420 B.S.M. Smith, E.W.

Prosecuting Officer: Your Regimental Number B.S.M. Smith is B-22420?

Witness: Yes, sir.

Pros: You are Sergeant-Major of the 42nd L.A.A. Battery, of which the accused Gnr Elliott is a member?

Witness: Yes, sir.

Pros: On the afternoon of 14th December, 1942 at approximately 1400 hrs did you have the accused F-40545 Gnr Elliott, W.M. up for Battery Orderly Office?

Witness: Yes, sir.

Pros: On completion of Office on 14th December, whom did you turn the accused over to?

Witness: Sgt Troughton, Sir.

Pros: Did you hear Sgt Troughton, G.W., B-22453 give the accused a specific order as to what accused was to do?

Witness: Yes, sir.

Pros: Will you tell the court just what exactly the order was that Sgt Troughton gave the accused on this occasion?

Witness: Yes, sir, I heard Sgt Troughton order Gnr Elliott to report to Battery Q.M. Stores to turn in some boots, and then to report to A Troop H.Q. for duty.

Pros: This order was given in your presence?

Witness: Yes, sir.

Pros: Is the accused a member of A Troop?

Witness: Yes, sir.

Pros: That is all I have to ask the witness.

Pres: (To Def.(Have you any questions to ask this witness?

Def: No.

Lt Howard (Member of Court(: What did accused do after the order was given to him.

Witness: He accepted the order, and I saw him leave Battery Orderly Room to carry out those instructions.

2nd Witness: B-22453 Sgt Troughton, G.W.

Pros: You are B-22453 Sgt Troughton, G.W.?

Witness: Yes, sir.

Pros: You are a member of the 42nd L.A/A. Battery, A Troop, No. 1 Detachment?

Pros: Yes, sir.

Re Court Martial: F-40545
Gnr Elliott, W.M.
7th L.A.A. Reg't R.C.A.

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Witness: Yes, sir.

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2nd Witness: B-22453 Sgt Troughton, G.W.

Pros: You are B-22453 Sgt Troughton, G.W.?

Witness: Yes, sir.

Pros: You are a member of the 42nd L.A/A. Battery, A Troop, No. 1 Detachment?

Pros; Yes, sir.

Re Court Martial: F-40545
Gnr Elliott, W.H.
7th Lt. A.A. Reg't R.C.A.
(second charge(

EVIDENCE FOR THE PROSECUTION

1st Witness: B-22452 Sgt Troughton, G.W.

Pros: The accused is a member of your detachment?

Witness: Yes, sir.

Pros: On the 14th of December, 1942, did you place the accused under close arrest?

Witness: Yes

Pros: Why?

Witness: He neglected to carry out the order I had given him.

Pros: Will you tell the Court in a few words what the order was?

Witness: I ordered Gnr Elliott to go to the Battery Q.M. Stores and then proceed to Troop Headquarters, which he did not do.

Pros: Did you detail an N.C.O. to supervise guarding of the accused on 14th December, 1942.

Witness: Yes, sir, L/Bdr Scott, F.R.

Pros: By L/Bdr Scott, F.R. do you mean B-22462 L/Bdr Scott, F.R. ?

Witness: Yes.

Pros: After placing the accused under close arrest, what did you do?

Witness: I told Gnr Silverthorne that he would be guard over Gnr Elliott. I then went downstairs in the house where the accused lived and told L/Bdr Scott that I had placed Gnr Elliott under close arrest and Gnr Silverthorne as his guard. I told L/Bdr Scott to tell Gnr Silverthorne and Gnr Elliott that under no circumstances were they to leave the building except for meals.

Pros: Did you ask L/Bdr Scott to repeat that order to Gnr Silverthorne in order that there could not be any misunderstanding as to the order?

Witness: Yes.

Pros: Did you hear L/Bdr Scott repeat the order to Gnr Silverthorne?

Witness: I did, Sir.

Pros: The order was repeated in your presence?

Witness: Yes.

Pros: Will you tell the Court what happened after you had instructed L/Bdr Scott and Gnr Silverthorne as to their duties?

Witness: It was in the afternoon, and I had some other work to do, so I carried on. I went downtown that night, and returned to my billets at approximately 2200 hours. I went upstairs to see if Gnr Silverthorne and L/Bdr Scott were alright, and they were not in their rooms.

Pros: When you returned to the billet in which the accused was confined, was either the accused or his guard in the room in which you had detailed for them to remain?

2nd Witness: B-22453 Sgt Troughton, G.W. (Cont'd(

Pros: Is the accused a member of your Detachment?

Witness: Yes, sir.

Pros: At approximately 1400 hrs, 14th December, 1942, did B.S.M. Smith bring the accused to you?

Witness: Yes, sir, he turned him over to me in the Orderly Room.

Pros: What instructions did B.S.M. Smith give to you at that time?

Witness: I just asked B.S.M. Smith if he was finished with him and he said he was.

Pros: Did you then order the accused as to what he was to do in the immediate future?

Witness: Yes, sir.

Pros: Did you give the order in the presence of B.S.M. Smith?

Witness: Yes, sir.

Pros: Will you tell the court in your own words the order you gave to the accused on that occasion?

Witness: I ordered Gnr Elliott to go to the Battery Q.M. Stores and return his boots, and from there to report immediately to A Troop Headquarters to attend a lecture.

Pros: In your presence, after giving accused the order, did the accused say anything at the conclusion of the order?

Witness: He repeated the order after me, and seemed to understand the order perfectly.

Pros: D id accused go immediately to the Battery Q.M. Stores?

Witness: He left the Battery Orderly Room immediately.

Pros: Will you tell the Court in your own words what followed the giving of the order?

Witness: I had a little work at the Orderly Room and when I was finished I proceeded directly to A Troop H.Q. I asked some of the boys if Gnr Elliott had reported in yet and they answered, 'no'. I then went upstairs to the lecture room and could not find Gnr Elliott. I then went back to my billets to see if he had gone there, and found Gnr Elliott in a room upstairs lying on a bed. I asked him why he did not report to Troop Headquarters and he replied that he did not know where it was. But Gnr Elliott had been there many times before. I had Gnr Elliott placed under close arrest for neglecting to carry out this order.

Pros: Approximately how much time had elapsed between the giving of the order and finding the accused lying on his bed?

Witness: Approximately one hour.

Pros: What is the distance in yards from the Q.M. Stores to the billets of the accused?

Witness: Approximately 700 yards.

Pro

2nd Witness: R-22453 Sgt Troughton, G.M. (Cont'd(

Pros: Is the accused a member of your Detachment?

Witness: Yes, sir.

Pros: At approximately 1400 hrs, 14th December, 1942, did B.S.M. Smith bring the accused to you?

Witness: Yes, sir, he turned him over to me in the Orderly Room.

Pros: What instructions did B.S.M. Smith give to you at that time?

Witness: I just asked B.S.M. Smith if he was finished with him and he said he was.

Pros: Did you then order the accused as to what he was to do in the immediate future?

Witness: Yes, sir.

Pros: Did you give the order in the presence of B.S.M. Smith?

Witness: Yes, sir.

Pros: Will you tell the court in your own words the order you gave to the accused on that occasion?

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Pros: D id accused go immediately to the Battery Q.M. Stores?

Witness: He left the Battery Orderly Room immediately.

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Witness: Approximately one hour.

Pros: What is the distance in yards from the Q.M. Stores to the billets of the accused?

Witness: Approximately 700 yards.

Pro

2nd Witness: B-22453 Sgt Troughton, G.W. (Cont'd(

Pros: How long has accused been a member of your Detachment?

Witness: Since January 1942.

Pros: For how long have you been using the present location of A Troop Headquarters.

Witness: For 2 months.

Pros: Has the accused attended lectures at Troop H.Q. on many occasions?

Witness: Yes, sir.

Pros: What is the distance from the location where you found accused lying on his bed to A Troop Headquarters?

Witness: About 200 yards.

Pros: In your opinion is there any reason why accused would not know the location of A Troop Headquarters.

Witness: No, sir.

Defending Officer: Sgt, Troughton, when you gave the order to Gnr Elliott, did he repeat the order back to you of his own volition?

Witness: Yes, sir.

Def: This matter of distances - what is the distance from Battery Office to Battery Q.M. Stores?

Witness: Slightly shorter than from Bty Office to Troop billets, about 600 yards.

Def: Total distance therefore is about one mile.

Witness: Yes.

Def: The prosecuting Officer has brought out the fact that we have been in billets approx. two months. Was Gnr Elliott at firing Camp at Clacton for two weeks during this time?

Witness: Yes, sir.

Def: Did not this period come at the middle of the two months during which we have been established here?

Witness: Yes, sir.

~~2nd Witness: B-22453 L/Bdr Scott, F.H.~~

President.

2nd Witness: B-22453 Sgt Troughton, G.W. (Cont'd(

Pros: How long has accused been a member of your Detachment?

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Pros: For how long have you been using the present location of A Troop Headquarters.

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Witness: Yes, sir.

~~Witness: B-22453 L/Sgt Scott, F.R.~~

President.

Re Court Martial: F-40545
Gnr Elliott, W.M.
7th Lt. A.A. Reg't R.C.A.
(second charge(

EVIDENCE FOR THE PROSECUTION

1st Witness: B-22453 Sgt Troughton, G.W.

Pros: The accused is a member of your detachment?

Witness: Yes, sir.

Pros: On the 14th of December, 1942, did you place the accused under close arrest?

Witness: Yes

Pros: Why?

Witness: He neglected to carry out the order I had given him.

Pros: Will you tell the Court in a few words what the order was?

Witness: I ordered Gnr Elliott to go to the Battery Q.M. Stores and then proceed to Troop Headquarters, which he did not do.

Pros: Did you detail an N.C.O. to supervise guarding of the accused on 14th December, 1942.

Witness: Yes, sir, L/Bdr Scott, F.R.

Pros: By L/Bdr Scott, F.R, do you mean B-22452 L/Bdr Scott, F.R. ?

Witness: Yes.

Pros: After placing the accused under close arrest, what did you do?

Witness: I told Gnr Silverthorne that he would be guard over Gnr Elliott. I then went downstairs in the house where the accused lived and told L/Bdr Scott that I had placed Gnr Elliott under close arrest and Gnr Silverthorne as his guard. I told L/Bdr Scott to tell Gnr Silverthorne and Gnr Elliott that under no circumstance were they to leave the building except for meals.

Pros: Did you ask L/Bdr Scott to repeat that order to Gnr Silverthorne in order that there could not be any misunderstanding as to the order?

Witness: Yes.

Pros: Did you hear L/Bdr Scott repeat the order to Gnr Silverthorne?

Witness: I did, Sir.

Pros: The order was repeated in your presence?

Witness: Yes.

Pros: Will you tell the Court what happened after you had instructed L/Bdr Scott and Gnr Silverthorne as to their duties?

Witness: It was in the afternoon, and I had some other work to do, so I carried on. I went downtown that night, and returned to my billets at approximately 2200 hours. I went upstairs to see if Gnr Silverthorne and L/Bdr Scott were alright, and they were not in their rooms.

Pros: When you returned to the billet in which the accused was confined, was either the accused or his guard in the room in which you had detailed for them to remain?

2nd Witness: B-22453 Sgt Troughton, G.W. (Cont'd)

Pros: How long has accused been a member of your Detachment?

Witness: Since January 1942.

Pros: For how long have you been using the present location of A Troop Headquarters.

Witness: For 2 months.

Pros: Has the accused attended lectures at Troop H.Q. on many occasions?

Witness: Yes, sir.

Pros: What is the distance from the location where you found accused lying on his bed to A Troop Headquarters?

Witness: About 200 yards.

Pros: In your opinion is there any reason why accused would not know the location of A Troop Headquarters.

Witness: No, sir.

Defending Officer: Sgt, Troughton, when you gave the order to Gnr Elliott, did he repeat the order back to you of his own volition?

Witness: Yes, sir.

Def: This matter of distances - what is the distance from Battery Office to Battery Q.M. Stores?

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Def: Total distance therefore is about one mile.

Witness: Yes.

Def: The prosecuting Officer has brought out the fact that we have been in billets approx. two months. Was Gnr Elliott at firing Camp at Clacton for two weeks during this time?

Witness: Yes, sir.

Def: Did not this period come at the middle of the two months during which we have been established here?

Witness: Yes, sir.

~~2nd Witness: B-22453 L/Sgt Scott, E.R.~~

F Wishart Major President.

Re Court Martial: F-40545
Gnr Elliott, W.M.
7th Lt. A.A. Reg't R.C.A.
(second charge(

EVIDENCE FOR THE PROSECUTION

1st Witness: B-22453 Sgt Troughton, G.W.

Pros: The accused is a member of your detachment?

Witness: Yes, sir.

Pros: On the 14th of December, 1942, did you place the accused under close arrest?

Witness: Yes

Pros: Why?

Witness: He neglected to carry out the order I had given him.

Pros: Will you tell the Court in a few words what the order was?

Witness: I ordered Gnr Elliott to go to the Battery Q.M. Stores and then proceed to Troop Headquarters, which he did not do.

Pros: Did you detail an N.C.O. to supervise guarding of the accused on 14th December, 1942.

Witness: Yes, sir, L/Bdr Scott, F.R.

Pros: By L/Bdr Scott, F.R. do you mean B-22482 L/Bdr Scott, F.R. ?

Witness: Yes.

Pros: After placing the accused under close arrest, what did you do?

Witness: I told Gnr Silverthorne that he would be guard over Gnr Elliott. I then went downstairs in the house where the accused lived and told L/Bdr Scott that I had placed Gnr Elliott under close arrest and Gnr Silverthorne as his guard. I told L/Bdr Scott to tell Gnr Silverthorne and Gnr Elliott that under no circumstances were they to leave the building except for meals.

Pros: Did you ask L/Bdr Scott to repeat that order to Gnr Silverthorne in order that there could not be any misunderstanding as to the order?

Witness: Yes.

Pros: Did you hear L/Bdr Scott repeat the order to Gnr Silverthorne?

Witness: I did, Sir.

Pros: The order was repeated in your presence?

Witness: Yes.

Pros: Will you tell the Court what happened after you had instructed L/Bdr Scott and Gnr Silverthorne as to their duties?

Witness: It was in the afternoon, and I had some other work to do, so I carried on. I went downtown that night, and returned to my billets at approximately 2200 hours. I went upstairs to see if Gnr Silverthorne and L/Bdr Scott were alright, and they were not in their rooms.

Pros: When you returned to the billet in which the accused was confined, was either the accused or his guard in the room in which you had detailed for them to remain?

1st Witness: R-22453 Sgt Troughton, G.W. (Cont'd(

Witness: No, sir.

Pros: On finding neither accused nor guard in their room what did you do?

Witness: I went downstairs where the other fellows were and asked them if they had seen Gnr Silverthorne or Gnr Elliott, and they replied that they had not.

Pros: What time did you return from downtown on the 14th of Dec?

Witness: Approximately 2200 hours.

Pros: What time did you leave for downtown?

Witness: Approx. 1800 hours.

Pros: Is it right to say you were absent about four hours?

Witness: Yes.

Pros: Will you tell the Court in your own words what happened then?

Witness: I went into my own room and in approximately ten minutes L/Bdr Scott came in and I asked him to have a look round the house for Gnr Elliott or Gnr Silverthorne. When he returned he said he could not find them. At approximately 2245 hours Gnr Elliott returned unescorted. I asked him where he had been and he said, 'Out walking'.

Pros: Is that all?

Witness: Yes.

Pros: Did Gnr Silverthorne come in shortly after accused?

Witness: Yes, at approximately 2255 hours.

Pros: Did you question accused on his return?

Witness: Yes, sir.

Pros: What did he say?

Witness: That he had been out walking.

Pros: Did the accused hear the order which you had given Gnr Silverthorne?

Witness: I gave it to him in Gnr Elliott's presence.

Pros: Did you ask the accused on his return if he heard you give the order?

Witness: No, sir.

Pros: You placed the accused under close arrest on the 14th of Dec?

Witness: I did, sir.

Pros: You appointed Gnrs Silverthorne to guard him on the 14th?

Witness: Yes, sir.

Pros: The accused left the billet in which you had order him to remain under guard?

Witness: Yes, sir.

1st Witness: R-22453 Sgt Troughton, G.W. (Cont'd(

Witness: No, sir.

Pros: On finding neither accused nor guard in their room what did you do?

Witness: I went downstairs where the other fellows were and asked them if they had seen Gnr Silverthorne or Gnr Elliott, and they replied that they had not.

Pros: What time did you return from downtown on the 14th of Dec?

Witness: Approximately 2200 hours.

Pros: What time did you leave for downtown?

Witness: Approx. 1800 hours.

Pros: Is it right to say you were absent about four hours?

Witness: Yes.

Pros: Will you tell the Court in your own words what happened then?

Witness: I went into my own room and in approximately ten minutes L/Bdr Scott came in and I asked him to have a look round the house for Gnr Elliott or Gnr Silverthorne. When he returned he said he could not find them. At approximately 2245 hours Gnr Elliott returned unescorted. I asked him where he had been and he said, 'Out walking'.

Pros: Is that all?

Witness: Yes.

Pros: Did Gnr Silverthorne come in shortly after accused?

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Witness: Yes, sir.

Pros: What did he say?

Witness: That he had been out walking.

Pros: Did the accused hear the order which you had given Gnr Silverthorne?

Witness: I gave it to him in Gnr Elliott's presence.

Pros: Did you ask the accused on his return if he heard you give the order?

Witness: No, sir.

Pros: You placed the accused under close arrest on the 14th of Dec?

Witness: I did, sir.

Pros: You appointed Gnrs Silverthorne to guard him on the 14th?

Witness: Yes, sir.

Pros: The accused left the billet in which you had order him to remain under guard?

Witness: Yes, sir.

Pros: As the accused's D.C. you had given no orders that the accused could be absent from his billets on the 14th of December?

Witness: No, except for mealx parades.

Pros: At what time are meal parades in the 42nd Battery.

Witness: Supper is at approximately 1700 hours.

Pros: Did the accused return from his meal parade before you went downtown.

Witness: No.

Defending Officer: Did you ask the accused when he returned who he had been out with?

Witness: No, sir, I do not think I did.

Def: When Gnr Silverthorne returned did you then try to find out?

Witness: Find out what?

Def: With whom Gnr Elliott had been out?

Witness: No, sir.

2nd Witness: B-22482 L/Bdr Scott, F.R.

Pros: You are a member of No 1 Detach., A Troop?

Witness: Yes, sir.

Pros: Is Sgt Troughton, G.W. your Detachment Commander?

Witness: Yes, sir.

Pros: And the accused, F-40545 Gnr Elliott is a member of your Det?

Witness: Yes, sir.

Pros: On the 14th of December, were you instructed by Sgt Troughton of the fact that Gnr Silverthorne would act as guard of the accused?

Witness: Yes, sir.

Pros: Did you give to Gnr Silverthorne the instructions which you had received from Sgt. Troughton?

Witness: Yes, sir.

Pros: Would you tell the Court what the instructions were?

Witness: I was ordered by Sgt Troughton to tell Gnr Silverthorne that neither he nor the accused were to leave the house except for meal parades.

Pros: At approximately what time on the 14th of Decemver did you leave the billet in which the accused was under guard.

Witness: I left at approximately 1730 hours.

Pros: When you left were both the accused and Gnr Silverthorne in the house?

Witness: Yes, sir.

Pros: Had they returned from their evening meal?

Witness: They had not been to their evening meal yet.

Pros: As the accused's D.C. you had given no orders that the accused could be absent from his billets on the 14th of December?

Witness: No, except for meals, parades.

Pros: At what time are meal parades in the 42nd Battery.

Witness: Supper is at approximately 1700 hours.

Pros: Did the accused return from his meal parade before you went downtown.

Witness: No.

Defending Officer: Did you ask the accused when he returned who he had been out with?

Witness: No, sir, I do not think I did.

Def: When Gnr Silverthorne returned did you then try to find out?

Witness: Find out what?

Def: With whom Gnr Elliott had been out?

Witness: No, sir.

2nd Witness: B-22462 L/Bdr Scott, F.R.

Pros: You are a member of No 1 Detach., A Troop?

Witness: Yes, sir.

Pros: Is Sgt Troughton, G.W. your Detachment Commander?

Witness: Yes, sir.

Pros: And the accused, F-40545 Gnr Elliott is a member of your Det?

Witness: Yes, sir.

Pros: On the 14th of December, were you instructed by Sgt.Troughton of the fact that Gnr Silverthorne would act as guard of the accused?

Witness: Yes, sir.

Pros: Did you give to Gnr Silverthorne the instructions which you had received from Sgt. Troughton?

Witness: Yes, sir.

Pros: Would you tell the Court what the instructions were?

Witness: I was ordered by Sgt Troughton to tell Gnr Silverthorne that neither he nor the accused were to leave the house except for meal parades.

Pros: At approximately what time on the 14th of December did you leave the billet in which the accused was under guard.

Witness: I left at approximately 1730 hours.

Pros: When you left were both the accused and Gnr Silverthorne in the house?

Witness: Yes, sir.

Pros: Had they returned from their evening meal?

Witness: They had not been to their evening meal yet.

Pros: Will you relate to the Court what happened on your return from downtown.

Witness: I returned from town at the hour of 2250, and Gnr Silverthorne and Gnr Elliott were absent.

Pros: Did you on your return from downtown search the quarters to make certain that neither the accused nor his guard were in another room.

Witness: Yes, sir, I was ordered to do so by Sgt. Troughton. Around 2255 hours Gnr Silverthorne returned home. When I asked him where he and the accused were, he said he had turned Gnr Elliott over to Gnr Chapman without authority of myself or Sgt Troughton, and he had gone downtown. Around 2300 hours Gnr Elliott returned. I told him Sgt Troughton wanted to see him, and while he was talking to Sgt Troughton I asked him if he had not heard me tell Gnr Silverthorne that neither he nor Gnr Elliott were to leave the house and he answered, 'Yes'. Then he went to his room to bed under the custody of Gnr Silverthorn

Pros: While talking to the accused on his return, did the accused admit to you that he had heard and knew the order which you had given Gnr Silverthorne regarding his duties as guard?

Witness: When I asked the question I remember him saying, 'Yes'.

Def: Do you remember whether Gnr Silverthorne returned before Gnr Elliot or after?

Witness: Yes, Gnr Silverthorne returned ~~first~~ before Gnr Elliott.

Def: Upon his return did you question him as to his actions?

Witness: No, sir, Sgt Troughton did that.

Lt Howard (Member of Court(You say Gnr Silverthorne returned first?

Witness: Yes, sir.

Lt Howard: And actually, that Gnr Elliott was left in the custody of Gnr Chapman?

Witness: Yes, sir.

3rd Witness: B-22539 Gnr Silverthorne, D.M.

Pros: Are you a member of No 1 Detachment, A Troop?

Witness: Yes, sir.

Pros: Is the accused Gnr Elliott a member of your Detachment?

Witness: Yes, sir.

Pros: Were you detailed by both Sgt Troughton and L/Bdr Scott to act as guard on the 14th of December?

Witness: Just by L/Bdr Scott.

Pros: Are you certain that Sgt Troughton did not ask you or detail you to be guard of the accused?

Witness: Yes, sir, Iam certain.

Pros: What orders did you receive from L/Bdr Scott regarding your duties as guard of the accused?

Pros: Will you relate to the Court what happened on your return from downtown.

Witness: I returned from town at the hour of 2250, and Gnr Silverthorne and Gnr Elliott were absent.

Pros: Did you on your return from downtown search the quarters to make certain that neither the accused nor his guard were in another room.

Witness: Yes, sir, I was ordered to do so by Sgt. Troughton. Around 2255 hours Gnr Silverthorne returned home. When I asked him where he and the accused were, he said he had turned Gnr Elliott over to Gnr Chapman without authority of myself or Sgt Troughton, and he had gone downtown. Around 2300 hours Gnr Elliott returned. I told him Sgt Troughton wanted to see him, and while he was talking to Sgt Troughton I asked him if he had not heard me tell Gnr Silverthorne that neither he nor Gnr Elliott were to leave the house and he answered, 'Yes'. Then he went to his room to bed under the custody of Gnr Silverthorne.

Pros: While talking to the accused on his return, did the accused admit to you that he had heard and knew the order which you had given Gnr Silverthorne regarding his duties as guard?

Witness: When I asked the question I remember him saying, 'Yes'.

Def: Do you remember whether Gnr Silverthorne returned before Gnr Elliot or after?

Witness: Yes, Gnr Silverthorne returned ~~first~~ before Gnr Elliott.

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Witness: No, sir, Sgt Troughton did that.

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Witness: Yes, sir.

Lt Howard: And actually, that Gnr Elliott was left in the custody of Gnr Chapman?

Witness: Yes, sir.

2nd Witness: B-22539 Gnr Silverthorne, R.M.

Pros: Are you a member of No 1 Detachment, A Troop?

Witness: Yes, sir.

Pros: Is the accused Gnr Elliott a member of your Detachment?

Witness: Yes, sir.

Pros: Were you detailed by both Sgt Troughton and L/Bdr Scott to act as guard on the 14th of December?

Witness: Just by L/Bdr Scott.

Pros: Are you certain that Sgt Troughton did not ask you or detail you to be guard of the accused?

Witness: Yes, sir, Iam certain.

Pros: What orders did you receive from L/Bdr Scott regarding your duties as guard of the accused?

Witness: L/Bdr Scott told me that I was not to let Gnr. Elliott out of my sight except for meal parades.

Pros. Were you to accompany the accused on meal parades?

Witness: Yes, sir, and that I was to be on duty until the following morning. That night I asked Gnr. Chapman if he would take my place and I went downtown. I told him that it would be alright.

Pros. Did you know why you were guarding accused?

Answer: Yes, sir, I knew he was under close arrest.

Def. When you went down town did you have any conversation with Gnr. Elliott.

Witness: No sir.

Def. You simply turned your duties over to another man?

Witness: Yes, sir.

Pros. Did you explain to him what his job was?

Witness: Yes, sir.

Pros. What did you tell him?

Witness: I just told him that he was to take my guard until the following morning and that Gnr. Elliott was not to go out of the house.

Def. Did you tell this to him in the presence of Gnr. Elliott.

Witness: No, sir, Gnr. Elliott was not there.

4th Witness: B-85334 Gnr Chapman, J.M.

Pros: Are you a member of No 1 Detachment of A Troop?

Witness: Yes, sir.

Pros: Is accused a member of your detachment?

Witness: Yes, sir.

Pros: On the 14th of December, 1942 were you asked by Gnr Silverthorne to take over his duties as guard of the accused?

Witness: I was, sir.

Pros: Did you take over?

Witness: Yes, sir.

Pros: When you were with the accused, did the accused have any conversation with you?

Witness: Yes, sir.

Pros: Will you tell the court what that conversation was?

Witness: He asked me if I would take him for a walk, and I said 'Yes'. While Gnr Elliott and I were walking he said he would like to take in a picture and I said I did not feel like going, but he could go if he wanted to, and we arranged to meet at a certain place after the picture was over. He did not meet me, so I came back to the billet alone.

Pros: Was accused in his billet when you got home?

Witness: L/Bdr Scott told me that I was not to let Gnr. Elliott out of my sight except for meal parades.

Pros. Were you to accompany the accused on meal parades?

Witness: Yes, sir, and that I was to be on duty until the following morning. That night I asked Gnr. Chapman if he would take my place and I went downtown. I told him that it would be alright.

Pros. Did you know why you were guarding accused?

Answer: Yes, sir, I knew he was under close arrest.

Def. When you went down town did you have any conversation with Gnr. Elliott.

Witness: No sir.

Def. You simply turned your duties over to another man?

Witness: Yes, sir.

Pros. Did you explain to him what his job was?

Witness: Yes, sir.

Pros. What did you tell him?

Witness: I just told him that he was to take my guard until the following morning and that Gnr. Elliott was not to go out of the house.

Def. Did you tell this to him in the presence of Gnr. Elliott.

Witness: No, sir, Gnr. Elliott was not there.

Mess

4th Witness: B-85334 Gnr Chapman, J.M.

Pros: Are you a member of No 1 Detachment of A Troop?

Witness: Yes, sir.

Pros: Is accused a member of your detachment?

Witness: Yes, sir.

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Witness: I was, sir.

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Pros: Was accused in his billet when you got home?

45

Witness: No, sir, he came in after me.

Def: How long after you got back to your billets was it before the accused returned?

Witness: About 45 minutes.

Def: There might have been a possibility of a slip-up in the meeting place?

Witness: It was possible I may have left a little early.

President

Witness: No, sir, he came in after me.

Def: How long after you got back to your billets was it before the accused returned?

Witness: About 45 minutes.

Def: There might have been a possibility of a slip-up in the meeting place?

Witness: It was possible I may have left a little early.

[signature] President

Re Court Martial: F-40545 Gnr Elliott

PROSECUTION'S CLOSING ADDRESS

This man is charged under Section 22 of the A.A. with escaping from confinement. The 1st Witness, Sgt Troughton, established that the accused was placed under close arrest on the 14th of December, 1942. The Sgt also established the accused was to be guarded by Gnr Silverthorne. The fact was also established by this Witness that for at least some period between 1600 and 2300 hours on the 14th of December the accused had escaped from confinement. L/Bdr Scott corroborated the evidence of the 1st Witness and established the fact that he had given satisfactory orders to the accused's guard. L/Bdr Scott also corroborated the fact that the accused was absent from his place of confinement on the 14th of December. This absence was furtherenumerated upon by the 3rd and 4th Witnesses. It is admitted by the Prosecuting Officer that the accused offered little violence in his escape and returned unescorted, but it is also pointed out that the accused knew he was under close arrest during this period by evidence of the order which was given to him personally by his D.C. The accused has been in the Army long enough to know the meaning of close arrest. Under Section 22 of the A.A., by virtue of Note 3 therein, an escape may be with or without force or artifice, or with or without consent of the custodian. Therefore it is pointed out by the Prosecuting Officer that the accused is guilty under this section even though he used no force and had the consent of his custodian at the time of his escape.

[signature] President

Re Court Martial: F-40545 Gnr Elliott

PROSECUTION'S CLOSING ADDRESS

This man is charged under Section 22 of the A.A. with escaping from confinement. The 1st Witness, Sgt Troughton, established that the accused was placed under close arrest on the 14th of December, 1942. The Sgt also established the accused was to be guarded by Gnr Silverthorne. The fact was also established by this Witness that for at least some period between 1500 and 2300 hours on the 14th of December the accused had escaped from confinement. L/Bdr Scott corroborated the evidence of the 1st Witness and established the fact that he had given satisfactory orders to the accused's guard. L/Bdr Scott also corroborated the fact that the accused was absent from his place of confinement on the 14th of December, This absence was furtherenumerated upon by the 3rd and 4th Witnesses. It is admitted by the Prosecuting Officer that the accused offered little violence in his escape and returned unescorted, but it is also pointed out that the accused knew he was under close arrest during this period by evidence of the order which was given to him personally by his D.C. The accused has been in the Army long enough to know the meaning of close arrest. Under Section 22 of the A.A., by virtue of Note 3 therein, an escape may be with or without force or artifice, or with or without consent of the custodian. Therefore it is pointed out by the Prosecuting Officer that the accused is guilty under this section even though he used no force and had the consent of his custodian at the time of his escape.

A Fisher Major President

DEFENCE'S CLOSING ADDRESS

The accused is making no attempt to deny that he was absent from his quarters. There was much doubt in his mind as to the terms of close arrest and of the orders given to him. In spite of the fact of Section 22, para 3 points out it is an escape whether or not you have the consent of your custodian, it is very doubtfuly whether one, Gunner out of one hundred would know this fact. Gunner Elliott obtained permission from his guard to go for a walk; he requested and was given permission to go to a movie and did so; he missed what was to have been the rendezvous by possibly a very few minutes, and in a perfectly normal course of time returned to his quarters. To him this seems not to have been any attempt to escape and he was back in his quarters before tattoo roll was called.

President.

DEFENCE'S CLOSING ADDRESS

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President.

President (To accused(: You are found NOT GUILTY of charge No 6.

(Other charges on which are found guilty are re-read to accused(.

Do you wish to make any statement of any circumstances in reference to the charges on which you have pleaded guilty?

Defending Officer: The accused has asked me to make a statement on his behalf. If agreeable to the Court we will attempt to answer these four charges as one. When the accused was paraded to Battery Office on the 14th of December he was faced with three charges of being A.W.L. on consecutive days. He pleads guilty to these charges, but at the same time he cannot understand why he was allowed to continue to be reported A.W.L. day after day without being notified of the fact. When he was told at Battery Office of the three charges, it was the first time he knew anything about their having been laid. Immediately after this he was marched from the Orderly Room, and if ever anybody had a right to make a delay in making a left turn and loose his balance - which is the unsoldierly conduct with which this man is charged - he did.

H Fisher Lt-Col President.

President (To accused(: You are found NOT GUILTY of charge No 6.

(Other charges on which are found guilty are re-read to accused(.

Do you wish to make any statement of any circumstances in reference to the charges on which you have pleaded guilty?

Defending Officer: The accused has asked me to make a statement on his behalf. If agreeable to the Court we will attempt to answer these four charges as one. When the accused was paraded to Battery Office on the 14th of December he was faced with three charges of being A.W.L. on consecutive days. He pleads guilty to these charges, but at the same time he cannot understand why he was allowed to continue to be reported A.W.L. day after day without being notified of the fact. When he was told at Battery Office of the three charges, it was the first time he knew anything about their having been laid. Immediately after this he was marched from the Orderly Room, and if ever anybody had a right to make a delay in making a left turn and loose his balance - which is the unsoldierly conduct with which this man is charged - he did.

R/Fisher Lieut President.

Captain K. H. Brown is brought before the Court and sworn in.

I am Adjutant of the 7th Lt.A.A. Regiment. I produce Army form B-296, statement as to character and particulars of service of the accused. This document is signed by myself and contains a true summary of entries in Regimental records in my custody. I also produce a ~~Militia Form M-6~~ copy certified by myself of Militia Form M-6 of the accused, the original Militia Form M-6 is in my custody.

[signature] President.

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A Fisher Major President.

PROSECUTION'S CLOSING ADDRESS

The essence of this charge is the disobeying of an order. The witnesses called have brought out the fact that a satisfactory order was given which was heard by the B.S.M. This order was not carried out. The accused has admitted by his Defending Officer that he had been in the locality for a period of six weeks, in which period he has been carrying out a normal syllabus of training which of itself has necessitated the accused attending Troop Headquarters to attend compulsory lectures The mere fact that the Def. brought up the question, and questioned the second witness on the point of whether the accused repeated the order in the second witness's presence has no relation to the case, and makes no difference in military law whether the accused took the order willingly or begrudgingly. It was an order given by a superior N.C.O. and carried out and to be questioned afterwards.

A Fisher Logan President.

DEFENCE'S CLOSING ADDRESS

When this order was given the accused had matters on his mind which would not give a clear comprehension to any order. He acted upon the order to the best of his ability.--Under the circumstances, which was to go directly to the Troop Stores and draw boots as instructed by his Sergeant and from there he went directly to his quarters, not knowing at the time where the rest of his detachment were undergoing training. He was waiting there when Sergeant Troughton found him.

A Fisher Logan President.

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A Fisher Lieut. President.

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A Fisher Lieut. President.

In the case of

F-40545 Gnr. Elliott, W.M.

Summary of Evidence

Taken on oath by direction of the C.O. 7 Lt.A.A.Regt., RCA.

Prosecution 1st Witness

B-22420 B.S.M. Smith, E.W., 42 Lt.A.A.Bty., R.C.A. sworn sta tes:

"I am the B.S.M. of the 42 Lt.A.A.Bty., RCA. I paraded the accused to the A/O.C. 42 Lt.A.A.Bty., RCA. at Battery Office at approximately 1400 hrs 14 Dec 42. The accused after having been dealt with would not respond to my commands in a soldierly manner. For example when I gave the command to left turn p rior to leaving the A/O.C's office the accused would not left turn with the remainder of the guard, but would do so a few seconds later. On performing the a/m movement the accused lost his balance and reached out with one hand to support himself by grasping the edge of the mantle over the fireplace. I then marched him out of the orderly room which he did in a very slevenly manner. After breaking the accused off, I questioned him by asking him if he was drunk which he denied. I then asked him if he had been drinking during the noon hour, which he also denied. I smelt liquer on the accuseds' breath, but he was by no means drunk, and fully aware of what was going on. I then turned the accused over to B-22453 Sgt. Troughton, G.W., whom I heard order the accused to report to the Battery Q.M. stores to draw boots and then to proceed to "A" tp. H.Q. for duty."

The accused declines to cross-examine this witness.

E. M. Smith
B-22420 B.S.M. Smith, E.W.

Prosecution 2nd Witness

B-22453 Sgt. Troughton, G.W., 42 Lt.A.A.Bty., R.C.A. sworn states:

"I am the Detachment of No. 1 detachment "A" Tp. 42 Lt.A.A. Bty., R.C.A. The accused was turned over to me by B.S.M. Smith, E.W. at the conclusion of Battery Office 14 Dec 42. Gnr. Elliott had been drinking but was not drunk. I ordered the accused to report to the Battery Q.M. stores to collect his boots, and then to proceed to "A" Tp. H.Q. to attend a lecture. On arriving at Tp. H.Q. I asked whether the accused Gnr. Elliott had arrived, and later went to the lecture room to see for myself. The accused was not in the lecture room. I then returned to our billets, which were about 700' from the Battery Q.M. stores and about 200' from A tp H.Q. I found Gnr. Elliott lying on a bed upstairs. I asked him why he did not report to "A" Tp. H.Q. and he replied that he did not know the location, although he had been there on many occasions. Approximately one hour had elapsed between my giving the order to the accused to pick up his boots at the Bty Q.M. Stores and proceed to "A" Tp H.Q. and finding him lying on a bed in his billet. I then placed the accused under close arrest at approximately 1500 hrs 14 Dec 42 and ordered B-22539 Gnr. Silvertherne to guard the accused. I gave further instructions to Gnr. Silvertherne that neither he nor the accused were to leave the billet except for meal parades, when they would go together. I then told B-22482 L/Bdr Scott what I had done and ordered him to make certain that Gnr. Silvertherne understood the order perfectly. L/Bdr Scott, P.R. in my hearing repeated to Gnr. Silvertherne the order which I had previously given him dealing with the guarding of the accused.

When I returned to my billets at approximately 2220 hrs 14 Dec 42, I went upstairs to check on the accused and his

guard. I found neither the accused nor his guard present. I then went downstairs and asked the men if anyone of them had seen Gnr. Silvertherne or the accused, to which they replied they had not. When L/Bdr Scott arrived I had him go upstairs and check all the rooms thoroughly. He reported to me that neither Gnr. Silvertherne nor the accused could be found. The accused returned to his billet without an escort at about 2245 hrs 14 Dec 42. I questioned the accused as to where he had been and he replied that he had been out walking. I asked him where Gnr. Silvertherne was and he said he (Silvertherne) had left earlier in the evening. At approximately 2255 hrs 14 Dec 42 Gnr. Silvertherne returned and I asked him why he had not looked after the accused. He offered no reason. I then informed Gnr. Silvertherne to carry on with his duties of guarding the accused.

I have on several occasions given orders to my detachment of which the accused is a member, that if a man is absent after 2300 hrs., he is ~~XXXXXX~~ marked absent on the tatoo report, and must either report to myself or to the N.C.O. in charge when they return. Otherwise they will be marked absent until 0630 hrs the following morning."

The accused asked the witness the following questions:

Q. Was I under close arrest when paraded to A/O.C. 42 Lt. A.A. Bty. RCA at approximately 1400 hrs on 14 Dec 42?

A. No, you were not placed under close arrest until approximately 1500 hrs 14 Dec 42.

C.W. Troughton

B-22453 Sgt. Troughton, G.W.

Prosecution 3rd Witness

B-22482 L/Bdr. Scott, F.R., 42 Lt.A.A. Bty., R.C.A.

sworn states:

"I a m the L/Bdr. of No.1 Detachment "A" Tp., 42 Lt.A.A. Bty. On the 13th day of Dec 42 at 2300 hrs I called the roll in No.1 Detachment and found the accused to be absent. Due to the fact tatoo was at 2300 hrs I therefore marked the accused A.W.L. The accused did not report to me until I called the roll at 0630 hrs 14 Dec 42. The accused had at a prior date been ordered by B-22453 Sgt. Troughton, G.W. in my hearing that if he did ever come in after 2300 hrs he was to wake the N.C.O. in charge up and report himself in. The accused came in sometime prior to reveille 14 Dec 42 but never woke me up, this he was ordered to do for I was the N.C.O. in charge on 14 Dec 42.

On the 14 Dec 42 I was told by B-22453 Sgt. Troughton, to detail one man to act as guard for the accused. I ordered B-22539 Gnr. Silvertherne to act as guard for the accused from 1500 hrs 14 Dec 42 to 0830 hrs 15 Dec 42. I further instructed Gnr. Silvertherne that neither he nor the accused were to leave the billet except for meal parades. At approximately 1700 hrs 14 Dec 42 I went to Beckenham, Kent. When I left both Gnr. Silvertherne and the accused were in the billet. On my return at 2250 hrs 14 Dec 42., I found both the accused and Gnr Silvertherne absent. Gnr. Silvertherne reported in at about 2255 hrs 14 Dec 42. On questioning him as to his whereabouts and the whereabouts of the accused, Silvertherne informed me that he had arranged with Gnr. Chapman to relieve him ~~XXXXX~~ without asking first the permission of an Officer or N.C.O. At approximately 2300 hrs 14 Dec 42 the accused came in and on asking him where he had been he replied he had been downtown (Beckenham, Kent). I then asked the accused if he had heard me give Gnr. Silvertherne the order that neither he nor the accused were to leave the billet except for meal parades and he replied he had heard me give this order. The accused was then placed in custody again with Gnr. Silvertherne acting as guard."

The accused declines to cross-examine this witness.

D. Blv. Scott R.R.
B-22482 L/Bdr. Scott, R.R.

Prosecution 4th Witness — B-22400 Bdr. Whitehead, L.A. , 42 Lt.A.A. Bty. R.C.A., sworn states;

"I am Bdr. of No.1 Detachemnt "A" Tp., 42 Lt.A.A. Bty. When I called the roll at 2300 hrs 11 Dec 42 the accused was absent.. At 0640 hrs 12 Dec 42 I noticed that the accused was present. There is a standing order in the detachment of which the accused is amember, and with which the accused is well acquainted that if a soldier comes in after 2300 hrs, he must report to the N.C.O. on duty or an N.C.O. of No.1 Detachment. If this is not done the soldier is marked absent until 0630 hrs the following morning.

On calling the roll at 2300 hrs 12 Dec 42 I found the accused to be absent. At 0630 hrs 13 Dec 42 on making my rounds I noticed that the accused was present. The accused failed to report to any N.C.O. when he arrived at his billets after 2300 hrs 12 Dec 42, and therefore following the order regarding reporting to an N.C.O. I marked the accused absent until 0630 hrs 13 Dec 42".

The accused declines to cross-examine this witness.

B.Bdr. W. Whitehead L.A.
B-22400 Bdr. Whitehead, L.A.

Prosecution 5th Witness — B-22539 Gnr. Silvertherne, D.M., 42 Lt.A.A. Bty. R.C.A., sworn states:

"I am a member of No.1 Detachment "A" Tp., 42 Lt.A.A. Bty., R.C.A. At approximately 1500 hrs 14 Dec 42, B-22482 L/Bdr. Scott ordered me to act as guard for the accused. I was to be on duty until the following morning. L/Bdr. Scott gave me orders that I was not to let the accused out of my sight and that I was to accompany him on meal parades. I made arrangement with B-85334 Gnr. Chapman without consulting with an Officer or N.C.O. that he (Gnr. Chapman) would relieve me from 1800 hrs to 2300 hrs 14 Dec 42. At 1800 hrs 14 Dec 42 Gnr. Chapman arrived to relieve me as guard of the accused and I went down town (Beckenham, Kent). I returned to my billets at 2300 hrs and found the accused in the same room as I had left him with Gnr. Chapman acting as guard of the accused."

The accused declines to cross-examine this witness.

Gnr. Silvertherne D.M.
B-22539 Gnr. Silvertherne, D.M.

Prosecution Witness — B-85334 Gnr. Chapman, J.M., 42 Lt.A.A. Bty. R.C.A., sworn states:

"I am a member of No.1 Detachment "A" Tp., 42 Lt.A.A. Bty., R.C.A. I came off M.T. guard at approximately 1745 hrs 14 dec 42 and B-22539 Gnr. Silvertherne asked me at that time if I would take over his duty of guarding the accused. I told Gnr. Silvertherne I would take over from him. I asked Silvertherne if he had the permission of Sgt. Troughton or Bdr. Whitehead to leave his post or obtain someone to relieve him to which he replied he did not, but said everything would be alright if I stayed with the accused.

stayed with the accused. Gnr. Silvertherne then went out Gnr. Elliott asked me if he and I could go for a walk and replied yes. Gnr. Elliott said later while we were walking together that he would like to see a picture and I let him on the promise that he would meet me at an appointed place as soon as the picture was over. I let the accused go to the pictures and he did not meet me when we had arranged to meet after the pictures were over. I returned home alone. Gnr. Silvertherne never told me the accused was under close arrest. I did not even know why I had to stay with him.

The accused declines to cross-examine this witness.

Gnr. Chapman J.M.
B-85334 Gnr. Chapman, J.M.

The accused, F-40545 Gnr. Elliott, W.M., having been warned in the terms set out in R.P.4(E) makes the following statement:

"I am in No.1 Detachment "A" Tp., 42 Lt.A.A. Rty. R.C.A. On returning to my billet at 1100 hrs 14 Dec 42, L/Bdr. Scott came and told me that Sgt. Troughton, G.W. wanted to see me in his room. This is the only statement L/Bdr. Scott made to me on this occasion. He never as he alleges in his statement, asked me if I heard him tell Gnr. Silvertherne that neither he (Silvertherne) nor myself were to leave the billet except for meal parade."

The accused is informed that the Prosecuter will be an Officer subject to Military Law and possessing legal qualifications.

The accused is asked whether he wishes an Officer to be appointed to defend him at the trial and replies in the affirmative.

Elliott W.M.
F-40545 Gnr. Elliott, W.M.

Certified that Rules of Precedure 4(B) ~~and~~ 4(G) inclusive have been complied with.

Taken before me under oath at Beckenham, Kent, in the presence of the accused this 18th day of December 1942.

C.L.B. Estey
(C.L.B. Estey) Lieut.,
for Adjutant,
7 Lt.A.A. Regt., R.C.A.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-40545	Gnr	ELLIOTT W M	7 Lt A A Regt R C A

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permissible being given to the most serious offence in each entry and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For A.W.L.	17 times	24 times
For Absent from place of parade	1 times	3 times
For Neglect to Prejudice etc	0 times	1 times
For Disobeying an order	0 times	1 times
For Drunkenness	0 times	1 times
For Conduct to the Prejudice etc	14 times	5 times
For Neglect to obey Camp Orders	0 times	1 times
~~Number of instances of gallantry or distinguished conduct~~		

~~or~~

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, ~~or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence imprisonment beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 8 days in military custody, making a total of 8 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ M.B.M.1 ~~attestation paper~~ is 24 yrs. 5 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ M.B.M.1 ~~attestation paper~~ is 15 May 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs. 222 days

8. The accused is entitled to deferred pay or gratuity in respect of $216.00 service.

9. The accused is entitled to reckon 2 yrs 222 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in possession of or entitled to (state any military decoration or award);)~~.

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. (*In the case of an officer.*) ~~The accused~~ holds in the army the rank of dated ~~and in his Regiment (or corps or department) the rank of dated~~

(*16546) Wt.30264/M/C Th.(X) 12/40 A.& E.W.Ltd. Gp.698
(17625) Wt.44641/1385 20,000 8/41

"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 7 40545 Rank Gnr Name ELLIOTT W.H. of 7 Lt A.A. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of Dec 42

Capt
Adjutant
7 Lt A.A. Regt. R.C.A.

In the case of

F-40545 Gnr. Elliott, W.M.

I hereby apply for the appointment of an Officer to represent me at my trial

Elliott W M

.....

F-40545 Gnr. Elliott, W.M.

M.F.M. 6 (A F R Type) 175M—7-41 (1219-20) H.Q. 1772-39-1682

No. F.4054 Name ELLIOTT WILLIAM MARTEL

Sqn., Battery, or Company: Royal Rifles of Canada Corps

Date of enlistment: 15/5/40 G.C. Badges

Service or Proficiency Pay

Date of last entry in Company Conduct Sheet

Date and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No.

Signature O.C. Company, etc. (Signed) W.G.Petrie, Major. RCA. Changes

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Quebec	17-3-41	Pte.		A.W.L. from 1200 hrs 28-12-40 until 2230 hrs 13-1-41(Absent 16 days 10 hours 30 min)	Cpl.Robson	17 days pay	14-1-40	Maj.Laurie	Forfeits 17 days pay
Quebec	17-4-41	Pte.		A.W.L. from 0800 hrs 17-4-41 to 2145 hrs 29-4-41.Total Absence: 12 days, 13 hrs,45 min.)	Cpl.May	14 days det.	1-5-41	Lt-Col. F.C. Wages	Forfeits 13 days pay.
Quebec	21-5-41	Rfn.		Absenting himself from 2359 hrs 21-5-41 until 1100 hrs.22-5-41 (Absence 11 hrs.1 min.)	Cpl.Corbett	3 days C.B.	22-5-41	Capt.E. Baillarge	1 days pay
Quebec	31-5-41	Rfn.		A.A. Sec.40 Absent from duty	Sgt.Voiselle L/Cpl.Roy	14 days det.	3-6-41	Lt.-Col.F. C.Wages	Forfeits 1 days pay
St.Johns, Nfld.	1941 24 June	Rfn.		Absenting himself from parade	Sgt.MacMillan	3 days C.B.	24-6-41	Capt.L. Boutillier	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
St.John'sNfld	3 July 41	Rfn.		A.W.L.from 2200 hrs 2-7-41 to 0600 hrs 3-7-41 (Total 8 hours)	Cpl.Travers	7 days C.B.	4-7-41	Capt.Le. Boutillier Maj.	Forfeits 1 days pay under F.R.&I
St.John's Nfld.	3-8-41	Rfn.		Absenting himself without permission,failing to appear on afternoon parade A.W.L.from 2200 hrs 5-8-41 to 0600 hrs. 6-8-41 (Absent 8 hours)	Sgt.Ebden,PW Cpl.McNaughton CSM Todd, E. Cpl.Kelso,J.	14 days det.	7-8-41 McAuley		Forfeits 1 days pay by F.R.&I
St.John'sNfld.	23 Aug.			Neglecting to obey an order given by Cpl. Kelso, J.	Cpl.Kelso,J. Rfn.Chatteron	3 days C.B.	23-8-41	Maj.Laurie-D.S.O.	---
Citadel	29-2-41			A.W.O.L.9 days	Sgt.Longlais	9 days pay	29-9-41	Cap. Ware	- - -
Petawawa Military Camp	14-10-41		#3	1.When on active service Drunkenness:In that he at about 2315 hrs Oct.14,1941 while at Wright Road -house was drunk A.A. Sect.19 2.When on Active Service neglecting to obey Camp Orders.i.e, he at about 2315 hrs 14-10-41 was to Wright's Roadhouse without the possession of a pass contrary to Camp Orders,d25/3741AASec.11	C.41441 Pte.Brisson No.13 Provost M.5448 P.C.Williams	1.Admonished 2.7 dys C.B.	17-10-41	Capt. Manning J.C.R.	- - -

No. F.40545 Name ELLIOTT W M | Sqn., Battery, or Company: ROYAL RIFLES OF CANADA Corps | Date of enlistment: 15/5/40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 1191) (1938—7-41 (310-20) H/A 3772-39-1602)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									KHB
Petawawa Mil.Camp	5-11-41	Gnr.		Embarkation Leave 31-10-41					
"		"		AWL 2 days 2 hours (Sec.15 AA)	Bdr.Grant,J.	10 days pay	7/11/41	Lt.Col.Inns	(Forfeits 3
				(Conduct prej.of good order &	L/Bdr.McNeil	2 days C.B.	18/11/41	Maj.Petrie	(days pay FR&I
On Board Ship	16/11 41	"		(Military discipline Sec.40 AA)					
				(					
Can.Army Overseas	11/12 41	"		AWL 2230 hrs 11/12/41 -2315 hrs 11/12/41 (Sec. 15 A.A.)	L/Bdr. Morrison,A.	2 days C.B.	12/12/41	Cap. Willis	- -
"	23/12 41	"		AWL 2300 hrs 23/12/41-0630 24/12 41 (Absent 7 hours 30 min)Sec.15	L/Bdr.Kilpatrick	3 dys C.B.	24/12/41	Maj.Petrie	For.1 days pay by FR & I
"	30/12 41	"		AWL 2230 hrs 30/12/41 to 2255 hrs 30/12/41 (Absent 25 min)Sec.15AA	Bdr.Bridge Sgt.Bourgeois	Admonished	30/12/41	"	- -
"	14/1/ 42			AWL 2230 hrs 14/1/41 - 0630 hrs 15/1/42 (Absent 8 hours)Sec.15AA	Bdr.Judd,R.	4 days C.B.	15/1/41	"	Forfeits 1 days

(P.T.O.)

	Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
San.	Army Over-Seas	18/1/42	Gnr.		AWL 1930 hrs 18/1/42-2230 hrs 18/1/42 (Absent 3 hours)Sec.15AA	Sgt.Troughton	4 days C.B.	19/1/42	Maj.Petrie	- - - -
	"	6/2/42	"		AWL 1320 hrs.2100 hrs 6/2/42(A.7hr)(Section 15 A.A.)	Bdr.Burjosky	5days C.B.	9/2/42	"	For.1 days pay
	"	18/2/42	"		AWL 2230 hrs 18/2/42-2145 hrs 19/2/42(Absent 23 hrs 15 min)S15AA)	L/B.Bennett	3 days C.B.	20/2/42	"	For. 1 days pay.
	"	22/2/42	"		AWL 1930 hrs-2300hrs 22/2/42 (Absent 4 hours)Sec.15 A.A.)	Bdr.Morrison	4 days C.B.	23/2/42	"	- - - - -
	"	23/2/42	"		Conduct etcLneglected to obey an order given by Sgt. Davis while on extra drill 1620 hrs 23/2/42 (Section 40 A.A.)	Sgt. Davis Bdr. Pearl Bdr. Morrison	5 days C.B.	23/2/42	"	
	"	25/2/42	"		AWL 0830 hrs 0925 hrs 25/2/42 (Section 15A.A.)	Sgt.Judd,R.	Admonished	26/2/42	"	- - - -
	"	28/2/42	Gnr.		AWL 2230 hrs 28/2/42-2350 hrs (Absent 1 hour 20 min)Sec.15AA)	L/B.Soper Bdr.Whitehead	14 days C.B.	2/3/42	Maj.MacKenzie A/O.C.	KHB
	"	15/3/42	Gnr.		AWL 1930 hrs 2200 hrs 15/3/42 (Section 15 A.A.)	Bdr.Boswell R.	2 days C.B.	17/3/42	Capt.Willis	

No. [illegible] Name William Martel Sqn., Battery, or Company Royal Rifles of Canada Corps

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 15.5.40 | G.C. Badges | Service or Proficiency Pay | Sheet No. | Signature O.C. Company, etc. | Character

M.F.M. 6 A.F.B. 1191 (1939-40) 12150—7-40 (1939-40) H.Q. 1772-39-1402

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	26.3.42	Gnr		AWL 2230 hrs 26.3.42 - 2255 hrs 26.3.42(Absent 25 min)Sec.15 AA)	Bdr Whithead Bdr Boswell	3 days CB	27.3.42	Maj.Petrie	
"	27.3.42	Gnr		AWL 1500 hrs 27.3.42 - 2240 hrs 27.3.42(Absent 7 hrs 40 min)S.15AA	Bdr Boswell				K.H.B.
"	28.4.42	Gnr		Failed to carry out instructions during training hours and conducted himself in a manner unbecoming a soldier A.A.Sec.40	Sgt Judd Sgt. Morrison Bdr Whithead	3 days CB 10 days det. For 10 days pay to commence 15 May 42	28.3.42 5.5.42	Lt.Col.H.J. Inns Lt.Col.H.J. Inns	For 1 days pay FR&I K.H.Brown,Capt.
"	16.5.42	Gnr		Sec.15AA(2) Failed to appear at Bty. parade 0820 hrs 16.5.42	Bdr.Burjoski Sgt. Judd,M	10 days det.	22.5.42	Maj.G.Grier A/C.O.	K.H.Brown, Capt.
				Landing Leave 8.12.41 - 13.12.41 Privilege Leave 23.2.42 - 2.3.42	FTW				

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Cdn. Army Overseas	4-6-42	Gnr.		A.W.L.40 minutes 4-6-42	L/Bdr.Fletcher J.	Forfeits 5 days ordinary pay	5-6-42	Lt./Col., H.J. Inns	K.H.B.
" "	14-6-42	Gnr.		AWL (Sec.15-1A.A.)from 0900 hours 14-6-42, until 0912 14/6/42 Total Absence 12 minutes	Sgt.Troughton, C. Sgt.Judd,H.	6 days C.B.	15/6/42	Maj.Petrie	
" "	17/6/42	Gnr.		Section 15(1)AA AWL from 1800hrs until 2300 hrs 17/6/42.Total absence 5 hours.	Sgt.Troughton J.	Ffts.4 days pay Sec.149(2)	18/7/42	Lt.-Col. H.J. Inns	K.H.B.
" "	6/7/42	Gnr.		Section 40 AA Conduct etc.,in that he broke off from parade at 1630 hrs without permission	Bdr.Burjoski,P. Gnr.Bennett,J.	168 hrs. Detention	7/7/42	" " "	K.H. Brown Capt.
" "	8/8/42	"		SECTION 40 AA CONDUCT ETC.in that he was beyond the limit of his pass(1) (2)In that he was improperly dressed i.e. not wearing his respirator.	Documentary	Admonished	12/8/42	Maj.Grier	

No. F.40545 Name ELLIOTT WILLIAM MARTEL | Sqn., Battery, or Company: Royal Rifles of Canada Corps | Date of enlistment: 15/5/40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 A.F.B. 1197

Date of last entry in Company Conduct Sheet | (Next date) of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Cdn. Army Overseas	12/9/42	Gnr.		AWL (Sec.15-(1)AA) from 2300 hrs. 12 Sep 42 to 0900 hrs 15 Sep. Total absence 2 days 9 hrs.	Lt.M.E.Archer Bdr.Whitehead	28 days Field Punishment	19/9/42	Col.Inns	Ffts.3 days say FR&I 149(1)(a) K.H.Brown Capt.
"	"	"		F.2 Priv leave F.T.W.7/8/42-14/8/42.					
"	"	30/11/42	"	Sect.15(1)A.A.,AWL from 1400 hrs 30/11/42 until 1730 hrs 30/11/42 (Absent 3 hrs 30 min)	Sgt.Troughton Judd,H.	Admonished	4/11/42	"	"

CERTIFIED TO BE A CERTIFIED COPY OF ORIGINAL M.F.M.6 IN MY CUSTODY.

K.H. Brown Capt.

(K.H. Brown), Capt.,
Adjutant,
7 Lt.A.A. Regt.RCA.

P.T.O.

BB-127
PTE ELLIS A.C.

BB-127

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A." J.J. Gilmour Major

On Active Service, this FIRST day of APRIL, 1943. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer of Field Units.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint :—~~

*~~(1.) Three Officers to form the Court.~~

*~~(2.) A Field Officer as President.~~

~~for the following reasons, namely :—~~]

* Omit if the alternative is not used.

63

President.

Rank.	Name.	Regiment.
Major *	F.J. GILMOUR	HQ 2 Cdn Div RCA

Members.

Rank.	Name.	Regiment.
One Major or Capt to be detailed by OC Essex Scot		Essex Scot
One Capt or Lieut to be detailed by OC RHLI		RHLI
WAITING MEMBER One Lieut to be detailed by OC RHLI		RHLI

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed J.J. GILMOUR (W.H.S. PENHALEY) Brigadier, Commanding 4 CDN INF BDE Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B37267 Private Andrew Coleman ELLIS, 1 Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army (Active).	FIRST CHARGE A.A.Sec.12(1)(a) Deserting His Majesty's Service. SECOND CHARGE A.A. Sec.15(1) (Alternative) Absenting himself without leave. (SEE CHARGE SHEET ATTACHED)	Not guilty Guilty	Guilty Not guilty Sentence: - two years detention. 3 April 1943 J Gilmour Major RCA	Confirmed. 5 Apr 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No Sir.

Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [illegible] Brigadier, (Signed) J Gilmour Major RCA
(M.M.S. PENHALE) Commanding CDN INF BDE — *Commanding Officer (e)* — *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

I certify that the above Court assembled on the 3rd day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. — Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable

Signed this 3rd day of April 1943.

J Gilmour Major
President of the Court Martial.

C.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. — Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

Signed this 7/4 day of 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. — Confirmation

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* In the case of a sentence of imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 7th day of April 1943.

[illegible]
Confirming Officer.
Comd. 4 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of B37267 PTE ELLIS, A.C.

(*a*) (Dated) 7 APR 43 (Signed) [illegible] Capt. R. H. L. I.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, B37267 Pte. Andrew Coleman ELLIS, 1st Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army, Overseas, is charged with:

FIRST CHARGE
Section 12 (1) (a)
ARMY ACT

DESERTING HIS MAJESTY'S SERVICE

in that he

in the Field, at 2359 hrs 2 Nov 41 absented himself from the Royal Hamilton Light Infantry until apprehended by the Civil Authorities on 10 Feb 43, dressed in civilian clothes and using a false Registration Card issued under the National Registration Act (Great Britain) 1939.

SECOND CHARGE (Alternative)
Section 15 (1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 2359 hrs 2 Nov 41 until apprehended by the Civil Authorities at Hendon, London, on 10 Feb 43.

In the Field
29 Mar 43

(J.J. Farley) Lieut.-Col.,
Comd 1 Bn R.H.L.I., Can Army A.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

the Field
April 43

"B"

Brigadier
Fourth Canadian Infantry Brigade

- MEDICAL CERTIFICATE -

I certify that I, this morning, have examined No: R 37267

(Rank) Pte (Name) Ellis A. G. (Unit) R.N.I.I.

and find him fit/~~unfit~~ to undergo trial by Court-Martial.

Date: 3 April 43.

J. P. Fletcher Capt RAMC
(Medical Officer)

J. P. Fletcher
Major
RAMC

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Gen'l Court-Martial held at In the field

on the 3rd day of April 1943 by order of

Brigadier W. H. S. Penhale

Commanding 4 Cdn Inf Bde

dated the 1st day of April 1943.

President.

Major F. J. Gilmour, RCA - attd HQ 2nd Cdn Div

Members.

Lieut R Sharp, R.H.L.I.

Capt J W Burgess Ord Corps.

Trial of *B37267 Pte Andrews C.
ELLIS, 1 Bn Royal Hamilton Light Infantry.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~A Court cannot be formed as there~~ is not available ~~to sit~~ ~~until another takes his place~~ as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt A.C. Brett R.H.L.I.

Counsel‡ or defending officer† Lt. K.E.G. Bull R.H.L.I.

At 1100 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer. No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

CHARGE SHEET

The accused, B37267 Pte. Andrew Coleman ELLIS, 1st Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army, Overseas, is charged with:

FIRST CHARGE
Section 12 (1) (a)
ARMY ACT

DESERTING HIS MAJESTY'S SERVICE

in that he

in the Field, at 2359 hrs 2 Nov 41 absented himself from the Royal Hamilton Light Infantry until apprehended by the Civil Authorities on 10 Feb 43, dressed in civilian clothes and using a false Registration Card issued under the National Registration Act (Great Britain) 1939.

SECOND CHARGE (Alternative)
Section 15 (1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 2359 hrs 2 Nov 41 until apprehended by the Civil Authorities at Hendon, London, on 10 Feb 43.

J.J. Farley Lieut.-Col.,
Comd 1 Bn R.H.L.I., Cdn Army A.

In the Field
29 Mar 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
1 April 43

Brigadier
Fourth Canadian Infantry Brigade

"B"

I desire Major G.H. Craig to defend me at my trial by Field General Court Martial and if he is not available, Lieut. H.E.G. Bull.

A C Ellis

B37367 Pte. Ellis, A.C.

- MEDICAL CERTIFICATE -

I certify that I, this morning, have examined Pte. S 37267

(Rank) Pte (Name) Ellis A. G. (Unit) R.W.L.I.

and find him fit/~~unfit~~ to undergo trial by Court-Martial.

Date: 3 April 43.

J. L. Fletcher Capt RAMC
(Medical Officer)

J. F. Coleman
Maj
RAMC

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Gen'l Court-Martial held at In the field on the 3rd day of April 1943 by order of Brigadier W. H. S. Penhale Commanding 11 Edn Inf Bde dated the 1st day of April 1943.

President.

Majr F. J. Gilmour, RCA. attd HQ 2nd Edn. Div.

Members.

Lieut R. Sharp. R.H.L.I.
Capt J. W. Burgess Essex Scots.

Trial of *B37267 Pte Andrew, C. ELLIS, 1 Bn Royal Hamilton Light Infantry.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available ~~(the reason being as follows)~~

~~Nothing further takes place~~ as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,‡ Capt A.C. Brett R.H.L.I.

Counsel,‡ or defending officer‡ Lt. R.L.G. Bull R.H.L.I.

At 1100 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and ~~judge-advocate~~ are duly sworn. JCS

~~The following officers under instruction are duly sworn.~~ JCS

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (B) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.* JCS *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.* JCS *Answer.*

The accused having pleaded Guilty to 2nd charge, the provisions of Rule of Procedure 35 (B) are here complied with. JCS

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Observation.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir.

~~The prosecutor makes an opening address [hands in a written address which is read, marked ~~ , signed by the President, and attached to the proceedings.]~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. Capt G. H. B. Stevens. R H L I.

being duly sworn, is examined by the prosecutor.

I am Adjutant of R H L I. I have been such since 16 Feb 1943. I produce Pt 2 Order # 69 dated 14 Nov 41. It shows amongst Pte Ellis lister as an absentee from 2 Nov 1941. D.R. attached as exhibit 'G'. I also produce a Certified Copy of Record of Court of Inquiry on the absence of accused dated 26 Nov 1941 attached & marked Exhibit 'H'.

No Cross Exam. R.P. 83(b) complied with.

2nd Pte Stevens. B 36518 Sgt Potter of R H L I duly sworn states:-

I am Provost Sgt of the Regt. I arrest Pte Bambury on the 25 Feb 43. At the Police Court I saw Pte Ellis the accused who was known to me by sight. I brought him back to the unit. He was in civilian clothes & I had seen him before. Bambury is in Oxfordshire.

No Cross Exam. R.P. 83 (b) complied with.

(2)

P.T.O.

C2

3rd Pros
Witness. Detective Constable 47 J. Holloway
Oxfordshire Constabulary duly
sworn states. –

On 2 Feb 43 I visited accused at his residence at 4 Council Houses Blackbarn near Banbury in Oxfordshire. I told him I was a police constable & I asked him to produce his identity card required under the National Registration Act 1939. He produced one numbered 2 D A G 7023 in the name of Andrew Ellis & signed Andrew Ellis. Upon examining this card it appeared to me that the word Andrew & the figure 7 had been inserted subsequent to the original card being issued. I cautioned Ellis & he made a statement as his declaration which I took down in writing. He signed the caution & the statement in my presence. (Witness reads statement) Attached & marked 'J'. Two days later on 4th Feb 43 I again visited Blackbarn in order to find that Ellis & his wife had left Blackbarn & that their whereabouts was not known. On 10th Feb 43 I went to London & from enquiries found Ellis in employment at the Vauxhall Motors Ltd Luton. This time I had a warrant in my possession respecting the identity card. I conveyed Ellis back to Banbury where he was questioned as to his true identity. (The witness identifies the accused as the man Ellis whom he was investigating)

JH

He still refused to give satisfactory as to his true identity. On 11 Feb 1943 he appeared before a civil court at Bunbury on a charge relating to the identity card & was remanded until the 25th Feb 1943. Details description of his tatoo marks were taken & with the assist of New Scotland Yard & the desertions records Police London I was satisfied that he was identical with A. C. Ellis published in the Police Records of deserters as being a deserter from the R.H.L.I. since Nov 1941. On 25th Feb 43 Ellis was charged with desertion. To this charge he pleaded guilty & on the advice from the magistrate he was handed over to the military escort provost of the time & disposed of the case by military authority.

Cross exam:- It is a matter of registration Identity card. Card marked "J". He was charged with using a wrong card before he was found to be a deserter & the first charge then dropped. The court made no ruling on the identification card. From my investigations I am satisfied that the card was issued to one woman named Ellis & that her christian name Phyllis Strasburg was erased & the name Andrews substituted & the number altered.

Re Examination. On every occasion I saw Ellis in civilian clothing.

RP 93(b) complies with.

R.P. 40 complies with.

Accuses admission of his rights.

Under RP 40

JH

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No Sir.

Question. Do you intend to call any other witness in your defence?

Answer. No Sir.

Question. ~~Is there will be any other witness to character (if any)?~~ *Answer.* ~~Nil~~

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence? No.

Answer. ~~The accused in his defence says:~~ ~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

The Prosecutor addresses the Court reviews the evidence & submits that the charge of desertion has been proved. The Defending officer makes a closing address & argues the circumstances surrounding the case do not satisfy the onus of proving intention to desert. see page 2.

Instructions. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused B37267 Pte Andrew Coleman Ellis 1 Bn Royal Hamilton Light Infantry is guilty of the 1st charge.

J Fulmore Maj
pres

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Lieut A C Britt is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* A F B 296. 4 Cert. copy of CR F/M 6

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked R1L, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

Cross-examined by the accused. No

The defending officer addresses the Court in mitigation.

Points out accused has a good record sheet

He served with the Imperial Army prior to this war.

Accused had family trouble and his wife in Canada

Accused had C.W.L. while on active service in consequence

as a result was [illegible] while on active service.

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

50

HS

F

Sentence.

Sentence.

The Court sentence the accused

"A"

A

ROYAL HAMILTON LIGHT INFANTRY

Part II Order Issued By

CANADIAN SECTION, G.H.Q., 2nd ECHELON

No.69
14 Nov 41

Last Part II Order Issued.....No.68 dated 7 Nov 41

A. - OFFICERS

1. ATTACHMENT

Lieut. G.D. Harvey
Attached for all purposes from No.1 C.I.H.U. w.e.f. 5 Nov 41
(Auth: CAN/G2E/ATTACH/1-4, d/3 Nov 41)

2. LEAVE

Lieut. J.N. Currie
Granted Privilege Leave with Free Warrant from 0600 hrs 3 Nov 41
to 0600 hrs 10 Nov 41 (P2)

Lieut. H.C. Arrell
Lieut. R.J.L. Carroll
Granted Privilege Leave with Free Warrant from 0600 hrs 5 Nov 41
to 0600 hrs 12 Nov 41 (P2)

Major H.F. Lazier
Granted Privilege Leave with Free Warrant from 0600 hrs 10 Nov 41
to 0600 hrs 17 Nov 41 (P3)

B. - OTHER RANKS

3. STRENGTH INCREASE

B.94908 Pte. Chamberlain, H.R.
Taken on Strength from No.1 Cdn Ord Holding Unit and attached
as in War Establishment w.e.f. 1 Nov 41 (Demand No.5737)

B.37850 Pte. Davies, J.E.
Taken on Strength from No.1 Cdn Sigs Holding Unit w.e.f. 5 Nov 41
(Demand No.5911, d/3 Nov 41)

B.37408 Pte. Webb, A.G.
Taken on Strength from No.1 Cdn Inf Holding Unit w.e.f. 7 Nov 41
(Auth: CMHQ Teletype CAN MIL XOl & 3(S40)OR37)

4. STRENGTH DECREASE

B.37446 Pte. Englebrecht, P.
B.37201 Pte. Johnson, A.E.
Struck off Strength to No.1 Cdn Inf Holding Unit on admission to
No.15 Cdn Gen Hosp w.e.f. 5 Nov 41

B.36987 Pte. Lawrence, V.A.
Struck off Strength to No.1 Cdn Inf Holding Unit having been
given Detention in excess of 28 days by FGCM w.e.f. 14 Oct 41

B.37295 Pte. Wood, W.E.J.
Struck off Strength to No.1 Cdn Ord Holding Unit w.e.f. 6 Nov 41
(Auth: Cdn Corps Letter 21/3/A, d/31 Oct 41)

See sheet 2 of this order

"A"

A

ROYAL HAMILTON LIGHT INFANTRY

Part II Order Issued By

CANADIAN SECTION, G.H.Q., 2nd ECHELON

No. 69
14 Nov 41

Last Part II Order Issued.....No.68 dated 7 Nov 41

A. - OFFICERS

1. ATTACHMENT

Lieut. G.D. Harvey
Attached for all purposes from No.1 C.I.H.U. w.e.f. 5 Nov 41
(Authn: CAN/02E/ATTACH/1-4, d/3 Nov 41)

2. LEAVE

Lieut. J.M. Currie
Granted Privilege Leave with Free Warrant from 0600 hrs 3 Nov 41 to 0600 hrs 10 Nov 41 (P2)

Lieut. H.C. Arrell
Lieut. R.J.L. Carroll
Granted Privilege Leave with Free Warrant from 0600 hrs 5 Nov 41 to 0600 hrs 12 Nov 41 (P2)

Major H.F. Lazier
Granted Privilege Leave with Free Warrant from 0600 hrs 10 Nov 41 to 0600 hrs 17 Nov 41 (P3)

B. - OTHER RANKS

3. STRENGTH INCREASE

B.24908 Pte. Chamberlain, H.R.
Taken on Strength from No.1 Cdn Ord Holding Unit and attached as in War Establishment w.e.f. 1 Nov 41 (Demand No.5737)

B.37850 Pte. Davies, J.H.
Taken on Strength from No.1 Cdn Sigs Holding Unit w.e.f. 6 Nov 41 (Demand No.5911, d/3 Nov 41)

B.37408 Pte. Webb, A.G.
Taken on Strength from No.1 Cdn Inf Holding Unit w.e.f. 7 Nov 41
(Auth: CMHQ Teletype CAN MIL XO1 & 3(840)GR37)

4. STRENGTH DECREASE

B.37446 Pte. Englebrecht, F.
B.37201 Pte. Johnson, A.E.
Struck off Strength to No.1 Cdn Inf Holding Unit on admission to No.15 Cdn Gen Hosp w.e.f. 5 Nov 41

B.36987 Pte. Lawrence, V.A.
Struck off Strength to No.1 Cdn Inf Holding Unit having been given Detention in excess of 28 days by FGCM w.e.f. 14 Oct 41

B.37295 Pte. Wood, W.E.J.
Struck off Strength to No.1 Cdn Ord Holding Unit w.e.f. 6 Nov 41
(Auth: Cdn Corps Letter 21/3/A, d/31 Oct 41)

See sheet 2 of this order

B. - OTHER RANKS Continued

5. ATTACHMENT

R.83391 Pte. Jessop, C.W.
Ceases to be attached No.1 Cdn Sigs Holding Unit w.e.f. 29 Oct 41

6. APPOINTMENTS PROMOTIONS AND REVERSIONS

R.37035 Pte. Duberry, W.E.
R.36545 Pte. Hartnett, J.
R.37351 Pte. Stewart, H.
R.37807 Pte. Williamson, J.
To be A/L/Cpls w.e.f. 8 Nov 41

R.38146 Pte. Harding, W.
To be A/L/Cpl w.e.f. 4 Nov 41

R.36678 Pte/A/L/Cpl. Juhlke, W.H.
To be A/Cpl w.e.f. 10 Nov 41

R.37271 Pte. Kelso, E.
To be A/L/Cpl(unpaid) w.e.f. 8 Nov 41

R.37835 Pte. Lesch, L.
To be A/Cpl w.e.f. 1 Aug 41

R.36605 Sgt. Mountain, C.O.
Reverts to the rank of L/Sgt at his own request w.e.f. 5 Nov 41

R.36722 L/Sgt. Whitaker, S.
To be A/Sgt w.e.f. 5 Nov 41

7. PERMISSION TO MARRY

R.37163 A/Sgt. Dudley, R.G.
Granted permission to marry on 8 Nov 41

C.30278 Pte. Simpson, D.M.
Granted permission to marry on 8 Nov 41

R.36865 Pte. Slusar, N.
Granted permission to marry on 29 Nov 41

R.36994 L/Cpl. Wray, W.G.
Granted permission to marry on 27 Dec 41

8. CHANGE OF ADDRESS NEXT OF KIN

	Address changed to
R.36868 Pte. Coughlin, T.J.	Betty Coughlin, c/o Mrs. May, 36 London Road, Brandon, Suffolk, England.
R.37485 Pte. Mavin, W.	134 Murray Street, Brantford, Ontario, Canada
R.37136 Pte. Pearson, P.L.D.	c/o Miss A. Casson, 27A Brunswick Square, Hove, Sussex, England

See sheet 3 of this order

B. - OTHER RANKS Continued

9. HOSPITAL

B.37802 Pte. Birdsell, B.E.
B.36750 Pte. Crawford, F.
Admitted to 11 Cdn Fd Amb w.e.f. 11 Nov 41 (sick)

B.36599 Pte. Browett, R.
Admitted to No.10 Cdn Fd Amb w.e.f. 8 Nov 41 (sick)
Discharged from No.10 Cdn Fd Amb w.e.f. 9 Nov 41

B.38148 Pte. Gibbons, F.
Discharged from 11 Cdn Fd Amb w.e.f. 4 Nov 41

B.37431 Pte. Gorsen, J.
Admitted to No.10 Cdn Fd Amb w.e.f. 9 Nov 41 (sick)
Discharged from No.10 Cdn Fd Amb w.e.f. 11 Nov 41

B.37856 Pte. Harris, R.
Admitted to No.10 Cdn Fd Amb w.e.f. 8 Nov 41 (sick)
Discharged from No.10 Cdn Fd Amb w.e.f. 9 Nov 41

B.37175 Pte. MacDonald, N.
Admitted to No.11 Cdn Fd Amb w.e.f. 8 Nov 41 (sick)

B.37628 Pte. McCann, T.F.
Admitted to No.11 Cdn Fd Amb w.e.f. 8 Nov 41 (sick)
Discharged from No.11 Cdn Fd Amb w.e.f. 11 Nov 41

B.39046 Pte. Rogers, R.
Admitted to No.11 Cdn Fd Amb w.e.f. 4 Nov 41 (sick)

B.37586 Pte. Turner, W.L.
Admitted to No.11 Cdn Fd Amb w.e.f. 19 Oct 41 (sick)

B.37767 Pte. Wichstacx, H.
Admitted to No.10 Cdn Fd Amb w.e.f. 7 Nov 41 (sick)
Discharged from No.10 Cdn Fd Amb w.e.f. 8 Nov 41

10. ABSENT WITHOUT LEAVE

The undermentioned personnel are Absent Without Leave with effect from dates shown:

B.37367 Pte. Ellis, A.C. w.e.f. 2359 hrs 2 Nov 41
B.37280 Pte. Harrison, H.B. w.e.f. 1330 hrs 5 Nov 41
B.37827 Pte. Todd, A.J. w.e.f. 0700 hrs 10 Nov 41

11. COURSES

B.36534 Cpl. Johnston, A.
B.37572 Pte/A/Cpl. Lake, W.J.
Attached for all purposes to H.Q. 3 Cdn Div to attend - Command Assistant P.T. Course No.37 for period 3 Nov 41 to 22 Nov 41 Inclusive

12. LEAVE

B.37825 L/Cpl. Coltman, J.
Granted Privilege Leave with Free Warrant from 0600 hrs 31 Oct 41 to 0600 hrs 7 Nov 41 (P3)

See sheet 4 of this order

B. - OTHER RANKS Continued

12. LEAVE (Con't)

The undermentioned personnel granted Privilege Leave with Free Warrant from 0600 hrs 3 Nov 41 to 0600 hrs 10 Nov 41 (P2)

B.36532 Pte. Kotterman, G.
B.37307 Pte. Shand, P.

7 days from 0600 hrs 3 Nov 41 to 0600 hrs 10 Nov 41 (P3 Free Warrant)

B.37471 Pte. Cooper, G.R.
B.36742 Pte. Francis, E.
B.36917 Pte. Gray, H.
B.37280 Pte. Harrison, H.
B.37828 Pte. Megson, E.
B.37627 Pte. Todd, A.E.
B.36892 Cpl. Walker, A.

7 days from 0600 hrs 4 Nov 41 to 0600 hrs 11 Nov 41 (P3 Free Warrant)

B.37458 Pte. Allen, K.W.
B.37466 Pte. Brennan, K.P.
B.36773 Pte. Caldwell, H.
B.37035 Pte. Duberry, W.
B.37706 Pte. Green, R.
B.37830 Pte. Jones, A.
B.37464 Pte. Karas, R.
B.36974 Pte. Marsden, H.R.

7 days from 0600 hrs 4 Nov 41 to 0600 hrs 11 Nov 41 (P2 Free Warrant)

B.36724 Pte. Sylvain, L.

7 days from 0600 hrs 5 Nov 41 to 0600 hrs 12 Nov 41 (P3 Free Warrant)

B.36792 Pte. Barnes, F.
B.37601 Pte. Barnes, J.
B.37191 Pte. Clark, H.
B.38148 Pte. Gibbons, F.
B.37218 Pte. Gibbons, H.
B.37273 Pte. Jackson, D.
B.37099 Pte. Kerslake, G.
B.36666 Pte. Long, E.
B.37660 Pte. Owen, W.G.
B.37489 Pte. Smale, G.

7 days from 0600 hrs 6 Nov 41 to 0600 hrs 13 Nov 41 (P3 Free Warrant)

B.36951 Pte. Booker, G.W.
B.37084 Pte. Edwards, A.W.
B.37130 Pte. Foguy, J.B.
B.37247 L/Sgt. Hibberd, R.
B.36769 Pte. Johnny, T.C.
B.37062 Pte. Monk, E.
B.37820 Pte. Nelson, T.
B.37358 Pte. Purcell, J.N.
B.37144 L/Sgt. Southon, M.D.
B.37801 Pte. Spence, J.
B.37403 Pte. Wilkinson, R.

See sheet 5 of this order

B. - OTHER RANKS Continued

12. LEAVE (Con't)

7 days from 0600 hrs 7 Nov 41 to 0600 hrs 14 Nov 41 (P3 Free Warrant)

B.37972 Pte. Butler, L.
B.38187 Pte. Griss, J.P.
B.37068 Cpl. Knowles, F.A.
B.36757 Pte. Main, E.W.
B.36740 Pte. Pinchak, P.
B.37578 Pte. Sellar, A.L.
B.38038 Pte. Weston, W.F.
B.37342 Pte. Porter, A.J.
C.30278 Pte. Simpson, D.M.

7 days from 0600 hrs 10 Nov 41 to 0600 hrs 17 Nov 41 with Free Warrant numbered as shown:

B.37285 Pte.	Collins, G.	P3
B.36843 Pte.	Freeborn, J.	P3
B.37328 Pte.	Heywood, D.R.	P3
B.89029 Pte.	McParland, O.	P2
B.36655 Pte.	McPartlin, G.B.	P3
B.36849 Pte.	McQuade, T.	P3

7 days from 0600 hrs 11 Nov 41 to 0600 hrs 18 Nov 41 (P3 Free Warrant)

B.37001 Pte. Adamson, G.
B.36715 Pte. Luey, A.
B.36614 Pte. Maloney, G.
B.36534 Pte. Olnick, J.

7 days from 0600 hrs 12 Nov 41 to 0600 hrs 19 Nov 41 (P3 Free Warrant)

B.37321 Pte. Gralick, J.
B.37663 Pte. Heifetz, L.
B.37812 Pte. Mino, M.
B.37834 Pte. Murphy, J.
B.37390 Pte. Partington, H.
B.37453 Pte. Prine, W.
B.38152 Pte. Rolston, W.

13. HOSPITAL STOPPAGES OF PAY

The undermentioned Other Ranks are placed under Hospital Stoppages of Pay (75¢ per diem) F.R. & I.222(1)b(ii) for periods as shown:

B.37838 Pte.	Kelf, L.	18 Jul 41 to 28 Jul 41 (11 days)
B.36987 Pte.	Lawrence, V.A.	15 Jul 41 to 2 Aug 41 (19 days)
B.37205 Pte.	McCormack, H.M.	7 Jul 41 to 16 Jul 41 (10 days)

14. PUNISHMENTS

B.36933 Pte. Barlow, W.R.
Was on 5 Nov 41 awarded 14 days F.P. for A.W.L. from 2300 hrs 1 Nov 41 to 2300 hrs 2 Nov 41 (1 day) Forfeits 1 days pay F.R. & I. 149 (1) (a) Forfeits 14 days pay F.R. & I. 149 (1) (b)
Total forfeiture 15 days pay

See sheet 6 of this order

B. OTHER RANKS Continued

14 PUNISHMENTS (Con't)

B.37595 Pte. Breckenridge, R.
Was on 4 Nov 41 awarded a forfeiture of 3 days pay for A.W.L. from 2300 hrs 2 Nov 41 to 0715 hrs 3 Nov 41 (8 hrs 15 mins)
Forfeits 1 days pay F.R. & I. 149 (1) (a) Forfeits 3 days pay F.R. & I. 149 (2)
Total forfeiture 4 days pay

B.36725 Pte. Cain, W.
Was on 4 Nov 41 awarded a forfeiture of 2 days pay for A.W.L. from 2300 hrs 31 Oct 41 to 1320 hrs 1 Nov 41 (14 hrs 20 mins)
Forfeits 1 days pay F.R. & I. 149 (1) (a) Forfeits 2 days pay F.R. & I. 149 (2)
Total forfeiture 3 days pay

B.37359 Pte. Crichton, J.
Was on 4 Nov 41 awarded 3 days C.B. for A.W.L. from 2300 hrs 2 Nov 41 to 0930 hrs 3 Nov 41 (10 hrs 30 mins) Forfeits 1 days pay F.R. & I. 149 (1) (a)

B.36945 Pte. Elsby, W.
Was on 19 Aug 41 awarded Stoppage of Pay under F.R. & I. 158 (2) to the amount of £0-10-0 by M.F.B.303 d/19 Aug 41 to make good the loss of Rifle Grenade Cup Discharger

B.37072 L/Cpl. Holliday, J.
Was on 4 Nov 41 reduced to the rank of Pte for A.W.L. from 2300 hrs 1 Nov 41 to 2255 hrs 2 Nov 41 (23 hrs 55 mins) Forfeits 1 days pay F.R. & I. 149 (1) (a)

B.37172 Pte. Hysert, F.G.
Was on 4 Nov 41 awarded 3 days F.P. for an offence under A.A.40
Forfeits 3 days pay F.R. & I. 149 (1) (b)

B.37176 Pte. McDermott, F.T.
Was on 31 Oct 41 awarded a forfeiture of 2 days pay for an offence under A.A.11
Forfeits 2 days pay F.R. & I. 149 (2)

See sheet 7 of this order

B. - OTHER RANKS Continued

14. PUNISHMENTS (Con't)

B.36810 Pte. Pickering, C.J.
Was on 4 Nov 41 awarded a forfeiture of 3 days pay for A.W.L. from 2300 hrs 1 Nov 41 to 2255 hrs 2 Nov 41 (23 hrs 55 mins) Forfeits 1 days pay P.R. & I. 149 (1) (a) Forfeits 3 days pay P.R. & I. 149 (2)
Total forfeiture 4 days pay

B.37301 Pte. Rice, K.A.
B.37345 Pte. Wilding, W.H.
Were on 10 Nov 41 awarded 3 days F.P. (EACH) for an offence under A.A.40 Forfeit 3 days pay P.R. & I. 149 (1) (b) (EACH)

B.37040 Pte. Sinden, J.A.
Was on 19 Aug 41 awarded Stoppage of Pay under P.R. & I. 158 (2) to the amount of £1-9-0 by M.F.B.303 d/19 Aug 41 to make good loss of Bren Gun Spare Parts Bag.

B.37511 Pte. Thompson, J.
Was on 5 Nov 41 awarded 10 days F.P. for an offence under A.A.40 Forfeits 10 days pay P.R. & I. 149 (1) (b)

B.36814 Sgt. Trendell, H.
Was on 19 Aug 41 awarded Stoppage of Pay under P.R. & I. 158 (2) to the amount of £2-0-0 by M.F.B.303 d/19 Aug 41 to make good loss of Rifle.

B.37263 Pte. Trusphour, L.H.
Was on 1 Nov 41 awarded 7 days F.P. for an offence under A.A.40 Forfeits 7 days pay P.R. & I. 149 (1) (b)

15. AMENDMENTS

Part II Order No.43 sub para 2 d/20 Jun 41 insofar as it concerns B.37363 Pte. Pilch, G.A. is amended to read: "S.O.S. to No.1 Cdn Signal Holding Unit on admission to No.15 Cdn Gen Hosp w.e.f. 11 Jun 41"

Part II Order No.68 sub para 15 d/7 Nov 41 insofar as it concerns B.37569 L/Cpl. Cutt, F.H. is amended to read: "w.e.f. 1 Aug 41"

Part II Order No.68 sub para 15 d/7 Nov 41 insofar as it concerns B.37357 Cpl. Marlow, A.H.L. is hereby cancelled.

16. STRENGTH RETURN As at 14 Nov 41 is attached hereto as an appendix

on copies for:

A.G.(S)., C.M.H.Q.	1
C.P.M., C.M.H.Q.	2
WAR DIARY (To be safeguarded by unit until forwarded with triplicate copy of War Diary)	1

J.L. Hayes Lieut

(J.L. Hayes) Lieutenant
for Officer i/c
Canadian SEction, G.H.Q., 2nd Echelon

WCP

Carried forward to page 8 for appendix only

"B"

"B"

RECORD of the Declaration of a Court of Inquiry assembled at HASTINGS on the 26th day of November 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B37367 Pte. ELLIS, A.C.

DECLARATION.

The Court Declare, that B37367 Pte. Ellis, A.C., R.H.L.I., Cdn Army (Overseas) illegally absented himself without leave at HASTINGS, Sussex, on the second day of November 1941:

that he is still so absent, and that on the 24th day of November 1941 he was deficient, and that he is still deficient the articles as noted below, to the value of £5-8-1 (FIVE POUNDS, EIGHT SHILLINGS AND ONE PENNY).

	£	s	d
Anklets, web		4	4
Badges, cap			6½
Boots, ankle with laces	1	2	6
Cap, Fd Serv.		2	5
Combs, hair			2
Worsted Shoulder Badges			7½
Drawers, cotton		2	2
Housewife			7
Jackets, sweater		8	6
Trousers, service		4	8
Socks, worsted		3	10
B.D. Blouse	1	2	6
B.D. Trousers	1	0	6
Shorts, cotton, gym		2	1
Vests, " "		1	11
Respirator haversack Mk VI		4	7
Eyeshields A/G (6)		2	3
Sleeve detectors			8
Wallets A/G			9
Ointment A/G			9½
Anti-dim			2½
		£5-8-1	

NAMES OF PRESIDENT AND MEMBERS:

President: Lieut. A.C. Hill, R.H.L.I.

Members: Lieut. T.J. Brown, R.H.L.I.

Lieut. J.B. Halladay, No. 2 C.S.H.W. att. R.H.L.I.

"H"

Signature of Commanding Officer 'R.H. Labatt'
(R.H. Labatt) Lt.-col.,
Officer Commanding,
1st Bn RHLI, Cdn A (O/S)

CERTIFIED TRUE COPY

(G.H.H. Stinson) Capt & A/Adjt
1 Bn R.H.L.I., Cdn Army (O/S)

OXFORDSHIRE CONSTABULARY

STATEMENT FORM BANBURY

Date 2nd February 1943

Name and address-----Andrew Ellis

4, Council Houses, Bloxham

Age 46 yrs Occupation - Stoker

I have been warned that I need not say anything unless I wish to do so, but whatever I do say will be taken down in writing and may be given in evidence. X - Andrew Ellis

I am a stoker employed at the Gas Works, Adderbury, and have resided at Bloxham for about 8 months, being transferred from the Gas Works at Derby.

Prior to being at Derby my wife Phyllis Ellis and myself resided at 11, Coomer Road, Fulham.

The Identity Card produced is my original one which was issued to be at Ashford, Kent, and this Card has not in anyway been altered by me.

I have not altered the figures 40

Whilst at Fulham my wife reported the loss of her identity Card, and was issued with the replacement Y.R.A.A. 733068, at the time she lost her handbag complete, and since then nothing has been heard of her Identity Card.

Ration Book EDAY. 70/23 Serial R.A.486681

Wifes " " Y.R.A.A. 733068 2 P.596638

issued at Derby

"Andrew Ellis"

11 February, 1943

Further statement made by Andrew Ellis

When we were in Derby my wife lost her purse with some money and I took her Identity Card, leaving her to believe that she had lost it with her purse.

I did not alter the card, but I had it altered

"Andrew Ellis"

SUMMARY OF EVIDENCE

In the case of B37267 Pte. Andrew Coleman ELLIS, Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas.

THE ACCUSED IS INFORMED OF HIS RIGHTS

THE C.O. DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH

FIRST WITNESS FOR THE PROSECUTION

B36518 Sgt. Porter, G., R.H.L.I., having been duly sworn states:-

"On 25 Feb 43 I was present at Banbury Police Station where I received B37267 Pte. Andrew Coleman Ellis into my charge. I returned with him to my unit and placed him in the guard house under close arrest. He was wearing civilian clothes and had no paybook".

THE ACCUSED DECLINES TO CROSS EXAMINE

G Porter
.....
(B36518 Sgt. Porter, G.)

SECOND WITNESS FOR THE PROSECUTION

Capt. G.H.B. Stinson, Adjutant, R.H.L.I., having been duly sworn states:-

"I took over my duties as Adjutant, R.H.L.I., 16 Feb 43 at which time B37267 Pte. Ellis, A.C., was listed as a deserter. I hereby present R.H.L.I. Part II Order dated 14 Nov 41, marked "A", which lists Pte. Ellis as an absentee. Also as documentary evidence I present certified copy, marked "B", of an entry in A.B. 161 Record of Court of Inquiry on the absence of Ellis, held 26 Nov 41".

THE ACCUSED DECLINES TO CROSS EXAMINE

.....
(G.H.B. Stinson) Capt.

THIRD WITNESS FOR THE PROSECUTION

Detective Constable 47, J. Holloway, Oxfordshire Constabulary:

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this summary (attached as exhibit "C"). Having regard to the exigencies of the service, the expense involved, and the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS EXAMINATION.

A C Brett
.....
(A.C. Brett) Capt.,
Officer detailed to take the Summary

THE ACCUSED HAVING BEEN DULY CAUTIONED IN ACCORDANCE WITH R.P. 4 (E) says:-

"I do not wish to make a statement".

THE ACCUSED DOES NOT WISH TO CALL ANY WITNESSES IN HIS DEFENCE AT THIS POINT.

Certified that R.P. 4
Complied with.

In the Field

17 Mar 43

A.C. Brett

(A.C. Brett) Capt.,
Officer detailed to
take the Summary.

(Substitute for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No B57267 Pte ANDREW COLEMAN ELLIS. Unit 1st Bn.R.H.L.I.C.A.O-s

Age 42 acc. Married or Single M No of Dependents 4

Date of Attestation 28 Sep 39

No of days spent in Close arrest(to date of trial) 52 days

Civil 15 days Military 37 days Hospital Nil Total

Dates of PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

NIL

A certified true copy of M.F.M. 6 must accompany this form.

Officer i/c Records

G.H.Stinson Unit.
(G.H.W.Stinson) Capt. & Adjt.
1st Bn., R.H.L.I., CMH A C/S.

Dated at: In the Field.

This day of 3 Apr 1943

(to be dated and signed as of date of trial)

"K 708

No. B37267. Name...ELLIS. A.C. Unit..R.H.L.I. Date of Enlistment.28-9-39

Substitute for MF.M.6
A.F.B. 122.

Place	Date of Offence	Rank	Cases of Drunkness	Offence	Name of Witnesses	Punishment Awarded	Date of Award	By whom Awarded
Windsor Park.	23-4-41.	Pte		Being found beyond limits of camp area. A.A.15(3)	Capt Creig.	4 Dys C.B.	26-4-41	Major Waldron.

S.O.S. R.H.L.I. w.e.f. 26 Nov 41 a Court of inquiry for AWL for more than 21 dys.

CERTIFIED TRUE COPY.

.....Actg Staff

1st Bn., R.H.L.I. C.A. O/s.

NATIONAL REGISTRATION

EDAY 70 23

ELLIS ANDREW

1. This Identity Card must be carefully preserved. You may need it under conditions of national emergency for important purposes. You must not lose it or allow it to be stolen. If, nevertheless, it is stolen or completely lost, you must report the fact in person at any local National Registration Office

2. You may have to show your Identity Card to persons who are authorized by law to ask you to produce it.

3. You must not allow your Identity Card to pass into the hands of unauthorised persons or strangers. Every grown up person should be responsible for the keeping of his or her Identity Card. The Identity Card of a child should be kept by the parent or guardian or person in charge of the child for the time being.

4. Anyone finding this Card must hand it in at a Police Station or National Registration Office.

NATIONAL REGISTRATION

EDAY 70 23

ELLIS ANDREW

REGISTERED ADDRESS OF ABOVE PERSON

4 Council Houses

Bloxham, Banbury

National Registration Office

14 Nov 42

"JWG" Banbury Rural

Signed "Andrew Ellis

Date 6 Feb 1941

NATIONAL REGISTRATION

IDENTITY

CARD

Certified true copy of the
original Identity Card
21 Apr 43 [illegible] through the
Judge Advocate

22-128 (Case #2)

Pte ELLIS D C

See BB-121 for 1st case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C6033 Pte Ellis DC, 5 CIRU (Attached HQ 1 CBOD)

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15(1) AA	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

K ~~A1 personal under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of Sixty (60) Days

(Sgd) ..... Judge-Advocate, if any. 5 Jan/44 Date Awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 57(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks for a further period~~ (1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date: 7 Jan 44. J. H. ROBERTS, Maj-Gen, Comd. Cdn. Rft. Units. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C 6033 pte Ellis DC.	15.1.44	[signature] Capt & adj't

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

22128

FIELD GENERAL COURT-MARTIAL

CFA86 (To Reg of AFA3) 45-P & S (1608 (3804)

Convened by Order of Maj-Gen JH Roberts DSO MC Comd Cdn Rft Units dated 4 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C6033	Pte	D	C	ELLIS	5 CIRU(Att 1 CBOD)

PROCEEDINGS REVIEWED

[signature] Capt. 27 Jany 44. REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

K Held in the Fd in (country) ENGLAND on (date(s)) 5 Jan/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation or procedure will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AP5, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

K A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)

R The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

K A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

R ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

R (1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

K A5. ~~President to accused: Do you object to~~ as interpreter? Ans

R ~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans

R ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO - SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	D.C. Redman	H.Q. C.R.U.
Member	Major	H.T. Fosbery	1 C.U.R.U.
Member	Lt	A.E. Brodie	1 C.A.C.R.U.
~~Judge Advocate~~			
Prosecutor	Capt	J.E. McGlashan	H.Q. 1 C.B.O.D.
Defending Offr	Lt	W.J. McLean	5 C.I.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

R A8. The accused ..... before arraignment make(s) (no) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 118), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

R A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 102. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 69s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

~~President to accused: Do you wish to make a statement?~~ Ans. NO = I'M (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The Accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 365. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 22.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (d), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - I'M
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. D ~~who can you call~~ on your behalf? NOT-I'M
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 118(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 309, 2302, 3606, p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, C.6033 Pte. Ellis, D.C., 5 C.I.R.U. Attached to H.Q. 1 C.B.O.D., a soldier of the Cdn. Army Overseas, is charged with,

FIRST CHARGE
Sec 15(1)
ARMY ACT

While on Active Service, absenting himself without leave

in that he

In the field, while in confinement, absented himself without leave from 2200 hours on the 18th December 1943 until he surrendered at 2300 hours 27th December 1943.

R C Kelly

(R. C. Kelly) Lt.Col.,
O. C., Depot Battalion,
Headquarters, 1 C.B.O.D., RCOC.

In the Field
30 Dec 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J H Roberts

(J.H. Roberts) Maj-Gen
GOC
Cdn Rft Units

In the Field
4 Jan 44

My

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA3)
40/P&R/1697 (2002)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C6033	Pte		D C	ELLIS	5 CIRU(Att 1 CBOD)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(~~s~~) named above as the accused, being subject to military law, has (~~have~~) committed the offence(~~s~~) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 4 Jan 44 endorsed by me, (~~or by an offr of my said (or my)~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I do appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT-COL	D.L. REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A MAJOR	FROM	1 CORU
A LIEUT.	FROM	1 CACRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 4 Jan 44

(Signed personally. RP 105 fn 2.)

(J.H. Roberts) Maj-Gen
Commanding Cdn Rft Units
Convening Officer.

Maj-Gen (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS. When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.
A 12345 Cpl H. Jones, RWR, sworn, states:
I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 62 I ordered the accsd to go on parade. He refused and did not go on parade.
Cross-exam: He did not say he was sick. (or, None.)
Re-exam: None.
Exam by Court: He said—" I've had enough parades ".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 118 provides that for procedure on defence RP 40-42 will apply *so far as practicable*, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:
(i) Opening address by Defending Offr. (*See* 60(a), 87(C), 92(C) (*D*).)
(ii) Opening statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP 86 fn* 10)), or A1 option of accused, statement by accused (*see supra*) or subject to cross-exam by Prosecutor, Court or JA (*RP 86 fn* 10), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 3, *46 fn* 1, 86.)
(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)
(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions where accused has called witnesses as to character. (*RP* 86(C).)
(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will confine his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)
(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(a).*)
(vii) Summing up by *JA*, if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:
(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 134.
(iii) Convening Order. (*KR Can 507.*)
(iv) Medical Certificates. (*KR Can 560.*)
(v) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*As to admissibility in evidence of certified copy in lieu of original see KR Can 560. As to certified copies of regimental books see AA 162 (3) (g) (ii).*)
(vi) Exhibits numbered Ex A, Ex B, etc.
(vii) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(D).) A recommendation for mercy will be inserted in Form 3 of Schedule on p 4 after sentence of sentence awarded. (*AA* 53(9), *RP* 114(C), *MML* p 759.)

4. The President or JA, if any, will return proceedings promptly with covering letter and in sm envelope marked "Confidential", or as otherwise directed.

MEDICAL CERTIFICATE (K.R.(Can)557)

I certify that I have this morning examined No. C 6033 Pte Ellis D.C. of R.C.O.C. and in my opinion he is fit to undergo trial by Court-Martial.

Station No 1 C.B.O.D. Medical Officer RA Fairbridge Capt

Date Jan 5, 1944

PLEA OF MITIGATION BY DEFENDING OFFICER

NOTE
ED-3
MW

FGCM - C6033 Pte Ellis, D C S CIRU (att 1 CBOD)

In the spring of 1942 the accused, Pte Ellis, was att to my pl - 11 Pl, B Coy, H & P E. We were stationed at Middleton-on-Sea.

Pte Ellis came to me one day and disclosed some trouble he had had with a girl in this country. He asked me to endeavour to get him three days leave, I believe in order to go to see the girl in London as I recall,(but I am not quite sure on that) in order to straighten out some difficulties. The girl had written him and was expecting a child. As I remember it, Pte Ellis was anxious to marry the girl because I believe they were more or less sweethearts and he wanted to give what he considered his own child his name. I believe he was given three days leave - I am not certain - yes, I am sure he got three days leave. When he came back he made application for Permission to Marry. Later he left my platoon.

I understand that permission was granted but due to his being recalled to Witley and numerous changes of Padres in the regt, his papers were evidently lost .. his papers of Permission to Marry.

At Witley he made application again but here a change in Padre left the thing in the air and he returned to the regt again.

Since that time he has been transferred to this Unit and nothing further has been done in regard to a wedding.

In Dec 43 he received notice from the girl that she was about to have a second child. The accused was not sure that this child was his. The girl has more or less threatened him with legal action. He went AWOL to see the girl and try to straighten things out.

I personally feel that the accused's affairs have been somehow neglected through bad management and would like some definite action taken by the authorities to get this man straightened out.

While he was with my platoon, I considered him one of my best men. He was a clear cut fellow and very earnest. He has more or less a previous record but I think that you will find the majority of his crimes have been since the spring of 1942 and while he was with the battalion. He was a good soldier while I had him but this trouble came about. I would ask for leniency because in my opinion his previous absences are largely attributable to the trouble above referred to.

LIST OF WITNESSES

FOR THE PROSECUTION

A.50436 Cpl. Garnett,G.E. N.C.O. I/c Guard, H.Q. 1 C.B.O.D.
C.15607 R.S.M. Leonard,V.P. R.S.M. H.Q., 1 C.B.O.D.

FOR THE DEFENCE

NIL

-o-o-o

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C.6033, Pte. Ellis,D.C. of 5 C.I.R.U. Attached to H.Q. 1 C.B.O.D., a soldier of the Cdn. Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

A.50436 Cpl. Garnett,G.E., 3 C.I.R.U., Attached to H.Q. 1 C.B.O.D., a soldier of the Cdn. Army Overseas, having been duly sworn states:
"On the 18th December 1943 I was N.C.O. i/c Guard which C.6033 Pte. Ellis,D.C. was on. His first shift came at 2200 hours and he was not present to take over his duties. I reported this to the W.O. in charge of guards, the following morning. C.6033 Pte. Ellis,D.C. reported to me at approximately 2300 hours 27 Dec 43. He was sober and properly dressed, total time absent, 9 days and one hour. He was undergoing Field punishment at the time he absented himself."

G.E. Garnett
A.50436 Cpl. Garnett, G. E.

The accused declines to cross examine this witness.

SECOND WITNESS FOR THE PROSECUTION

C.15607 R.S.M. Leonard,V.P., a Warrant Officer of the R.C.O.C., stationed at H.Q., 1 C.B.O.D., having been duly sworn, states:
"I am the R.S.M. at H.Q. 1 C.B.O.D. On the 29th November 1943, Pte. Ellis, the accused, was awarded 21 days Field Punishment by Lt.Col. R.C. Kelly, O.C. Depot Bn., 1 C.B.O.D. and the date ending his Field Punishment would have been 19th December 43 at 1400 hrs. He was therefore still undergoing Field Punishment when reported A.W.L. at 2200 hours 18th December 43."

V.P. Leonard
C.15607 R.S.M. Leonard, V. P.

i) The accused declines to cross examine the Witness.

ii) The accused declines to make a statement.

iii) The accused does not wish to call any witness for the defence.

I certify that the foregoing summary of evidence, consisting of one page, was taken down by me in the presence of the accused on the 29th day of December 1943 and that Rules of Procedure 4(c)(d)(e)(f) have been complied with.

EXAM

J. C. McGlashan
(J. C. McGlashan) Capt.
Adjutant, HQ, 1 C.B.O.D.
Officer detailed to take summary of Evidence.

M.F.M. 6
A F B 177.
17234—7-41 (1219-30)
R.Q. 1272-35,1453

No. C.6033 Name Ellis, D.C. Sqn., Battery, or Company C.I.C. Corps Date of enlistment 8 May 40 G.C. Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. one Signature O.C. Company, etc. R.F.Dafoe, Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	7/6/40	Pte		WOAS A.W.L. from 0615 hrs 7/6/40 to 1400 hrs 17/6/40 - A.A.Sec 15(1) (1) Absent 10 days 7 hrs 45 mins	Cpl.Bowen	Admonished	18/6/40	Lt.Col. Campbell	Forfeits 11 days pay F.R & I 149(1)a
In the Field	29/3 41	Pte		WOAS AWL from 2200 hrs 28/3/41 to 1000 hrs 29/3/41 A.A.Sec 15(1) Absent 12 hrs	Cpl.Cherery L/Sgt.Grant	Admonished	31/3/41	Major H.M. Fletcher	Forfs.1 days pay FRI 149(1) a 3 days pay FRI 149 (2)
In the Field	12/7 41	Pte		WOAS AWL from 0900 hrs 17/6/41 to 1130 hrs 12/7/41 AA Sec 15(1) Absent 25 days 2 hrs 30 mins	Sgt.Merny	28 days detn.	12/7/41	Lt.Col. Slack	Forfs.26 days pay.FR&I 149 (1)a. 28 days pay FR&I 149 (1)(b). Total Forf 54 days pay.

P.T.O.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Fld	17/4/41	Pte		WOAS AWL from 1330 hrs 17/4/41 to 2200 hrs 17/4/41 AA Sec 15(1) Absent 8 hrs 30 mins	Sgt.Nutley	96 hrs Detn.	19/4/41	Lt.Col. Slack	Forfs. 1 days pay FR&I 149(1)a 4 days pay FR&I 149(1)(b)
In the Fld	18/10/41	Pte		WOAS AWL from 1300 hrs 18/10/41 to 1800 hrs 23/10/41 AA Sec (15 (1) Absent 5 days 5 hrs.	Cpl. McKnight		25/10/41	Lt.Col. Sutherland	Forfs.6 days pay FR&I 149(1)(a) 9 days pay FRI 149 (2)
In the Fld	15/1/42	Pte		WOAS AWL from 1900 hrs 15/1/42 to 1700 hrs 25/1/42 AA Sec 15(1) Absent 9 days 22 hrs	Cpl. Furshee	28 days F.P.	26/1/41	Lt.Col. Graham	Forfs.10 days pay FR&I 149(1)(a) 28 days pay FR&I 149(1)(b) Total Forf.38 days pa

No.C.6033 Name Ellis,D.C. Sqn., Battery, or Company Corps C.I.C. Date of enlistment 8 May 40 G.C. Badges Service or Proficiency Pay N/A

M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. R.F.Dafoe Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	13/3 42	Pte		1.WOAS AWL from 13/3/42 to 2000 hrs 16/3/42 Absent 2.Breaking C.B. 3.Being in possession of liquors	Cpl.Forshee	28 days detn.	23/3/41	Lt.Col. Graham	Forfs 4 days pay FR&I 149(1)(a) 28 days pay FR&I 149(1)(b)
On 8 May 42 this soldier completed 2 years service. In accordance with R.O. 71 C.A.S.F. Overseas) previous sheet destroyed 8 May 42. Above entries brought forward.									
In the Field	21/8 42	Pte		WOAS AWL from 1700 hrs 1/8/42 to 2300 hrs 1/8/42. 2.Breaking out of barracks. 3.AWL from 0800 hrs to 1100 hrs 4/8/42	Sgt. Nutley Cpl.Bullied	7 days detn.	14/8/42	Lt.Col. Graham	Forfs 2 days pay FRI 149 (1)(a) 2 days pay FRI 149 (1)(b)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Fld	27/8 42	Pte		WOAS (1) Breaking C.B. 2.Failing to appear at a place of parade	L/Cpl.Stratham Cpl.Yearwood Cpl.Bullied	14 days CB	4/9/42	Lt.Col. Graham	
In the Fld	16/1 43	Pte		WOAS AWL from 2300 hrs 16 Jan 43 till 2340 hrs 21 Mar 43.Absent 55 days 40 Mins. A.A. Sec 15(1)	Documentary	4 Months Detn. Released from the detention barracks FIELD on Jun 25 1943 Sentence having expired.Remission earned 40 days. Commandants initials.	6 Apr 43	F.G.C.M.	Forfs 122 days pay FRI 149 (1)(b) Forf 56 days pay FRI 149 (1)(a) Forf 24 days pay FRI 149(1)(c)
In the Fld	15 Aug 43	Pte		WOAS AWL from 2359 hrs 15 Aug 43 till 0900 hrs 16 Aug 43.Total absence 9 hrs 1 min. AA Sec 15(1)	Sgt.Clarke	4 days pay	17 Aug 43	J.F.Clingan Lt.Col.	Forf 1 days pay FRI 149(1)(a) Forf.4 days pay FRI 149 (2)Total forf. 5 days pay

No. C.6033 Name Ellis, D.C. | Sqn., Battery, or Company | Corps 5 C.I.R.U. | Date of enlistment 8 May 40 | G.C. Badger | Service or Proficiency Pay N/A | M.F.M. 6 (A.F.B. 132) 115M—7-41 (1219-30) H.Q. 1272-39-4652

Date of last entry in Company Conduct Sheet: N/A | No. and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Peper Harow	17 Sep 43	Pte.		1.Sec.15A.A.(1)WOAS absenting himself without leave from 1530 hrs 15 Sep 43 to 2359 hrs 15 Sep 43. (Absent 8 hrs 29 mins.)	Sgt. H.J. Thompson	Forfeiture 10 days pay	22 Sep 43	Major D.E. Mounteer	Auto.Forf. 1 days pay
				2.Sec.15A.A. (1)WOAS AWL from 1800 hrs 17 Sep 43 to 1045 hrs 22 Sep 43.Total time absent 4 days 16 hrs 45 mins.	Sgt.H.J. Thompson				Auto.Forf. 5 days pay
Peper Harow	28 Nov 43	Pte.		Sec.15(1)A.A. WOAS Absenting himself without leave,thereby missing guard mount (Total time absent 11 hrs 45 mins).	Sgt. Darnbrough Documentary	21 days F.P.	29 Nov 43	Lt.Col. R.C.Kelly	Forfeiture 1 days pay

CERTIFIED TRUE COPY of original document from Records in my possession
F.C. Hay Captain / Capt & Adjt.

M.F
22M—2
H.Q.
A

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C.6033	Pte.	Ellis,D.C.	5 CIHU Att.HQ 1 CBOD.

1. The following is a fair and true summary of the entries in the Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Absent without leave	four times	thirteen times
For Breaking C.B.	times	two times
For Breaking out of barracks.	once times	times
For Being in possession of liquor	times	once times
For		

Regimental and Squadron, Battery Service and General

Note.—If the charge is for drunkenness the entries for drunkenness must be stated separately.

2. Previous convictions of the accused by a court-martial or a civil court, summary awards under Section 47 of the Army Act and dispensations with trial under A.A. s. 43 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charge, for NIL days in civil custody, and 1.5 days in military custody, making a total of 1.5 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his attestation paper is 29 yrs 5 Mons.

6. The date of birth specified in his attestation paper is 8 May 1940

7.

8. The accused is entitled to reckon 3yrs& 8 Mons service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or air force reward

10.

11. [redacted]

12. [redacted]

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number C.6033 Rank Pte. Unit

Name Ellis, D.C. of 1 CBCD(Att.from 5 CIRU)

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 16/1/43	Sec.15(1) AWL	4 Months Detention	40 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of December 1943

The above statement [illegible] schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

EYB

BB-121
PTE ELLIS DC.

BB-121

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Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Third day of April, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

*~~[1. One unable to appoint.]~~

*~~[2. Three Officers to form the Court.]~~

*~~[3. A Field Officer as President.]~~

for the following reasons, namely :—]

159

1

159

101

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Capt.	L.G.B. Lavoie	R.C.R.

Members.

Rank.	Name.	Regiment.
Capt	H. McCutcheon	48 Highrs
Lieut	F.T. Wagner	1 C.I.B.
Lieut.	F.J. Hammond	Hast & P.E.R.

Waiting Member

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed H.D. Graham Brig.
(H.D. Graham)
Commanding 1 Cdn Inf Bde.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C.6033 Pte ELLIS, Donald Clifford The Hastings and Prince Edward Regiment	FIRST CHARGE A.A. Sec 15 (1) W.O.A.S. Absenting himself without leave in that he at "In the field absented himself without leave from 2000 hrs 12 Mar 43 until surrendering himself at the Union Jack Club London at 2345 hrs. 12 Mar 43. Total absence - 55 days 45 minutes. Incurring expenses to the amount of 11/6 d. for his return to the Unit by R.E.R. under escort.	Guilty	Guilty — Six months detention and pay ~~&~~ allowances incurred by his being returned to Unit by R.E.R. (The Court recommend that the accused be considered for reduction in view of apparent mental dullness.) [illegible] Capt 6 Apr 43	I confirm the finding of the Court but remit four (4) months detention. [illegible] Lieut Actg Capt 6 Apr 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) [illegible] Brig. (Signed) [illegible] Capt
(H.D. Graham) (L.C.B. Lavoie)
Commanding 1 Cdn Inf Bde — The Royal Canadian Regt.
Convening Officer (e) — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the sixth day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

were duly sworn.

* Omit if not applicable.

Signed this sixth day of April 1943.

[illegible] Capt
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this sixth day of April 1943.

[illegible] Capt
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 6th day of April 1943.

[illegible]
(B.M. Crowe) Lt.-Col
A/Comd. *Confirming Officer.*
1 Cdn Inf Bde

Promulgated and extracts taken in the case of C.6033 Pte Ellis D.C. Hast & P.E.R. Regt Lieut & Capt Q

(a) (Dated) 8th April 43 (Signed) [illegible] Lt Col
B/Comd Hast. & P.E.R. Regt.

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W. 47767/1867 20 M. 6/43 K.J.L./1365(2) Gp. 9/8.3

B-2-16

CHARGE SHEET

The accused, C6033 Pte. Donald Clifford ELLIS,
The Hastings & Prince Edward Regiment, a soldier
of the Canadian Army placed on active Service
is charged with:-

FIRST CHARGE — S.O.A.S. absenting himself without leave
ARMY ACT
See 69(1)

in that he

at "In the Field" absented himself without leave from 2300 hrs. 16 Jan 43 until surrendering himself at The Union Jack Club, London, at 2340 hrs. 12 Mar 43.

Total absence - 55 days 40 minutes.

Incurring expenses to the amount of 11/6d. for his return to the Base. & P.E.R. under escort.

"In the Field"
12 Mar 43

(E.A. Sutcliffe) Lt.-Col.,
Commanding,
The Hastings & Prince Edward Regt.,
C.A.(A.F.)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

Brigadier,
(H.D. Graham)
Comd. 1 Can Inf Bde.

In the Field
3 Apr 43

MEDICAL CERTIFICATE (KR (Can) 557)

15

I certify that I have this morning examined No. 66033

Pte Ellis DC of H+P ERgt and, in my opinion,

he is fit to undergo trial by Court-Martial.
unfit

Station Field

Date April 6/43

W.E. Foote Capt
Medical Officer

14

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at
on the 6th day of April 1943 by order of
Brig. H. D. Graham Commanding 1 Can. Inf. Bde.
dated the third day of April 1943

President, Capt. L. G. B. Lavoie R.C.R.

Members, Capt. H. McCutcheon
48 Highrs
Lieut. F. T. Egener
HQ 1 C.I.B. Def. Pl.

Judge Advocate.

Trial of* No. 6033 Pte. ELLIS, Donald Clifford Asst. a. P.E.R.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† ~~Capt~~ Lieut. B.K. Von Dziegielewski — Asst. a. P.E.R.

~~Counsel~~‡ or defending officer† Lieut. R.O. Cleworth — Asst. a. P.E.R.

At 1330 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

MS. Form B. 271
10M—8-43 (3339)
H.Q. 1773-99-224

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.
If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

13

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused No. C-60 33 Pte. ELLIS, Donald Clifford - Host wPER.

is found guilty of the first charge as set out on page two of A.F.A.3 attached to these proceedings.

*The summary (or abstract) of evidence is read, marked , signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes.

Answer. The accused in mitigation of punishment says:— No. Ellis is to my knowledge a soldier capable in the execution and in his ordinary behaviour ~~Reference to his~~ conduct does not indicate the one failing of continuous absence. On his behalf I would appeal to the court to consider the extenuating nature of the accused and that his only offence is that of being absent without leave and that otherwise he is a capable soldier. I point out also that the circumstances under which we are living tend themselves to affecting the restless spirit of a man of this spirit.

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No.

Answer.

Evidence as to character.

B-3

Summary of Evidence in the case of C 60332 Pte Donald Clifford Ellis Support Coy the Hastings and Prince Edward Regiment

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

C 40440 Sgt Watt A E support Coy the Hastings and Prince Edward Regiment having been duly sworn, states: On the 16 January 1943 at 2300 hrs while acting as Platoon Sgt #2 platoon, I was checking the platoon at 0100 and found Pte Ellis was not in billet I checked the roll at 0800 hrs the 17 January 1943 and Pte Ellis was still absent. I can state that Pte Ellis has not been on parade with the platoon since that date. Pte Ellis is a member of my platoon I identify the accused as C 60332 Pte Ellis D.C.

A.E. Watt Sgt.

The accused declines to cross examine the witness.

2nd Witness for the prosecution

Lieut J. H. Bird Hastings and Prince Edward Regiment, having been duly sworn, states:

In my capacity as acting adjutant of the Hastings and Prince Edward Regiment, I produce certificate under Sec 162 (1) (f) Army Act, stating that C 60332 Pte Ellis D.C. surrendered himself to the Canadian Military Police London at 2345 hrs in March 43 at the Station Guard Room, duly signed by the D.A.P.M. London area. Marked exhibit A

(2) I produce form CMHQ 1000/23 being expense vouchers duly signed stating cost of transportation of escort and accused to Leeds from London being 11 shillings and 6 pence. Marked exhibit B

J. H. Bird Lieut,

The accused declines to cross examine this witness

The accused having been duly warned in accordance with rule of Procedure 4(a) declines to make a statement.

Certified that rule of procedure 4(a)(b) and (7) have been complied with.

Taken down by me in the presence and hearing of the accused this 15 day of March at "in the field"

Lt

Witness Lieut
Ast. A.P.M.

Lt Col
President

A

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (b)

(12) 10 Copy

I, ...

Reg. No. ....Rank ..... Name .....

REGIMENT .....

UNIT .....

STATIONED AT .....

Surrendered himself to (a) .....Rank.....Name.....

of the .....

on the .... day of .....196 , at ..... hours .....

.....AS AN ABSENTEE WITHOUT LEAVE .....

at the time of his surrender he was wearing (Military Uniform) (Civilian Clothes).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender.

(Strike out part inapplicable).

.....Lieut.
Officer i/c Detention Room,
No. 6 Can. Provost Coy.

"B"

Expense Voucher Re—:

Ref: K.R. & O. (Can) 166 (A-3) 9

Reg. No. C6033 Rank Pte Name Ellis, D Unit HQ PE

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
12 Mar 42	Escorts return fare from LONDON To Lewes		7	8
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Lewes		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/38
40/P & S/483

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the cons~~

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it

Lieut A.A. Bird Adjt Host & P.E.R. is duly sw

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particular of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked A, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes = A.F.B. 21 = Certified true copy of N.A.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

(5)

[Instruction.—If by reason of the terms of the service of the accused or a departmental order of the Court the latter is unable to pay attention to the proceedings recorded by the Court the prosecutor may call the attention of the Court to the fact, and the Court must investigate into the matter and record its finding and punishment.]

...ce

Sentence.

The Court sentence the accused No. C 6033 Pte. ELLIS Donald Clifford Host. & R.E.R. to six months detention and to pay the sum of eleven shillings and six pence incurred by his being returned to Host. & R.E.R.

[illegible] Lieut.

President

STATEMENT IN ACCORDANCE WITH R. of F. 14 (B)

C6033 Pte. Donald Clifford ELLIS, desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Capt. W.O. Olsworth, if he is available.

D C Ellis

C6033 Pte. Ellis, D.C.
Hast. & P.E.Regt.

8

M.F.M. 5
(A.F.B. 122)
1775M—7-41 (1229—40)
H.Q. 1775-99-1552

No. 66035 Name Ellis, D.C. Sqn., Battery, or Company Corps Mast.&TER Date of enlistment 8 May 40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (before) ning with 1214)	By whom awarded	Remarks
	26/10 40	Pte.		A.W.L.		7 days C.B.			1 days pay
	31/3 41	"		A.W.L.		96 hours Detn			3 days pay
	19/4 41	"		A.W.L.		28 days Detn			1 days pay
	17/6 41	"		"					1 days pay
	29/9 41	"		"					16 days pay
	2/10 41	"		"					
	17/10 41								

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispatched stating with trial	By whom awarded	Remarks
	15/1 42	Pte.		A.W.L.		7 days C.B.			1 dayspay
	26/1 42	"		"		28 days F.F.			36 days pay
	21/3/42			"		28 days Detn 7 days C.B.			37 days pay 1 days pay
	18/5 42			"		7 days C.B.			2 days pay
	20/7 42			"		7 days C.B.			1 days pay
	23/7/42			"		7 days C.B.			10 days pay
	14/8/42			"		5 days C.B.			1 days pay
	26/8/42			"					
	16/1/43								

CERTIFIED TRUE COPY

J. Bradbent — Signature illegible

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-6033	Pte.	Donald Clifford ELLIS, Hast. & P.E.R.	

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or extract in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.W.O.L.	six times	sixteen times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N.P. beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 24 days in military custody, making a total of 24 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ record of service is 22 yrs. 10 months 3 days.

6. The date of his ~~attestation~~ specified in his record of service is 8 May 1940

7. ~~The service which the accused is allowed to reckon towards [illegible] or transfer to the reserve is~~

8. ~~The accused is entitled to [illegible] pay or gratuity in respect of [illegible] service.~~

9. ~~The accused is entitled to [illegible] service for the purpose of determining his pension, as~~

10. ~~The accused is in possession of [illegible] or entitled to [illegible] military decorations or military reward [illegible] as in possession of or entitled to (state any military decoration or reward)~~

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer held the regimental rank of~~

12. ~~He was [illegible] of [illegible]. He is considered suitable to be appointed to the rank of [illegible] and to be recommended for duty as [illegible] the rank of [illegible].~~

(7)19140 Wt.30264/1022 75,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 6033 Rank Pte Name Gerald Clifford Ellis of 1 Base P.E. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charge upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of March 1943
6 April 1943

Jt Bird Lieut

13 The prisoner has served as a non-commissioned officer continuously, without reduction, to the present date.

To the rank of ... Date of Promotion ...

In the rank of ... years ... months

In the rank of ... years ... months

(Instructions—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph inserted and initialled accordingly.)

UUU-11
Gov. Ellis C6.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 17988 Gnr Ellis G.S. 3 A/Tk Regt RCA

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	Guilty	Guilty	
2nd AA 15 (1)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Thirty days detention

~~Judge~~ Judge Advocate, if any — Date awarded. — President. (RP 45, 56)

24 Jul 44 (Sgd) W. Beverley Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 54–56, 120, MML pp 759-761, KR Can 562–577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP (2)(iii)(a). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirm & Finding & Sentence of the Court.

~~I direct that the sentence be put into execution by [illegible] detention barracks until further orders~~ (1) 8.2.

(1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 3 day 44 Commanding C.R.A. 3 Cdn. Div. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. G 17988 Gnr Ellis G.S. Date 5th Aug 1944 Signature of Offr. [illegible] Capt. 3rd ANTI-TANK REGT. R.C.A. - [A.J.]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 AUG 1944 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 160. 4424/11

CPA86 (1st Rev. of AF B.2) 40-P & S-1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. P.A.S. Todd Comd 6 CA Bde dated 28 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or substituted rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.
C 17988	Gnr.	G	Ellis

Unit: Qn. Sec. GHQ 21 Army Gp. Date 12 Aug 44 PROCEEDINGS REVIEWED

FINDINGS REVIEWED 22 Aug 44 C G Ellis 3 A/Tk Regt RCA

W.A.G. Branch CMHQ

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) France on (date(s)) 24 Jul 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (91/128)

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any, assemble, and the~~ Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 149, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans: ~~The Interpreter is sworn (1). Do you object to~~ as shorthand writer? Ans: ~~The shorthand writer is sworn. (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.A. Blakely	13 Cdn Fd Regt RCA.
Member	Capt.	J.P. Bell	17 Cdn Fd Regt RCA.
Member	Capt.	J.R. Dickenson	3 AT Regt RCA.
~~Judge Advocate~~			
Prosecutor	Lieut.	A.J. Richardson	3 Cdn A/Tk Regt
Defending Offr	Lieut.	J.L. Bazell	3 Cdn A/Tk Regt

Questions by President: Is the Prosecutor a lawyer? Ans: NO Is the Defending Offr a lawyer? Ans: NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused in entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 32.)

A8. The accused C 17988 Gnr Ellis G.S. before arraignment makes(s) ~~(made)~~ (a) plea(s) of Guilty on all charges (2)

(1. If a special plea, e.g. for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Parcel I, page 24

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ~~[illegible]~~ No (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) ~~The Court decides (not) to advise accused to change his plea from a plea of Guilty to Not Guilty, and finds charge(s) The accused is (are) so informed, and he (the) charge(s) for (three) pleads as to charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty was (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by son of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Con* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP* 155. *2. RP* 60(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(2) (*d*), *RP* 45, 120(*A*). *2. AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans I have given evidence & I have no witnesses to call. I make a statement in mitigation
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB* 355 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans nil (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(*E*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 70(*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

Charge against G.17988 Gnr Ellis, C.G., 3rd Cdn Anti-Tank Regiment a soldier of the Cdn Army whilst on active service is charged with:

First Charge
AA Sec 15(1) WHILST ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE
in that he

left his gun position at 1530 hrs 29 June 1944 without permission, and did not return until 2000 hrs 29 June 1944(4 hrs 30 mins)

Second Charge
AA Sec 15(1)

WHILST ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE
in that he

left his gun position at 2130 hrs 29 June 44 without permission, and reported to #9 Bn 2 CBRG at 1830 hrs 30 June 44 (absent 20 hrs).

(J.P. Phin)Lt.Colonel
C.O. 3rd Cdn Anti-Tank Regiment

In the Field 28 Jul 44

To be tried by F.G.C.M.

(PAS Todd) Brigadier
CRA 3 Cdn Inf Div

FIELD GENERAL COURT-MARTIAL

CFA16 (In lieu of AFA3)
40/PAM/3-607 (30668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G17988	Gnr		C.G.	ELLIS	3 ATk Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 Jul 44 endorsed by me, ([illegible]), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	S.A. BLAKELY	13 Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	J.C. BEER	12 Fd Regt RCA
Captain	J.R. Dickinson	3 ATk Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	D.J.K. FROST	12 Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in France
(Country.)

Date 23 Jul 44

(Signed personally. RP 105 fn 2.)
(F.A.S. Todd)
Commanding CRA 3 Cdn Inf Div
Convening Officer. Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(AO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A. 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 prescribes that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 60(C), 87(C), 92(C)(D).*)

(ii) At option of accsd, statement by accsd (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accsd, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accsd as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions where accsd has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than on mitigation of punishment*) by Defending Offr or accsd. (*See RP 40 fns 8-12, 87(C), 92(C)(D).*) But Defending Offr or accsd will make his address after the Prosecutor, if there has been no statement by accsd or any evidence given as to facts, or if accsd alone has given evidence on oath as to facts, whether any evidence as to his character has been given, or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C)(D). Prosecutor has no rights to address Court on subject of sentence except as provided by RP 40(E), KR Con 562(a).*)

(vii) Summing up by JA, if any. (*RP 82.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINK AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Con 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Con 566. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after promulgation of sentence awarded. (*AA 52(9), RP 118(C), M ML p 794.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

MEDICAL OFFICERS CERTIFICATE

24 July 1944.

This is to certify that G.17988 Gnr Ellis, C.G.
is fit/~~unfit~~ to undergo trial by Field General
Court Martial.

Date 24 July 1944

Medical Officer
3rd Cdn A/Tk Reg R.C.A.

G.17988 Gnr. Ellis, C.G., 3 Cdn Anti-Tank Regt., having been duly sworn states:-

From #10 C.B.R.G. I was sent to the 3rd A/Tk, 94 Bty, approximately 15 June 44, as a driver. I was immediately put on a gun and was there three weeks. I had no gun drill in England. When I was there one of our crew was killed. I was afraid of what might happen if I had to take over the gun, should I be the first to reach the gun if required to fire. I knew nothing of the gun. We moved back to Cairon which I thought was a rest area. We were right in the village so I went down about 75 yds to a house. We talked there and had some drinks of Cider. When I came back at 2000 hrs I was checked up by Sgt. Pollo who bawled me out. I was afraid he would have me up and I don't know what made me do it, but I went away again at approximately a half-hour later. I don't know where I went to actually, I woke up in the morning in a slit trench. I didn't know where my unit would be. The best thing to do was report to #9 C.B.R.G. which I did at Fontaine Henry at 1830 hrs the following day, 30 June 44.

Q. What type of Gun was that you speak of?

A. 6 Pdrs.

Q. What reinforcement unit did you come from in England?

A. # 2 C.A.R.U.

Q. How long had you been in # 2. C.A.R.U.

A. About a year.

Q. What Anti-Tank Guns did you receive training on while there?

A. None, sir.

Q. How do you account for that?

A. I took my basic training in "A" Bty, and was sent from there to "D" Bty on a Driver's Course. When I finished the Driver's Course, I took an MC Course and was sent to the 5th A/Tk Regt. as a driver. While I was there I drove the Major of the Bty. I was there for nine months but did not receive any training on any A/Tk Guns whatsoever as I was in B.H.Q.

Q. Did you receive any A/Tk Training in Canada?

A. Two half days on 6 pdrs.

Q. When did you join the Army?

A. June, 1940, with a 25 pdr battery, I transferred to A/Tank after 1½ years time. I was in M.T. in Petawawa.

Q. Are you a qualified driver i/c?

A. Yes.

I realize the foolishness of this and am very sorry I do not know what made me do it. I have a wife and two children who depend entirely upon my pay.

G.17988 Gnr. Ellis, C.G., 3 Cdn Anti-Tank Regt., having been duly sworn states:-

From #10 C.B.R.C. I was sent to the 3rd A/Tk, 94 Bty, approximately 15 June 44, as a driver. I was immediately put on a gun and was there three weeks. I had no gun drill in England. When I was there one of our crew was killed. I was afraid of what might happen if I had to take over the gun, should I be the first to reach the gun if required to fire. I knew nothing of the gun. We moved back to Cairon which I thought was a rest area. We were right in the village so I went down about 75 yds to a house. We talked there and had some drinks of Cider. When I came back at 2000 hrs I was checked up by Sgt. Pollo who bawled me out. I was afraid he would have me up and I don't know what made me do it, but I went away again at approximately a half-hour later. I don't know where I went to actually, I woke up in the morning in a slit trench. I didn't know where my unit would be. The best thing to do was report to #9 C.B.R.C. which I did at Fontaine Henry at 1830 hrs the following day, 30 June 44.

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A. # 2 C.A.R.U.

Q. How long had you been in # 2. C.A.R.U.

A. About a year.

Q. What Anti-Tank Guns did you receive training on while there?

A. None, sir.

Q. How do you account for that?

A. I took my basic training in "A" Bty, and was sent from there to "D" Bty on a Driver's Course. When I finished the Driver's Course, I took an MC Course and was sent to the 5th A/Tk Regt. as a driver. While I was there I drove the Major of the Bty. I was there for nine months but did not receive any training on any A/Tk Guns whatsoever as I was in B.H.Q.

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Q. When did you join the Army?

A. June, 1940, with a 25 pdr battery, I transferred to A/Tank after 1½ years time. I was in M.T. in Petawawa.

Q. Are you a qualified driver i/c?

A. Yes.

I realize the foolishness of this and am very sorry I do not know what made me do it. I have a wife and two children who depend entirely upon my pay.

G.17988 Gnr. Ellis, C.C., 3 Cdn Anti-Tank Regt., having been duly sworn states:-

From #10 C.B.R.C. I was sent to the 3rd A/Tk, 94 Bty, approximately 15 June 44, as a driver. I was immediately put on a gun and was there three weeks. I had no gun drill in England. When I was there one of our crew was killed. I was afraid of what might happen if I had to take over the gun, should I be the first to reach the gun if required to fire. I knew nothing of the gun. We moved back to Cairon which I thought was a rest area. We were right in the village so I went down about 75 yds to a house. We talked there and had some drinks of Cider. When I came back at 2000 hrs I was checked up by Sgt. Pollo who bawled me out. I was afraid he would have me up and I don't know what made me do it, but I went away again at approximately a half-hour later. I don't know where I went to actually, I woke up in the morning in a slit trench. I didn't know where my unit would be. The best thing to do was report to #9 C.B.R.C. which I did at Fontaine Henry at 1830 hrs the following day, 30 June 44.

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A. 6 Pdrs.

Q. What reinforcement unit did you come from in England?

A. # 2 C.A.R.U.

Q. How long had you been in # 2. C.A.R.U.

A. About a year.

Q. What Anti-Tank Guns did you receive training on while there?

A. None, sir.

Q. How do you account for that?

A. I took my basic training in "A" Bty, and was sent from there to "D" Bty on a Driver's Course. When I finished the Driver's Course, I took an MC Course and was sent to the 5th A/Tk Regt. as a driver. While I was there I drove the Major of the Bty. I was there for nine months but did not receive any training on any A/Tk Guns whatsoever as I was in B.H.Q.

Q. Did you receive any A/Tk Training in Canada?

A. Two half days on 6 pdrs.

Q. When did you join the Army?

A. June, 1940, with a 25 pdr battery, I transferred to A/Tank after 1½ years time. I was in M.T. in Petawawa.

Q. Are you a qualified driver i/c?

A. Yes.

I realize the foolishness of this and am very sorry I do not know what made me do it. I have a wife and two children who depend entirely upon my pay.

Exhibit a

Summary ~~of~~ of evidence in the case of C 17988 Gnr Ellis, Chalmers Granville, of the 94th Battery, 3rd Cdn Anti-tank Regt.

Statements of witnesses taken under oath by order of Lt. Col J.P. [illegible].

First witness for prosecution: C 50073 Sgt RolloRD having been duly sworn states:
I am C50073 Sgt Rollo RD of the 94th Bty and I am No.1 of a gun crew, on the 29th of June 1944 in the village of Cairon at approxomately 1530 hrs I noticed Gnr Ellis was missing from the gun position, I made a search of the village and the adjourning gun positions, with no results. Gnr Ellis came back at approxomately 2000hrs. I warned him there was a move at 2200 hrs and he said he knew about it. I went over to Sgt Beatty's gun to see if he had any news of the coming move, when I returned at approxomatel y 2130 hrs Gnr Ellis was again missing. I moved the gun and gun crew over to the forming up point and sent GnrEngessetter back around the gun positions and village to see if he could find Gnr Ellis. He returned with no results. Just as we were moving I reported to Sgt Feeney that I could not find Gnr Ellis. He went back through the village on motorcycle but could not find Gnr Ellis.

Q. Did Gnr Ellis make any excuse for his first absence?
A. No, Sir.

The accused declines to cross-examine the witness at this time. R.P. ~~xxx~~ 4 (c) (d) (e) (f) (g) have been complied with.

Second witness for the prosecution: E 21801 BSM Hanson having been duly sworn states:
I am E 21801 BSM Hanson of the 94th Battery. At approxomately 2230 hrs 29th Jun 44 just outside of the village of Thaon I saw Gnr Ellis hitch a ride on a carrier belonging to the 62nd A/Tk Regt R.A. Gnr Ellis jumped off the carrier at Bretteville De L'Orge, and stood by the side of the road. I next saw the accused at H H Q 3rd Cdn A/Tk Regt where he made a statement to the effect that he was an escaped POW

The accused declines to cross-examine the witness at this time. R.P. 4 (c) (d) (e) (f) (g) having been complied with.

[signature] B.S.M.

Third witness for the Prosecution: F 6099 S/Sgt Franklin J.T. of the 3rd Cdn A/Tk Regt having been duly sworn duly states:

I am F 6099 S/Sgt Franklin J.T. of the 3rd Cdn Anti-Tank Regt. On the 2nd of Jul 44 acting on the orders of RSM Black, I escorted Gnr Ellis to No. 43 Coy No, 9 CsRG. I stated the facts to the Commandant that Gnr Ellis was supposed to have reported there and he verified the fact that he did so at approximately 1830 hrs 30th June 44. Also the accused was short equipment and that he was issued a considerable amount of equipment by the Quartermaster No. 43 Coy No. 9 CsRG.

S/Sgt J.T. Franklin

The accused declines to cross-examine the witness at this time. R.P. 4 (c) (d) (e) (f) (g) have been complied with.

The accused having been cautioned, declines to make a statement.

Taken down before me this 4th day of July 44.

(J.H. Turpin) Lieut.

Capt. D.M. Cowie, O.C. Adv Rft Coy 2 Cdn Inf Div, states:

"I am Capt. D.M. Cowie, O.C. Adv Rft Coy 2 Cdn Inf Div (43 Coy). G/17988 GNR Ellis, CG reported to my camp at Fontaine-Henry at approximately 1830 hrs, 30 Jun 44. He was kept there over night and on the following morning was paraded before me. Gnr. Ellis stated that he had been captured by an enemy patrol at approximately 2300 hrs, on the night 29/30 Jun 44. He claimed to have made his escape at approximately 0200 hrs of the same night and spent the remainder of the 30 Jun 44 wandering about the country insearch of his Battery. On the advice of the D.A.A.G., 3 Cdn Inf Div, I sent Gnr Ellis under escort to Main Div H.Q. for interrogation by the "I" Branch, who were responsible for the return of Gnr. Ellis to his Unit.

(D.M. Cowie) Capt.
O.C. Adv Rft Coy (43 Coy)
2 Cdn Inf Div.

witness - [illegible] 22 Jul 44

Exhibit B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
7988	Gunner	ELLIS C.G.	3rd Can Anti-Tank Regiment RCA

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. — 6 times.

For 2 entries for which Sect of AA is not known. — times.

For — times.

For — times.

Date of first entry in Field Conduct Sheet Field conduct sheet not available, extracts taken

Date of last entry in Field Conduct Sheet from MFM 14.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for n/a

beginning on the day of

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 21 days in military custody, *i.e.*, nil days in open arrest, 21 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 21

6. The date of his attestation / calling up for military service is 6.6.41

7. The service which the accused is allowed to reckon is 3 yrs 1 mth 17 dys

8. The accused is in possession of: CVSM with clasp

*State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

(21154) W.1.8570/4668 100,000 4/42 A. & E.W.Ltd. Gp.685 Forms B.296(War)S
(21154) W.1.21626/1675 50,000 8/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 23 day of July 1944

Officer i/c Regimental Documents,
3rd Cdn Anti-Tank Regiment

Edward G. 63

M.F.M. 6 - Conduct sheet of G.17988 Gnr Ellis C.G. is not available.

Herewith extracts taken from M.F.M. 14 which is in Regimental Pay Office.

- -

27.1.42 -- Reverted to the Rank of Bdr and forf 3 days P & A.

12.3.42 -- AWL 2200 hrs -- 5.3.42

25.4.42 -- AWL forfeits 20 days pay. Cost of app $15.65

29.7.42 -- AWL - 1 days pay

3.3.43 --- Reverted to the perm rank of Gnr and forf 2 dys pay. AWL from 2200 hrs 28.2.43 to 2359 hrs 1.3.43 (1 dy 1 hr 59 mins)

9.7.43 -- On 25 June awarded 7 dys CB and forf 1 dys pay for an off under AA Sec 15(1) AWL

22.10.43 On 16 Nov 43 awarded 7 dys CB and forf 5 dys pay for an offence under AA Sec 15(1) AWL

20.4.44 - 19 Apr 44 - 14 dys CB and placed under stoppage of pay in the amount of £5.0.0 for partial replacement of WD veh.

Certified true extracts

Officer i/c Regimental Documents
3rd Cdn Anti-Tank Regiment

23 July 44

12 July 44

B

This is to certify that G.1/988 Gunner ELLIS, C.G. arrived at this Regiment with no papers or documents.

(F.P.Boothe) Capt., Adjt.,
3rd Cdn Anti-Tank Regiment

BB-25

PTE ELLIS H.

A-11016 Pte ELLIS, Harry BB-25
Perth Regiment
3 Cdn Infantry Reinforcement Unit

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this twenty-seventh day of March, 1945.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Cdn Reinforcement Units, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable that they should be tried by a superior qualified officer~~;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereinafter~~ appointed or detailed hereunder.

* Omit if not applicable.

~~*if available for appointment~~
~~(a) three Officers from the Court~~
~~(b) A Field Officer as President~~
~~(c) three Officers having more than one year's service~~
~~for the following reasons, namely:~~

Proceedings terminated 13 April 45

President.

Rank.	Name.	Regiment.
Lt. Col.	D.L. Redman	Calg Highrs

Members.

Rank.	Name.	Regiment.
A Major	from	5 Cdn Gen Pioneer Coy
A Captain	from	5 Cdn Gen Pioneer Coy

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Signed at Grammy Barker Colonel
Commanding "D" Group, Cdn Rft Units
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-11016 Private ELLIS, Harry Perth H 3 C.I.B.U.	First Charge A.A. Sec 15 (1)	Guilty	Guilty Sentence To undergo detention for a period of One Hundred and Twenty (120) days. 30 Mar 1943 WM	I confirm the finding and sentence of the Court. G Rodney Bacher Lt.Col. Commanding "D" Group C.I.B. (Cdn. Reinforcement Units)
	See Charge Sheet Attached			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) G Rodney Bacher Colonel (Signed) W M Nicol
Commanding "D" Group, C.R.U. President.
Commanding Officer (e)

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule so to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. ~~The witness~~
3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30th day of March 1943
W M Nicol
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (f) on page 3for M.M.L. 1939

~~I certify that the terms of A.C.I. 520 of 1918 have been~~ complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be released from custody forthwith and struck off the strength of the unit.)

Signed this 31. day of Mar 1943
G Rodney Bacher Lt.Col.
Confirming Officer "D" Group
(Cdn. Reinforcement Units) C.I.B.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commute or grant, or having such authority, recommends suspension.

Promulgated and extracts taken in the case of A/11016 Pte Ellis Harry Perth R(Cdn)

(a) (Dated) 1/April/43 (Signed) D Fletcher Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. A-11016 Pte. Harry ELLIS, Perth Regiment on strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas is charged with, while on active service,

FIRST CHARGE
A.A. 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

at 2359 hours on the 14th day of February 1943 absented himself without leave from Salamanca Barracks, until he surrendered himself at 2050 hours on the 16th day of March 1943. Absent 29 days 20 hours 51 minutes.

D. Fletcher Lt.-Col.

(D. Fletcher) Lt- Col. V.D.
Commanding "H" Wing
3 Cdn.Inf Rft Unit

In the Field
March 1943.

To be tried by Field General Court Martial.

G. Harry Basher

(G. Harry Basher) Colonel
Commander
"D" Group, Cdn Rft Units

In the Field
27 March 43

30 Mar. 43.

To Whom it May Concern:

Re: A11016 Pte Ellis. H.

This is to certify that I, the undersigned Medical Officer, medically examined the A/M Soldier and find him fit to stand trial by Courts Martial

M.C. Jennings Capt.
A.D.M.S. 1 A.C.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Gailliat Camp & on
ON THE 30 DAY OF March 1943

The accused A/Wo/Pte Ellis N. Unit Cent Regt

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Re.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt Col Redmond Unit Calgary Highlanders
Members Major Powell H W Unit 5 C G R C
Capt Wilks W J Unit 5 C G R C
[redacted] Unit
Four others Unit

The officers under instruction are duly sworn:-

Prosecutor Capt Maj Robinson Unit 3 C I R V
Defending officer Major E C Shelley Unit 3 C I R V

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor ~~is sworn and~~ produces ~~MFR 3m~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment.~~
(b) ~~calls witnesses as to character.~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Nil in mitigation adduced

A Plea in Mitigation of punishment in the case of 3/2016 Pte Ellis, H., Perth R.

In mitigation of punishment in the case of the accused, Pte H. Ellis, I would like to say that the accused is fully aware of his position and is quite ready to accept his punishment. While in conversation with the accused, he informed me of his reason for going A.W.L. He had received some very discomforting news about his wife back in Canada. He tore up those letters as he didn't wish anyone to learn about it. When he got for the news he was so mentally tormented that he took it upon himself to go A.W.L. to get away from everything and everybody and be by himself.

What mental anguish he went through will never be known.

this, I concur, does not excuse him from committing an offence against military laws. But I hesitate to suggest what I or you might have done in a similar state of mental anxiety. However, after being a W.L. for some time he realized his great mistake, gave himself up and prepared to take his punishment.

I doubt if he would have told anyone else the true circumstances. Possibly he told me because he used to be in my company and on me or more former occasions, while still in Canada, we were able to iron out one or two domestic problems.

But being many thousands of miles from you loved ones makes any unhappy news from home much more disconcerting.

I sincerely believe that in this case if the accused had had someone to turn to in his mental anxiety, he wouldn't have taken the step he did.

We must not forget that although he may have quite a number of crimes against his record he is still a human being, such as you and I, and therefore has feelings for his loved ones which can cause the deepest mental anguish when he hear disconcerting news.

I, therefore, feel that there is some reason for his action and therefore worthy of a plea in mitigation of punishment.

Then, too, my recently one of his buddies in custody with him made his successful escape and I do believe the accused could just as easily have escaped. However, he

remained to take his punishment.

Further he enlisted some 3½ years ago on his own free will to fight for his loved ones and for what he thought was right for which I think stands to his credit. Several years have passed and he has seen any action. Years which, of course, are just ample time for one to get into trouble. I believe he is still sincere in the ideals of his original enlistment — to fight for his loved ones. Then to get any disconcerting news about those same loved ones must have caused considerable mental anguish.

What you or I might do under similar circumstances no one can say. Nevertheless, he has committed the offence of A.W.L. and is punish-

prepared to accept your
punishment.

Taking these reasons into
consideration I feel that the
case merits a plea for
mitigation of punishment.

Summary of Evidence in the case of A-11016 Pte. Harry ELLIS, Perth Regiment on strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas)

By the direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS

Captain W.E. Thorne, Corps Military Staff Clerks on strength of 3 Canadian Infantry Reinforcement Unit a Officer of the Canadian Army(Overseas) having been duly states:

"I'm Captain W.E. Thorne C.M.S.C. employed as Records Officer 3 Canadian Infantry Reinforcement Unit.

I produce a certified true copy of Part II Daily Orders #2 dated 6 Feb. 43 which states that the accused was taken on strenght of 3 Canadian Infantry Reinforcement Unit. Exhibit "A".

I produce a certified true copy of Part II Daily Order #11 dated 17 Feb. 43 which shows that the accused went absent without leave 2359 hrs. 14 Feb. 43. Exhibit "B"

I produce a certified true copy of Part II Daily Order #31 dated 13 Mar. 43 which shows accused Struck Off Strength as a Deserter. Exhibit "C".

I produce a certified true copy of Part II Daily Order #36 dated 19 Mar. 43 which shows the accused Taken On Strength from Desertion on ceasing to be absent without leave at 2050 hrs. 16 Mar. 43. Exhibit "D".

The Evidence is read to the accused.

The accused declines to cross-examine this witness.

The accused was cautiom as follows-Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with.

In the Field
24 March 43.

Officer detailed to take Summary.

Certified True Copy

(C.E. Thorne) Capt.
Records Officer
3 Cdn. Inf. Reinf. Unit

3 CANADIAN INFANTRY REINFORCEMENT UNIT

P a r t II O r d e r s b y

COLONEL J.A. MCINTOSH, D.S.O., ACTING COMMANDING OFFICER

Part II Order No 2
Dated 6 Feb 43

Last Order No 1
Dated 1 Feb 43

"A"

1. STRENGTH INCREASE

(a) The u/m are TOS from Field Unit wef 1 Feb 43 (Auth: CMHQ Admn Order No 18 d/27 Jan 43):

HLI of C		
CAPT C.A. BEAN		LIEUT J.A. CALDER
LIEUT D.S. BARRIE	LIEUT J.A. GORMAN	LIEUT W.H. JARDINE

(b) The u/m officers having embarked in Canada on 15 Jan 43, disembarked in U.K. on 4 Feb 43, are SOS Cdn Army (CAN) on 15 Jan 43, TOS Cdn Army (O/S) on transfer on 16 Jan 43, reported for duty and are TOS 3 CIRU wef 5 Feb 43:

CAPT A.J. AYDEN	WPG L I
LIEUT E. NICHOLSON	SASK L I
MAJOR D.E. WALKER	SASK L I
CAPT W.S. MACPHERSON	ALGONQUIN R
CAPT T.C. TRENHOLME	R M R
LIEUT G. LEVESQUE	FUS M R
LIEUT J.M. PANET	FUS M R
LIEUT R.S. CHAMBERLAIN	PERTH R
LIEUT J.R. HENDERSON	PERTH R
LIEUT R. SHAPIRO	PERTH R
LIEUT D.F. TREBELL	PERTH R
LIEUT L.C. BOND	ESSEX SCOT R
LIEUT F.J.J. LYNCH	ESSEX SCOT R
LIEUT R.S.C. WILLIAMS	ESSEX SCOT R

GENERAL LIST

LIEUT R. CARPENTIER	LIEUT H.T.W. DAVIS
LIEUT J.M. DUSSAULT	LIEUT S. DUTKOWSKI
LIEUT R. GODIN	LIEUT D.H. FOGG
LIEUT J.G.W.J.C. PORTIER	LIEUT F.B. KANE
LIEUT R.J. LAPIERRE	LIEUT G.A. MCVEY
LIEUT G.J. LAVIGNE	LIEUT J.G. CORMIE
LIEUT J. LEDUC	CAPT W.S. BACKMAN
LIEUT C. MAJOR	LIEUT M.G. KLINKHAMER
LIEUT J.P. MANTEL	LIEUT W.H. MCLACHLAN
LIEUT R. RACINE	LIEUT C.S. MUNROE
LIEUT R. SAVARY	LIEUT J.E. OLDFIELD
CAPT N.R. WAUGH	LIEUT R.C. SMITH

(c) The u/m Officers are TOS from 5 CIRU (AD) wef 1 Feb 43:

PERTH R

MAJOR W.I. KEMP	LIEUT W.A.H. CREE
CAPT C.A. BRYAN	LIEUT A.J. GELLER
LIEUT R. COLE	LIEUT R.C.O. O'HAGAN

(d) The u/m Officers are TOS from 5 CIRU (AD) wef 1 Feb 43 while attached to units shown:

CAPT N. BULLOCK	PERTH R	5 CIRU
LIEUT G.T. ALEXANDER	PERTH R	Records Office CMHQ
LIEUT T.C. LINE	PERTH R	HQ 1 CDN CORPS
LIEUT H.T. SMITH	PERTH R	HQ 5 CDN ARM'D DIV

1. STRENGTH INCREASE (CONTINUED)

(e) The u/m Officers are TOS from 5 CIRU (AD) wef 1 Feb 43 while in Hospitals shown:

MAJOR M.W. ANDREW	PERTH R	14 Cdn Gen Hosp
LIEUT L.F. JONES	PERTH R	15 Cdn Gen Hosp

2. ATTACHMENTS

(a) The u/m Officers are attached fap from 1 CIRU wef 4 Feb 43:

C SCOT R

LIEUT F.S. HAYDEN	LIEUT G.B. LIVINGSTONE
LIEUT P.J. DOWNEY	LIEUT J.K. MACMILLAN

(b) The u/m Officers are attached fap from 2 CIRU for period 3 Feb 43 to 5 Feb 43:

R WPG RIF

LIEUT J.W. BENHAM	LIEUT R.S. MOGLOVE
LIEUT O.R. DONOGH	LIEUT K.F. OXENHAM

REGINA RIF R

LIEUT H.A. CROWE	LIEUT W.O. TOOMBS

(c) The u/m Officers are attached fap from 6 CIRU for period 1 Feb 43 to 5 Feb 43:

R de CHAUD

CAPT J. PELLETIER	LIEUT L.N. BEGIN

(d) LIEUT R.L. BOULANGER, R de CHAUD — Attached fap from 6 CIRU for period 1 Feb 43 to 5 Feb 43 on return from CMHQ Crs 3054 Ser CK9 Inf Mtr Course

(e) LIEUT A. TRUDEL, GEN LIST — Attached fap from 6 CIRU for period 1 Feb 43 to 5 Feb 43

(f) CAPT N. BULLOCK, PERTH R — Ceases to be attached fap to 5 CIRU and is attached fap to No 2 Cdn Gen Pioneer Coy wef 5 Feb 43

(g) A/CAPT J.T. CARVELL, R WPG RIF — Ceases to be attached fap from 2 CIRU on proceeding to Field Unit wef 5 Feb 43

(h) LIEUT J.G.W. SAVAGE, R WPG R — Ceases to be attached fap from 2 CIRU on admission to 8 Gen Hosp wef 4 Feb 43

(i) LIEUT F.E. BALSOM, C SCOT R — Ceases to be attached fap from 1 CIRU on proceeding to 7 CIRU wef 3 Feb 43

3. HOSPITAL

MAJOR M.W. ANDREW, PERTH R — Discharged from 14 Gen Hosp wef 4 Feb 43

4. LEAVE OF ABSENCE

MAJOR M.W. ANDREW, PERTH R — Granted 7 days P/L plus 48 hrs pass (total - 9 days) with money allowance in lieu of rations under PR I(0) 789 (3)&(4) 6 Feb 43 to 14 Feb 43

"B"

5. STRENGTH INCREASE

(a) B 64800 CSM LOW GOR of C	G M	TOS from 3 CDIRU wef 1 Feb 43, posted to "H" Wing
(b) A 37245 PTE POTENTIER M.I of C	A E	TOS from 3 CDIRU wef 1 Feb 43 while in 8 Gen Hosp. Absorbed in the (PE) 3 CIRU and is posted to "A" Wing

5. STRENGTH INCREASE (CONTINUED)

(e) A 21321 PTE FRY J TOS from 2 CDIRU while in 7 Gen Hosp
ESSEX SCOT R wef 1 Feb 43

(e) A 11050 PTE HANLEY G J TOS from Field Unit while in 15 Gen
PERTH R Hosp wef 2 Feb 43

(f) A 37640 A/SGT JOHNSTON R TOS from Field Unit wef 3 Feb 43
A 37513 L/SGT WILSON W J (Auth: ECH/99/6/ROT 3 INF/2 d/15 Jan
HLI of C 43)

(g) The u/m are TOS from 3 CDIRU while in hospitals shown wef 1 Feb 43:

HLI of C		
A 37611 L/SGT THURGOOD	W C	1 Cdn Conv Depot
A 58222 PTE HOWALD	H J	1 Cdn Conv Depot
A 37767 PTE CRAIG	K J	1 Cdn Gen Hosp
A 37977 PTE HUNT	E F	8 Cdn Gen Hosp
A 32865 A/CPL LAWLOR	T M	8 Cdn Gen Hosp
A 22670 PTE BULLARD	A F	15 Cdn Gen Hosp
A 38118 PTE SCOTT	G	16 Cdn Gen Hosp
A 38091 L/CPL LUCAS	F R	16 Cdn Gen Hosp
A 49730 PTE CARR	R J	16 Cdn Gen Hosp
A 37261 PTE GOOD	H T	16 Cdn Gen Hosp
A 38168 PTE HAUCK	[illegible]	16 Cdn Gen Hosp
C 4036 PTE JONES	H	16 Cdn Gen Hosp
F 40625 PTE OBED	K B	1 Cdn Spec Hosp
C 79013 PTE MOFFATT	D T	Bedford, Fort William Hosp
A 37990 PTE VAN DYKE	J R	

(h) The u/m are TOS from 3 CDIRU wef 1 Feb 43 while on courses as shown:

HLI of C		
A 37339 CPL CRAWFORD	E F	CMHQ Crs 1080 at 3 TTC
A 38377 PTE BYE	L	CMHQ Crs 1047 Ser 4
A 37819 PTE FOSS	H R	CMHQ Crs 1039 Ser 23
A 59983 PTE TALBS	L W	CMHQ Crs 1047 Ser 4

(i) The u/m are TOS from 3 CDIRU wef 1 Feb 43 while on command as shown:

HLI of C			
A 50019 PTE ADDY	R		1 Neuro Hosp
A 4380 PTE ROWAN	J E		1 Neuro Hosp
A 50591 PTE SHCAEFER	J B	(Cat.C2)	Unit Pay Det RCAPC

(j) The u/m are TOS from 3 CDIRU wef 1 Feb 43 while attached to Units as shown: HLI of C

A 37408 L/SGT(Unpaid) ROSS	O		Seaford Wpn Trng School
A 59567 PTE BEECHEY	R A	(Cat.B2)	Command Pay RCAPC
A 38334 PTE CORRIGAN	J J		2 Wing CTS
A 38341 PTE EVANS	W	(Cat.C1)	1 CBSC
A 37477 PTE LAKING	C H G		1 Plastic Surgery Team
A 37662 PTE MCILHRAVY	J		1 CORU
A 38367 PTE O'BRIEN	C L		Cdn Overseas Postal Depot

(k) The u/m are TOS from 3 CDIRU wef 1 Feb 43 while serving detention at places shown:

HLI of C		
A 50531 PTE GEROUX	A A	HM Prison, Wandsworth
B 6089 PTE KUEHNER	J M	Headley Downs
A 29562 PTE MOORE	J W D	Broadmoore Prison

(l) Ref Pt II O. 1 d/1 Feb 43 para 4(b) sheet 5 insofar as it concerns H 9357 RFN HOLDAWAY B K (R WPG RIF) after "1 Feb 43" add "while on CMHQ Crs 1047 Ser 4" and "H 9357" is amended to read "H 95557"

5. STRENGTH INCREASE (CONTINUED)

(m) The u/m are TOS from 5 CIRU (AD) wef 1 Feb 43:

PERTH R

A 70071 PTE ANDREWS A E
A 59472 PTE BALL C R
A 11041 CPL BANNERMAN W J
A 59923 PTE AITCHESON N G
B113437 PTE BEAVER R E
A103266 PTE BIEMAN E J
A 59774 PTE BURT E A
M 65116 PTE BYERS T D W
A103196 PTE CASEMORE H W
A 59992 PTE CASSEL F J
A 56956 PTE CHARRON E J
G 49020 PTE CHASE C V
A 220 PTE COSGROVE J
D 26483 PTE CROCKER W J
B 53427 PTE DAVIDSON J W
M 50665 PTE DENNING G R
A103189 PTE DIETRICH A E
A 28787 PTE DOUGLAS R J
A 67823 PTE DRUMMOND W A
A100161 PTE DRYSDALE J
A 11916 L/CPL EICHLER C B
A 11932 CPL ELGEAR N C
B130724 PTE ELLWOOD J B
A103148 PTE FERGUSON L
D 26617 PTE FINN R
A 42465 PTE FITZSIMONS N B
A 20720 PTE FITZSIMONS M L
B 48953 PTE FLANAGAN T
A 42473 PTE FORBES G P
A 56637 CPL FRANZ R R
A 641 CQMS FRASER R J
A 10063 PTE FURTNEY G W
A 11961 PTE GIBBONS N J
M 65908 PTE GERARD D J
A 56781 CQMS GOODWIN W
C 5964 PTE GREEN W
A103151 PTE GRIMM V A
A 11171 CQMS HAMILTON F G
A 11262 CPL HANDLEY J A
A103140 PTE HARDY F W
A 11296 PTE HARWOOD A G
A 56937 CPL HASKELL M E
A 11367 A/SGT HOWE S L
A 11661 PTE HUNTER C A
A 9967 PTE IUTZI S E
M 50703 PTE JACKSON K
B 68438 PTE JILLINGS T C
A 11469 PTE JOHN A E
A 42476 PTE JOHNSON D D
A 11457 PTE JOHNSTON J A G
A 56832 CPL KANE M J
A 70083 PTE KEMPSTON W J D
A 11009 CQMS KENTISH A T
A 11110 A/CPL FULCHER J A
A 11991 PTE KEWAQUOM R
A 42481 PTE KNOWLES C F
A 68232 PTE KOOBS F W
A 10062 PTE KOOKLA J J
A 56866 L/CPL KROEKER H
A 103254 PTE LAFORET A
A 59471 PTE LARABEE A C
B112558 PTE LEFEBVRE C L
A 50478 PTE LEFLER F
A 56984 PTE MACLINTOCK J W P
A 42487 PTE MCDONALD H F
B113454 PTE MCDONALD J D H
A 11590 A/SGT MCLEOD J C
B 85481 SGT MACPHERSON D G
A 68247 PTE MACK M H
A 11084 PTE MADDESS B H
D 26660 A/CPL MILNER S F
B113026 PTE MONROE K J
A 59834 PTE MORNINGSTAR E A
A 11729 SGT MCCONNELL P J S
A 11155 SGT RAINES G
A 11570 PTE MUIR E
A 11824 PTE MULLIN L J
A 11522 PTE MURTON J J
A103079 PTE PAWLEY K J H
A 11017 PTE PECKITT W R
A 64113 PTE PENDLETON W R
A 57562 CPL PENNY K S
A 11915 PTE PIROS A S
A 57218 L/CPL REUDER C A
A 23050 PTE REID G A
A 11566 PTE ROANE N A
A 11008 A/SGT ROTH C C
B112065 PTE RYE A P E
A 59999 PTE SAGER W F
A103066 PTE SAINT R N
A 103220 PTE SCHMIDT D W
A 11390 L/SGT SCHNEIDER E W
A 56740 PTE SCHOOP G E J J
A 11734 L/CPL SMITH J A
B 80057 PTE SMITH J G
A 56760 PTE SMITH W P
A 59823 PTE STEEPER O A
F 5248 PTE STEVENS A V
D110797 PTE STEWART S C
A 56690 L/SGT STONEY R M
B111554 PTE THEDORFF C W
A 12000 PTE THODY P B B
B 48957 PTE TRIBBLE J A
A 64740 PTE VERTULIA F J
A 59804 PTE WALKER A B
A 11665 PTE WATSON F M
A103256 PTE WILLIAMS W G
A 11104 PTE STRASSER D C
A 103333 PTE WOODS A J

5. STRENGTH INCREASE (CONTINUED)

(n) The u/m are TOS from 5 CIRU (AD) wef 1 Feb 43 while attending courses as shown:

PERTH R

B 64492	PTE BAKER	R	G	CMHQ 1047 at #3 TTG
A 4493	PTE BROADLEY	W	R	CMHQ 1047 at #3 TTG
A 12030	PTE BROOKS	L	A	CMHQ 1047 Ser 4 at 4 TTG
A 11642	SGT CAMERON	A	A	CMHQ 303 Ser HW22 at SAS
M 65610	PTE CLUCHEY	M E	V	CMHQ 1047 at 3 TTG
A 11381	PTE COSSTICK	F	J	CMHQ 1047 (B) at 3 TTG
A 12011	PTE DAVIDSON	V	S	CMHQ 1047 Ser 5
A 59924	PTE DODDS		D	CMHQ 1047 Ser 6 at 4 TTG
A 60001	PTE DUFTON	H	W	CMHQ 1047 Ser 4 at 4 TTG
A 44505	PTE ELLIOTT	H	J	CMHQ 1109 Ser 3 at 4 TTG
A 11263	PTE ELLIOTT	W	P	CMHQ 1047 at 3 TTG
A 59849	PTE FULLER	C	S	CMHQ 1047 Ser 4 at 4 TTG
A 12031	PTE GROVER	T	G	2 Pdr School (5 CIRU(AD) Crs)
A 10066	PTE HAYS	R	G	CMHQ 1033 Mil Engineering
A 11304	L/CPL HEINBUCK	J	W	CMHQ 802 Ser 12 at CTS
A 11024	SGT HICKS	V	G	OCTU Crs 148 Trng Bde
A 59830	PTE LEAMEN	J	W	CMHQ Crs 1047 Ser 6 at 4 TTG
A 11410	PTE LOCKING	R	H	CMHQ 1109 Ser 3 at 4 TTG
A 11114	SGT MCKNIGHT	J	F	OCTU Crs 148 Trng Bde
A 11325	SGT NADON		L	CMHQ 807 Ser 12 at CTS
A 11648	PTE PUGH	P	K	CMHQ 1047 at 3 TTG
A 11914	PTE ROSSO	J	R	CMHQ 1047 at 3 TTG
A 11499	PTE SHEAN	W	J	CMHQ 1047 at 3 TTG
L 58632	PTE STORRY	J	C	CMHQ 1047 (b) at 3 TTG
A 11557	PTE SWINGHAMMER		L	CMHQ 1047 at 3 TTG
A 67811	PTE TSCHIRHART	S E	L	CMHQ 1047 Ser 4 at 4 TTG
A 11595	PTE WEIR	J	H	CMHQ 1047 at 3 TTG
A 59755	PTE WILBY	D	E	CMHQ 1047 Ser 4 at 4 TTG
A 11026	CPL WILLMORE		W	CMHQ 824 Ser 6 at CTS
A 11878	PTE WOOLEY		A	CMHQ 1047 at 3 TTG

(o) The u/m are TOS from 5 CIRU (AD) wef 1 Feb 43 while attached to Units shown:

PERTH R

A 11425	PTE ASHCROFT	R	A	Att'd fap to HQ Sqn 5 C&D
A 67845	PTE MURPHY	L	J	Att'd to 7 Constr RCE Coy
B 79647	PTE STEWART	W	C	Att'd fap to CMHQ (AG Stat)

(p) The u/m are TOS from 5 CIRU (AD) wef 1 Feb 43 while in Hospitals shown:

PERTH R

A 349	PTE ADAIR	F W	A	14 Cdn Gen Hosp
A 11634	PTE AGNEW		A	1 Cdn Gen Hosp
B112896	PTE ANDREWS	D	H	2 CMC
C 58167	PTE BROWN	J	J	15 Cdn Gen Hosp
C 40015	L/CPL CASAULT	J	P	1 Cdn Gen Hosp
A 59394	PTE CASWELL	W	W	2 CMC
A 11405	PTE CLARK		K	14 Cdn Gen Hosp
A 11016	PTE ELLIS		H	14 Cdn Gen Hosp
A 59743	PTE GARDNER	E	W	15 Cdn Gen Hosp
A 11980	PTE GATENBY	T	R	14 Cdn Gen Hosp
A 11856	PTE GREENSIDES	W	E	10 Cdn Gen Hosp
A 11048	A/SGT HARVEY	C	L	17 Cdn Gen Hosp
A 10095	PTE LEE	H	G	3 CMC
A 11879	PTE MCROBB	J	W	1 Cdn Gen Hosp
A 11907	PTE MANSER		C	1 Cdn Gen Hosp

5. STRENGTH INCREASE (CONTINUED)

(p) PERTH R (Cont'd)

A 11722 PTE MOTE H B		1 Cdn Gen Hosp
C 5963 PTE REEVES R F		1 Cdn Conv Depot
A 11085 L/CPL SCHELLENBERGER O C		14 Cdn Gen Hosp
A 11726 SGT SMITH A E		14 Cdn Gen Hosp
A 11403 PTE SODERBERG J R		14 Cdn Gen Hosp
A 9782 PTE SOLOMAN W F		1 Neuro Hosp
C 58005 PTE STEWART D E		1 Cdn Conv Depot

(q) The u/m are TOS from 5 CIRU (AD) wef 1 Feb 43 while serving Detention in Bks shown:

PERTH R

A 11291 PTE BARNES J T		1 Cdn Corps Det'n Bks
A 11691 PTE BARR R T		1 Cdn Corps Det'n Bks
C 40208 PTE DALLAIRE L A		1 Cdn Corps Det'n Bks
C 40191 PTE KIRK K E H		1 Cdn Corps Det'n Bks
A 11516 PTE LECLARE J E		1 Cdn Corps Det'n Bks
B 41051 PTE MITTON W J		In Civil Custody

(r) The u/m are TOS from 5 CIRU (AD) wef 1 Feb 43 while on P/L Leave:

PERTH R

B 38484 PTE DAVEY F L	A 60000 PTE MURRAY	J P
A 11037 SGT FURZER W V	A 11427 PTE SCHWARTZ	F J
A 59679 PTE HUBER L J	A 59443 PTE STERLING	G W

6. ATTACHMENTS

(a) P 15344 CSM HOVEY B N A 71045 PTE SMITH C D RCR		Attached fap from RCR Fd Unit wef 4 Feb 43
(b) A 22456 PTE ASCOTT E W ESSEX SCOT R		Attached fap from Field Unit wef 4 Feb 43
(c) H 41868 RFN LAFORTE P H 40609 RFN THOMAS A R WPG RIF		Attached fap from 2 CIRU for period 2 Feb 43 to 5 Feb 43
H 41494 RFN THOMPSON I A M H 17752 RFN SASYNIUK N R WPG RIF		Attached fap from 2 CIRU for period 3 Feb 43 to 5 Feb 43 on discharge from 1 Con
H 40504 CQMS PORTER F J S R WPG RIF		Attached fap from 2 CIRU for period 4 Feb 43 to 5 Feb 43
(d) L 27316 SGT ANTOINE J REGINA RIF R		Attached fap from 2 CIRU for period 2 Feb 43 to 5 Feb 43 on discharge from 17 Gen
L 64021 RFN ACTON W REGINA RIF R		Attached fap from 2 CIRU for period 4 Feb 43 to 5 Feb 43 on return from CMHQ Crs 10364 (Base Carpenters) at 6 TTG
M 31702 RFN MCGRATH S E REGINA RIF R		Attached fap from 2 CIRU for period 4 Feb 43 to 5 Feb 43 on return from CMHQ Crs 1047 Ser 4 (Dr Mechs) at 4 TTG
L 27222 RFN GOULD C R REGINA RIF R		Attached fap from 2 CIRU wef 6 Feb 43
(e) K 62725 PTE BARRELL J W K 65080 PTE STARK L H K 71445 PTE FILGATE R A C SCOT R		Attached fap from 1 CIRU wef 1 Feb 43 on discharge from 16 Gen Hosp

6. ATTACHMENTS (CONTINUED)

(e)	K 57614 PTE IVERS M 12198 PTE WRABCHEK C SCOT R	H G M	Attached fap from 1 CIRU wef 2 Feb 43 on discharge from 16 Gen Hosp
	K 57458 PTE STOLZENBERG C SCOT R	H	Attached fap from 1 CIRU wef 4 Feb 43 on discharge from 16 Gen Hosp
	M 12246 PTE SCHOULTS C SCOT R	D R	Attached fap from 1 CIRU wef 4 Feb 43 on return from CMHQ Crs 1047 Ser 4 (Dr Mechs) at 4 TTG
	K 63164 PTE KRIMBILL C SCOT R	H V	Attached fap from 1 CIRU wef 1 Feb 43 on return from AWL at 2035 hrs 1 Feb 43
	K 73857 CQMS GIDDY C SCOT R	M E	Attached fap from 1 CIRU for period 1 Feb 43 to 2 Feb 43
	K 62804 PTE GAGNE K 57273 L/CPL JEWELL C SCOT R	R H L	Attached fap from 1 CIRU wef 2 Feb 43
	K 45286 PTE KINSEY LAKE SUP R	K H R	Attached fap from 1 CIRU wef 3 Feb 43
	K 63206 PTE STINSON C SCOT R	J G W	Attached fap from 1 CIRU wef 3 Feb 43
	K 63032 PTE JORDON K 62240 SGT LEEDAM K 73815 PTE NORTON C SCOT R	C A C L R J	Attached fap from 1 CIRU wef 4 Feb 43
(f)	B 65939 RFN PICHE QOR of C	S	Attached fap from 4 CIRU for period 1 Feb 43 to 2 Feb 43 on discharge from 8 Gen Hosp
(g)	E 10369 PTE REMILLARD R de CHAUD	P	Attached fap from 6 CIRU for period 1 Feb 43 to 5 Feb 43 on discharge from 15 Gen Hosp
	D 59291 PTE DUPERRON R de CHAUD	A	Attached fap from 6 CIRU for period 4 Feb 43 to 5 Feb 43 on return from CMHQ Crs 1036A (Base Carpenters) at 6 TTG
	D106197 PTE MARTIN R de CHAUD	A	Attached fap from 6 CIRU for period 4 Feb 43 to 5 Feb 43 on return from CMHQ Crs 1071 Ser (a) (Equipment Repairers) at 3 TTG
	C 31630 PTE COTE RCASC	H	Attached fap from 6 CIRU for period 1 Feb 43 to 5 Feb 43
(h)	C 53097 PTE MCGREGOR SD&G HIGHRS	K	Attached fap from 5 CIRU wef 1 Feb 43 on discharge from 16 Gen Hosp
	C 40817 PTE MORRISON SD&G HIGHRS	J	Attached fap from 5 CIRU wef 4 Feb 43 on discharge from 14 Gen Hosp
	C 65003 PTE MILLER SD&G HIGHRS	F	Attached fap from 5 CIRU wef 4 Feb 43 on return from CMHQ Crs 1036A (Base Carpenters) at 6 TTG
	C 36727 PTE BRIDGE C 40778 SGT CAREY C 57558 PTE COVILLE SD&G HIGHRS	4 J E W	Attached fap from 5 CIRU wef 2 Feb 43

6. ATTACHMENTS (CONTINUED)

(i) Ref Pt II O. 1 d/1 Feb 43 para 5(l) sheet 18 "5 CIRU" is amended to read "2 CIRU"

Ref Pt II O. 1 d/1 Feb 43 para 5(q) sheet 25 delete "the u/m are SOS to 7 CIRU wef 31 Jan 43"

Ref Pt II O. 1 d/1 Feb 43 para 5(p) sheet 24 insofar as it concerns E 11108 PTE BOUTIN C (R de CHAUD) is Cancelled

Ref Pt II O. 1 d/1 Feb 43 para 5(q) insofar as it concerns G 22585 PTE SOMERS M C Sheet 26, and G 18448 L/CPL DEROCHE A (N SHORE R) sheet 25 are Cancelled

(j) The u/m are attached fap from 1 CIRU wef 4 Feb 43:

C SCOT R

K 62291 L/SGT ROBINSON	B A	K 62158 CPL AITKEN	J S
P 7516 L/SGT ROEDER	P A	K 62224 CPL DELUCE	F
K 57146 L/SGT DICKSON	R	K 57324 CPL BARBER	G W
K 57822 CPL ALLAN	W J	H 12309 CPL STEVENS	F
K 57428 CPL WEIR	R		

(k) The u/m are attached fap from 2 CIRU for period 3 Feb 43 to 5 Feb 43:

REGINA RIF R

L 27767 CPL BIRD	L E	L 28288 RFN PRITCHARD	P
L 27936 RFN BOWIE	G A	L 27452 RFN FOURNIER	L
L 27731 RFN MCARTHUR	A N	L 27625 L/CPL REALFF	W B
L 27174 CPL FRIESEN	A	L 27952 RFN MACDONALD	R T
L 27909 RFN ERDMAN	C O	L 27373 L/CPL ANDERSON	H E
L 27796 RFN MOORE	J W	L 27328 RFN MCAULEY	W G
L 27162 CPL THOMSON	J R	L 27526 RFN POLLARD	H L
L 27632 A/CPL KEYES	J B	L 28269 RFN KREGER	H
L 27503 RFN CHARETTE	J	L 28014 RFN KALLICHUK	L L
L 28195 RFN THORNHILL	G	L 27744 CPL JETHUNDSON	C M
L 27593 CPL HAMPTON	E M	H 17273 RFN BONWICK	H W
L 27776 RFN MACDONALD	R J	L 27444 RFN GALE	B E
L 27309 CPL WOOD	T V		

7. COURSES

H 95557 RFN HOLDAWAY R K	Returned from CMHQ Crs 1047 Ser 4 (Dr Mechs) at 4 TTG wef 4 Feb 43
R WPG RIF (PE)"I" Wing	
K 47586 PTE MURDOCK J	
C SCOT R (PE)"A" Wing	
A 38377 PTE BYE L	
A 59983 PTE TALES L W	
HLI of C	

8. STRENGTH DECREASE

A 38247 L/SGT HINN H J	Ceases to be attached fap to Field Unit and is SOS to 1 NETD wef 3 Feb 43 (Auth: CMHQ/34/OCTU/1 HQS/23 d/ 25 Jan 43)
HLI of C	

9. ATTACHMENTS

(a) C 79080 PTE BUFFAM L H SD&G HIGHRS	Ceases to be attached fap from 5 CIRU on admission to 3 CMC wef 1 Feb 43
(b) C 79193 PTE LIVINGSTONE R A SD&G HIGHRS	Ceases to be attached fap from 5 CIRU on admission to 3 CMC wef 4 Feb 43

9. ATTACHMENTS (CONTINUED)

(c) The u/m cease to be attached fap from 5 CIRU on proceeding to HQ CRU wef 3 Feb 43:

C 75505 PTE DECOSTE	R	SD&G HIGHRS
C 79201 PTE DRADER	G K	SD&G HIGHRS
C 79309 PTE HEINTZMAN	J M	SD&G HIGHRS

(d) H 6491 RFN FREESE R WPG RIF — M L — Ceases to be attached fap from 2 CIRU on admission to 8 Gen Hosp wef 4 Feb 43

10. HOSPITAL

(a) Admissions

E 11108 PTE BOUTIN R de CHAUD	C	3 CMC	1 Feb 43
G 22585 PTE SOMERS	M C	15 Gen	1 Feb 43
G 18448 L/CPL DEROCHE N SHORE R	A	8 Gen	1 Feb 43
C 79080 PTE BUFFAM SD&G HIGHRS	L H	3 CMC	1 Feb 43
K 65257 PTE PRINCE GEN LIST	H	8 Gen	3 Feb 43

Discharges

(b) H 64671 L/CPL SOBKOWICZ R WPG RIF (PE)"I" Wing	J C	8 Gen	1 Feb 43
B 88185 PTE BALDWIN RCR	P	16 Gen	4 Feb 43
A 21321 PTE FRY ESSEX SCOT R	J	7 Gen	4 Feb 43
A 37865 A/CPL LANLOR	T M	8 Gen	1 Feb 43
A 37611 L/SGT THURGOOD HLI of C	W C	1 Con	2 Feb 43
A 71045 PTE SMITH RCR	C E	15 Gen	4 Feb 43
A 22456 PTE ASCOTT ESSEX SCOT R	E W	15 Gen	4 Feb 43

11. LEAVE OF ABSENCE

(a) The u/m are granted 7 days P/L with money allowance in lieu of rations under FR&I(O) 789 (3)&(4) as shown:

H 41411 RFN BUSCH R WPG RIF (PE)"A" Wing	C	4 Feb 43	to	10 Feb 43
B 74693 PTE FOWLER C SCOT R (PE)"A" Wing	C A	6 Feb 43	to	12 Feb 43

(b) The u/m are granted 7 days P/L plus 48 hrs pass (total - 9 days) with money allowance in lieu of rations under FR&I(O) 789 (3)&(4) as shown:

M 17455 PTE GAW EDMN R (PE)"A" Wing	R G	6 Feb 43	to	14 Feb 43
L 27824 L/CPL CULLEN	W T	5 Feb 43	to	13 Feb 43
L 51056 RFN SCHUMANN	G C	6 Feb 43	to	14 Feb 43
L 27681 RFN WATERS REGINA RIF R (PE)"A" Wing	A F			
K 37533 PTE BAINES C SCOT R (PE)"A" Wing	E P	6 Feb 43	to	14 Feb 43
G 22470 PTE HICKEY N SHORE R (PE)"A" Wing	J A D	6 Feb 43	to	14 Feb 43

11. LEAVE OF ABSENCE (CONTINUED)

(b)	C 42754 L/CPL BROWN C 53081 PTE POOLE SD&G HIGHRS (PE)"A" Wing	C F	D	6 Feb 43	to 14 Feb 43
	F 79070 PTE MILLENOR NTH NS HIGHRS (PE)"A" Wing	M	W	6 Feb 43	to 14 Feb 43

12. DETENTION

(a)	A 50531 PTE GEROUX HLI of C	A	A	Released from HM Prison, Wandsworth wef 1 Feb 43
(b)	A 21836 PTE PARENT HLI of C		A	Admitted to Headley Downs Detention Bks wef 4 Feb 43

13. QUALIFICATIONS

The u/m qualified at CMHQ Crs 1036A (Base Carpenters) at 6 TTG wef 3 Feb 43 (Auth: 6 TTG/CL/645/1 d/27 Jan 43):

L 64021 PTE ACTON	W	REGINA RIF R
D 59291 PTE DUPERRON	A	R de CHAUD
C 65003 PTE MILLER	F	SD&G HIGHRS

14. PAY & ALLOWANCES

H 64671 L/CPL SOBKOWICZ R WPG RIF (PE)"I" Wing	J	To receive increase in Regt'l Rates of Pay from $1.50 to $1.60 per diem wef 1 Jan 43 (Auth: G.O. 486/42)

/WIS

(W.E. THORNE) CAPT
RECORDS OFFICER
3 CDN INF REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

CERTIFIED TRUE COPY

(W.S. Thorne) Capt
Records Officer, 3 Cdn. Inf. Reinf. Unit.

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Part II Orders by

COLONEL J.A. MCINTOSH, D.S.O., ACTING COMMANDING OFFICER

Part II Order No 11
Dated 17 Feb 43

Last Order No 10
Dated 16 Feb 43

"A"

1. ATTACHMENTS

(a) LIEUT C.M. JEFFS
SD&G HIGHRS — Attached fap from 5 CIRU wef 13 Feb 43 on return from CMHQ Crs 519 Ser 20 (Offrs Vehicle Mastership) at 1 CASCRU

(b) MAJOR C.N. WIGHTMAN
C SCOT R — Ceases to be attached fap from 1 CIRU for period 5 Feb 43 to 14 Feb 43 while on Privilege Leave

(c) LIEUT J.B. CURRAN
C SCOT R — Ceases to be attached fap from 1 CIRU on posting to 2nd Echelon wef 16 Feb 43 (Auth: ECHM/HS/4623 d/15 Feb 43)

(d) LIEUT J.K. MACMILLAN
C SCOT R — Ceases to be attached fap from 1 CIRU on posting to 1 CGRU wef 16 Feb 43 (Auth: DGHQ d/16 Feb 43)

(e) LIEUT J. INCE
NTH NS HIGHRS — Ceases to be attached fap from 7 CIRU on proceeding to 1 CBSC wef 16 Feb 43 (Auth: DGHQ d/16 Feb 43)

"B"

2. STRENGTH INCREASE

(a)

A 21999 PTE BOYLE ESSEX SCOT (Cat.C2)	R L	TOS from 2 CDIRU wef 1 Feb 43 while attached fap to HQ CRU. Posted to "H"
A 21909 PTE CROCKETT ESSEX SCOT	G H	TOS from 2 CDIRU wef 1 Feb 43 while in 14 Gen Hosp. Posted to "H" Wing
A 22185 PTE FIGLIOLA ESSEX SCOT	T J	TOS from 2 CDIRU wef 1 Feb 43 while attached fap to 1 CIRU. Posted to "H"
A 21915 PTE GOW	E R	TOS from 2 CDIRU wef 1 Feb 43 while
A 82053 PTE MCKEE ESSEX SCOT	H M	in 1 Gen Hosp. Posted to "H" Wing
A 82268 PTE WILSON ESSEX SCOT	N W	TOS from 2 CDIRU wef 1 Feb 43 while attending CMHQ Crs 626 Ser 8 (Driver i/c). Posted to "H" Wing
L 64926 PTE HICKS ESSEX SCOT	F R	TOS from Field Unit wef 16 Feb 43 (underage) (Auth: CMHQ/REC/L/64926/ RES d/18 Jan 43). Posted to "H" Wing
A 23233 PTE TRIS ESSEX SCOT	R V	TOS from 2 CDIRU wef 1 Feb 43, and attached fap to 2 CIRU for period 1 Feb 43 to 4 Feb 43. Posted to "H" Wing

(b) Ref Pt II O. 4 d/9 Feb 43 para 5(j) insofar as it concerns A 21966 PTE FAIRBANKS W (ESSEX SCOT) "in 15 Cdn Gen Hosp" is amended to read "attached to 15 Cdn Gen Hosp".

Ref Pt II O. 4 d/9 Feb 43 para 5(j) insofar as it concerns A 21296 CPL MILLIGAN W (ESSEX SCOT) "8 Gen Hosp" is amended to read "1 Con Depot"

Ref Pt II O. 4 d/9 Feb 43 para 5(i) insofar as it concerns B 87782 PTE BARNES H H (ESSEX SCOT) "No 1 NETD" is amended to read "attached fap to No 1 Neuro"

Ref Pt II O. 4 d/9 Feb 43 para 5(k) insofar as it concerns A 20291 L/CPL HUTCHESON J J A (ESSEX SCOT) "CMHQ Crs 808 Ser 18 (3" M)" is amended to read "CMHQ Crs 803 Ser 18 (3" M)"

(c) Ref Pt II O. 4 d/9 Feb 43 para 5(k) insofar as it concerns A 21803 PTE STANTON S R (ESSEX SCOT) after "Command Course" add "at EASE Army WTS"

2. STRENGTH INCREASE (CONTINUED)

(d) Ref Pt II O. 4 d/9 Feb 43 para 5(g) insofar as it concerns the u/m is Cancelled:

A 21709 PTE CROCKETT G H ESSEX SCOT
A 21915 PTE GOW E R ESSEX SCOT
A 82053 PTE MCKEE H M ESSEX SCOT

Ref Pt II O. 4 d/9 Feb 43 para 5(f) insofar as it concerns the u/m is Cancelled:

A 21999 PTE BOYLE R L ESSEX SCOT
A 22186 PTE FIGLIOLA T J ESSEX SCOT
A 82268 PTE WILSON N W ESSEX SCOT

3. ATTACHMENTS

(a) B 88793 CSM TURNER J H Ceases to be attached fap to 7 CIRU
HLI of C wef 15 Feb 43

(b) K 62749 PTE GORVITCH I M Attached fap from 1 CIRU wef 15 Feb
C SCOT R 43 on discharge from 8 Gen Hosp

(c) K 62016 CPL LOGAN L H Attached fap from 1 CIRU wef 15 Feb
K 63089 PTE RILEY A 43 on discharge from 16 Gen Hosp
C SCOT R

(d) Ref Pt II O. 10 d/16 Feb 43 para 6(a) insofar as it concerns P 17160 PTE ROSS A D T (RCR) is Cancelled

4. STRENGTH DECREASE

(a) A 6046 PTE SPELLER H W SOS to "D" Group HQ,CRU wef 16 Feb
R C R 43 (Auth: DGHQ/6-C-HQ d/11 Feb 43)

(b) A 37927 PTE HUNT E F SOS to 1 CSRU wef 10 Feb 43 on dis-
HLI of C charge from 1 Gen Hosp pending trans-
fer to RCCS (Auth: CRU/6-C-TRAN/H
(A.4) d/16 Jan 43)

5. ATTACHMENTS

(a) K 57059 SGT BUTT H M Ceases to be attached fap from 1 CIRU
C SCOT R wef 6 Feb 43 on proceeding on Privil-
ege Leave

(b) The u/m cease to be attached fap from 1 CIRU on posting to No 1 CGRU wef 16 Feb 43 (Auth: DGHQ d/16 Feb 43):

K 62323 CSM HUNTER J C SCOT R
K 74579 PTE CLACK R H C SCOT R

(c) The u/m cease to be attached fap from 2 CIRU on posting to No 1 CGRU wef 16 Feb 43 (Auth: DGHQ d/16 Feb 43):

H 40995 CQMS STEELE J F R WPG RIF
H 38698 A/SGT SQUAREBRIGGS R W R WPG RIF

COURSES

B 63554 A/SGT STEVENS A (Cat.C1) Proceeded on CIHQ Crs 303
QOR of C (PE)"I" Wing Ser HW 23 (Pl Weapons) at SAS wef
A 3619 CPL BUCK C I 16 Feb 43
R C R

HOSPITAL

Transfers

A 82130 PTE HENDERSON C J 15 Gen to 10 Gen 12 Feb 43
ESSEX SCOT

Discharges

C 57589 A/CSM HAIG G D 8 Gen 15 Feb 43
SD&G HIGHRS (PE)"I" Wing

7. HOSPITAL (CONTINUED)

(b) B 41722 PTE BROWN J 8 Gen 15 Feb 43
A 6124 PTE LAUMAILLIER N E 1 Gen 16 Feb 43
A 3598 PTE MURRAY E 15 Gen 15 Feb 43
A 4319 PTE STROH H E 14 Gen 15 Feb 43
R C R

A 37261 PTE GOOD H T 17 Gen 16 Feb 43

8. ABSENT WITHOUT LEAVE

A 11016 PTE ELLIS H AWL from 2359 hrs 14 Feb 43
PERTH R

9. DETENTION

A 22339 PTE O'NEIL J W Released from Headley Downs Detention
ESSEX SCOT Bks wef 16 Feb 43

10. RATION ALLOWANCE:

The u/m are Republications of No 1 District Depot (AF) Part II O. No 6A d/6 Jan 43 para 5:

(a) The u/m are granted ration allowance 50¢ per diem, from 0900 hrs 2 Jan until 1200 hrs 7 Jan 43, (5 days) FR&I 186(4):

KENT REGIMENT

A 49511 CPL ANDERSON J L
A 50375 CPL BAKER H I
A 50485 PTE BALTZER C A
A 49857 L/CPL BALDWIN H F
A 50327 CPL BUTLER W D
A 49974 L/CPL BUNDA W F
A 50309 PTE BREWER J C
A 49738 PTE BROUSSEAU G K
A 49659 PTE BUTLER I C
A 4334 PTE BUTLER L O
A 50103 PTE BUTLER J M
A 49849 PTE CASEY W B
B 80090 PTE COBURN A C
A 50306 PTE COLES F G
A 50296 PTE CRAWFORD S
A 49757 PTE CURRAN J F
A 50003 PTE DEWAGNER M
A 55323 PTE DOAN W C
A 49523 PTE DROHAN J P
C 42933 PTE FABIAN W H
A 50198 L/CPL FLYNN E D
A 49657 L/CPL FOULIS G E
A 50522 PTE FOX J R
A 50352 PTE GEFFAN L A
A 49774 L/CPL GELINAS R A
A 50345 CPL GEROUX H H
A 50330 PTE GEROUX H J
A 50329 PTE MCCART L L
A102001 PTE MCDONALD B C
A 50290 PTE MCDONALD J A
A 50527 PTE MCINTYRE W
A 50168 PTE MADEAU A J
A 49631 SGT MELMES J
A 50210 PTE MICOL W L
A 50507 PTE OERTON D R
A 50404 PTE PARKER J E
A 22892 PTE PARKER W A

A 50511 PTE GILLETT R R
A 49611 PTE GIRARD E J
A 49580 L/CPL GIRARD C W
A 50555 PTE GOLDER C
A 50208 PTE GORDON J M
A 50279 PTE GORDON T
A 49911 PTE GRAY S
A 50137 PTE HARMSWORTH S R
A 50302 PTE HEDMAN F
A 50322 CPL HENDRIE J W
A 50022 PTE HILLER V B
A 50390 PTE KNISTER C E
D135626 PTE LALONDE L
A 50315 PTE KRITZER L W
A 50351 PTE LALONDE D R
A 59317 PTE LETOURNEAU L H J
A 50133 PTE LOZON D J
A 50611 PTE MAHANEY R B
A 50350 PTE GARROD O B
A 50346 PTE SIMPSON H T
A 50124 PTE MARCHAND J J
A 49541 PTE MARSHALL J W
B127510 PTE MISKIW H A
A 50496 PTE MORGAN A P
A 50205 PTE MORTON A T
A 50278 L/CPL MCCANN E J
A 49747 PTE MCCALMONT J A
A 50474 PTE PALMER W H
A 50300 PTE PATTERSON C W
A 49780 PTE PATRICK O S
A 49927 PTE PRIESTLY N H
A 49621 PTE PROUDY W P
A 50255 CPL PURDIE J P
A 50605 PTE PETERS R W
A 49953 PTE SAWYER H J
A 49848 PTE SCHMADL C
A 49734 PTE SLAVIK S

10. RATION ALLOWANCE (CONTINUED)

(a) A 49767 CPL STOTHERS D A 49675 PTE TROJEK
A 50403 PTE SUTHERLAND W A A 50451 PTE VANDEVELDE J P
A 50349 PTE TOULOUSE C L A 49617 PTE VIDLER P
A 49992 PTE TOWART G M A 50483 PTE WALKER G C
A 50241 CPL TRANTER S H A 49961 PTE WHITLOCK R D
A 50584 PTE ZEBEDEE J A J B

(b) The u/m are granted ration allowance, 50¢ per diem, from 1200 hrs 1 Jan 43 to 0900 hrs 7 Jan 43, (6 days), FR&I 186(4):

OXFORD RIFLES

A 38295 RFN ASHFORD
A 82052 SGT ARCHER R L A 82246 RFN MORDEN
A 82139 RFN BENDER J F A 82008 CPL NEWMAN E B
A 82160 RFN BERGEN E I A 82199 RFN RIEHL J C
A 82169 RFN CAREY G A 82256 CPL ROSEN G A
A 82123 RFN CARTIER V H A A 82290 RFN SCHAEFER R H
A 82311 RFN CLARK R E A 82051 RFN SIM L A J
A 82156 RFN COONEY H L A 82108 CPL TELFORD G W
A 82078 RFN CRAWFORD G A A 82061 RFN WEEKS W G
A 82234 RFN DARRACH R A A 82179 RFN HAWKES K A
A 82041 RFN DEADMAN C C A 82155 RFN KEW R I
A 82308 RFN EVERITT R E A 82194 RFN MEAGHER H L
A 82172 RFN FOSTER N E A 82055 RFN NEWMAN E P
A 82189 RFN KENNY J F A 82092 RFN PARKER R J
A 82039 RFN HARMER L G A 82096 RFN ROGERS H L
A 82183 RFN HINSPERGER J R A 82103 RFN ROUTLY W C
A 82241 RFN LABADIE H J A 82050 RFN SIM W S
A L A 82203 RFN STUDIMAN A M
A 82075 RFN TICE J H C R

11. REMISSION OF SENTENCE

A 22339 PTE O'NEIL
ESSEX SCOT J W Granted 38 days remission of sentence of 120 days Detention awarded 21 Nov 42 (Auth: Rules for DB & MP Nos 126 & 129)

12. PUNISHMENTS

(a) A 22245 PTE ELLWOOD
ESSEX SCOT W AA 15(1)
AWL from 2200 hrs 14 Feb 43 to 0630 hrs 15 Feb 43 (Absent 8 hrs 30 mins)
Awarded 10 days C.B. on 15 Feb 43
Forfeits 1 days Pay FR&I 149(1)(a)

(b) B 55702 PTE MARTIN
ESSEX SCOT J A AA 15(1)
AWL from 2359 hrs 14 Feb 43 to 0130 hrs 15 Feb 43 (Absent 1 hr 31 mins)
Awarded 10 days C.B. on 15 Feb 43

(c) A 82167 PTE BRUNELLE
HLI of C J AA 15(1)
AWL from 1330 hrs 11 Feb 43 to 2200 hrs 11 Feb 43 (Absent 8 hrs 30 mins)
Awarded 10 days C.B. on 12 Feb 43
Forfeits 1 days Pay FR&I 149(1)(a)

(d) A 37811 PTE DUNLOP
HLI of C J C AA 15(1)
AWL from 1330 hrs 11 Feb 43 to 1700 hrs 11 Feb 43 (Absent 3 hrs 30 mins)
Awarded forfeiture of 1 days Pay FR&I 149(2) and 10 days C.B. on 12 Feb 43

12. PUNISHMENTS (CONTINUED)

(e) A 38365 PTE GOVER HLI of C	G E	AA 15(1) AWL from 2200 hrs 14 Feb 43 to 0630 hrs 15 Feb 43 (Absent 8 hrs 30 mins) Awarded 10 days C.B. on 15 Feb 43 Forfeits 1 days Pay FR&I 149(1)(a)
(f) A 37966 PTE RITCHIE HLI of C	N E	AA 15(1) AWL from 1330 hrs 11 Feb 43 to 1700 hrs 11 Feb 43 (Absent 3 hrs 30 mins) Awarded forfeiture of 1 days Pay FR&I 149(2) and 10 days C.B. on 12 Feb 43
(g) B127559 PTE TILLING HLI of C	J E	AA 15(1) AWL from 1330 hrs 11 Feb 43 to 2200 hrs 11 Feb 43 (Absent 8 hrs 30 mins) Awarded 10 days C.B. on 12 Feb 43 Forfeits 1 days Pay FR&I 149(1)(a)
(h) A 11029 PTE BECKNER PERTH R	H W	AA 15(1) AWL from 2200 hrs 14 Feb 43 to 0630 hrs 15 Feb 43 (Absent 8 hrs 30 mins) Awarded 10 days C.B. on 15 Feb 43 Forfeits 1 days Pay FR&I 149(1)(a)
(i) A 11932 CPL ELGEAR PERTH R	N C	AA 40 Severe Reprimand on 15 Feb 43
(j) A 57562 CPL PENNY PERTH R	K I	AA 40 Severe Reprimand on 15 Feb 43

/WTS

for (W.E. THORNE) CAPT
A/RECORDS OFFICER
3 CDN INF REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

Certified True Copy
(C.E. Thorne) Capt.
Records Officer,
3 Cdn. Inf. Reinf. Bn.

Exhibit "C"

CANADIAN INFANTRY REINFORCEMENT UN

D A I L Y O R D E R S P A R T I

Last Order
No 30
12 Mar 43

issued by
A/COLONEL J.A. MCINTOSH, D.S.O.
OFFICER COMMANDING

"A"

1. ATTACHMENTS
CAPT C.A. BEAN — Attached fap to 7 CIRU for period 9 Mar 43 to 12 Mar 43
HLI of C

"B"

2. STRENGTH INCREASE

(a) A 5032 L/SGT WALKER W J — (Clerk Group "C") TOS from Fd Unit while in 1 Gen Hosp wef 3 Mar 43
RCR

(b) A 3265 PTE BINDNER R A — TOS from Fd Unit while in 1 Gen Hosp wef 2 Mar 43
RCR

(c) A 4021 PTE CONROD C W — TOS from Fd Unit while in 14 Gen Hosp wef 29 Feb 43
RCR

(d) A 3121 PTE NASH G R — TOS from Fd Unit while in 1 Gen Hosp wef 4 Mar 43
RCR

(e) A 5016 PTE BERNARDO C E — TOS from 2 Cdn Gen Pion Coy wef 11 Mar 43 Posted as reinforcement to "H" WING (Auth: CMHQ 4/ALIENS/1/2 (A.G.2b) d/10 Mar 43)
RCR

(f) A 21474 PTE JORDAN G S — TOS from 1 NETD wef 12 Mar 43 Posted as reinforcement to "H" WING
ESSEX SCOTTISH R

(g) D 61495 PTE ERAZOLA F — TOS from 2 CDIBU while in 15 Gen Hosp wef 1 Feb 43
ESSEX SCOTTISH R

(h) A 22067 SGT MILLS W E — TOS from Fd Unit while in 1 Gen Hosp wef 29 Feb 43
ESSEX SCOTTISH R

(i) A 21292 PTE PATE G T — TOS from Fd Unit while in 1 Gen Hosp wef 4 Mar 43
ESSEX SCOTTISH R

(j) A 61002 PTE TAPLAY P — TOS from Fd Unit while in 8 Gen Hosp wef 7 Mar 43
ESSEX SCOTTISH R

(k) Ref Pt II O 3 d/8 Feb 43 para 6(c) insofar as it concerns A 38121 SGT SHERIFFS R (HLI of C) "A 38121" is amended to read "A 37182" and "SHERIFFS" is amended to read "SHIRREFFS"

3. ATTACHMENTS

(a) A 5031 PTE LLOYD F W — Attached fap from Fd Unit wef 12 Mar 43
RCR

(b) A 22971 L/CPL MATTON G J — Attached fap to 1 N.E.T.D. wef 12 Mar 43 (TEMPORARY) (Auth: CMHQ (A02b) 408/CLERKS/1 (SC 4) 4/9 Mar 43)
ESSEX SCOTTISH R

(c) A 23207 CPL PANDORF M — Ceases to be attached fap to ESSEX SCOTTISH Fd Unit wef 11 Mar 43 (Auth: Umpires Exercise Sparton)
ESSEX SCOTTISH R

(d) A 11796 PTE NOBLE V J — Ceases to be attached fap to 2 CDN ARMY on admission to 8 Gen Hosp wef 10 Mar 43
PERTH R

(e) Ref Pt II O 29 d/11 Mar 43 para 3(c) insofar as it concerns A 3265 PTE BINDNER R A (RCR) is Cancelled

(f) Ref Pt II O 12 d/18 Feb 43 para 9(b) insofar as it concerns D 61495 PTE ERAZOLA F (ESSEX SCOTTISH R) is Cancelled

4. COURSES

The u/m returned from CMHQ Crs 626 Ser 10 (D&M) wef 12 Mar 43:

B 88285 PTE BISHOP	H J		RCR
A 57559 PTE NAYLOR	A A		RCR
A 3578 PTE WOOD		D	RCR
A 21998 PTE NAPIER	J P		ESSEX SCOTTISH R

5. PUNISHMENTS

(a) A 4060 PTE BENTLEY W E AA 15(1) AWL from 2130 hrs 27 Feb 43 to 1435 hrs 10 Mar 43 (Absent 11 days 17 hrs 5 mins)
RCR Awarded 21 days Fd Punishment on 12 Mar 43
Forfeits 12 days Pay FR&I 149(1)(a)
Fordeits 21 days Pay FR&I 149(1)(b)
TOTAL FORFEITURE: 33 days Pay

(b) A 37989 PTE GORDON J T Ref HQ CRU Pt II O 20 d/8 Mar 43 (REPUBLICATION):
HLI of C AA 15(1) AWL from 1345 hrs 4 Mar 43 to 2230 hrs 5 Mar 43 (Absent 1 day 8 hours 45 mins)
Awarded 14 days C.B. on 8 Mar 43
Forfeits 2 days Pay FR&I 149(1)(a)

6. HOSPITAL

Admittances

(a) A 49617 PTE VIDLER G C 7 Gen 12 Mar 43
KENT R

Discharges

(b) A 3121 PTE NASH G R 1 Gen 12 Mar 43
A 5031 PTE LLOYD F W 5 Gen 12 Mar 43
RCR

A 22067 SGT MILLS W E 1 Gen 12 Mar 43
A 21129 SGT BRYDEN W R 8 Gen 12 Mar 43
ESSEX SCOTTISH R

7. ABSENT WITHOUT LEAVE

(a) A 37998 PTE HARVIE A H AWL from 2200 hrs 4 Mar 43 8th day of Absence 2200 hrs 12 Mar 43
HLI of C

(b) B 49429 PTE ARTHURS P J Apprehended from AWL at 1115 hrs 10 Mar 43
A 22382 PTE MERRITT B H
ESSEX SCOTTISH R

8. TRANSFERS

K 70622 SPR FAGAN S Transferred from R.C.E. to CDN INF CORPS (ESSEX SCOTTISH R) wef 10 Feb 43 (Auth: CMHQ/REC/K 70622 d/10 Mar 43)
RCE

9. TRADESMEN'S RATES OF PAY

F 87543 PTE ALLEN A P On (PE) 3 CIRU and covering off a vacancy in establishment is entitled to receive Tradesmen's Rates of Pay as Dr Mech Group "C" wef 1 Feb 43 FR&I 147(2)
NTH NS HIGHRS (PE) "I" WING

10. CHANGE OF DATE OF BIRTH

A 37238 CPL MESSIER H G Change Date of Birth from 5 Dec 1920 to 5 Dec 1921 All documents to be amended accordingly (Auth: CMHQ/REC/A/37238/RES d/11 Mar 43)
HLI of C (PE) RHQ

11. STRENGTH DECREASE

(a) A 3849 PTE INCH R R (Cook Group "C")
RCR SOS to Cooks & Butchers Trng Wing 1 ASCRU wef 12 Mar 43 (Auth: CMHQ Admn Order 210 d/13 Aug 42)

(b) A 11016 PTE ELLIS H SOS as a Deserter wef 11 Mar 43 having been found illegally absent by a Court of Enquiry from 2359 hrs 14 Feb 43 (Auth: Court of Enquiry d/11 Mar 43
PERTH R Placed under Stoppages of Pay to the amount of £3/11/10 to recover loss of Kit FR&I 158(2)

/mam

(W.E. THORNE) CAPT
A/RECORDS OFFICER
3 CDN INF REINFORCEMENT UNIT
CDN ARMY OVERSEAS

SUPPLEMENT No 13 TO 3 CDN DIV INF REINF UNIT PART II ORDER NO 26E d/31 Jan 43

"A"

1. STRENGTH INCREASE
Ref Pt II O 13 d/16 Jan 43 para 1(a) insofar as it concerns LIEUT O.J. WEILER (C SCOT R - 3 Coy) is Cancelled

2. ATTACHMENTS
Ref Pt II O 13 d/16 Jan 43 para 3(a) insofar as it concerns LIEUT O.J. WEILER (C SCOT R - 3 Coy) is Cancelled

3. APPOINTMENTS, PROMOTIONS & RETIREMENTS
Ref Pt II O 26 d/31 Jan 43 para 9(b) insofar as it concerns LIEUT O.J. WEILER (C SCOT R - 3 Coy) is Cancelled

4. STRENGTH DECREASE
Ref Pt II O 264 d/31 Jan 43 para 1(h) insofar as it concerns LIEUT O.J. WEILER (C SCOT R - 3 Coy) is Cancelled

"B"

5. STRENGTH INCREASE

(a) F 44669 L/CPL MATHESON D TOS from Pd Unit while attending
NTH NS HIGHRS Pipers' Crs and attached fap to 30th Bn Royal Scots wef 19 Jan 43 (Auth: ECH Cir Letter No 49)

(b) Ref Pt II O 8 d/11 Jan 43 para 7(a) insofar as it concerns B 98470 BDMN SWADDLING F C (3 ARMD R (SUPER TO W E)) "wef 10 Jan 43" is amended to read "wef 9 Jan 43"

6. STRENGTH DECREASE

(a) F 44669 L/CPL MATHESON D SOS to 7 CIRU while attending Pipers' Crs and attached fap to 30th Bn Royal
NTH NS HIGHRS Scots wef 31 Jan 43 (Auth: CMHQ/44/DESPATCH/2/2 (ADAG (A)) 6/CORPS INF/1 d/28 Dec 42)

(b) Ref Pt II O 264 d/31 Jan 43 sheet 11 insofar as it concerns C 20627 PTE BROWN J M (C H or C) after "CIRU" add "and ceases to be absorbed in the (PS) 3 CDIRU"

(c) Ref Pt II O 264 d/31 Jan 43 para 4 sheet 16 insofar as it concerns K 62191 PTE NELSON F C (C SCOT R) is Cancelled

/mam

(W.E. THORNE) CAPT
RECORDS OFFICER
3 CDN DIV INF REINFORCEMENT UNIT
CDN ARMY OVERSEAS

Certified True copy.

(W.E. Thorne) Capt.
Records Officer,
3 Cdn. Inf. Reinf Unit

Exhibit "B"

3 CANADIAN INFANTRY REINFORCEMENT UNIT

D A I L Y O R D E R S P A R T II

issued by

A/COLONEL J.A. MCINTOSH, D.S.O.
OFFICER COMMANDING

Last Order No. 35 18 Mar 43

No. 36
19 Mar 43

1. STRENGTH INCREASE

(a) The u/n Officers having embarked in Canada on 10 Mar 43, disembarked in U.K. on 17 Mar 43, are SOS CDN ARMY (CAN) on 10 Mar 43, TOS CDN ARMY (O/S) on transfer on 11 Mar 43, reported for duty and are TOS 3 CIRU wef 18 Mar 43. Posted as reinforcements to "H" WING:

RCR
LIEUT P.J. DAGNALL
LIEUT V.B. FRYER
LIEUT J.T.B. QUAYLE
LIEUT E.J. RICHARDS
LIEUT A.J. SIGOUIN
LIEUT G.A. SLACK
LIEUT M. STERLIN
LIEUT A.G. THERIAULT
LIEUT A.R.C. WALKER
LIEUT H.L. WATSON
LIEUT G.I. WILSON
LIEUT G.K. WRIGHT
LIEUT E.K. WILDFANG (while in Hosp)

HLI of C
LIEUT R.L. CHANTLER
LIEUT J.G. CHRYSLER

ESSEX SCOTTISH R
LIEUT H.A. CREATES
LIEUT S.W. JONES
LIEUT J.D. PATTERSON
LIEUT A.H. STEVENS
LIEUT T.C. STEWART

PERTH R
LIEUT G.F. DOWNHAM
LIEUT W.C. HIDER
LIEUT D.L. THOMPSON

(b) Ref Pt II Order 2 d/6 Feb 43 para 1(b) insofar as it concerns LIEUT C.S. MUNROE (GEN LIST), "MUNROE" is amended to read "MUNRO"

2. ATTACHMENTS

(a) Ref Pt II O 23 d/4 Mar 43 para 2(a) insofar as it concerns LIEUT C.S. MUNROE (GEN LIST), "MUNROE" is amended to read "MUNRO"

(b) Ref Pt II O 35 d/18 Mar 43 para 2(a) insofar as it concerns A/LIEUT COL C.S. HADLEY (ESSEX SCOTTISH R), "ESSEX SCOTTISH R" is amended to read "ESSEX SCOTTISH R (FE) "." WING"

3. COURSES

CAPT H. DENIS-NATHAN
HLI of C
Returned from CMHQ Crs 607 Ser 17 wef 18 Mar 43

4. STRENGTH DECREASE

CAPT I.A. HODSON
RCR
SOS to Fd Unit wef 19 Mar 43 (Auth: ECH/EA2/2137 d/17 Mar 43)

"B"

5. STRENGTH INCREASE

(a) C 6280 PTE HILL
HLI of C
K G
TOS from Fd Unit wef 18 Mar 43 (Cat "B2") (Auth: ADMS Letter/3/MED/5-2-2 d/15 Mar 43)

A 635 PTE YOUNG
H R

(b) B 36985 PTE ASHLEY
RHLI
J E
TOS from 7 CIRU wef 22 Feb 43. Attached fap to 7 CIRU for period 22 Feb 43 to 17 Mar 43 (Auth: Batman to A/Lieut Col C.S. Hadley)

(c) Ref Pt II O 35 d/18 Mar 43 para 6(l) insofar as it concerns A 11546 CQMS HOLMES C W (PERTH R) "6 Mar 43" is amended to read "7 Mar 43"

(d) Ref Pt II O 35 d/18 Mar 43 para 6(g) insofar as it concerns A 38204 PTE LIVOCK E G (HLI of C), "5 Mar 43" is amended to read "4 Mar 43"

(e) Ref Pt II O 1 d/1 Feb 43 para 4(i) insofar as it concerns F 76999 PTE CARROL W (RCR), "1 MTVRD" is amended to read "1 CBOD"

(f) Ref Pt II O 33 d/16 Mar 43 para 4(d) insofar as it concerns A 3059 PTE FOURNIER F J (RCR) is cancelled

(g) A 11016 PTE ELLIS
PERTH R
H
TOS from desertion wef 16 Mar 43 on surrendering at 20 50 hrs 16 Mar 43

5. STRENGTH INCREASE (CONTINUED)

(h) The u/m having embarked in Canada on 10 Mar 43, disembarked in U.K. on 17 Mar 43, are SOS CDN ARMY (CAN) on 10 Mar 43, TOS CDN ARMY (O/S) on transfer on 11 Mar 43, reported for duty and are TOS 3 CIRU wef 18 Mar 43. Posted as reinforcements to "H" WING:

RCR

B132103 PTE ANDERSON H R
B132622 PTE ANDERSON M L
B132142 PTE BAILEY K C
B131694 PTE BARLOW H J N
B135680 PTE BEAUCHAMP L P
B132305 PTE BELFOY E J
C101136 PTE BELL J A
B132166 PTE BENN J P
A102534 PTE BENNETT C A
B131989 L/CPL BIRD E A W
B134958 PTE BLAIR W J
B132883 PTE BLUE W H
B132267 PTE BOUFFARD H A
B 21091 SGT BOUGARD J
B135548 PTE BRITTON E W
B 48983 PTE BRUNELLE R E
B132607 PTE BUFFY C L
A102641 PTE BURROUGHS W H
B132196 PTE CALDER R G
B132155 PTE CAMERON A
A102300 PTE CAMPBELL J A
B135205 PTE CAMPBELL J H
B131518 PTE CASCANETTE J
B132882 PTE CHATREAU H C
B135505 PTE CHERRY J S
B131819 PTE COUPAR J H M
B132121 PTE COUSINEAU J P
B 58906 PTE COWDEN O L
B133474 PTE CUNNINGTON G H
A 42485 PTE DALEY H G
B134595 PTE DANIS W J
B132214 PTE DAVIDSON W S
B103106 PTE DEARSLEY J H
B131683 PTE DENNISTON F P
B132232 PTE DERBYSHIRE J R
B135666 PTE DEVENISH E J
B131962 PTE DIMARIO E E
B132614 L/CPL DIMSON A B
B103107 PTE DOGGRELL B J
B133444 PTE DOUGLAS A
B131692 PTE DOWNER B N L
B132570 PTE DUFRESNE P A
D125181 PTE DUNBERRY J
B131651 PTE DURACK W J
B131706 PTE DUSOME G J
B133128 PTE EISENBACH W E
B 77375 L/CPL FANCHER K O
B135231 PTE FAULKNER R J R
B135215 PTE FINLAY P M
B132832 PTE FORIN M J
B132578 PTE FRITSCH W
B131964 PTE FRITZLEY W A
B132256 PTE FRYER H A
B131951 PTE GADSDEN M L
B130066 PTE GAUTHIER J
B132274 PTE GILBERT A S
B132120 PTE GILLIES J L G
A 4522 PTE GRAINGER C W
B131523 PTE GREEN J J
B135529 PTE GRIGGS

B130041 PTE GUMMERSON F A
B134934 PTE HARLING D T
B103152 PTE HASS E W
B133170 PTE HEDLEY R T
B134956 PTE HERNDEN J R
B131031 PTE HERSACK J
B132856 PTE HODGINS C J A
B103153 PTE HODD J D
B133396 PTE HOOKHAM E S
B134945 PTE HORDEYCHUK R A
B132161 PTE HORTON J C
B133349 PTE HORNER W G
B134997 PTE HOWARD J M
B132249 PTE HUGGARD L R
B132009 PTE JARMAN F J
B132210 PTE JELLY P T
B134958 PTE JURIGA J M
B113561 PTE KARMARZNUK S
B131953 PTE KEATING B E
B133399 PTE KNAPP W J
B 97103 PTE KNIGHT J J
B131144 PTE LAUGHLIN J P
B 77448 L/CPL LAVALLIE G A
B130273 PTE LAWLOR W J
B132268 PTE LEVESQUE R J
B134414 PTE LINKLATER M
B113977 PTE LOWRS E N
B132433 PTE LUNLEY J A G
B135552 PTE LYNCH J E
B132255 PTE MACDONALD G I
B133633 PTE MACLEOD J W
B131247 PTE MATHEWS T M
B103171 PTE MCCLEMONT C J
B135537 PTE MCCONKEY D W
B134937 PTE MCEACHERN J D
B132567 PTE MCGAHEY M F
B133323 PTE MCKEAN R J
B131995 PTE MCKEE M L
B112543 PTE MCMAIN G E
B 58964 PTE MCCALLEN J W
B134999 PTE MCMASTER K H
C101225 PTE MCTAVISH D J
B132604 PTE MCWILLIAM R S
B131828 PTE MELLING L
B132620 PTE MIEHM H J
B 24009 SGT MISENER E M
B112363 PTE MOORES R E
B132665 PTE MORABITO S N
B131813 PTE MOSS A E
A 61012 A/SGT MURMILLO J
B132111 PTE NASTUK F
B131985 PTE NIEMI T O
B132829 PTE NOGANOSH P
A 4374 PTE NOLAN W J
B133642 PTE O'HALLORAN J E
B132609 PTE OWENS A H
A102747 PTE PARENT N A J
B130133 PTE PORTEOUS H
D135941 PTE PRESCOD H M
B 53134 PTE RATHIER M A

5. STRENGTH INCREASE (CONTINUED)

(h) RCR (Cont'd)

B132261 PTE REVILL J
B132895 PTE RICKARD T C
B133114 PTE ROBERTSON R
B133606 PTE ROBINSON H G
B 46882 PTE SALISBURY H D
B131216 PTE SCOTT J H
A104179 PTE SEAMAN W G
B114455 PTE SHAULE L A
B133016 PTE SHEARER J S L
B133337 PTE SILLS W H
B132849 PTE SMALLER J
B131099 PTE SMART D D
B133366 PTE SMELTZER B C L
B132815 PTE SMITH J H
B133137 PTE SMITH J H
A 59982 L/CPL STRIDE R L
B133138 PTE TAYLOR M J
B110737 PTE THOMSON M J
B133431 PTE TRAVIS J W
B133107 PTE TURGEON M S
C120066 PTE TURNER R R
B133420 PTE WARD C H
B103096 PTE WHEELER K R
B132167 PTE WILLIAMS E
B114768 PTE WILLIAMS P
B132197 PTE WILLIS A B
B131174 PTE WILSON J Mc.
B132606 PTE WILSON N A
B132824 L/CPL WHALEN D F
B131504 PTE WILSON J W
B132170 PTE WOODS J G
B132278 PTE WOJNAS J
B 24264 PTE WARD M
B132847 PTE YATES D J
B131004 PTE YUERS A
B131191 PTE YOUNG N

(i) HLI of C

B131636 PTE WATERS L J
B132612 PTE BEATTIE S B
B133390 PTE BRITNELL W T
A102437 PTE BULLOCK E W
B133667 PTE CAMPBELL L
B103163 PTE CLINTON B D
B 59141 PTE CUMMINGS K A
B103164 PTE DEAN A
B133468 PTE DEAN R G
B133302 PTE DOLAN K O
B132915 PTE FARE E M
A 38354 PTE GADD F M
B131541 PTE GILLESPIE J
B114300 PTE GREEN K R
B133636 PTE LONG J G
B133401 PTE LYFORD G E
B133388 PTE MCILVRIDE J M
B103125 PTE PAGE G W
B103129 PTE ROCKS J J
B132819 PTE REID W J
B133123 PTE ROTH J L
A 38371 PTE WALTERS H E
B100578 PTE ZALEWSKI C

(j) ESSEX SCOTTISH R

B133112 PTE ANDERSON I H
A 49995 PTE EVERITT W W J
A102368 PTE GODFREY G M
A103078 PTE LAMBIER F R
B130575 PTE MACDONALD N C
B103131 PTE ST.PIERRE I C
B133336 PTE TREADWELL L
B132138 PTE TRUSKOSKI T
B134390 PTE WHEATLEY R H
A 23297 L/CPL WOLINSKY N L

(k) PERTH R

B133333 L/CPL CHEVRIER C
B133175 P E COONS G E
B133180 PTE DABOLL C E
A 12018 PTE GATES L E
B132623 PTE HISHON T J P
A 50096 PTE HUFF W J
A 59439 PTE SCOTT F (While in Hosp)

6. COURSES

The u/m proceeded on CMHQ Crs 1047 Ser 10 (Dr Mechs) at 4 TTG (18 Mar 43 to 1 May 43) wef 18 Mar 43:

K 73053 L/CPL BAILEY H L	C SCOT R	(PE) "I" WING
H 95594 RFN JANUIK J T	R WPG R	(PE) "I" WING
C 29380 PTE KNOX C W	SDAG HIGHRS	(PE) "I" WING
A 10057 PTE PICKELL K W	HLI of C	(PE) "I" WING

7. PUNISHMENTS

(a) A 11661 PTE HUNTER C A
PERTH R
A A 15(1) AWL from 2200 hrs 17 Mar 43 to 0730 hrs 18 Mar 43(Absent 9 hrs 30 minutes)
Awarded 7 days C B on 18 Mar 43
Forfeits 1 days Pay FR&I 149(1)(a)

(b) A 23227 PTE SHANKS L
ESSEX SCOTTISH R
A A 15(1) AWL from 2359 hrs 13 Mar 43 to 2000 hrs 16 Mar 43 (Absent 2 days 20 hours 1 minute)
Awarded 7 days Fd Punishment on 18 Mar 43
Forfeits 3 days Pay FR&I 149(1)(a)
Forfeits 7 days Pay FR&I 149(1)(b)
TOTAL FORFEITURE: "10 days Pay"

7. PUNISHMENTS (CONTINUED)

(c) A 68232 PTE KOOBS F W — Tried by F.G.C.M. on 16 Mar 43
PERTH R

CHARGES: 1st Charge: A A 15(1) AWL from 2200 hrs 3 Feb 43 to 1545 hrs 6 Mar 43 (Absent 30 days 17 hrs 45 minutes)
2nd Charge: A A 22
3rd Charge: A A 8
4th Charge: A A 24

FINDING & SENTENCE: 1st Charge: GUILTY
2nd Charge: GUILTY
3rd Charge: NOT GUILTY
4th Charge: GUILTY
Awarded 90 days Detention on 16 Mar 43

CLOSE ARREST: Placed in Close Arrest from 1545 hrs 6 Mar 43 to 1000 hrs 16 Mar 43

FORFEITURES: Forfeits 31 days Pay FR&I 149(1)(a)
Forfeits 90 days Pay FR&I 149(1)(b)
Forfeits 10 days Pay FR&I 149(1)(c)(i)
TOTAL FORFEITURE: "131 days Pay"

STOPPAGES OF PAY: Placed under Stoppages of Pay to the amount of £2/11/64 to recover cost of loss of Kit FR&I 158(2) (Ref Pt II O 29 d/11 Mar 43 para 12(f))

8. TRADESMEN'S RATES OF PAY

(a) A 28795 PTE GULLIFORD G T — Granted Tradesmen's Rates of Pay as Carpenter Group "B" (Rein Quota) wef 12 Mar 43 FR&I 147(5)
RCR

(b) B 32404 PTE EARLE T — Granted Tradesmen's Rates of Pay as Carpenter Group "C" (Rein Quota) wef 12 Mar 43 FR&I 147(5)
RCR

9. HOSPITAL

(a) Admittances

C 54102 PTE CLEMENT A J — 1 Neuro — 16 Mar 43
SD&G HIGHRS (PE) "A" WING

A 22335 PTE DENEAU E — 8 Gen — 16 Mar 43
ESSEX SCOTTISH R

(b) Discharges

C 53310 PTE RYAN R — 8 Gen — 18 Mar 43
SD&G HIGHRS (PE) "A" WING

A 2060 PTE ASTON S G — 17 Gen — 18 Mar 43
HLI of C

A 82161 L/CPL BORTZ H T — 1 Gen — 18 Mar 43
ESSEX SCOTTISH R

A 56956 PTE CHARRON E J — 8 Gen — 18 Mar 43
PERTH R

10. ABSENT WITHOUT LEAVE

(a) A 3458 PTE WILSON R E — AWL from 1200 hrs 17 Mar 43
RCR

(b) A 28763 PTE ANKCORN L W — AWL from 2200 hrs 17 Mar 43
ESSEX SCOTTISH R

11. CHANGE OF ADDRESS/NEXT OF KIN

P 16207 CPL MALONEY M — Address of Next of Kin now is: MRS BEATRICE MALONEY (Wife), 56 GREENSIDE AVENUE, TORONTO, ONTARIO, CANADA
RCR

11. QUALIFICATIONS

(a) A 58864 PTE WRIGHT E J — Passed at CRU Crs 2 Ser 14 (Regt'l San Dutfes) wef 6 Mar 43 (Auth: DGHQ/4-6-RESULTS d/16 Mar 43)
ESSEX SCOTTISH R

11. QUALIFICATIONS (CONTINUED)

(b) A 67811 PTE TSCHIRHART S E L — Failed at CMHQ Crs 1047 Ser 4 (Dr Mechs) wef 17 Feb 43 (Auth: DGHQ/4-6-RESULTS d/4 Mar 43)
PERTH R

12. STRENGTH DECREASE

(a) A 22599 PTE HALL F H — SOS to No 1 NETD wef 18 Mar 43 (Auth: CMHQ/10/HALL F.F./1 (A.G.2b) d/13 Mar 43)
ESSEX SCOTTISH R

(b) The u/m are SOS to No 1 NETD wef 18 Mar 43 (Auth: CMHQ/REC/34/OCTU/1 d/17 Mar 43):

A 21143 A/CSM SEAL	T A	ESSEX SCOTTISH R
A 56690 L/SJT STOREY	R M	PERTH R
P 15344 CSM HOVEY	B N	RCR
A 5020 SGT BEGIN	D O	RCR
P 13239 A/CSM KENNARD	C R	RCR

(c) The u/m are SOS to Pd Unit wef 19 Mar 43 (Auth: Demand No 5804 d/14 Mar 43):

PERTH R

A 11041 CrL BANNERMAN	W J	A 59443 PTE STERLING		C W
A 59471 PTE LARABIE	A C	B111554 PTE THEODORFF		C W
		A 11665 PTE WATSON	F M	

/whm

for (W.E. THORNE) CAPT.,
A/RECORDS OFFICER,
3 CDN INF REINFORCEMENT UNIT,
CANADIAN ARMY OVERSEAS

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at 3 C.I.R.U. and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial, as well as list of witnesses and list of Exhibits. are free of charge. H. Ellis

In the Field
March 1943

Pte H. Ellis
A-11016 Pte. Ellis, H.

I wish MAJ. E.C. SHELLEY to represent me at my Trial.

A-11016 Pte. Ellis, H.

LIST OF WITNESSES

In the case of A-11016 Pte. Ellis, H.

(For the Prosecution)

1. Capt. W.E. Thorne, C.M.S.C. Officer i/c of Records.

(For the Defence)

NIL.

LIS T OF EXHIBITS

Exhibit "A" Part II Order No.2 d/ 6 Feb. 43

Exhibit "B" Part II Order No.11 d/17 Feb. 43.

Exhibit "C" Part II Order No.31 d/13 Mar. 43.

Exhibit "D" Part II Order No.36 d/19 Mar. 43.

Army Form B.122

No. A11016 Name ELLIS, H. Sq., Batty., or Company "A" Coy Corps Perth Regt. Date of enlistment 5-9-39 Sheet No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk 22-5-40 | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Strafford Ont.	21-4-40	Pte.		Breaking out of barracks while on light duty. A.A. 10/9	Sgt. Holmes	2 days C.B.	22-4-40	K.C. Shelley Major	
Stratford Ont.	22-5-40	Pte.	1st	Drunkenness, neglect of duty & A.A. 19. A.W.L. from 1000 hrs 22/5/40 to 1030 hrs 23/5/40 A.A. 15(1)	CSM. Twest	admonished 3 days C.B.	23/5/40 23/5/40	W. Charters. Capt. W. Charters. Capt.	Forf. 2 dys pay
Niagara	2-6-40	Pte.		AWL from 2200 hrs 2/6/40 to 1600 hrs 7/6/40 AA15(1).	Sgt. C.W. Holmes	168hrs Detn.	10/6/40	Lt.Col. SH. McComb	Forf. 5 dys Pay.
Niagara	27-6-40	Pte		AWL from 1630hrs 17/6/40 to 2355 hrs 1/7/40 AA15(1) (14 dys 7 hrs 35 mins)	Sgt Adams	21 dys Detn.	2/7/40	Lt.Col. SH McComb	Forf. 15 dys Pay.
Victoria Camp	23-7-40	Pte.		AWL from 2300 hrs 23-7-40 to 2000 hrs 29 Jul 40 AA 15(1). (5 dys 20 hrs 5 min)	Cpl Wartens Sgt. Beckerson	28 dys Detn.	30-7-40	A.J.C. Talley	Forf. 5 dys Pay

[P.T.O.

Wt. 29249/793, 2m.m. 11/40, S.P. Co., 51-7951

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order convening trial	By whom awarded	Remarks
Camp Borden	8-11-40	Pte.		AWL 0100 hrs 8-11-40 to 2330 hrs 11-11-40. AA 15(1) (3dys 22 hrs 30 min)	L/Cpl. Byron	Admonished	12-11-40	Maj EC. Shelley	Forf 4 dys pay.
Camp Borden	26-11-40	Pte.		AWL 1400 hrs 26-11-40 to 2130 hrs 27-11-40(1 dy 7 hrs 30min) AA 15(1)	Sgt. Holmes	14 days C.B.	28-11-40	Maj. E.C. Shelley	Forf 2 dys p.y.
Camp Borden	30-11-40	Pte.		Conduct to Prej. etc. Drinking while on Duty AA 40	Sgt. Levie Lt. Chambers	14 dys Detn	3-12-40	Lt/Col.O.W. Little	Forf. 30 dys pay.
Hamilton, Ont.	18-12-40	Pte		AWL 0800 hrs 18-12-40 to 0830 hrs 4-1-41 (16dys 22hrs 30 min) AA 15(1)	Cpl. Cordell	28 dys Detn	4-1-41	Lt/Col.O.W. Little	Forf. 18 dys pay.
In the Field	4-2-42	Pte.		AWL 0856 hrs 16-2-42 to 1000 hrs 16-2-42(1 hrs) AA 15(1)	Cpl. Kelat	5 dys C.B.	16-2-42	Maj. E.C. Shelley	Forf. 1 dy pay.
In the Field	21-3-42	Pte.		Neglect to prej. etc. Neglec to obey an Order Not wearing respirator. " "	L/C. Baird	3 dys C.B.	23-3-42	Lieut. J.W. Alexander	

Army Form B.122

No. A 1101 Name ELLIS H. Sq., Batty., or Company Coy Corps Perth R. Date of enlistment 5-9-39 Sheet No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk 22-5-40 | G.C. Badges | Long Service and G.C. Par | Signature O.C. Company etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	5/6/42	Pte		Conduct to the prej.(1c)	Capt Bullock	14 Days C.B.	12/6/42	Major Tindall A/OC	
				Driving Military Vehicle in Reckless Manner A.A. 4	L/Cpl Swaniger	21 days Fd. Punishment	13 Jul42	Major R.L. Tindall A/C	E.Hutchinson Capt & Adjt. Corps Dvn pay
In the Field	12/6/42	Pte		AWL from 0700hrs 12 Jul 42 until 1200 hrs 12 Jul 42		Forf 6 days pay. (F.P.& I	19/6/42	A.E.Noble, Lieut.Col.	R I 149 (1)
Field	16/8/42	Pte		W.O.A.S. A.W.L. from 2359 hrs 16/8/42 to 0630 hrs. 19/8/42 A.A.15(1)	Cpl. Saunders	140(2)).Forf 3 Days Pay	13/10/42	J.A.H.Lind	
In the Field	15/11/42	Pte		A.A.15(1) W.O.A.S. AWL from 2200 hrs 15 Nov 42 until 2215 hrs 20 Nov 42 (15 Days 16 Hrs).	Cpl. E.H. Smith Cpl. Hunter	Forf 20 Dys Pay PR1,140 (2)	1 Dec 42	Lt Col J.A.H. Lind	Forf 16 Dys pay PR1,140 (a.R.I. Corps dr

[P.T.O.

"CERTIFIED TRUE COPY" with the original in my possession. [illegible] Maj.

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A11061	PRIVATE	HARRY ELLIS	PERTH (M) VDR.

1. The following is a fair and true summary of the entries in the ~~regimental and squadron (battery or~~ company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court-martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned above to be produced in court with this statement but not reported to the proceedings.

† See para. 677, K.R., 1940.

* The numbers to be stated should correspond with the number of entries in the medical sheets, pay-sergeant's book, given to the usual witness to each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the tables for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For H.A. 15 (1)	4 times	12 times.
For A.H. 10 (9) (22 May 1940)	NIL times	1 times.
For A.A. 18	NIL time	1 times.
For AA. 40	2 times	3 times
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~ VDR.

or

~~There are no entries in the conduct sheets of the accused~~ VDR.

2. ~~The accused has not been previously convicted~~ VDR.

~~Previous convictions~~ of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for ~~imprisonment~~ beginning on the ~~day of~~ VDR.

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 14 days in military custody, making a total of 14 days.

~~of which days were spent in hospital~~ VDR.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 38 years. VDR.

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 5th Sept. 39 VDR.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 1/2 years.

8. The accused is entitled to deferred pay or gratuity in respect of 3 1/2 years. service.

9. The accused is entitled to reckon 3 1/2 years. service for the purpose of determining his pension, etc.

~~10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to those specified in the margin).~~ VDR.

11. ~~(If the accused is a warrant officer.)~~ The accused before he was made a warrant officer was held substantively the rank of ~~rank~~ VDR.

12. ~~(In the case of an officer.)~~ The accused holds in the army the rank of ~~and on his appointment to which or departure from the rank of~~ above ~~since~~ VDR.

[7 lines] W1.30540/1601 15,000 11/40 A & E W 3,000 Gp. 698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A/1061 Rank PRIVATE Name HARRY ELLIS of PERTH (ONT.) Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under s. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of March 1943

Records Officer,
No. 8 Can. Inf. Reinf. Unit,
Canadian Army (Overseas).

12. The accused has served as a non-commissioned officer continuously without reduction, to the present date, since his promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Instructions.—If any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, and in the case of a trial by field general court-martial the information may be collected from such sources as are available and recorded accordingly.)

A.A. 46 (case #2)

PTE ELLISON E.C.

See F-142 for 1st case

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

A A 46

Army Form A.S.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Ninth day of March, 1943

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable that the said offences should be tried by the said Court~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~Deputy Judge Advocate to attend~~

*Omit if not applicable.

~~Officers to be detailed by the Court~~

President.

Rank.	Name.	Regiment.
Major	C.J.A. Aylen-Parker	RCR

Members.

Rank.	Name.	Regiment.
Capt	W.R. Catto	48 Highrs
Capt	W.W. Exeley	Hast & PER
Lt.	M.C.D. Bowman	RCR

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be inserted on the proceedings.

*Signed H.D. Graham Brigadier
(H.D. Graham)
Commanding, 1 Cdn Inf Bde.
Convening Officer.

Waiting Member must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A3965 Pte. ELLISON, Earl Carl. The Royal Canadian Regiment.	FIRST CHARGE A.A. Sec 15 (1)	Guilty	Guilty	Finding and sentence confirmed H.D.G.
	SECOND CHARGE A. A. Sec 24 (2)	Guilty	Guilty To undergo detention for Six (6) months and to be placed under stoppages of pay to the amount of £4-11-0½ to make good the cost of apprehension and detention of part.	13 Mar 43 H.D.G. Brig Comd 1 Cdn Inf Bde 13 Mar 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer to be recorded on separate sheet if necessary):—

(Signed) H.D. Graham Brig. (Signed) C.J.A. Aylan-Parker Major
(H.D. Graham) (C.J.A. Aylan-Parker)
Commanding 1 Cdn Inf Bde. The Royal Canadian Regiment.
Confirming Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Seventh day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this Seventh day of March 1943

H.D.G. Jackson Brig
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (k) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 13 day of March 1943

H.D. Graham

(H.D. Graham) Brigadier
Comd *Confirming Officer.*
1 Cdn Inf Bde.

Promulgated and extracts taken in the case of A3965 Pte Ellison, E.C.

(*a*) (Dated) 13 Mar 43 (Signed) [illegible] Lt Col
A.D.J.G. 1 Cdn Inf Bde

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2

CHARGE SHEET

The accused, A3965, Pte Ellison, Earl Carl, HQ Coy., The Royal Canadian Regiment, a soldier of the Canadian Army, placed on Active Service, is charged with:-

FIRST CHARGE
Sec 15 (1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he, in the field, absented himself without leave, from 0630 hrs 26 Dec 42 until ~~apprehended by~~ he surrendered to Civilian Police at GLASGOW at 0800 hrs 25 Feb 43 and incurring Escort expenses to the amount of £4/0/11.
Time absent: 61 days 1 hr and 30 mins

SECOND CHARGE
Sec 24(1)
ARMY ACT

LOSING BY NEGLECT HIS CLOTHING AND NECESSARIES

in that he, in the field, on 25 Feb 43 was deficient the undermentioned articles of kit to the amount of £0/10/1½

	Quantity	Vocabulary Price	Three Quarter Value
Braces, Prs	1	£ 0 1 3½	£ 0 0 11½
Brushes, shaving	1	0 1 4	0 1 0
Comb, hair	1	0 0 2	0 0 1½
Discs, identity	1	0 0 1½	0 0 1½
Drawers Woolen	1	0 5 3	0 3 11½
Dressing, F.F.	1	0 1 1½	0 0 10½
Knife, table	1	0 0 9½	0 0 7½
Fork, table	1	0 0 5	0 0 3¾
Spoon, table	1	0 0 4½	0 0 3½
Gloves, woolen, prs	1	0 2 7½	0 1 11½
Total		£ 0 13 6	0 10 1½

In the Field
6 Mar 43

(R.E. Crowe) Lt.-col.
Commanding,
The Royal Canadian Regiment.

To be tried by Field General Court Martial.

Brigadier

In the Field
9 Mar 43.

(H.D. Graham)
Comd., 1 Cdn Inf Bde.

C

MEDICAL CERTIFICATE (KR (Can) 577)

I certify that I have this morning examined No: R.39655.....

Pte Ellison E....C....of The Royal Canadian Regiment, and in my opinion, he is fit to undergo trial by Court Martial

~~unfit~~

Station. Field.....

Date. 11. March 43.

J.M. Heller Capt
J.M. Heller) Capt.
R.C.A.M.C. att R.C.R.

Pte Ellison Charles Percy
Lieutenant

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ in the field

on the seventh day of March 1943 19 43 by order of

Brigadier H.D. Graham Commanding 1 Cdn Inf Bde

dated the ninth day of March 19 43

President.

Major C.J.G. Taylor-Cantan, R.C.R.

Members.

Capt. W.R. Catto, 48th Highrs. of C.

Capt. W.W. Eyeley, Hqrs 1 C.I.B.

—, Judge Advocate.

Trial of* A 3965 Pte Ellison, Earl Carl, R.C.R., C.A.C.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ——— is not available to serve owing to ———~~

~~———, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.**

The accused is brought before the Court.

Prosecutor,† Lt R.A. Conche, R.C.R.

~~Counsel‡ or~~ defending officer† Capt S. Abner, R.C.R.

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked ——— signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. NO, Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

---

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

** I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any court of inquiry respecting the matters forming the subject of the charges before this Court. Medical Boy 1st Lt Canada

M8. Form B. 271
1936—9-41. (3119)
H.Q. 1773-89-234

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

A. Pte. C.A. Beaumont, R.C.A.

Charge-Sheet

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction.
If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty, Sir

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Guilty, Sir

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

Answer.

The accused having pleaded Guilty to ~~the~~ first and second charges the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the *Instruction.*
Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused A.3965 Pte. Ellison, Earl Carl, R.C.R., C.A.O. is found guilty of the first and second charges.

*The summary (or abstract) of evidence is read, marked D, signed by the President, and attached to the proceedings.

Court adjourned 1105 hrs.
Court re-opened 1135 hrs, same Court in attendance.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. NO Sir

~~The accused in mitigation of punishment says:—~~

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

I Wish to give evidence myself. *Answer.*

The accused proceeds to give evidence A 3164 Pte. Ellison E.C. being duly sworn states:- *Evidence as to character.*

I enlisted 7 May 1900. My home is in Rodney Ontario and I am married. I have a family of two children ages 6 and 7 years. Shortly after I came overseas I received letters from two or three friends of mine stating that my wife was at times seen out at parties & dances with two or three different fellows. After that I had got worried and lost nearly all interest in soldiering at the time I did not want to get a divorce because of the two children so that is the way it has been going along for approximately 2½ years. I have probably at home who could look after the children because my mother is dead and my father is aged about 75 years. He lives alone, is rather old and leads a careless life so that I would not like him to look after the children.

By DD.

Before my two days absence in December I had no crime against me for ten months. I like the army and I wish to stay in it until the end of the war.

Cross-examination.

Q1 - You have been under some form of mental strain for some time?

A1 - Yes, sir.

Q2 - The cause of this has been based on letters you have received from friends?

A2 - Yes, sir.

Q3 - Have you ever taken any steps to have these charges against your wife investigated?

A3 - No, sir.

Q4 - Do you realize that there is machinery for investigation of complaints of this nature?

A4 - Yes sir, I do.

Q5 - Why did you not take advantage of this machinery?

A5 - Because I thought it best to wait until after the war because of the children.

Q6 - Did it not occur to you that it might be necessary to check up and confirm the source of complaints

Page DD 2.

against your wife? (Plea by Private Hay not guilty)

A6 At the time I did but I let it go in hopes that the war would soon end?

Q7- In other words you voluntarily underwent this mental strain which might have been avoided by investigation of the charges?

A7- Yes, Sir.

Q8- Do you not think it was foolish for your own welfare and well-being?

A8- Yes, sir. I do, in a way.

Q9- When was your second last offence?

A9- January or February 1942.

Re-examination declined.

R.P. 83(B) complied with.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused A 3465 Pte [illegible]
Allison, Earl Carl, R.C.R., C.A.O.
Guilty of both charges as laid.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*~~The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

[illegible] R.C.R. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* No, Sir

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked F, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have ~~heard~~ read? *Answer by the Witness.* Yes, Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes, Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes, Sir

Cross-examined by the accused.

Declined

Question to the accused.

Do you wish to address the Court? *Answer.* Yes Sir. (Supp E 1)
Do you wish to call any witnesses as to character? Answer. No, Sir
The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused
A 3963 Pte Ellison, Earl Carl
R.C.R., C.A.D.

Sentence.
To undergo detention for six (6) months and to be placed under stoppages of pay to the amount of £4-11-3½ & £4-0-11½ to make good the cost of apprehension and deserters kit.
C/M. Cert
C/M. upld. Confirmed
Promulgated

Page E 1

A.P.C. Officer Southern Area
Trivandrum

Address To Court

The Presiding Officer in his address stated:-

1. The circumstances behind the causes of this case go below the surface of the family trouble at home

2. That he was NOT prepared to blemish the future of his children by attempting to get a divorce at this time. However the mental burden of awaiting for the end of the war to clear up this matter was too much for him

3. That he now realizes that this type of conduct does NOT pay and that he intends to soldier for the rest of the war, and get back to his children

4. That he wished the Court to remember that the accused had been in confinement for twelve days awaiting trial.

A.P.C. Officer Southern Area
Trivandrum

Summary of Evidence in the case of A3965 Pte. Ellison E.G., The Royal Canadian Regiment, a Soldier of the Canadian Army, placed on Active Service.

By direction of the Commanding Officer, The Summary is taken on oath.

D

Lt. Col. [illegible]
President

1st Witness for Prosecution:

A/Capt. A. F. Mitchell, The Royal Canadian Regiment having been duly sworn states:-

"I am Adjutant, The Royal Canadian Regiment, I recognize the accused. I present herewith the certified true copy of the Record of the Declaration of a Court of Inquiry on the illegal absence of the accused. Exhibit "A". Also, a revised list of the kit deficiences of the accused and the value thereof, Exhibit "B" I further present a "Certificate of Surrender to the Civil Police of a Deserter or Absentee without leave" pertaining to the accused. Exhibit "C" Also, expense vouchers - in accordance with KR&O(Can.) 559 - to the total amount of Four pounds, eleven pence (£4-0-11) report expenses in the case of the accused and are shewn as exhibits "D" and "E".
To the best of my knowledge and from all available unit records the accused has not been present with his unit from the commencement of his absence until apprehended at 0200 hrs 25 Feb. 1943 in Glasgow
The accused declines to cross examine the witness.

A.F. Mitchell A/Capt
Adjutant The Royal Canadian Regt

The accused having been duly cautioned in accordance with Rule of Procedure 4(2) declined to make a statement.

Certified that Rules of Procedure 4(C)(D)(E)(F) and (G) have been complied with. Taken down by me in the presence and hearing of the accused this 2nd day of March, Nineteen Hundred and Forty three.

A.F. Mitchell, Capt

Exhibit "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 17th day of January 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A3965, Pte Ellison, E.C., The Royal Canadian Regiment

DECLARATION.

The Court declare A3965, Pte Ellison, E.C., The Royal Canadian Regiment, illegally absented himself without leave or other sufficient cause at 0630 hrs 26 Dec 42 and that at 0630 hrs 17 Jan 43 he was still absent and was deficient kit to the value of £6-12-4½ as per att. list.

Lt. [illegible] Canadian

Names of President and Members

Lieut. G.C. Pullen,	RCR	PRESIDENT
Lieut. G.D. Pollock,	RCR (Can Bus)	MEMBER
Lieut M.C.D. Bowman,	RCR	MEMBER

Signature of Commanding Officer (T.Eric Snow) Lt.-col.
Commanding, The Royal Can Regiment

CERTIFIED TRUE COPY

(A.F.Mitchell) Capt. RCR

Signature of Officer having custody of the Original Record

[illegible] W1.58992/1340 250,000 1/41 A.H.Q.W.144 Gp.698 Forms/8113/37.

ARTICLE	QUANTITY	FULL PRICE			3/4 Value		
Blouse Serge	1	£ 1	7	11	£ 1	0	11¼
Trousers Serge	1	1	7	8	1	0	9
Boots ankle	1	1	1	6	0	16	1½
Braces, prs	1	0	1	3½	0	10	11⅝
Brushes, shaving	1	0	1	4	0	1	0
Caps, service	1	0	3	8	0	2	9
Greatcoat, drab	1	3	17	0½	2	17	9⅜
Comb, hair	1	0	0	2½	0	0	1⅞
Discs, Identity	3	0	0	1½	0	0	1⅛
Drawers, woollen, prs	1	0	5	3	0	3	11¼
Dressing, first field	1	0	1	1½	0	0	10⅞
Shirts, woollen	1	0	5	3	0	3	11¼
Knife, table	1	0	0	9½	0	0	7⅛
Fork	1	0	0	5	0	0	3¾
Spoon, table	1	0	0	4½	0	0	3⅜
Gloves, woollen, prs	1	0	2	7½	0	2	1⅞
TOTAL		£ 8	16	6½	£ 6	12	4⅞

CERTIFIED CORRECT

A.F. Mitchell

(A.F.Mitchell) Capt.
Adjutant,
The Royal Canadian Regiment.

Exhibit "B"

Kit deficiences less the kit returned by Pte Ellison E.C.

Article	Quanity	Full Price	Value
Braces prs	1	0 - 1 - 3½	0 - 0 - 11 5/8
Brushes, shaving	1	0 - 1 - 4	0 - 1 - 0
Comb, hair	1	0 - 0 - 2	0 - 0 - 1 3/8
Discs, identity	3	0 - 0 - 1½	0 - 0 - 1 1/8
Drawers Woolen, pr	1	0 - 5 - 3	0 - 3 - 11½
Dressings, first field	1	0 - 1 - 1½	0 - 0 - 10 1/8
Knife, table	1	0 - 0 - 9½	0 - 0 - 7 1/8
Fork, table	1	0 - 0 - 5	0 - 0 - 3½
Spoon, table	1	0 - 0 - 4½	0 - 0 - 3 3/8
Gloves Woolen, prs	1	0 - 2 - 7½	0 - 1 - 11 3/8
Total		0 - 15 - 6	0 - 10 - 1 1/8

Certified Correct -

(E.H. Shuter)
O.C. H.Q. Coy., R.C.R. Lieut,

Certified True Copy
Arrowsmith Capt
Adjutant The Royal Canadian Regiment

Exhibit "C"

I CERTIFY that the man whose personal description is given below surrendered himself to* John Chalmers, 145 Cons. at Glasgow at (hour) 8.am. on the 25th day of February, 1943 as being No. A3965 (Rank and Name) Pte. Earl Carl Ellison, a deserter (or absentee without leave) from Royal Canadian Regiment and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 27. Height 5 Feet 10 Inches	
Complexion Sallow Hair brown Eyes Grey	
Marks Nil	
In uniform or plain clothes Uniform	
Probable Date and Place of Attestation	7th. May, 1940. London, Ontario, Canada.
Probable Date of Desertion or beginning of absence, and from what place	26th. December, 1942, from his unit then stationed at Inveraray.

Signature of Officer of Police in charge of Edward Hammond
Lennox Street Police Station. Glasgow.
25th February 1943. Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.
(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No.
who surrendered to the Police at on
Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(13048) Wt.27469/737 25,000 9/40 A.& E.W.Ltd. Gp.698
(13048) Wt.41390/1442 25,000 7/41 " " Forms O.1617/14

Exhibit "D"

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No A3665 Rank Pte Name Ellison, E.C. Unit R.C.A.S.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
26 Feb 45	Escorts return fare from LONDON To Lewes (½ portion)		5	2
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Lewes		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

1748
28 FEB 1945
16.30

C.M.H.Q. 1000-22
40/P. & P. 1/88

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

Ex Exhibit "E"

Expense Voucher Re—: Ref: K.R. & O. (Can.) 699

Reg. No. A3965 Rank Pte Name Ellison, E.C. Unit R.C.R.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit ~~from~~ London from Glasgow

Date	Particulars	Amount		
26.11.43	Escorts return fare from LONDON To Glasgow (3 persons)	2	1	1
	Prisoners single fare to LONDON From Glasgow	1	10	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	3	11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S/482

No. A3965 Name Ellison E. C. Sqn., Battery, or Company Depot Corps R.C.R. Date of enlistment 7-5-40. G.C. Badges. Service or Proficiency Pay. M.F.M. 6 A.F.B. (12)

Date of last entry in Company Conduct Sheet. No. and date of last drunk. Period not reckoning towards freedom from extra fine. Sheet No. ONE. Signature O.C. Company, etc. T. O'Reilly Capt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks and signature
				Previous Sheet destroyed 7-11-40.				E	A. M. McCully Lt.
Borden Canada	8-11-40	Pte.		A.W.L. from 2200 hrs 7-11-40 to 1330 hrs 8-11-40. A.A. Sec. 15. (1)	Sgt Terry C.O.S.	Awarded 120 hrs. detn	10-11-40.	Major D. Fletcher.	Forf 1 days pay F.P.I. 1 (a) (b) & M.C.O. Total forf. 1 days pay
Watley Surrey	9-1-41	Pte		A.W.L. from 2215 hrs 9-1-41 until 2000 hrs. 10-1-41. A.A. Sec. 15. (1)	L/Cpl Sherard	144 hrs. detention	13-1-41.	Lt Col. D.W. Stark	Forf 1 day pay F.P.I. Total Forf. 1 day pay
Watley Surrey	25-1-41	Pte		(1) A.W.L. from 2200 hrs 24-1-41 to 0715 hrs 25-1-41 A.A. Sec 15 (1) 2 Nights to the prejudice of good order and military discipline A.A. Sec 40.	Cpl Brown	14 days C.B.	29-1-41.	Lt Col Steele	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley Surrey	9.5.41	Pte		Failing to appear at a place of parade appointed by his C.O. AA Act 1.5.(2)	Cpl. Hewer Cpl. Barron	5 days C.B.	10.5.41	Lt. Mansted	
Witley Surrey	18.3.41	Pte		Conduct to the prejudice etc. dirty rifle & equipment AA Act 1.9. Dec 41	Cpl. Hurrard	2 days C.B.	13.3.41	Capt Patterson	
Chipstead	27.6.41	Pte		W.O.A.S. A.W.L. from 2230 hrs. 27.6.41 to 0600 hrs. 30.6.41 (3 days 7 hrs. 30 mins)	L/Cpl. Markham L/Cpl. Baldwin	7 days F.P.	28.6.41	Maj. H.R. Grey	Forf. 4 days pay 7.97
Field	16.5.41	Pte		Sec. 12 (1) AA. A.W.L. from 2359 hrs 16.5.41 to 2200 hrs. 16.5.41 1 day 22 hrs	Cpl Bassett L/Cpl. Holden	5 days F.P.N. under AA 44	19.5.41	W.C. Smithhead R.A.S.C.	Forf. 2 days pay 7.97
Chipstead	17 July 41	Pte		W.O.A.S. A.W.L. from 0600 hrs 17 July 41 to 0130 hrs 20 July 41 3 days 19 hrs 30 mins	L/Cpl. McHugh	Forf. 28 days pay	23.7.41	Major T.E. Lowe	Forf 4 days pay under 7.97
Field	20 Aug 41	Pte		W & Rd was improperly dressed on return from leave (2) W.O.A.S. A.W.L. from 2300 hrs. 28 Aug 41 to 1435 hrs. 3 Sep 41 (Total 5 days 15 hrs 35 mins)	L/Cpl Hamilton L/Cpl Whyte (Pioneer Coy) & Cpl Baldwin (Regimentary)	28 days F.P. Forfeits 28 days pay	8.9.41	Lt Col T.B. Lewis	Forfeits 6 days pay under 7.97

No. A3965 Name Pte Lass R. C. Sqn., Battery, or Company Depot Corps R.C.R.

Date of enlistment 7-5-40 G.C. Badges

Service or Proficiency Pay

M.F.M. 6
(A.F.B. 122)
(12)M.-7-41-(1210-26)
H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet

No. and date of last drunk N/L

Period not reckoning towards freedom from extra fine

Sheet No. Two.

Signature O.C. Company, etc. P.O. Busby Capt.

Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Algonquin Utility	29-11-41	Pte		W.O.A.S. AWL from 1200 hrs 29-11-41 to 1600 hrs 12-12-41. Total absence 13 days 4 hrs.	Dpl Sinclair Commissionaire	120 days detention	18-3-42	F.G.C.M.	
						Released from detention 5 Jun 42. Sentence having expired. Remission earned under Rules for detention 40 days.	Barracks Guelph (Ontario) Barracks or Military Prisons Commanding Officer		
Algonquin	29-11-41	Pte		W.O.A.S. AWL from 1330 hrs 29-11-41 to 1600 hrs 7-12-41. Total 2 hrs 30 mins AA this date	L/Cpl Meredith R.C.R. Roberts	7 days C.B.	30-11-42	Asst Centurion	
Guelph	5-12-41	Pte		AA this date 5-12 AWL from 0830 hrs 5-12-41 to 1130 hrs 7-12-41. Total 2 days 3 hrs.	Commissionaire Pte Seymour Pte Bignell	14 days C.B. 6/3 stoppage Canteen Expenditure	12-12-42.	Maj T.H. Parker	3 days pay $4.50

Certified True Copy
A. J. Mitchell Capt.
Adjutant, The Royal Canadian Regiment.

F

M.F.B. 355
22M—5-41 (572-0)
H.Q. 1772-39-620
A.F.B. 206

Pte Captain Gordon Perry President

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A3965	Private	Ellison, E.C.	The Royal Canadian Regiment

1. The following is a fair and true summary of the entries in the ~~conduct sheets~~ Regimental and Service Documents or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A.Sec 15(1)	Two	times	Nine	times
For A.A.Sec 40		times	Three	times
For A.A.Sec 15(2)		times	One	times
For		times		times

~~Number of entries on conduct sheet which are distinguished as:~~

There are ~~XX~~ entries in the conduct sheets of the accused.

~~Particulars of charges for convictions, the entries for drunkenness struck out, etc.~~

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

~~The accused at the present time is under sentence of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 2 days in military custody, making a total of 2 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ N.P.M. 4 is 27 yrs 18 days

6. The date of his ~~attestation~~ specified in his ~~record of service~~ N.P.M. 4 is 7 May 40

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 308 days

8. The accused is entitled to reckon 2 yrs 308 days for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~receive~~ military decoration, or ~~receive~~ military reward (or is in possession of or entitled to). State any ~~unofficial~~ military decoration or reward.

~~If the accused is a commissioned officer:~~ The accused ~~has~~ is not a ~~Regular~~ Active Force officer.

11. (In the case of an officer.) The undermentioned in the Royal Canadian Air Force the rank of Permanent Force

[illegible] and in his regiment or corps the rank

12. The undermentioned has received his commission as an officer without reversion to the

Date of promotion

In the rank of

In the rank of

In the rank of

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A3965 Rank Private

Name Ellison, Earl Carl of The Royal Canadian Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	18 Mar 42 Whitley Hants	A.A.Sec 15(1) A.W.L. for 44 days 3 Hrs	120 days detention	40 days remitted Remission earned under Rules for Detention Brks and Mil Prisons

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Eleventh day of March 1943 A/Adjutant Cdn. Adjutant R.C.R.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked F and signed by the president, and annexed to the proceedings.

President

REQUEST FOR DEFENDING OFFICER

If available, I desire the services of Capt. S. Lerner, THE ROYAL CANADIAN REGIMENT, to defend me at my Trial by Field General Court Martial

Pte E.C. Ellison

A3965, Pte Ellison, E.C. - R.C.R.

I

Lt. Col. [illegible] Judge Advocate
President.

CERTIFICATE OF DELAY

Pte Ellison, E.C. was remanded by the Commanding Officer on 5 Mar 43 for F.G.C.M. The summary of Evidence was taken on the after noon of 5th Mar and Forms completed on 6th Mar 43.

A.F. Mitchell

(A.F. Mitchell) Capt.
Adjutant,
The Royal Canadian Regiment.

In the field
6 Mar 43

J

LIST OF EXHIBITS

A.F.B. 115	Declaration of C of I on Illegal absence
	List of Deficiencies of Kit
A.F.O. 1617	Certificate of Apprehension
CMHQ 1000:55	Cost of Escort Expenses

(R.M. Crowe) Lt.-col.
Commanding,
The Royal Canadian Regiment.

In the Field
6 Mar 43

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

GGG 138 (Can #3)

Pte Ellison E.C.

See F-142 for 1st Can
"AA 46" 2nd

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 3965 Pte Ellison E.C.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 12(1)(a)	NOT GUILTY	GUILTY	
2nd AA 24(2)	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ (1) ~~beginning on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer penal servitude for a term of Three (3) years and to be cut under stoppages of pay until he has made good £5-5-7 the value of kit lost by neglect.

20 Mar 44 (Sgd) President. (RP 45, 50.)

(Sgd) Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve confirmation of finding and sentence for superior authority.

Date 24 Mar 44 (Sgd) Commanding 4 Can Rft Units

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) (F.J. Montague) Major-General

Date Commanding 1 Can Mil Hist Section Canadian Military Headquarters 21 Mar 1944 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. A 3965 Private Earl Carl Ellison Incarcerated Winchester Prison

Date. 4 April 1944 Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL CFAO

Convened by Order of Maj Gen Roberts DSO MC Comd Can Rft Units dated

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or co- rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number. (a) Prmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname.

A 3965 Pte Earl Carl ELLISON

Certified true copy of original proceedings herein. R Lieutenant-Colonel 8 Jan 45 Capt J.A.G. Rep.

PROCEEDINGS OF TRIAL

Held in the Fd in (country) on (date(s))

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms. RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 84, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1500 hours trial commences.

A4. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (1)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ Ans ~~No Sir~~

~~The Interpreter is sworn.~~ (1) Do you object to ~~Mr. ...~~ as shorthand writer? Ans No Sir

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) The President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.M. Spry	4 Can Fd Regt
Member	Captain	Ellerton Donald Jones	2 C.A.P.Tk.
Member	Lieutenant	Arthur Thomas Stuart	2 C.A.P.Tk.
~~Judge-Advocate~~			
Prosecutor	Lt.	W. Green	2 C.A.P.Tk.
Defending Offr	Lt.	L.R. Brown	2 C.A.P.Tk.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 24, 27, 109. 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment make(s) (no) ~~(a)~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 21, 112. See para 1 of insers p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A66 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Insters on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans.....[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against~~ the accused on the.....charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. No Sir.....
Ans. ~~Are they witnesses as to character only?~~ Do you intend to call witnesses on your behalf? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see notes on back of Convening Order. CF 405. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (f), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans. No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (~~copies~~) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (g) (h), and (ii) they purport so refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. 2 and Ex. 2 respectively.[3]
(*1. AFB 3215 or AFB 2916. 2. MML p. 3. 3. RP 46, KR Con 158. If above documents not produced, see RP 44 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. No Sir. Not Officer. Good Arf.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the ~~Sub. if any~~ JA.
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 68, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COPY

CHARGE SHEET

The accused, No.A-3965 Private Earl Carl Ellison, Royal Canadian Regiment, posted (surplus to establishment) to No. 1 Canadian Base Staging Camp, a soldier of the Canadian Army, is charged with:-

1st Charge
Section 12
(1)(a)
Army Act

WHILE ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

at Chobham Camp, Chobham, Surrey, when proceeding on draft with intent to avoid further proceeding on such draft absented himself without leave from 2215 hours 6 January 1944 until apprehended by Canadian Provost Corps at Highbury Holloway Road, London at 1610 hours 10 March 1944.

Total time absent 63 days, 17 hours, 55 minutes.

2nd Charge
Section 24
(a)
Army Act

WHILE ON ACTIVE SERVICE LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES

in that he

at Chobham Camp, Chobham, Surrey, on the 13th day of March 1944 was deficient the following items of clothing and regimental necessaries issued to him for his use:-

			Used wear price	Vocabulary Price
Boots, ankle	prs	1	£0-18-4	1-4-5
Drawers, woollen	prs	1	0-4-4	0-5-4½
Gloves, knitted drab	prs	1	0- 1-7	0-2-1
Lanyards, knife		1	0- 0-1	0-0-1
Socks, worsted	prs	1	0- 1-3	0-1-8
	Total		£1-5-7	£1-13-7½

"L.M. Watson" Lt-Col
(L.M. Watson) Commanding Officer,
No. 1 Canadian Base Staging Camp.

In the Field
14 March 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"J.H. Roberts"
(J.H. Roberts) Maj-Gen
Comd
Cdn Rft Units

In the Field
20 March 1944

R

COPY

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate command of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt. A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-3965	Pte		Earl Carl	Ellison	1 CBSC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Mar 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ nil
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman VD		HQ CRU

MEMBERS.

Capt	from	3 CIRU
Lieut (Rank.)	from (Named or detailed. RP 106.)	3 CIRU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

"J.H. Roberts" (Signed personally. RP 105 fn 2.) Maj Gen (Rank.)

Dat. 20 Mar 44

(J.H. Roberts)Maj Gen
Commanding Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 80 (In lieu of AFA 3; 40-P & S-1807 (45-43)) (See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TÉMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing *see* AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 90(C)), any objections (*RP* 90(D)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 90(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn* 2, *46 fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly, see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP 40 fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by *J.A., if any.* (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or *J.A., if any*, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 547.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting an evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 53(3), RP 113(C), MML p 759.*)

4. The President or *J.A., if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

C O P Y

No. 1 CANADIAN BASE STAGING CAMP

MEDICAL OFFICER'S CERTIFICATE

I CERTIFY THAT NO. A-3965 Pte. Earl Carl ELLISON, of THE ROYAL CANADIAN REGIMENT, IS..fit.....TO UNDERGO TRIAL BY COURT MARTIAL.

W.H.Walters....CAPTAIN
R.C.A.M.C.

FIELD
20 MAR. 44

CERTIFIED TRUE COPY

The trial of No. A.3965 Private Earl Carl Ellison, Royal Canadian Regiment, posted (surplus to establishment) to No. 1 Canadian Base Staging Camp, a soldier of the Canadian Army.

Prosecutor

Defending Officer

At 1600 hrs trial commenced.

The names of President and Members were read to the accused.

The accused was asked, do you object to being tried by me as President, or by any of the officers whose names you have heard read. Answer - No Sir.

The accused was arraigned upon charges on schedule.

Note D-3

Evidence for Prosecution.

FIRST WITNESS FOR THE PROSECUTION.

A.37561 Sgt. DOWNEY, H.H., No. 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I was present at the warning of a draft at No. 3 C.I.R.U. on 31 Dec 43, at 1115 hrs. A roll call was taken and all the men answered their names. At the end of the roll call, Major J.H. Anderson read the draft warning, and asked the parade if there were any questions. No questions were asked. I produce a certified copy of No. 3 C.I.R.U. Part I Order dated 3 Jan 44.

(Marked Exhibit I by this Court)

Paragraph I of Exhibit I is the warning that Major Anderson read to the draft that day. The name of the accused is in its proper alphabetical order among the 'Es' on nominal roll in Exhibit I. There was also present when the warning was read

Lieut. J.R. Henderson
Lieut. G.A. Hampson
Sgt. A.W. Elmes

FIRST WITNESS FOR THE PROSECUTION (continued)

Cross-examined by the Defending Officer.

The draft was not told where they were going, they only knew they were going from one place to another.

The Court were of the opinion thatit was not necessary to comply with R.P. 83b.

SECOND WITNESS FOR THE PROSECUTION

Major J.H. Anderson of the Highland Light Infantry of Canada, having been duly sworn, states:

On the 31 Dec 43 I was on the strength of No. 3 C.I.R.U., commanding 'E' Coy. It was one of my duties to get drafts ready and dispatch them. We had a draft, I believe "Walnut", at that time.

(Prosecutor shows witness Exhibit I)

Witness continues: I remember that draft quite well. At approximately 1100 hrs on the 31 Dec 43 I, and the witnesses shown on Exhibit I, assembled. The roll was called in my presence and I read the warning shown on Exhibit I. There were no absentees. On the afternoon of 2 Jan 44 I turned the draft over to the Field Officer of the week, and the roll was called in my presence and in the presence of the Field Officer. Every member of the draft answered his name except one absentee, whose name had been struck from the roll. That was not the accused. The draft left on draft from No. 3 C.I.R.U., I would think about 1430 hrs. 2 Jan 44

Cross-examined by the Defending Officer.

The accused had answered his name and was on the draft when it left No. 3 C.I.R.U.

The Court were of the opinion that it was not necessary to comply with R.P. 83b.

THIRD WITNESS FOR THE PROSECUTION

Lt. G.A. Hampson, of No. 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I recognize the accused. On 31 Dec 44 I was employed in 'E' Coy, No. 3 C.I.R.U., in assisting in clearing drafts overseas, locally, and on course. At approximately 1115 hrs on that date the draft, exercise "Walnut", was formed up and the warning order was read to that draft by Major J.H. Anderson in my presence. Prior to the reading of the warning order the nominal roll was read and when the draft was turned over on 31 Dec 44 it was reported that one man was absent, who was Pte. Pelteau.

(Prosecutor shows witness Exhibit I).

Witness continues: I recognize the warning in Exhibit I as being the warning on that parade.

Cross-examined by the Defending Officer.

The men are not told where they are going, they are merely warned for draft.

The Court were of the opinion that it was not necessary to comply with R.P. 83b.

FOURTH WITNESS FOR THE PROSECUTION

Capt. H.K. Russell, Records Officer, No. 1 Canadian Base Staging Camp, having been duly sworn, states:

I am the Records Officer of No. 1 Canadian Base Staging Camp. I produce herewith nominal roll of personnel to No. 3 C.I.R.U. who reported at Chobham Camp for exercise "Walnut" in the afternoon of 2 Jan 44. The name of the accused appears on this roll and there were no absentees when the draft reported to this camp.

(Nominal roll marked Exhibit 2 by this Court)

FOURTH WITNESS FOR THE PROSECUTION (continued)

(The Defending Officer stated he did not object to the admission of this document)

Witness continues: I produce a movement order for Serial 8002/2 of exercise "Walnut" for a movement on the 11 Jan 44 of that draft from Chobham Camp to a port of embarkation.

(The Defending Officer said he doubted whether this document should be admitted as the accused was absent before the 10th day of January, 1944, and the proceedings mentioned in this order were never brought to his attention. The Court declined to admit the document.)

The serial number of the draft referred to in Exhibit II was 8002/2. This draft was to arrive at Chobham Camp and leave Chobham Camp. This was the concentration point for the draft. The draft would leave here on 11 Jan 44 for a port of embarkation. The accused did not proceed on the draft referred to from this Unit on 11 Jan 44. He was then absent without leave. I produce a certified copy of record of declaration of Court of Inquiry respecting the illegal absence without leave of the accused.

(Record marked Exhibit III by Court)

I produce P.C.2797, Certificate of Apprehension, of the accused. This certificate refers to the accused.

(Certificate of Apprehension marked Exhibit IV)

Cross-examined by Defending Officer.

I was present when the said draft arrived from No. 3 C.I.R.U. I heard the nominal roll called and the accused was present. No warning was given to this draft that it was still on draft. I know that these personnel come here to go out on draft. We felt that as they had been warned before they came here that it was unnecessary to warn them here. This draft did proceed on 11 Jan 44 from this camp and on that date before they left they were given a further warning order.

The Court were of the opinion that it was not necessary to comply with R.P. 83b.

FIFTH WITNESS FOR THE PROSECUTION

C.20975 R.S.M. Mather, G.K., Regimental Sergeant Major No. 1 Canadian Base Staging Camp, having been duly sworn, states:

I am R.S.M. Mather, G.K. On the evening of 6 Jan 44 it was reported to me by the Orderly Sergeant of the portion of the draft of which the accused was a member, that the accused was absent at Tattoo Roll Call, held at 2215 hrs of that evening. This report was made to me in the ordinary course of the day. I then caused in his name to Bn. Orderly Room an an absentee at Tattoo Roll Call. On the morning of 7 Jan 44 I held a Muster Parade and roll call of the Royal Canadian Regiment personnel on that draft, the accused being a member of that regiment. The accused failed to answer his name. I did not see him. I continued to call the roll each morning until and including the morning of 11 Jan 44, and during that period the accused did not answer his name. This draft left on the night of 11 Jan 44, and the accused, to the best of my knowledge, was not on this draft.

Cross-examined by the Defending Officer.

At this Camp we stage troops from Canada, and also drafts going abroad. Troops coming here are not told that this a camp in which they are intransit.

The Court were of the opinion that it was not necessary to comply with R.P. 63B.

SIXTH WITNESS FOR THE PROSECUTION

Capt. D.M. Jacquest, Quartermaster, No. 1 Canadian Base Staging Camp, having been duly sworn, states:

I am the Quartermaster of No. 1 C.B.S.C. At about 1600 hrs, 13 Mar 44, I inspected the kit of the accused in his presence, and I found him deficient the following articles, opposite each of which I give the full Vocabulary Price and the Used Wear Price on the basis of 75% of the Vocabulary Price.

SIXTH WITNESS FOR THE PROSECUTION (continued)

Article		No.	Vocabulary Price	Used Wear Price
Boots, ankle	prs.	1	1- 4- 5	0- 18 - 4
Drawers, woolen	prs.	1	0- 5- 4½	0- 4 - 4
Gloves, knitted drab	prs.	1	0- 2- 1	0- 1 - 7
Lanyards, knife		1	0- 0- 1	0- 0- 1
Socks, worsted	prs.	1	0- 1- 8	0- 1 - 3
			£1-13-7½	£1-5-7

There is a scale of issue for privates in the Canadian Army in the appendix to C.R.O. 3959. The accused when I inspected him could not produce Part III of his Pay book, but these are deficiencies as checked against the scale of issue in the Routine Order. After the inspection of kit I informed the accused of his deficiencies and he made no objection.

These drafts coming in are ordinarily not attached to us for any purpose except to send them forward and we do not get a Q.M. clearance. The accused was kit inspected when he came to this camp after 2 Jan 44, and it was found his kit was complete, except for sleeve detectors - 4, which is not included in the present deficiencies.

The Court were of the opinion that it was not necessary to comply with R.P. 83b.

NOTE D-5

Evidence for the Defence

FIRST WITNESS FOR THE DEFENCE

The accused, having been duly sworn, states:

I am twenty-eight years old. I am married, my wife lives at Rodney, Ontario, Canada, and I have four children. I came to England in August, 1940. About a year after that I received letters from friends that my wife had been running out on me. About 22 Dec 43 I received a letter from my wife and she said she did not want anything more to do with me. This worried me quite a bit. I did not know what had happened to the children.

I recall being warned for draft on 31 Dec 43. I proceeded with the draft to Chobham Camp. I had no idea where the draft was going. I did not know and do not know now what C.R.C.C. means. No one told me why the draft was in this camp. I was warned at No. 3 C.I.R.U. that I was proceeding on draft and the draft arrived in this camp. Having got this letter I was in a low frame of mind, being down in the dumps. We got paid on 6 Jan 44. I got in a dice game and I cleaned up quite a considerable sum of money. Still feeling depressed I went to Sunningdale, about one mile away and I got drunk. I came to two or three days later in London.

FIRST WITNESS FOR THE DEFENCE (Continued)

My recollection of that period is rather hazy. My recollection is that I found myself in a service club with two Canadians and I had been out with them the night before. I asked then what day it was. I am pretty sure they said it was Monday. I went drinking again. This continued for some time.

I realized I was absent. I knew I had been on a draft. Respecting the draft having arrived at Chobham Camp, that was as far as I knew it was going. When I went absent I did not do so with the intention of not further proceeding on the draft.

I do not know what happened to the articles which I am charged with being deficient. They were all with my kit when I left Chobham Camp. When I left Chobham Camp I went merely in my battle dress, boots and cap. All other kit was left in camp. I do not know what happened to Part III of the Paybook. When the Provost picked me up I knew myself that I was drunk, but I do not show it, I do not stagger around.

The Court were of the opinion that it was not necessary to comply with R.P. 83B.

The Prosecution declines to cross-examine.

The defence is closed.

Prosecutor's address to the Court.

The first charge against the accused is under Section 12(1)(a) of the Army Act, while on active service deserting his Majesty's service.

In the charge it is alleged that when the accused was proceeding on draft, with intent to avoid further proceeding on such draft he absented himself without leave during the period stated. To prove this charge the prosecution must establish both absence and intention to avoid the draft. The accused has admitted his absence. The Court has heard the accused's evidence as to his intention when he left without leave. If the Court accepts that statement they must find the accused not guilty of desertion, if the Court is satisfied, the prosecution has established an intent to avoid further proceeding of the draft, the accused should be found guilty of desertion. It is open to the Court to infer such intention from the evidence that the accused did not proceed with the draft. On this matter the Court is the sole judge of facts. If the Court is unable to find intention on the part of the accused, it is open to the Court to find the accused guilty of the lesser charge of absence without leave, which may be founded on the charge of desertion. It is submitted by the Prosecution, if the charge of desertion has not been proved the accused must be found guilty of absence without leave.

On the second charge under section 24(2) of the Army Act, losing clothing and equipment by neglect, it is submitted that the accused has submitted apart from the proof tended by the Prosecution that the articles deficient as charged were with his kit when it was left on the 6 Jan 44. That his kit was examined on the 13 Mar44 in his presence the articles as alleged were missing according to the Quartermaster who made the inspection that the accused did not object when told of the deficiencies. It is submitted that there is sufficient evidence to support 'guilty' on this charge. It must be pointed out to the Court that the accused is presumed to be innocent and that the onus of proving the charges is upon the Prosecution. Unless the Court is satisfied beyond reasonable doubt, all doubt must be resolved in favour of the accused.

Defending Officer's address to the Court.

Respecting the second charge, the Court is requested to note Section 24(2)(6) of the Manual of Military Law. If there was any neglect on the part of the accused that it was not necessarily culpable neglect.

With respect to the first charge, the question is what construction shall the Court put upon the actions of the accused. First the accused receives very upsetting news about his wife in Canada. Then on 31 Dec 43 he is warned for draft. He was not told where the draft was going or for what purpose. When the draft left No. 3 C.I.R.U. the accused left with it. He arrived at Chobham Camp on 2 Jan 44 and went absent without leave on 6 Jan 44.

The Defending Officer pointed out that the absence must be deliberate or clandestine nature.

The evidence shows in this case that the accused had no knowledge that as he went absent without leave that he was avoiding any draft service. His actions show no intent to evade all service, and as the essential ingredient of the offence is intent I submit he cannot be found guilty of desertion as charged. His actions throughout are those of an individual who had no guilty knowledge or intent of committing any crime except that of absence without leave.

The Court will now be closed and consider its finding.

The Defending Officer said in mitigation that -

The accused has four children and is only twenty-eight years of age, and has been in England since Aug 40. I submit, sir, that, although theM.F.M. 6 of the accused does not disclose what you could by any means call a good record, they are essentially not vicious crimes, mostly A.W.L.'s. I might point out too, sir, that the Court in dealing with this individual should possibly take a lenient view of the accused's troubles a suggestion of which have come out before the Court today. I might also point out that a human being is a fine piece of machinery, for example a watch, the rougher you treat it the more erratic it runs.

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A3965	Private	ELLISON E.C.	R.C.R., Att. 1 CRSC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not accessed to the prosecution.

† See para. 617, K.R., Regs.

* The numbers herein stated should correspond with the number or charge in the conduct sheets, permission being given to the court reduce offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	Absence without Leave 1	Absence without leave.
For	Absent from Defaulters Parade	Once — 10 times. (5 times, 1 charge)
For	A.W.L. & Escape. 1 times	times
For	Dirty Rifle and Equipment times	7 times
For	Improperly Dressed times	1 times
For	times	times

Number of instances of gallantry or distinguished conduct, Nil.

or

~~There are no entries~~ in the ~~conduct sheets of the~~ accused.

2. The accused has not been previously convicted, *or* N.A.

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for _____ days in civil custody, and 11 days in military custody, making a total of 11 days, of which _____ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / ~~attestation paper~~ is 20 yrs. 10 days (M.B.N. 1 Pt. 1.)

6. The date of his ~~commission~~ / ~~attestation~~ specified in his ~~record of service~~ / ~~attestation paper~~ is _____

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 10 mos 7 dys.

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of _____

12. (*In the case of an officer.*) The accused holds in the army the rank of _____ dated _____ and in his regiment (*or corps or* department) the rank of _____ dated _____

(Signed) _____

(Rank) _____

(Regiment) _____

(Corps) _____

(Date) _____

for B R

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 43965 Rank Private Name ALLISON, H.C. of R.C.D. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	Field 18 Mar 42	AWL 1200 hrs. 29 Dec 41 to 0108 hrs. 12 Feb 42.	120 dys detention	40 days remission
F.G.C.M.	Field: 11 Mar 43	AWL 0630 hours 26 Nov 42 to 0800 hours 25 Feb 43. AA 24(2)	6 mos detention	60 days remission

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Fourteen day of March 1944

Capt

The record has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of . . . . . Date of Promotion.

In the rank of . . . . . years, ...

In the rank of . . . . . years . . . . . .

In the rank of . . . . . years . . . . . .

(Instruction.—If any matter in any of the above five periods cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such records as are available and the paragraphs concerned amended accordingly.)

MFM 6
(A.F.B. 122)
40/P.R./126 (1438)

No A3965 Name ELLISON, E.C. Sqn, Battery, or Company | Corps R.C.R. | Date of enlistment 7-5-40 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc D.Campbell,Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				PREVIOUS SHEET DESTROYED 7-11-40					
Field	8-11-40	Pte		AWL from 2200 hrs 1-11-40 to 1330 hrs 8-11-40 AA Sec 15(1)	Sgt ?	120 hrs detn	10-11-40	Maj D. Fletcher	Forf 1 day's pay. FGT Total forf 6 days pay.
Field	9-1-41	Pte		AWL from 2215 hrs 9-1-41 to 2030 hrs 10-1-41 AA Sec 15(1)	Corp ?	144 hrs detn	13-1-41	Lt.Col Slack	Forf 1 day's pay. FGT Total forf 7 days pay.
Field	26-1-41	Pte		AWL from 220 hrs 26-1-41 to 2315 hrs 28-1-41 AA Sec 15(1)	Corp Brown	14 days C.B.	29-1-41	Lt.Col. Slack	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9-2-41	Pte		Conduct the prej. dirty rifle and equipment AA Sec 40	Corp ?	7 days C.B.	11-2-41	Capt Patterson.	
Field	27-6-41	Pte		AWL from 2230 hrs 27-6-41 to 0600 hrs 30-6-41.	L/Cpl Kenham L/Cpl Baldwin	7 days FP	28-6-41	Maj Spry	

MFM 6
(AFB 122)
40/PAM/136 (3435)

No A3965 Name ELLSION, S.C. Sqn, Battery, or Company | Corps RCR | Date of enlistment 4-5-40 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet 27-6-41 | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc D. Campbell Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16-5-41	Pte		AWL from 2359 hrs 16-5-41 to 2200 hrs 18-5-41 AA Sec 15(1)	Corp Basset L/Cpl Holden	5 days pay under Sec 46 AA	19-5-41	Lt Col Sutherland	Forf 2 days pay FR&I
Field	17-7-41	Pte		AWL from 0600 hrs 17-7-41 to 0130 hrs 21-7-41	L/Cpl McHugh	28 days pay	23-7-41	Maj Snow	Forf 6 days pay FR&I
Field	20-8-41	Pte		WOAS improperly dressed--no steel helmet.	L/Cpl Hamilton L/Cpl Smyth	28 days FP	5-9-41	Lt Col Snow	
Field	28-8-41	Pte		AWL from 2300 hrs 28-8-41 to 1430 hrs 3-9-41	L/Cpl Baldwin DOS	28 days pay	5-9-41	Lt Col Snow	Forf 6 days pay FR&I

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29-12-41	Pte		AWL from 1200 hrs 29-12-41 to 0108 hrs 12-2-42	L/Cpl Sinclair DOC	120 days detn Released from Headley Downs Det Bks 5-6-42 40 days remission of sentence.	18-3-42	FGCM	

MFM 6
(AFB 122)
40/PAM/136 (34285)

No A3965 Name ELLISON, E.C. Sqn, Battery, or Company — Corps C.E.R. — Date of enlistment 7-5-40 — GC Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet 29-12-42 — No and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No 3 — Signature OC Company, etc D.Campbell Capt C.E.R.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
							30-11-41	Capt Castonguay	
Field	29-11-42	Pte		AWL from 1330 hrs 29-11-41 to 1600 hrs 29-11-42 AA Sec 15(1)	L/Cpl Marshello L/Cpl Roberts	7 days C.B.			
					DOC	14 days CB 0-6-3 stoppage cost of apprehension	12-12-42	Maj Powers	3 days pay FRI
Field	5-12-41	Pte		AWL from 0630 hrs 5-12-41 to 1130 hrs 7-12-42.					
						6 mos detn	11-3-43	FOCH	Forf 242 days pay
Field	26-12-43	Pte		AWL from 0630 hrs 26-12-42 to 0800 hrs 25-2-43 AA Sec 24(2)	Capt. Mitchell DOC				
						Released from Det Barracks 10-7-43 60 days remission.			

PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-8-43	Pte.		(1) AA15(1) WOAS AWL from 1245 hrs 26 Aug 43 to 1251 hrs 26 Aug 43. Time abs 6 mins) (2) AA15(1) WOAS AWL from defaulters parade at 0615 hrs 27 Aug 43. (3) AA15(1) WOAS AWL from defaulters parade at 1745 hrs 25 Aug 43 1804 hrs 25 Aug 43. (Time abs. 19 mins). (4) AA15(1) WOAS AWL from defaulters parade at 2245 hrs 25 Aug 43 to 2252 hrs 25 Aug 43. (Time abs. 7 mins).	Cpl Brown Pte Hexter L/Cpl Ronan L/Cpl Monckton L/Cpl Monckton	7 days FP Fort 7 days pay KRI 149 (1) (b)	27 Aug 43	Lt Col. D. Fletcher	

MFM 6
(AFB 122)
40/PA2/156 (5426)

No A3965 Name ELLISON, E.C. | Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 7-5-40 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4-10-43	Pte		AA15(1) AWL 0930 hrs 4 Oct 43 to 2045 hrs 7 Oct 43. Total time 3 days 11 hrs 15 mins.	Sgt. Schoeneck	27 days FP Forf 27 days pay FAA 149(1)(b)	9 Oct 43	Lt Col. D.Fletcher	Forf 4 days pay FAA 149 (1)(b)(A) Total Forf - 31 days pay
Field	4-10-43	Pte		AA Sec 22 escaping while under open arrest.	Sgt. Schoeneck				
				AA Sec15(1) AWL 2200 hrs 1 Oct 43 to 0600 hrs 4 Oct 43. Total time 8 hrs.	Cpl Costello Cpl Munro				

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Oct 43	Pte		AA15(1) AWL from 1300 hrs 29 Oct 43 until apprehended at London at 0300 hrs 9 Nov 43. (Time Abs 10 days, 9 hrs)	Documentary Evidence Cpl. Hopkins T.A.E.	27 days Detn	10 Nov	43 Lt Col C.S. Hadley	Forf 11 dys pay FWAI 149(1) (a) Forf 27 days pay FWAI 149(1) (b) Total forf 38 days pay.

SUMMARY OF EVIDENCE IN THE CASE OF

A 3965 Private Earl Carl ELLISON, Royal Canadian Regiment, posted (surplus to establishment) to No. 1 Canadian Base Staging Camp.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

A 37561 Sgt. Downey, H.H., having been duly sworn, states:-

"I am on the permanent staff of No. 3 Canadian Infantry Reinforcement Unit. At 1115 hours on 31st of December 1943 I was witness to the calling of the roll and the reading of the Warning Order for Exercise "Walnut". All personnel answered to their names. Major J.H. Anderson read the Warning Order.

I produce a certified true copy of Appendix "A" to Order No. 2 of No. 3 Canadian Infantry Reinforcement Unit Daily Orders Part I dated 3rd January 1944. (Marked Exhibit "A" by the officer taking the summary of evidence.)

The other witnesses to the draft warning from the permanent establishment of No. 3 Canadian Infantry Reinforcement Unit are:-

Lieut. J.R. Henderson,
Lieut. G.A. Hampton,
Sgt. A.W. Klems.

The accused declines to cross-examine this witness.

H. H. Downey sgt

SECOND WITNESS FOR THE PROSECUTION

Captain H.K. Russell, Records Officer, No. 1 Canadian Base Staging Camp, having been duly sworn, states:-

I am the Records Officer, No. 1 Canadian Base Staging Camp. I produce nominal roll which accompanied the draft from No. 3 Canadian Infantry Reinforcement Unit exercise "Walnut", Serial 8002/2, which arrived at Chobham Camp on the afternoon of the 2nd day of January 1944. The name of the accused appears thereon. (Marked Exhibit "B" by the officer taking the summary of evidence.)

I produce No. 1 Canadian Base Staging Camp Movement Order dated 10th January 1944 affecting the move from Chobham Camp on the 11th January 1944 of personnel of Exercise "Walnut" Serial 8002/2 (Marked Exhibit "C" by the officer taking the summary of evidence.)

SECOND WITNESS FOR THE PROSECUTION (Continued)

I produce nominal roll of personnel removed from Serial 8002/2 of Exercise "Walnut" as of 11 January 1944. The name of A 3965 Pte. Ellison E.C., appears thereon, and marked AWL. (Marked Exhibit "D" by the officer taking the summary of evidence.)

I produce certified true copy of the original record of the Court of Inquiry assembled at Chobham Camp, Chobham, Surrey on the 29th day of January 1944 for the purpose of investigating and recording the absence without leave and deficiencies in arms, ammunition, equipment and regimental necessaries of A 3965 Pte. Earl Carl ELLISON, Royal Canadian Regiment. (Marked Exhibit "E" by the officer taking the summary of evidence.)

The accused declines to cross-examine this witness.

J.K. Russell Capt

THIRD WITNESS FOR THE PROSECUTION

C 20975 R.S.M. Mather, G.K., Regimental Sergeant Major No. 1 Canadian Base Staging Camp having been duly sworn, states:-

I am Regimental Sergeant Major No. 1 Canadian Base Staging Camp. At approximately 2300 hours on the 6th January 1944 I was informed by the Orderly Sergeant of that portion of Serial 8002/2 made up by the Royal Canadian Regiment that A 3965 Pte. Ellison, E.C. was absent at Tattoo Roll Call, which was held at 2215 hours. At 0830 hours 7th January 1944 I held a Muster Parade and called the roll of the Royal Canadian Regiment personnel. A 3965 Pte. Earl Carl Ellison did not answer to his name. I called the roll each morning including 11 th January 1944 and on no occasion did the accused answer to his name.

The accused declines to cross-examine this witness.

G.K. Mather R.S.M.

FOURTH WITNESS FOR THE PROSECUTION

Captain D.M. Jacquest, Quartermaster No. 1 Canadian Base Staging Camp having been duly sworn, states:

I am Quartermaster No. 1 Canadian Base Staging Camp. At 1600 hours on 13th March 1944, I inspected the kit of the accused and found him to be deficient the following items:-

Article		No.	Vocabulary Price	Used Wear Price
Boots, ankle	prs.	1	1- 4- 5	0-18- 4
Drawers, woollen	prs.	1	0- 5- 4½	0- 4- 4
Gloves, knitted drab	prs.	1	0- 2- 1	0- 1- 7
Lanyards, knife		1	0- 0- 1	0- 0- 1
Socks, worsted	prs	1	0- 1- 8	0- 1- 3
			£1-13- 7½	£1- 5- 7

The accused declines to cross-examine this witness.

D M Jacquest Capt

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declines to make a statement or to give evidence on oath.

The accused does not call any witness for the defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down before me in the presence of the accused and that Rules of Procedure 4(C), (D), (E) and (F) have been complied with.

L McO Watson Lt.-Col.
(L.McO. Watson) Commanding Officer,
No. 1 Canadian Base Staging Camp.

In the Field
14 Mar 1944.

ADDITIONAL SUMMARY OF EVIDENCE IN THE CASE OF

A 3965 Private Earl Carl ELLISON, Royal Canadian Regiment, posted (surplus to establishment) to No. 1 Canadian Base Staging Camp

The Commanding Officer directs that the evidence be taken on oath.

FIFTH WITNESS FOR THE PROSECUTION

Major J.N. Anderson, having been duly sworn, states:

On the 31st day of December 1943 I was on the Permanent Establishment of No. 3 Canadian Infantry Reinforcement Unit. I commanded "H" Company. My responsibilities among other things were the despatching of reinforcements.

At approximately 1030 hours on the 31st December 1943 I read the warning order to personnel proceeding on Exercise "Walnut". I heard the roll called prior to my reading the warning order and all personnel answered to their name. I would not recognize the accused.

On the afternoon of 2nd January 1944 I was present when the roll was again called at which all personnel except Ptes. Fulton answered to their name and I witnessed the departure of the draft from No. 3 Canadian Infantry Reinforcement area.

The accused declines to cross-examine this witness.

(J.N. Anderson) Major

SIXTH WITNESS FOR THE PROSECUTION

Lieut. G.A. HAMPSON, having been duly sworn, states:

At approximately 1115 hours on the morning of the 31st day of December 1943, I was witness to the calling of the roll and the reading of draft warning to personnel of No. 3 Canadian Infantry Reinforcement Unit being despatched on Exercise "Walnut". The accused whom I recognize was present and answered to his name when called and was also present when the warning order for the draft was read.

Major J.H. Anderson read the warning order. I was not present when the said draft left No. 3 Canadian Infantry Reinforcement Unit area. On the 31st day of December 1943 I was a reinforcement officer (OIC) on "B" Company reinforcement strength my duty was to assist in preparing drafts for departure. I was not on the permanent establishment of No. 3 Canadian Infantry Reinforcement Unit.

The accused declines to cross-examine this witness.

(G.A. Hampson) Lieut.

SEVENTH WITNESS FOR THE PROSECUTION

A 37752 Sergeant Elmes, A.W., having been duly sworn, states:

I am on the permanent establishment of No. 3 Canadian Infantry Reinforcement Unit. I am employed as draft despatching sergeant. At approximately 1115 hours on the 31st day of December 1943 I was present at the calling of the roll and the reading of the warning order to the draft proceeding on Exercise "Walnut".

The accused whom I recognize was present and answered to his name. The warning order was read by Major J.H. Anderson.

The accused declines to cross-examine this witness.

(A.W. ELMES) Sgt.

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declines to make a statement or to give evidence on oath.

The accused does not call any witness for the defence.

I certify that the foregoing Additional Summary of Evidence consisting of three pages was taken down before me in the presence of the accused and that Rules of Procedure 4(C), (D), (E), and (F) have been complied with.

(L.M. Watson) Commanding Officer,
No.1 Canadian Base Staging Camp.

In the Field
18 March 1944.

EX. 1 Exhibit (A)

Appendix "A" to order No.2

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART I
BY

Appendix "A" to order No. 2

COLONEL J.A. MCINTOSH, D.S.O., E.D.

Monday 3 Jan 44.

1. TROOPS WARNED FOR DRAFT

Absentees

The u/s personnel of Draft "Exercise Walnut" were present on a parade held 31 Dec 43 at 1115 hours and were warned that they were proceeding on draft "Exercise Walnut" and were cautioned on said parade as follows:-

(a) The failure of an officer or soldier to proceed with the draft because of unauthorized absence is a serious offence.

(i) "you have been selected to proceed on draft, and you are now warned that you must be present and ready to go when the draft is sent off.

(ii) Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on Active Service.

(iii) If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of penal servitude for life.

(iv) At some time prior to the departure of the draft, a parade will be called on which you must be present, and at which the exact date and time of departure will be told to you."

(J.M. Anderson) Major.

NOT ON DRAFT

2nd Witness (G.A. Thompson) Lieut.
4th Witness (A.W. Wilmes) Sgt.

ON DRAFT

2nd Witness (R.P. MacDonald) Sgt.
4th Witness (A.J. Marshello) L/Sgt.

RECALL OF DRAFT

EXERCISE "WALNUT"

A.3965 Pte. Willson, E.C. (RCR) Gen Duty

CERTIFIED THAT THIS IS A CERTIFIED TRUE COPY OF THE ORIGINAL DOCUMENT IN MY POSSESSION.

"R.D. MacArthur", Capt. Adjt.
3 Can. Inf. Reinf. Unit.

3 CANADIAN INFANTRY REINFORCEMENT UNIT (Exhibit B)

NOMINAL ROLL "EXERCISE WALNUT"

NO.	RANK	NAME	REGT	QUALIFICATION
A3965	Pte	ELLISON, E.C.	RCR	

CERTIFIED CORRECT :

(W.B. THORNE) CAPTAIN
RECORDS OFFICER
3 CDN INF REINF UNIT

(Exhibit B)

RECORD of the Declaration of a Court of Inquiry assembled at CHOBHAM CAMP, CHOBHAM, SURREY.

on the 29th. day of JANUARY, 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A-1965, Pte. Earl Carl ELLISON, ROYAL CANADIAN REGIMENT, (Attached for all purposes to No.1 Canadian Base Staging Camp).

DECLARATION

The Court declare that No. A-1965, Pte. Earl Carl ELLISON, ROYAL CANADIAN REGIMENT, attached for all purposes to No.1 CBSC,

illegally absented himself without leave at CHOBHAM CAMP, CHOBHAM, SURREY

at 2215 hrs on the 6th day day of JANUARY, 1944,

that he is still so absent, and that on the 28th day of JANUARY, 1944 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
	No.	VOCAB, PAYBK	£ s. d.
BLOUSE, S.D.	1.		£ 3 : 6.
BOOTS, Ankle prs.	1.		£ 4 : 5.
DRAWERS, Woolen prs.	1.		£ 2 : 1.
GLOVES, Knitted Grab prs.	1.		£ 5 : 0.
SOCKS, prs. @ 1/6d	1.		£ 4 : 3.
TROUSERS, S.D., prs.	1.		£ -: -: 4
CAPES, Cap.	1.		£ 1 : 3.
KNIFE, Shoe, Polishing.	1.		£ -: -: 2.
COMBS, Hair.	1.		£ -: -: 10.
DISCS, Identity sets.	1.		£ -: -: 6.
KNIVES, Table.	1.		£ -: -: 1.
LANYARD, Knife.	1.		£ -: -: 4½
UNIT TITLES, prs. @ 1½d	1.		£ -: -: 3.
COVERS, Breech Rifle.	1.		£ -: -: 4½
PATCHES Distinguishing 3 @ 1½.	3.		
			£ 4 : 9: 4.

ARTICLES	VALUE
	£ s. d.
UNEXPIRED WAR PRICE	£ 1 : 6: 2.

Capt. C.J. BARNES D.C.M. RWR President

Capt. E.W. MacDONALD. RCA Member

Signed at

Lt. S.E. TAPPIN. RCASC Member

this day of 19

Signature of Commanding Officer L.W. WATSON, Lieut.-Col.
O.C. 1 Can Base Staging Camp.

Certified true copy Capt.
Signature of Officer having custody of original record

3/608 HBB 375-AFB 115
40-P&S/392 (6610)

EX 4 (Exhibit F)

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 A r.42.

I Certify that No.A2965....Rank.Pte..Name .WILTSON,.E.C.....

Unit...R.C.I.R.U.....was arrested at... London.....(Place)

at.1610..(hour)on.10.Mar.44(date) and that at the time of his arrest he was wearing (Military Uniform) or [illegible]
Signature of Porovost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
10 Mar 44

.....Capt.
(W.H.N.J. Holmes) D.A.P.M.
Cdn Military Headquarters.

TOS from Desertion w.e.f. 10 March
having been apprehended at London by C.P.C. 1610 hrs 10 Mar 44.

To:- O.C. 1 Can Base Staging Camp

With reference to my pending trial by Field General Court Martial.

I wish that an officer be assigned to act as defending officer.

Private
Royal Canadian Regiment
(CIC)

14 March 1944

LIST OF WITNESSES FOR THE PROSECUTION

Major	J.H. ANDERSON	No. 3 Canadian Infantry Reinforcement Unit
Capt.	H.K. RUSSELL	No. 1 Canadian Base Staging Camp
Capt.	D.M. Jacquest	No. 1 Canadian Base Staging Camp
Lieut.	G.A. HAMPTON	No. 3 Canadian Infantry Reinforcement Unit
C 20975 RSM	MATHER G.K.	No. 1 Canadian Base Staging Camp
A 37561 Sgt.	DOWNEY H.H.	No. 3 Canadian Infantry Reinforcement Unit
A 37752 Sgt.	ELMES A.W.	No. 3 Canadian Infantry Reinforcement Unit

5-4-18

Nte Ellison E.b

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-3965 Pte Earl Carl ELLISON R M R att 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 3 years penal Servitude beginning on (date) 6 Jan 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 57 days, of which 18 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under 62.)

Sentence Awarded by the Court: To be imprisoned with hard labour for a period of two years and to be discharged from His Majesty's service with Ignominy.

(Sgd) Major Judge-Advocate, if any. 28 Mar 45 Date awarded. (Sgd) "George BH Cox" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

12 May 45 OC 1/c 1 Fch 21 A Gp directed accused be committed. "W F Taylor" DAA 1 Fch

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding Comdg 1 Cdn Disciplinary Cent

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 13, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) "J Runcie" [X Runcie] Lt Col [~~X S F Keyling Brigadier~~]
Date 30 Mar 45 A/Commanding 2 Cdn Base Rft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A3965 Pte Earl Carl ELLISON	24 Apr 45	"J Medhurst" Lt Col Comdg 1 Cdn Disciplinary Centre

CR #124/1 & Last d/21Apr45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 21 May 45 JAG BRANCH

5I-18.

FIELD GENERAL COURT-MARTIAL

CPA&R 4/388

Convened by Order of Brigadier GSN Gostling, ED Comd 2 CBRG dated 27 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-3965	Pte	Earl Carl	ELLISON	R M R att 1 Cdn Disciplinary Centre

PROCEEDINGS REVIEWED 21 May 45 "G W Dyman" Lt REVIEWING OFFICER, JAG BRANCH CMHQ

CERTIFIED TRUE COPY [illegible] Lt Col for 21 A Gp

PROCEEDINGS REVIEWED O J A 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 28 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 30/145

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevants from RQs. For guidance on procedure when a variation in this Form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 265, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 93, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1545 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans [illegible]
The Interpreter is sworn.(1) Do you object to [illegible] as shorthand writer? Ans [illegible]
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G B H COX	CAC att 1 Cdn Disciplinary Centre
Member	Major	A E LEFROY	Seaforth Highrs att 1 Cdn Dis Centre
Member	Captain	J D POLLOCK	Can Pus att 1 Cdn Dis Centre
Judge-Advocate			
Prosecutor	Lt	H E LEWIS	LSR 11 CBH Bn
Defending Offr	Captain	J H LABRIE	R de Mais att 1 Cdn Dis Centre

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information. (If Conv Offr.)
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See DF p 32.)

A8. The accused A-3065 Pte Earl Carl ELLISON before arraignment make(s) (no) plea. (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (severally) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records this plea in Part I of the Schedule.
(1. RP 35, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 266 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is duly sworn, considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court~~ considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to~~ ..... charge(s). ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 40, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 43, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement~~s~~ as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 355 or MFB 294.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans I would give evidence on oath, records as exhibit D" and I call no witnesses.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(C) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564, Overseas RO 3019, 3323, MML p 160, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 96(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE Exhibit "P" GBC

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined A-3965
(No.)

Pte ELLISON E C and in my opinion he is fit ~~xxxxx~~ to unde
(Rank) (Name)
trial by Court Martial.

Station 1 Cdn Disciplinary Centre "A A Toms" Capt (Sgd)
Medical Officer

Date 28 Mar /45

1 Cdn Disciplinary Centre
Unit

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. (AA 52, KR Con 562, RP 26, 29, 111.)
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless there unto required in due course of law.

2. JUDGE-ADVOCATE. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. (AA 52, MML 762, RP 27, 111.)
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. (AA 52, MML 763, RP 82, 111.)
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. (RO (Can) 2693.)
Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes")

1. RECORDING PROCEEDINGS. When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 95(C)), any objections (RP 95(B)), and any statements by accused, may be summarized aswell, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.
A 12345 Gnr H. Jones, RWB, sworn, states :
I am a sgt of the Pl to which Pte Smith, belongs. The accused in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accused to go on parade. He refused and did not go on parade.
Cross-exam : He did not say he was sick. (or, None.)
Re-exam : None.
Exam by Court : He said—" I've had enough parades ".
RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the pars in CF A 96, under which it is taken. Both sides of paper should be used. (RP 95 fn 1.)

4. DEFENCE PROCEDURE. (RP 122.) RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service, (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (RP 86(C), 87(C), 92(C) (D).) If the Court consider such compliance not practicable, the following order of procedure,

(ii) An option of accused, statement by accused (see *recorn re subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or

(iii) Evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1.*)

(iv) Evidence of witnesses for accused as to character. (*See RP 46 fn 1.*)

(v) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(E)*), or to prove previous convictions where accused has called witnesses as to character.

(vi) Closing address by Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given on his behalf, or if accused, not having given evidence on oath as to facts, whether any evidence as to his character has been given or not. (When accused charged jointly see *RP 85.*)

(vii) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D).* Prosecutor *does no right to address Court on subject of sentence* except as provided by *RP 86(E), KR Con 565(a).*)

(viii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED by President or JA, if any. RECORD

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 as following order :

(i) Charge Sheet. (On top.)
(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.
(iii) Medical Certificate(s). (*KR Con 557.*)
(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used. (*See RP 40 fn 8-12, 87(C),* (v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or fact of original see KR Con 560. As to* certified copies of registered books see *AA 185 (1) (g) (ii).*)
(vi) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy or fact of original see KR Con 560. As to* certified copies of registered books see *AA 185 (1) (g) (ii).*)
(vii) Summary of Evidence, if not already an exhibit.
(viii) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96, and not forms part of record of proceedings. (*AA 52(3), RP 111(C), MML p 759.*) A recommendation for mercy will be inserted in Part I of Schedule on p 4, *where* of sentence awarded. (*AA 52(3), RP 111(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

GBC

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA8) 40/FA8/169) (1668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-3965	Pte		Earl Carl	ELLISON	R M R att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G B H COX		CAC att 1 Cdn Disciplinary Centre

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	A E LEFROY		Seaforth Highrs att 1 Cdn Disciplinary Centre
Capt	J D POLLOCK		Can Pus att 1 Cdn Disciplinary Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 27 Mar 45

"G S N Gostling" (Signed personally. RP 105 fn 2.)

(G S N Gostling)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

GBC

CHARGE SHEET

The accused, A.3965 Pte Earl Carl ELLISON, Royal Montreal Regiment, presently attached 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
ARMY ACT
Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 1330 hrs 26 Dec 44 until apprehended in BRUSSELS, Belgium, at 1130 hrs 28 Jan 45.
(Total time absent: 32 days 22 hrs)

"A O Hood"
(A O Hood) Lt Col
Commander
1 Cdn Disciplinary Centre.

In the Field,
24 Mar 45.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"G S N Gostling"
(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

In the Field,
27 Mar 45.

Exhibit D GBC

Statement of the Accused in mitigation of punishment.

Defence
A-3965 Pte ELLISON Earl Carl RMR

having been duly sworn states:-
I am A3965 Pte Ellison, Earl Carl, I arrived in England Aug 1st 1940. shortly after I received letters from one of my friends telling me that my wife had been going out with different men. I saw my padre about it and there was nothing done about it at all. Just before Christmas 1944 I received a letter from childrens Aid Society St Thomas saying that my wife had put a child in their care. The child was born June 13th 1944. This was the first I had heard about it. If I can get a divorce through the army I'm willing to soldier again. I have four other children, the oldest about 9 years of age the others between that age and four years of age. I have not heard of or from them for the past two years. I have never stopped my dependents allowance to my wife, and the only other relative or friend I have is my father who is a chronic invalid. I have not heard from my wife in two years and have no idea where she is.

R.P. 83 (b) complied with.

GBC

PLEA OF MITIGATION
in the case of
A-3965 Pte Earl Carl ELLISON (RMR)

Gentlemen of the court:

Pte Ellison enlisted May 40 Came UK Aug 40 and in Northern Europe Oct 44. I must bring to the attention of the court that this soldier is out of Canada for 5 years, His conduct as a soldier is not very recommanded, but we find behind a big thing who change a lot a men, not only in the army, but also in civilian life. If you consider the life easiest in the army, I still think when you have family troubles, you are far away and letters told you"Your wife is doing all right with another man, you dont like it, but when you cant have a straight proof it pass like a cold shower, but when letters, and letters by reliable persons said so you are very unhappy and more when the news arrived to you that you have a child newly born in June 44 and the last time you have seen your wife is in/40. Pte Ellison spoke of his troubles to his Coy Comdrs, Padres etc nothing was done for cutting his family allowances or having a divorce, so his stability is affected, he is not a normal man, he hasnt a life like the others. I ask the court for the accused that the convening authorities shoudl be advised in relation of all those troubles. When a decision will take place Pte Ellison will be happy and he will serve his country with the best of his ability. I recommend him to the court. And for his four children in Canada.

"Henri Labrie" Capt
Def Off.
27 Mar 45

Exhibit "A" GBC

SUMMARY OF EVIDENCE

Summary of Evidence in the case of A.3965 Pte Earl Carl ELLISON, Royal Montreal Regiment, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, charged with, when on active service absenting himself without leave (AA Sec 15(1)).

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certificate of Apprehension dated 19 Feb 45.

FIRST WITNESS W.2015 Sgt Gatehouse, W.H., SIS 1 Cdn Disciplinary Centre, duly sworn, states:-

On 22 Mar 45 I interviewed the accused, A.3965 Pte Earl Carl ELLISON, attached to 1 Cdn Disciplinary Centre, whom I now recognize. After making my identity know, I cautioned him as follows: "You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be used in evidence." The accused understood the caution and signed his name to the statement which was read over to him. It is attached to these proceedings as Exhibit "B".

The accused declines to cross-examine this witness.

"W H Gatehouse"
W.2015 Sgt Gatehouse, W.H.

The accused is cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

A I have nothing to say.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of one pahe was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

"Maurice Rousseau" Capt
(Maurice Rousseau) Capt
Officer detailed to take the Summary of Evidence.

In the Field
26 Mar 45.

Exhibit "A"
"M Rousseau" Capt

CERTIFICATE IN ACCORDANCE WITH F.O. 3707 of 10 Apr 42

I CERTIFY THAT No A.3965 Rank Pte Name ELLISON E C

Unit RNR 1st Cdn Army HQ Coy was arrested at Brussels (Place)

at 1130 (hour) on 28-1-45 (date) and that at the time of his arrest he was wearing (military uniform) or (xxxxxxxxxxxxxxxx

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on arrest.

"J Tweddle"
(J Tweddle) A/Capt
OC 2 Cdn L of C Prov Coy

Field
19 Feb 45

Exhibit "B"
"A Rousseau" SIS/A1/59 CDC
Capt

CANADIAN PROVOST CORPS

Special Investigation Section 1 Canadian Disciplinary Centre

STATEMENT

PLACE: Field DATE: 22 Mar 45

SUBJECT: ABSENTEE

Reg No: A-3965 Rank: Pte Name: Ellison, Carl Earl
Unit: RMR

STATES: "I have been cautioned that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I fully understand the meaning of this warning and to show that I do so, I sign my name herewith"

Signature "E C Ellison"

I am A-3965 Earl Ellison. I am 28 yrs old. I enlisted in the infantry on 7 May 40 and arrived in Eng 1 Aug 40. In the first week of Oct I landed in France, with reinforcements; and was sent to RMR. I have been with my unit since arriving in France. Just after my joining up my wife began to go out with other men. Since arriving in Europe I have received a letter, stating that a boy was born to her and sent to the welfare society in St Thomas Ont. I knew all along that my home life was wrecked and consequently could not give my mind to soldiering. On the 26 Dec 44 I left my unit at 1330 hrs and was arrested on 28 Jan 45 at 1130 hrs in Brussels. If I could arrange a proper settlement, of my married life I feel sure that I could be a good soldier. This is a voluntary statement. I have had the opportunity to add change or delete anything I wish.

Sgd "E C Ellison"

Witnessed.
T.2015 W H Gatehouse Sgt
SIS C Prov C 1 C Disc C
22 Mar 45

Exhibit A GBC

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
A-3965	Pte	ELLISON Earl Carl	(Royal Montreal Regiment) att 1 Cdn Disciplinary Centre

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, preminence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AWL AA Sec 15(1) ..... 16 times

For Desertion AA Sec 12(1)(a) ..... 1 time

For AA Sec 24(2) ..... 1 time

For ..... times

2. Previous convictions of the Accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 57 days in military custody, making a total of 57 days of which 18 days were spent in hosp.

5. The present age of the accused is 20 yrs one mos

6. The date of his attestation is 7 May 40

7. The service which the accused is allowed to reckon is .....

8. The accused has in possession #

CVSM with Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

Date of Promotion

In the substantive rank of ....

* Strike out if not applicable

State the military decorations (if any) held by accused.

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by Which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
FGCM	18Mar42 UK	AA Sec 15(1) AWL 44 days 3 hrs	120 days deten cost of app £3-5-3-	40 days remission 5 Jan 42
FGCM	3Jan43	AA Sec 15(1) AWL 61 days 1 hrs 55 mins	6 months deten cost of app £4-0-1-	60 days remission of sentence 10Jul43
FGCM	6Jan44	AA Sec 12(1)(a) AWL 63 days 17 hrs 15 mins	3 years Penal Servitude and make good cost of equip.	Sentence suspended wef 12 Sep 44

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of Mar 45

"Stagg" Capt Admin Offr

1 Cdn Disciplinary Centre

Exhibit C

NoA 3965 Name ELLISON E C | Sqn, Battery, or Company | Corps CIC | Date of enlistment 7May40 | GC Badges | Service or Proficiency Pay GBC | [redacted]6

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7Aug40	Pte		AA15(1) AWL not shown		not shown	9Aug40	1 CIRU order 99-1940	
Field	21Sep40	Pte		AA15(1) AWL 16 hrs 31 mins		not shown	22Sep40	1 CIRU order 136-1940	1 dys pay FR&I 149(1)a
Field	7Nov40	Pte		AA15(1) AWL 15 hrs 30 mins		120 hrs detn	8Nov40	1 CIRU order 171-1940	Total Forf 6 days pay
Field	9Jan41	Pte		AA 15(1) AEL 21 hrs 45 mins		144 hrs detn	13Jan41	1 CIRU order 6-1941	Total forf 7 days pay
Field	28Jan41	Pte		AA 15(1) AWL 1 hrs 15 mins		14 days CB	29Jan41	1 CIRU order 19-1941	
Field	16May41	Pte		AA 15(1) AWL 1 day 22 hrs 1 min		5 days forf pay	21Mar41	1 LCIRU order 115-1941	Total forf 7 days pay
Field		Pte		AA 15(1) AWL not shown		7 days FP	30Jun41	RCR order 48-1941	total forf 10 days pay

(PTO)

Exhibit A GSC

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
A-3965	Pte	ELLISON Earl Carl	(Royal Montreal Regiment) att 1 Cdn Disciplinary Centre

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For AWL AA Sec 15(1) ..... 16 times

For Desertion AA Sec 12(1)(a) ..... 1 times

For ..... AA Sec 24(2) ..... 1 times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charge for ..... days in civil custody, and for 57 days in military custody, making a total of 57 days of which 18 days were spent in hosp.

5. The present age of the accused is 28 yrs one mos

6. The date of his attestation is 7 May 40

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of #

CVSM with Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of ..... N/A	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not Applicable

State the military decorations (if any) held by accused.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
FGCM	18Mar42 UK	AA Sec 15(1) AWL 44 days 3 hrs	120 days detn cost of app £3-5-3-	40 days remission 5 Jan 42
FGCM	3Jan43	AA Sec 15(1) AWL 61 days 1 hrs 55 mins	6 months detn cost of app £4-0-1-	60 days remission of sentence 10Jul43
FGCM	6Jan44	AA Sec 12(1)(a) AWL 63 days 17 hrs 55 mins	3 years Penal Servitude and make good cost of equip.	Sentence suspended wef 12 Sep 44

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 27th day of Mar 45

"Stage" Capt Admin offr

1 Cdn Disciplinary Centre

Exhibit C GBC

NoA 3955 Name ELLISON E C | Sqn, Battery, or Company | Corps CI C | Date of enlistment 7May40 | GC Badges | Service or Proficiency Pay | [redacted] 6 (22) 40/PA [illegible] (2488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
								1 CIRU order 99-140	
Field	7Aug40	Pte		AA15(1) AWL not shown		not shown	9Aug40		
Field	21Sep40	Pte		AA15(1) AWL 16 hrs 31 mins		not shown	22Sep40	1 CIRU order 136-140	1 dys pay FR&I 149(L[illegible]a
Field	7Nov40	Pte		AA15(1) AWL 15 hrs 30 mins		120 hrs detn	8Nov40	1 CIRU order) 171-1940	Total Forf 6 days pay
Field	9Jan41	Pte		AA 15(1) AEL 21 hrs 45 mins		144 hrs detn	13Jan41	1 CIRU order) 6-1941	Total forf 7 days pay
Field	28Jan41	Pte		AA 15(1) AWL 1 hrs 15 mins		14 days CB	29Jan41	1 CIRU order) 19-1941	
Field	16May41	Pte		AA 15(1) AWL 1 day 22 hrs 1 min		5 days forf pay	21Mar41	1 CIRU order) 115-1941	Total forf 7 days pay
Field		Pte		AA 15(1) AWL not shown		7 days FP	30Jun41	RCR order 46-1941	total forf 10 days pay

(PTO)

	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA 15(1) AWL not shown		28 dys frof pay	23Jul41	RCR order 51-1941	Total forf 32 days pay
Field	18Aug41	Pte		AA 15(1) AWL 5 days 15 hrs 35 mins		120 days detn cost ap.£3-5-3	18Mar42	FGCM 1 CDIRUorder 73-144	Total forf 199 days pay & cost of app
				40 da ys remission of sentence	5 Jan 42 1	CDIRU order 133-1942			
Field		Pte		AA 15(1) AWL not shown		14 days CB & cost of app £0-6-3-	12Dec42	RCR order 1-1943	forf 3 days pay & cost of app
Field	3Jan43	Pte		AA 15(1) AWL 61days 1 hr 30 mins		6 months detn cost of app £4-0-1 Stopp £0-10-1 158(2) FR&I	11Mar43	FGCM RCR order 23-1943	Total forf 254 days pay cost of app cost of equip.
				60 days remission of sentence	10 Jul 43 3	CIRU order 133-1943			

Place	Date of offence	Rank	Class of prisoners	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15Oct44	Pte		AA 15(1) AWL 6 hrs 53 mins		10 days FP	19Oct44	Y list Inf Gen unallocated order 66-1944	Total forf 11 days pay

Duplicate created from MFM 4 Record of conduct in Canada not available
"R S C Williams" Lt 12 Mar 45
Officer i/c Records X
Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of MFM 6 in my possession
"Stage" Capt

Exhibit C

No A 3965 Name ELLISON E C | Sqn, Battery, or Company | Corps CIC | Date of enlistment 7Mar40 | GC Badges | Service or Proficiency Pay GBC | MFM 6

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order (corresponding with trial	By whom awarded	Remarks
Field	25 Aug43 25Aug43	Pte		AA 15(1) (1) AWL 19 mins (2) AWL 7 mins (3) AWL 6 mins.		7 days FP	27 Aug43	3 CIRU order) 174-1943	forf 7 days pay
Field	30Oct43	Pte		AA 15(1) AWL 8 hours AWL 3 days 11 hrs 15 mins		27 days FP	90ct43	3 CIRU order) 213-1943	Total forf 32 days pay
Field	290ct43	Pte		AA 15(1) AWL 10 days 9 hrs		27 days detn	10Nov43	3 CIRU order) 240-1943	Total forf 58 days pay
Field	6Jan44	Pte		AA 12(1)(a) AWL 63 days 17 hrs 55 mins AA 24(2)		3 years penal servitude & to make good cost of loss of equip	20Mar44	1 CBSC order) 31-1944 FGCM	Total forf 1168 days pay Stopp of pay £1-5-7
				Sentence suspended wef 12 Sep 44	2 CIRU order 242-1944				

(PTO)

5 S-57
Pt. Ellis, Gl.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-2704 Pte Ellis, F. C. 1 Cdn Base T pt Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~28~~ beginning on (date) ~~.....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.) 14 Jul to 5 Aug - 22 days in Hosp. 6 Aug to 27 Aug - in open arrest

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of 45 days and to be put under stoppages of pay until he has made good the sum of $ 4.6.0 in respect of the damage to 1 Cdn Inf. Veh No. L-5406006

(Sgd) Gordon H. Jermyn, Judge-Advocate, if any — 27 Aug 45. Date awarded. (Sgd) F.M. Pardee major, President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispatch of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that ~~the accused be duly committed to prison or detention barracks until discharged by competent authority~~. (1)

(1. AA 57A. Delete if not used.)

Date 28 August 45 (Sgd) J.J. Maggs BRIG. Commanding COMD 2 CDN. BASE RFT. GP. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Date. 29 Aug 1945 Signature of Offr. D. Cheatley-Major. Officer Commanding 1 Cdn Base T pT. Coy R.C.A.S.C.

F2704 - Pte Ellis F.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I. INTEL. 1 SEP 1945 JAG BRANCH C.M.H.Q.

5-5-57

CPA86 (To replace AFA81) 40-P-M-8/1908 (4070)

FIELD GENERAL COURT-MARTIAL

4438B

Convened by Order(s) Brig J. J. Maggs Comd 2 Cdn Base Rft Gp dated 26 Aug 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-2704	Pte	Hew Conrad	Ellis	1 Cdn Base T pt Coy RCASC

PROCEEDINGS REVIEWED
NO REPORTS

[signature] Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 27 Aug 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 37/32

A1. The President, Members, ~~waiting Offrs~~, JA, ~~if any, and Offrs under~~ ~~fns. if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fns. ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~s~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the OIC.~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under fns. if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc.:

President	Major	F.M. Pardee	13 Cdn Base Rft Bn
Member	Capt	J.R. Chenal	13 Cdn Base Rft Bn
Member	Capt	J.E.O. Millette	13 Cdn Base Rft Bn
Judge-Advocate	Major	G.H. Jermyn	HQ 2 CBR Gp.
Prosecutor	Lt.	R.E. Patchell	1 Cdn Base T pt Coy RCASC
Defending Offr	Lt.	J.H. Taylor	1 Cdn Base T pt Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO. (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (3) and fn 2 were not followed. See 27 p 3.)

A8. The accused F-2704 Pte Ellis, F.C. before arraignment make(s) (no) ~~s~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is directed~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B x D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~President~~ JA, ~~is~~ has, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No Sir.(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*). *114, KR Con* 355. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not be given the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

Do you intend to call witnesses on your behalf? Ans .....

Are they witnesses as to character only? Ans .....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF #85. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 44(*A*) *fn* 1, 86(*C*). *Note the further opportunity on para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up to the jury under RP* 42, 102(2)(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 34(2) (*d*), *RP* 43, 120(*A*). *2. AA* 34(3), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 44 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (a) they purport to be signed in the manner required by AA 163(1) (g) (h), and (b) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. IAFB* 252 *or IAFB* 294. *2. MEM* 4. *3. RP* 46, *KR Con* 358. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement of Service and Conduct Sheet and in mitigation of punishment?(1) Ans Only as by my defending officer.(2)
(*1. RP* 27(*C*), 44(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to give evidence on oath anything bearing or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 34(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP* 71 (2). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its* (*or its*) *powers, is to be awarded to cover all charges in all charge sheets on which accused pleaded guilty. RP* 45. *As to sentences see AA* 44, 138, 182, *RP* 46-55, 58, 118, 119(4), *KR Con* 308, 330, 363-366. *Overseas RO* 3009, 3213, *MML p* 60, 727-739. *As to sentences assigned for civil offences by the law of England see AA* 6(3), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(1), *KR Con* 364. *2. RP* 50. *As to remission from sentence by Confirming Offr see KR Con* 367. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

This is to certify that F2704 Pte ELLS G.C. has been Medically examined and is fit to undergo Court Martial

Fmy

(Medical Officer)

Date: 27 Aug 45.

First Cdn Army Terminal

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(E)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 62 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 82(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 86(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (not sworn or subject to cross-exam by Prosecutor, Court or JA (*RP 40 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 86.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address on matters other than on extinguation of punishment by Defending Offr or accused. (*See RP 40 fns 9-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 562(4).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 360. As to certified copies of regimental books see AA 163 (1) (g) (h).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part 3 of Schedule on p 4 after minute of sentence awarded. (*AA 23(9), RP 118(C), MML p 759.*)

4. The President or JA, if any, will remove proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Fmy

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-2704	Pte		Glen Conrad	Ells	1 Cdn Base Tnt Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Aug 45 endorsed by me, [redacted] "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ([redacted]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 104(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	F M Pardee		13 Cdn Base Rft Bn

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	J R Duval		13 Cdn Base Rft Bn
Capt	J E E Ouellette		13 Cdn Base Rft Bn

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Major	G H Jermyn		HQ 2 Cdn Base Rft Gp

On Active Service in the Fd

in Holland
(Country.)

Date 26 Aug 45

(Signed personally, RP 105(C).)
(J G Gagnon)
Brigadier
(Rank.)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CF AAG (To Dept of AFAIR) 40-F-S-8/1/45 (4201)

(See overleaf for oaths and notes for use on trial.)

ANNEX "B"

CHARGE SHEET

The accused F-2704 Pte Glen Conrad ELLS, No 1 Cdn Base Tpt Coy RCASC, a soldier of the Canadian Army Overseas is charged with,

FIRST CHARGE
ARMY ACT
SEC 40

When on active service, conduct to the predjudice of good order and military discipline

in that he

in the field at about 1400 hours 14 Jul 45 improperly and without authority used Cdn Mil Veh L-540b006 for his private purposes resulting in damage to the said vehicle to the amount of £4-6-0.

W.C. Anderson

(W.C. ANDERSON) Capt
A/Officer Commanding,
No. 1 Cdn Base Tpt Coy RCASC

In the Field
16 Aug 45.

To be tried by Field General Court Martial

J G Stragge

(J G STRAGGE) Brig
Comd - 2 Cdn Base Rft Gp

In the Field
26 Aug 45

27 August 45

PLEA OF MITIGATION Of Punishment

for

F-2704 Pte Glen Conrad ELLS, No-1 Canadian Base Transport Company RCASC.

Mr President and Members of the Court I would like to make a plea of Mitigation on behalf of F-2704 Pte Glen Conrad ELLS. Pte Ells Volunteered for the Canadian Actice Service Army on 26 March 1942. After only a very short period of approx 2 Months in Canada he was sent to England. Then followed 2 Years training in England. I would like to point out that during all this time Pte Ells MFM 6 remained without any entries. On "D" Day plus 24 came to France and during some of the most difficult periods of this war carried out his duties as Driver i/c in an exemplary manner. Pte Ells was always found to be willing, co-operative, and extremely good soldier. On the occasion when Pte Ells was wounded in the leg he requested immediate return to his unit which was granted.

Pte Ells action when involved in the accident was such as to prevent damage to the other vehicle or injury to any of the occupants.

In conclusion may I stress the service Pte Ells has rendered to his country and may I point out this will be the first mark on Pte Ells clear record.

Having heard in brief a record of his good service in the army I trust that you will be as lenient as possible at thr same time it is realized that discipline must be upheld.

.....
J.H. Taylor Lieut.
1 Cdn Base Tpt Coy RCASC

Summary of Evidence EXHIBIT
in the case of
W/O F. 2704 Pte Ells H. G.
1 Tdn Base Tpt Coy RCASC

By direction of the convening officer, the evidence is taken on oath.

1st Witness: B 157177 Pte Gee D.H. of 1 Tdn Base Tpt Coy RCASC, sworn, states:

I am B 157177 Pte Gee D.H. of 1 Tdn Base Tpt Coy. On the 14th July my truck was in W/S and Pte Ells was to transport us from pl. lines to W/S at approx 1415 hrs we left the pl lines. When I arrived at W/S my truck was not finished so I went back into Pte Ells' truck. It was a very hot day so we decided to go for a swim. at the swimming pool there was full and people we had up stairs waiting to get in. We decided not to wait there but to go over to Marine swimming. When coming [illegible] there we were proceeding along the road at approx 30 m.p.h. There was a civilian truck in front of us and an oncoming Dodge truck in front of the civilian truck a civilian truck in front of the oncoming Dodge. Pte Ells driver his horn and passed the civilian truck in front of him. As he his horn + started passing the oncoming Dodge. we were about 1/2 way up the side of the oncoming Dodge when he put sharply to the left to pass the civilian car. To avoid a collision with the oncoming Dodge Pte Ells swung his truck towards the ditch. There was a road pole on the side of the road. The left front fender that struck the road

and swung the truck into the ditch. The truck finally stopped. I got out and found Pte Ellis laying in the ground between the door and the box of the truck. I helped him to his feet and found he could walk. He had been injured. A jeep stopped and we put him in it and it took him away to get medical treatment.

Q 1 : Did the officer Dodge step when you got into the ditch?

A : No Sir.

Q 2 : When you saw in the A/S did you make any inquiries as to where the work ticket was made out for or if Pte Ellis had any authority for any thing doing?

A : No Sir

Q 3 : Do you know the route of the truck that Pte Ellis was driving?

A : Yes, L 406006.

The accused declines to cross-examine the witness and witness: L 100150 Pte Hayding A. G. of 1 Can Tpt Coy RCASC sworn states:-

I am L 100150 Pte Hayding A. G. of 1 Platoon Can Tpt Coy RCASC On 14 July at approx 1430 hrs I was walking down town to get my watch was in a jewellery store in Grantham about 500 yds from camp, Pte Ellis stopped the truck in which he was driving and asked me up to give me a ride to the store. He said he was going for a swim and asked me if I would like to go as I said I would. He stopped at the store and then I got in the front.

of the truck. We went to Cantai
in the pass there but there was people lined
waiting to get in as we decided not to wait
but to go on to Menin and swim there. Between
Cantai & Menin we were passing at approx 30
m. p. h. There was a civilian car in front of us
and an infantry Dodge in front of it and the
vehicle in front of the infantry truck. Pte Ellis
seeing his chance and passed the civilian car
and the started to pass the infantry Dodge.
When we were about to run up on it he
swung out to pass the vehicle in front of him.
To avoid a collision with the truck Pte Ellis
swung his truck towards the ditch just
on the side of the road there was a pile of
rocks and on left front wheel caught on
these and swung the steering wheel out of
Pte Ellis hand and the truck went off
the road into the ditch. When the truck
hit the ditch the door flew open and
Pte Ellis half fell out but managed
to hang onto the door with his hand
When the truck stopped I got out and we
went around to the other side of the truck
and found Pte Ellis laying on the ground
I helped him to his feet and found that
he had been injured. An infantry jeep
came along and we put Pte Ellis into it
and took him to get medical treatment.

Q 1: Where did you see Pte Ellis after he took you [illegible] did you enquire if he had authority to take the vehicle or not.

A: No.

Q 2: Do you know the number of the truck that Pte Ellis was driving?

A: No Sir.

The accused declines to cross-examine the witness. A. D. Hepting.

Third Witness: Capt G. A. Wray, 1 Ch Base Tpt Coy RCASC., duly sworn, states:

I am G. A. Wray W/S Offr 1 Ch Base Tpt Coy. On the 18th July 45 I issued one of the coy's 3 ton lorries, a Dodge 4x2 No L 540 6006 which had been in accident and estimated the damage to amount to $146.00.

The accused declines to cross-examine the witness.

G. A. Wray Capt.

The accident report re the above is attached hereto as exhibit "A".

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whether you

sary or any evidence you give will be
taken down in writing and may be given
in evidence.

A; Yes. I will make a statement

The accused No F2704 Pte Ellis G. C.
1 Can Base Tpt Coy R C A S C sworn, states:

I am F2704 Pte Ellis G. C. of J D
platoon and now of Coy H. Q. 1 Can Base
Tpt Coy R. C. A. S. C. At about 1400 hrs
on 14 July 45 L/Cpl Shaw asked me
to take him to the W/S. I changed the
worktikat from the 12th to the 16th as
my office was available to sign the ticket.
After dropping L/Cpl Shaw my friend & I
decided to go for a swim. We arrived
at the swimming pool at Centralhof
there was a large queue so we decided
we would go to Menin. I was going
Menin & was about to pass a stationary
civilian car on the right-hand side of the
road. Another army truck was ahead of me
also passing the civilian car. I then
got to the road when the army truck was
about 20 yds from the civilian car.
He remained behind the civilian car
and I attempted to pass but

as I was about to pass the two pulled out and detached me.

The above mentioned is attached hereto as Exhibit "B"

The accused does not call any witnesses

R. G. Ellis

I certify that the foregoing Summary of Evidence consisting of six pages was taken down by me in the presence of the accused and that R. P. 4 (c) (D) (E) (F) and (G) (1) have been complied with

C. H. Marie
Capt

In the Field
13 Aug 45.

EXHIBIT B.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-2704	Pte	ELLS G.C.	1 Cdn Base Tpt Coy RCASC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial the necessary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to all recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	N/A	times	N/A	times.
For		times		times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~[illegible]~~

3. The accused is not under sentence at the present time ~~for the reason stated below~~

~~[illegible]~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for N/A days in civil custody, and N/A days in military custody, making a total of N/A days, of which 42 days were spent in hospital. 14 days 5 days - 22 days in hosp
4 days 27 days - in open arrest

5. The present age of the accused according to his record of service is 25.

6. The date of his ~~enlistment~~ attestation specified in his record of service is 26 Mar 42.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs 4 mos 20 days.

8. The accused is entitled to ~~[illegible]~~ gratuity in respect of 3 yrs 4 mos 20 days service.

9. The accused is entitled to reckon 3 yrs 4 mos 20 days for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or reward~~ (*or* is in possession of *or* entitled to (*state any military decoration or reward*)) CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated , and in his regiment (*or* corps *or* department) the rank of N/A dated .

(72647) Wt.61708/1877 10,000 10/41 A.& E. & Co. Gp.679
(72648) Wt.12827/481 50,000 5/42 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be entered.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		---------N/A----------		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 27th day of Aug 1945

(J.D. CHEATLEY) Major
O.C. 1 Cdn Base Tpt Coy RCASC

13 The person has served as a non-commissioned officer continuously, without reduction, to present date.

In the rank of ..... years, ... months.

In the rank of ..... years, ... months.

In the rank of ..... years, ... months.

Date of Promotion.

EXHIBIT C

No F-2704 Name [redacted] G.C. | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 26/3/42 | GC Badges | Service or Proficiency Pay n/a | 1/1/43 | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 3 | Signature OC Company, etc ZAW PROLUSHT Lt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries from previous sheet; destroyed 26/9/42 on completion of 6 months servic								ZAW PROLUSHT Lt.	

CERTIFIED TRUE COPY

(H.J. MACOOI) Lt. & A/C
No. 1 Obn Base Tpt Coy RCASC

(PTO)

SUMMARY OF EVIDENCE

in the case of

No F2704 Pte. Ells G.C.

1 Cdn Base Tpt Coy R.C.A.S.C.

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS: B157177 Pte Gee, D.H. of 1Cdn Base Tpt Coy, RCASC sworn, states:

I am B157177 Pte Gee, D.H. of 1 Cdn Base Tpt Coy RCASC. On 14 July my truck was in workshops and Pte Ells was to transport us from platoon lines to workshops. At approximately 1415 hrs, we left the platoon lines. When I arrived at workshops my truck was not finished so I got back into Pte Ells' truck. It was a very hot day so we decided to go for a swim, at the swimming pool at Courtrai. When we arrived at Courtrai the pool was very full and people were lined up outside waiting to get in. We decided not to wait there but but to go on to Menin swimming. Between Courtrai and Menin we were proceeding along the road at approximately 30 mph. There was a civilian truck in front of us and an Airforce Dodge truck in front of the civilian truck, and a civilian truck in front of the Airforce truck. Pte Ells sounded his horn and passed the civilian truck in front of him. He blew his horn and started passing the Airforce Dodge. We were about half way up the side of the Airforce Dodge when he cut sharply to the left to pass the civilian car. To avoid a collision with the Airforce Dodge Pte Ells swung his truck towards the ditch. There was a rock pile on the side of the road. The left hand front wheel struck the rocks and swung the truck into the ditch. When the truck finally stopped I got out and found Pte Ells laying on the ground between the door and the box of the truck. I helped him to his feet and found that he could not walk and had been injured. A Jeep stopped and we put him in it and it took him away to get medical treatment.

Question No 1: Did the Airforce Dodge stop when you went into the ditch?
Answer: No Sir.

Q 2 : When you were in the Workshops did you make any enquiries as to where the work ticket was made out for or if Pte Ells had any authority for any other journey?

A: No Sir.

Q: Do you know the number of the truck that Pte Ells was driving?

A: No Sir.

The accused declines to cross-examine the witness. D. H. Gee

(B 157177 Pte Gee D.H.)

Second Witness: L 100150 Pte Hepting, A.G. of 1 Cdn Base Tpt Coy RCASC sworn, states:

I am L100150 Pte Hepting, A.G. of D Platoon, 1Cdn Base Tpt Coy, RCASC. On 14 July 45, at approximately 1430 hrs, I was walking down town to get my watch which was in a jewellry store in Ghent. About 300 yds from camp Pte Ells stopped the truck in which he was driving and picked me up to give me a ride to the store. He said he was going for a swim and asked me if I would like to go, so I said I would. We stopped at the store and then I got in the front of the truck. We went to Courtrai to swim in the pool there but there were people lined up waiting to get in, so we decided not to wait but to go on to Menin and swim there. Between Courtrai and Menin we were proceeding at approx 30 mph. There was a civilian car in front of us and an Airforce Dodge in front of it and another vehicle in front of the Airforce truck. Pte Ells blew his horn and passed the civilian car and then started to pass the Airforce Dodge. When we were about half way up on it he swung out to pass the vehicle in front of him. To avoid a collision with the truck Pte Ells swung his truck towards the ditch. Just on the side of the road there was a pile of rocks and our left front wheel caught on these and swung the steering wheel out of Pte Ells' hands and the truck went off the road into the ditch. When the truck hit the ditch the door flew open and Pte Ells half fell out but managed to hang on to the door with his hands. When the truck stopped I got out and went around to the other side of the truck and found Pte Ells laying on the ground. I helped him to his feet and found that he had been injured. An Airforce Jeep came along and we put Pte Ells into it and took him to get medical treatment.

Q1: When Pte Ells offered to take you swimming did you enquire if he had authority to take the vehicle or not?

A: No.

Q: Do you know the number of the truck that Pte Ells was driving?

A: No Sir.

The accused declines to cross-examine the witness. R. G. Hepting

(L100150 Pte Hepting A.G.)

Third Witness: Capt G.A. Wry 1Cdn Base Tpt Coy, Duly sworn, States:

I am Capt G.A.Wry W/S Officer, 1 Cdn Base Tpt Coy. On the 18 July 1945 I examined one of the Coy's 3 ton lorries, a Dodge 4x2 No L5406006 which had been in an accident and estimated the damage to amount to Four Pounds Six Shillings (£4-6-0).

The accused declined to cross-examine the witness.

G.A. Wry (Capt)

The accused was cautioned as follows:

Q: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A: Yes, I will make a statement.

The Accused, No F2704 Pte Ells G.C., 1 Cdn Base Tpt Coy RCASC, Sworn, states: I am F-2704 Pte Ells, G.C. of D Platoon and now of Coy H.Q., 1 Cdn Base Tpt Coy RCASC. At about 1400 hrs on the 14 July 45, L/Cpl Shaw asked me to take him to the Workshops. I changed the work ticket from the 13th to the 14th as no officer was available to sign the ticket. After dropping L/Cpl Shaw, my friends and I decided to go for a swim. We arrived at the swimming pool atCourtrai, but there was a large queue so we decided we would go to Menin.

I was nearing Menin and was about to pass a stationary civilian car on the right hand side of the road. Another army truck was ahead of me also passing the civilian car. I blew for the road when the army truck was about 200yds from the civilian car. He resumed behind the civilian car and I attempted to pass, but as I was about to pass, the truck pulled out and ditched me.

(F2704 Pte Ells G.C.)

The s/a transport worktickd is being attached as exhibit "A"
The accused does not call any witnesses.

I certify that the forgoing Summary of Evidence, consisting of Two pages was taken down by me in the presence of the accused and that R.P. 4(c) (D), (E), (F), and (G)(13) have been complied with

G.A. Wry (Capt)
1 Cdn Base Tpt Coy
R.C.A.S.C.

In the Field
13 Aug 45

TRANSPORT WORK TICKET

TO BE COMPLETED IN INK WHENEVER PRACTICABLE

Army Form [redacted] (Revised 1942)

No.

MAKE OF VEHICLE	(1) Type	UNIT	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Dodge	3 ton	1 Cdn Base Tpt Coy RCASC	D Pl Beaulieu J	L 2406006	July

DATE	FOR WHOM JOURNEY IS PERFORMED	DETAILS OF LOAD	ROUTE: From	To	Via	SIGNATURE OF PERSON AUTHORISING JOURNEY	FUEL GALLONS: Petrol	Oil	Grease	Diesel	Drawn At	Used	TIME: Out	In	SPEEDOMETER: Out	Run	Total
			Remarks forward from White Paper No.														
12 July													1000				
14	A Cdn Base	Duty	Unit Lines Ghent Area Return			E.G. Patchell Lt.											
	Exhibit "A"		Certified True Copy			H.J. Jacobi (Lieut)											
	E.G. Patchell Capt.					A/O 1 Cdn Base Tpt Coy R.C.A.S.C.											

M.P.O. for week..... no. of vehicles carried over.....

TRANSPORT WORK TICKET

TO BE COMPLETED IN INK WHENEVER PRACTICABLE

Army Form [redacted] (Revised 1942)

No.

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Dodge	3 ton	1 Cdn Base Tpt Coy RCASC	D Pl	Beaulieu J	L 5406006	July

DATE	FOR WHOM JOURNEY PERFORMED	DETAILS OF LOAD	ROUTE From	ROUTE To	ROUTE Via	SIGNATURE OF PERSON AUTHORISING JOURNEY	FUEL GALLONS Type	FUEL GALLONS Petrol	TIME Out	TIME In	SPEEDOMETER In	SPEEDOMETER Run	SPEEDOMETER Bar
			Brought forward from Work Ticket No.										
12 July									1000				
14	1 Cdn Base	Duty	Unit Lines Ghent Area Return			E.G. Patchell Lt.							
						H Jacobi Lt							
	Exhibit "A"		Certified True Copy			H.J. Jacobi (Lieut)							
						A/C 1 Cdn Base Tpt Coy							
	E Patchell Capt.					R.C.A.S.C.							

DATE: 16 Aug 45.

F-2704 Pte ELLS G.C.
(Name of accused)

1. I hereby acknowledge receipt of one copy of CHARGE SHEET and one copy of the SUMMARY OF EVIDENCE delivered to me

17 Aug 45.
DATE

2. (a) ~~I do not wish to make any statement in connection with the charge preferred against me.~~

~~I do not wish to call any witnesses.~~

(b) I request that an officer be appointed as my Defending Officer at my trial by Court Martial

(delete either (a) or (b)

(Signed) G G Ells

I hereby certify that Lieut J.H. TAYLOR was appointed to defend F-2704 Pte ELLS G.C. at his forthcoming trial by Court Martial and the said OFFICER was notified that he was Defending Officer on 21 Aug 1945.
(date)

I hereby certify that Capt G.A. WHY was appointed Prosecuting Officer for F-2704 Pte ELLS G.C. at his forthcoming trial by Court Martial and the said OFFICER was notified that he was Prosecuting Officer on 21 Aug 1945.
(DATE)

W.O. Anderson
.....
(W.O. ANDERSON) Capt
A/Officer Commanding,
No. 1 Cdn Base Pt Coy RCASC

LIST OF WITNESSES

APPLICATION FOR FLCH
F-2704 Pte ELLIS G.G.

1. B-157177 Pte GEE D.H. of No. 1 Cdn Base Tpt Coy RCASC

2. L-100150 Pte KEPTING A.G. of No. 1 Cdn Base Tpt Coy RCASC

3. Captain G.A. WHY of No. 1 Cdn Base Tpt Coy RCASC

I I E-32

PTE ELLSWORTH M

RECORDED AT CMHQ IN AB 160 III-32

Correspondence to be PINNED here.

E117

CANADIAN SECTION 28 MAR 1944

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twelfth day of March, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * and that it is not practicable to delay the trial for reference to a superior qualified officer;

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*I am unable to appoint

*1. Three Officers to form the Court

*2. A Field Officer as President

for the following reasons, namely:—

*Omit if not applicable.

PROCEEDINGS REVIEWED 26 Apr 44

[illegible] Major
OFFICER i/c JAG BRANCH CMHQ

77

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	R H Morsey	Queen's Own Rifles of Canada

Members.

Rank.	Name.	Regiment.
Captain	C E Taylor	Regt HQ
Captain	G C Dark RCAPC	Queen's Own R
Waiting Lieut	D K Richardson	Regt HQ

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier
Commanding, 3 Cdn Inf Bde
Convening Officer.

E117

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F55586 Pte Michael ELLSWORTH, West N.S.R	First Charge Sec 15(1) AA	GUILTY	GUILTY To undergo detention for a period of 120 days 1st Degree DND.	Confirmed [illegible]

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [illegible] Brigadier (Signed) D.M.S. Hornby Major

Commanding 3 Cdn Inf Bde
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14 day of MAR. 44, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 14 day of MAR 1944

D.M.S. Hornby Major
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (k) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 19 day of Mar 19 44.

[illegible] Brig
Confirming Officer.

Promulgated and extracts taken in the case of F55586 Pte Michael Ellsworth West N.S.R.

(a) (Dated) 20 Mar 44 (Signed) [illegible] Capt & Adjt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Div. H.Q. Field on the 12th day of March 1944 by order of Brigadier J. A. Gibson Commanding 3. Can. Inf. Bde. dated the 12 day of March 1944.

President. ~~Major~~ Major L. R. Horsey R.C.A.

Members.

Capt. G. E. Taylor W.N.S.R.

Capt. G. B. Brunt R.C.A.P.C.

Trial of* F55586 Pte Michael Lillesmith ~~Judge Advocate~~ W.N.S.R.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

The Court satisfy themselves that N. A. is not available to serve owing to

N. A., waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. G. B. G. Cochran W.N.S.R.

~~Counsel~~‡ or defending officer† Capt. R.V. Inman R.C.A.P.C.

At 1005 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer. No. Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and ~~judge advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Capt. A. B. Mitchell R.C.N.R.C.
Lieut S. K. Hickerson W.N.S.R.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ charge against you, which you have heard read? GUILTY S.K. *Question to the accused.* *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? N.A. *Question.* *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? N.A. *Question.* *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? N.A. *Question.* *Answer.*

The accused having pleaded Guilty to THE. charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty" until after the finding on that other charge.

CHARGE SHEET

The Accused, F55586 Pte Michael ELLSWORTH, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas - CMF, on Active Service, is charged with:-

1st Charge
Sec 15 (1)
Army Act.

When on Active Service, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, at approx 1700 hrs 8 Feb 44, did absent himself and remained absent until surrendering himself to No. 1 Coy, Canadian Provost Corps, at approx 2000 hrs 21 Feb 44. Total time absent 13 days 3 hrs.

In the Field
1 Mar 44

(R S E Waterman) Lt col.,
Comd West N S R.

To be tried by Field General Court Martial.

In the Field
12 Mar 44

Brig Comd, 3 Cdn Inf Bde.

B.2 Ldn.

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) PARA 557

I certify that I have this morning examined

No. F-55586 Pte Ellsworth M

of West A S R and in my opinion he is

fit to undergo Trial by Court Martial.

Station Final

Date 14 Mar 44

Medical Officer. Maj. RCAMC.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused is found guilty of F55586 Michael Ellsworth the charge.

†The summary (or abstract) of evidence is read, marked × signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

YES.

Answer. The accused in mitigation of punishment says:— See attached marked C.

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Footnotes.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No. Sir.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Capt. C. B. C. Cochran is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES, Documentary

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked D. E., signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES

Question

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* YES

[Instruction.—If by reason of the nature of the service of the accused in a subordinate corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the presumable ground for the discretion of the Court in the like, and the Court must inquire into the nature and amount of the additional punishment.]

Cross-examined by the accused.

N. A.

Question to the accused.

Do you wish to address the Court? *Answer.* NO

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence

The Court sentence the accused

See schedule.

R.C.D. Yarmouth.

C.
B.S.M.

Statement in Mitigation.

The last time I was out in the car, I was only there for a short while and we stayed out there for 4 hrs and got relieved by another Pde, and at the time I was out there, I got sand fly nerves and couldn't eat, and went in the R.A.P. and the H.Q. W.O. S.R. told me I had no temp. he said I was nervous. Then he put me with the stretcher bearers until we were relieved that night, the unit returned to Ortona that night between 4 & 5 o'clock, and then they brought me back to my coy area, I reported to the Dr next morning. when I asked the Dr. what he would do with me, he told me he wouldn't have anything more to do with me. That's the reason I went A.W.L.

C. T. Taylor cas/f.

"C"

Certificate under A/A 165 (I) (1)

I. J.R. Markberg ..... certify that F.55586 Pte.
ELLSWORTH M. of the WEST NOVA SCOTIA ..... Regt.
surrendered himself to BASSAL SGT. PARKER G.F. ..... at
Ortona Italy ..... the 21st ..... day of FEBRUARY
1944. at 2060 hrs as a ~~deserter~~ (or absentee without leave)

Date

21 Feb 44.

J.R. Markberg ..... Lieut.
Officer i/c I Platoon
I Coy. Cdn. Provost Corps.

LIST OF WITNESSES in the case of: F55586 Pte Ellsworth, M
West Nova Scotia Regiment.

PROSECUTION: F-39725 A/Cpl Zwicker, R C West NSR
Capt A J W Dyer West NSR

DEFENCE: Nil

LIST OF EXHIBITS: Certificate of Surrender under Sec 163 (1) (j) of the Army Act

Statement by the accused as to a defending officer:

If I am to be tried by Court Martial on charges now pending against me, I wish to have Lt Holloway to act in my behalf.

In the Field
1 Mar 44

M Ellsworth
(Signature of Accused)

This is to certify that I, F-55586 Pte Ellsworth, M West NSR, have been given free of charge, a copy of the Summary of Evidence, Charge Sheet, Documents, etc., relative to my trial by Court Martial.

In the Field
1 Mar 44

M Ellsworth
(Signature of Accused)

X
Draft.

SUMMARY OF EVIDENCE in the case of F55586 Pte Michael ELLSWORTH of 17 Platoon "D" Coy. West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, stationed in the Field On Active Service.

By the order of Lt-col R.S.W. Waterman, Officer Commanding, West Nova Scotia Regiment

Evidence taken on oath.

First Witness for Prosecution F-39725 A/Cpl Zwicker, R C of 17 Platoon, "D" Coy West Nova Scotia Regt. having been duly sworn states :-

I am F39725 A/Cpl Zwicker, R C of 17 platoon "D" Coy West Nova Scotia Regt. At approximately 1700 hrs on the 8 Feb 44 I checked No 17 platoon and found the accused F55586 Pte Ellsworth, M to be absent. I have not seen him since that time.

Signed. x Cpl. R.C. Zwicker

The accused declines to cross examine this witness.

Second Witness for Prosecution Capt A.J.W. Dyer, Adjt West Nova Scotia Regt, having been duly sworn states

I am, Capt A.J.W. Dyer, Adjt for the West NSR. I produce as evidence certificate of surrender under section 163 (1) (j) of the Army Act. relating to the accused F55586 Pte Ellsworth M

Signed [signature] Capt

The accused declines to cross examine this witness

The accused having been duly cautioned as follows, "Do you wish to make any statement or to give evidence upon oath ? you are not obliged to say anything of to give evidence unless you wish to do so, but what ever you say or any evidence you give will be taken down in writing and may be given in evidence " declines to make a statement or to give evidence on oath.

Certified that Rule of Procedure 4 (c) (') (e) (f) have been complied with.

Taken down by me, in the Field, this 1 day of March 1944 in the presence and hearing of the accused.

In the Field.
1 Mar 44

O.M. Workman Capt
.....
(Officer taking Summary)

No. 55886 Name E Barrack M | Sqn., Battery, or Company | Corps C/E | Date of enlistment 16 July 40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/1 & 5136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character D

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Case	By whom awarded
Barrack Room	6-3-41	1/6	–	Breaking of Barracks 1400 hrs 6-3-41 (2) Improperly dressed when walking out	Sgt Campbell 30 Sgt Campbell 30	10 days Detention	10-3-41	Lt Col E R Small
	1-6-41	"		AWL 1400 Failing to report for duty		Extra 7 days	2-6-41	Maj Carmichael
Base Hospital	27-6-41	"		Leaving unit & Home 1245 hrs 27-6-41 & remained absent until 2355 hrs 27-6-41		3 Days Pay		OC Base Hospital
"	29-6-41	"		AWL from 2200 29-6-41 until 2345 hrs 30-6-41		7 days CB 7 days Pay	4-7-41	Lt Col E R Small
Camp Borden	1-7-41	"		Neglecting & losing his equipment on 4 occasions	pt Lennon	2 days CB	8-7-41	Lt Col E R Small
Camp Borden	1-7-41	"		AWOL 1400 Failing to comply with an order from the CO.	Sgt Wilson	9 days CB 7 days Pay	10-7-41	Lt Col E R Small

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Comp Barnhams	31.7.41	Pte		Absent without leave at 2030 hrs 31-7-41 being in police possession	Cpl Campbell RA & Sgt Smith.	28 Days Detention	1.8.41	Maj [illegible] RA	
[illegible] Bore	6.12.41	Pte		AA 40 Failure to appear at place of duty at appointed time	Sgt [illegible]	14 Days CB	14.12.41	Lt Col [illegible]	
Grappa Camp	14.7.42	Pte		AA sec 15 - Drunk - 10 Minutes	Pte [illegible] & Pte [illegible]	1 Days Pay	27.7.42	Maj [illegible] RA	
Grappa Camp	14.7.42	Pte		AA sec 40 Conduct to the prejudice of [illegible]	Pte [illegible] & Pte [illegible]	3 Days Pay	17.9.42	Maj [illegible] RA	
Imola	22 Jan 43	Pte		AA 24 (2) Losing by neglect his equipment	Documentary	3 Days CB	2 Mar 43	Lt. Col. Comd Depot	
Imola	7 Feb 43			AA sec 12 (1) - Absent - AWL from 1720 hrs 7.2.43 until 1730 hrs 7.2.43	Sgt Ransom RA	12 Days Pay & 7 Days CB	10.3.43		7 of 7 Days Pay

No. 55556 Name Ellsworth M. | Sqn., Battery, or Company | Corps RAC | Date of enlistment 15 Jul 42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/P & /5136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Delhi	3 Apr 43	AC		AA Sec 12 (b) AWL from 2200 hrs 2 Apr 43 to 2300 hrs 4 Apr 43	Cpl Hay J.	7 days CB 10 days Pay	6 Apr 43		2 days Pay Fd 44 1-4
Delhi	8 Jul 43	"		AA Sec 40 Wops conduct to the prejudice of discipline a room mud with no provocation.	Sgt Congdon.	3 days CB.	8 Jul 43	Capt G.A. Brown	
Delhi	14 Jul 43	"		AA Sec 40 Neglect to the prejudice of good order & discipline & refusal to obey.	CQMS Brown	3 days CB.	15 Jul 43	Capt G.A. Brown	
Field	19 Oct 43	"		(1) AWL from 2359 - 12-10-43 to 2215 hrs - 13-10-43 - AA Sec 15 (1) (2) AWL from 2315 hrs - 13-10-43 to 1600 hrs - 13-10-43 - AA Sec 15 (1)	A/Cpl Beaton & Pte Day Sgt Hall	2 days Pay	19-10-43	Maj D.A. McNaughton	2 days Pay Fd 44 1-4

(P.T.O.)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED.

No. F55586 Rank. Pte Name Ellsworth, M Regiment West Nova Scotia Regiment

1. THE following is a fair and true summary of the entries in the regimental Conduct Sheet of the accused;

Since Enlistment

Sec 15(1) AA -16 times.
Sec 40 AA - 6 times.
Sec 19 AA - 1 time.
Sec 24 (2) AA- 1 time.

Within last 12 months

Sec 15 (1) AA - 5 times
Sec 40 AA - 2 times
Sec 19 AA - 1 time

No. of instances of gallantry or distinguished conduct - Nil

The accused is NOT under sentence at the present time.

The accused has been under Close Arrest awaiting trial on the present charge for ..... days of which NO days were spent in hospital.

The present age of the accused is: ..... 21 ..... years.

SCHEDULE

On convictions by a Court Martial, of a summary award under Sec 47 of the Army Act, and of cases in which trial has been dispensed with of accused's No. F55586 Rank. Pte Name Ellsworth M of the West Nova Scotia Regiment.

NIL

I hereby certify that the foregoing schedule of convictions and ...ctions with trial is a true extract from the regimental books in ...y.

...le 1st ..... day of ..... March 1944

(Officer i/c regtl record ...
West Nova Scotia Regimen

...statement (with schedule of convictions and of cases in which ... "dispensed" with) is read to ..... Marks ..... signed by ... and answers to the proceedings.

No. 55586 Name Ellsmere M. Squ., Battery, or Company Corps C of C Date of enlistment 8 Jul 42 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Service or Proficiency Pay

M.F.M. 6
(A.F. B.122)
63-F & /8136 (2963)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order thereon-ning with trial	By whom awarded	Remarks
Duke	2 Jul 43	AC		AA Sec 12(1) AWOL from 2330 hrs 2 Jul 43 to 2330 hrs 4 Jul 43	Cpl Hayes J.	7 days CB 14 days Pay	6 Jul 43		2 days Pay not rem'd
Duke	8 Jul 43	"		AA Sec 40 (0095 Conduct to the prejudice of good order & discipline in camp	Sgt Livingston	3 days CB	9 Jul 43	Capt G.A. Swan	
Duke	14 Jul 43	"		AA Sec 40 Neglect to the prejudice of good order & discipline in camp	C.S.M. Swan	2 days CB	15 Jul 43	Capt G.A. Swan	
Field	12.10.43	"		(1) AWOL from 2359 - 12.10.43 to 2400 hrs 12.10.43 AA Sec 12(1). (2) AWOL from 1900 hrs 12.11.43 to 1800 hrs 13.11.43 AA Sec 12(1)	A/Cpl Hudson Sgt Smith Sgt Wells	2 days Pay	14.10.43	Maj J.G. Hamilton	1 day Pay FSP 1944-45 (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kutbi	18 Dec 43	Pte		Sec 15 2(a) - Absc 33 men from Coy Parade	Lt Jackson	7 days CB	18 Dec 43	(Capt) R. Ferguson	
Kutbi	1 Dec 43	Pte		Sec 12(1) Desk from 18 hrs 1 Dec 43 to 2130 hrs 1 Dec 43 (2 hrs 5 mins)	Capt Commanding	14 days FP 21 Days	2 Dec 43	Lt Col C of Preston	
Kutbi	1 Dec 43	Pte	(1)	Sec 15 Quartermaster Sec 19 AA	Lt Hanson RA	28 days CB	22 Dec 44	Lt Col R.S. Cochrane	

Certified true copy from the military books in my custody

Lieut Col
Officer Commanding

M.F.M. 6
(A.F. B.122)
40/P & /5136 (3965)

No. 55886 Name Ellwood N Sqn., Battery, or Company Corps C/E Date of enlistment 15 July 40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character D

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Barrack Room	8.3.41	Pte	—	Breaking of Barracks, 1400 to 2.3.41 (2) Improperly dressed when ordered out	Sgt Campbell RD L/Cpl Campbell RD	10 days detention	10.3.41	Lt Col E.N. Small	
	1.6.41	"		Absent Parking Report for duty		Extra Duties	2.6.41	Maj Carnaby	
Prison Hospital	27.6.41	"		Awaiting court of Inquiry 1st 1245 hrs 27.6.41 to 1200 hrs 30.6.41					
"	27.6.41	"		Absent from 2200 27.6.41 until 1245 hrs 30.6.41		2 days Pay 7 days CB 7 days Pay	4.7.41	OC Prison Hospital Lt Col E.N. Small	
Camp Borden	3.7.41	"		Neglecting to have his equipment on 4 B.C. Parade	Cpl Thomson	2 days CB	5.7.41	Lt Col E.N. Small	
Camp Borden	3.7.41	"		Absent 4 B.C. Parade & comply with an order from the CO.	Sgt McLaren	9 days CB 9 days pay	10.7.41	Lt Col E.N. Small	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	31.7.41	Pte		Absent without leave at 2030 hrs 31.7.41. being in [illegible] possession	Lt Campbell S.A. Sgt Smith.	28 days detention	6.8.41	Maj. [illegible] Regt	
[illegible] Base	6.12.41	Pte		AA 40 [illegible] to appear at place of [illegible]	Sgt [illegible]	14 days FB	10.12.41	A/Col. [illegible]	
Jasper Camp	24.7.42	Pte		AA 15 - AWL - 10 minutes	Bdr [illegible]	1 days Pay	27.7.42	Maj. [illegible] R.A.	
Jasper Camp	14.7.42	Pte		AA 40 Conduct to the prejudice [illegible]	Bdr [illegible]	3 days Pay	17.9.42	Maj. [illegible]	
Jasper Camp	14.7.42	Pte		AA 24 (3) Losing by neglect his equipment	Documentary	3 days CB	3 Dec 42	A/C Ross Capt	
Jasper	23 Jan 42	Pte		AA 24 (3) - AWOL - AWL from 1730 hrs 7.2.42 until 1730 hrs 7.2.42	Lt Harold S.S.	10 days Pay 7 days CB	10 Dec 42		7 days Pay

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED.

No. F55586 Rank. Pte Name Ellsworth, M Regiment West Nova Scotia Regiment

1. The following is a fair and true summary of the entries in the regimental Conduct Sheet of the accused:

Within last 12 months	Since Enlistment
Sec 15 (1) AA - 5 times	Sec 15(1) AA -10 times.
Sec 40 AA - 2 times	Sec 40 AA - 6 times.
Sec 19 AA - 1 time	Sec 19 AA - 1 time.
	Sec 24 (2) AA- 1 time.

No. of instances of gallantry or distinguished conduct e Nil

The accused is NOT under sentence at the present time.

The accused has been under Close Arrest awaiting trial on the present charg

for . . . . . days of which NO days were spent in hospital.

The present age of the accused is: . . . . 21 . . . . years.

SCHEDULE

On convictions by a Court Martial, of a summary awards under Sec 47 of the Army Act, and of cases in which trial has been dispensed with of accused, No. F55586 Rank. Pte Name Ellsworth M of the West Nova Scotia Regiment.

NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st day of March 1944

(Officer i/c regtl record
West Nova Scotia Regiment

The above statement (with schedule of convictions and of cases in which trial has been dispensed with) is read, marked . . . . . signed by the president, and annexed to the proceedings.

5Y-17 Pte Ellsworth, B.F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : G 3437 Pte George William ELLSWORTH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 8(1)AA	NOT GUILTY	GUILTY	
2nd Sec 15(3)AA	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 27 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of sixty (60) days.

(Sgd) ..... 11 JAN 46 (Sgd) ..... President. (RP 45, 50.)

Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) Jas.

(1. AA 57A. Delete if not used.)

Date 15 Jan 46 (Sgd) Jas Roberts Brig

Commanding 1st AB, CRU

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 3437 Pte GEORGE WILLIAM ELLSWORTH	8JAN46	WC Hagan Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT HHQ IN AB 168 K 54-07

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA31) 40-P & R/1698 (6144) 4/388

Convened by Order of Brig J A Roberts Comd A Gp CRU dated 9 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G 3437	Pte	George William	ELLSWORTH	1 CGRU

PROCEEDINGS REVIEWED

1 Feb 46 A P Brodie Maj

REVIEWING OFFICER, JAG BRANCH, RAAF M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 11 JAN 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs ~~under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) as attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1345 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ? Ans~~

~~The Interpreter~~ is sworn.(1) Do you object to M.G.P.R. (Mrs) E. SIMSTAD RP shorthand writer ? Ans NO - SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N.O. SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 70, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	C E WOODROW ODE CO	HQ CRU
Member	CAPT	R H BROWN	1 CGRU
Member	LIEUT	P E REEVE	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	R H GALWAY	1 CGRU
Defending Offr	LIEUT	E G RIVERS	1 CGRU

Questions by President : Is the Prosecutor a lawyer ? Ans N.O. Is the Defending Offr a lawyer ? Ans N.O. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RuP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B - D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of J A see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*II*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or Ja if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No Sir.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~charge(s)~~. The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ~~charge(s)~~. Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 4, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*E*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*C*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making as appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

His have Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No Sir.(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*b*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1) Exercise attached
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ charge(s).(2) ~~The Court is re-opened, and the President announces that the submission is disallowed on the~~ charge(s), ~~and allowed on the~~ charge(s), ~~and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Do neither Sir. Do you intend to call witnesses on your behalf? Ans. Yes Sir. Are they witnesses as to character only? Ans. No Sir. Evidence attached
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the First + Second charge(s), being subject to confirmation, will be promulgated later.(1) ~~(or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated). Part I of the Schedule is dated and signed.~~(2)
(1. *AA* 54(*7*) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(*7*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 5 and Ex C respectively.(3)
(1. *MFR* 255 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Reiterating offence's plea in mitigation attached.(2)
(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 332, 543-566, *Overseas RO* 309, 1313, *MML p* 687, 737-739. *As to sentences consigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*1*) (*B*), 98(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, G3437 Pte George William ELLSWORTH, RCASC, on the strength of No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHEN ON ACTIVE SERVICE

SECTION 8 (1) ARMY ACT — STRIKING HIS SUPERIOR OFFICER, BEING IN THE EXECUTION OF HIS OFFICE

in that he,

in London, on 15 Dec 45, struck with his fist in the face, B99757 Cpl MacPherson J.A., a Corporal of the Canadian Provost Corps, while in the execution of his duty.

SECOND CHARGE — WHEN ON ACTIVE SERVICE

SECTION 15 (3) ARMY ACT — BEING FOUND BEYOND THE LIMITS FIXED BY REGIMENTAL ORDERS WITHOUT A PASS OR WRITTEN LEAVE FROM HIS COMMANDING OFFICER

in that he,

in the Field, was apprehended by the Canadian Provost Corps at 2140 hrs 15 Dec 45, in London, a place beyond the limits fixed by Regimental Orders, without a pass or written permission from his Commanding Officer, contrary to Unit Part I Order No 257, dated 13 Sep 45.

J Smith Lt Col

(Commander
No 1 Cdn Gen Rft Unit
Canadian Army Overseas

Field,

5 Jan 46

To be tried by Field General Court Martial.

Jas A Roberts

7 Jan 46 — (J A Roberts) Brig
Comd A Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 3437	Pte		George William	ELLSWORTH	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [have] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Jan 46 endorsed by me, [or by my staff for me], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it would be prejudicial to the interests of discipline to delay the trial for reference to a superior convening authority.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

[I do convene the said Court by virtue of the power vested in me by the Offr of the President, for the reasons I have stated herein.]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

[I also appoint such judge advocate to the Court as the Offr mentioned hereunder.]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt Col	C.E.Woodrow,CBE,ED		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
A Capt	to be detailed by CO 1 CGRU		
A Lt	to be detailed by CO 1 CGRU		

[WAITING MEMBER.]

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

[JUDGE ADVOCATE.]

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 9 Jan 46

Jas C Roberts
(Signed personally. RP 105 fn 2.) (Rank.)

(J A Roberts) Brig
Comd A Gp CRU
Commanding Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (Para 1 to 3 inc of AFAM 40/P & S/1007 4651)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(B)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jun 42 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 80 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 114 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance most practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 80(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exams by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(D)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 48(E), KR Can 565(a).*)

(vii) Summing up by JA, if any. (*RP 42.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see KR Can 580. As to certified copies of regimental books see AA 163 (1) (g) (k).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule or, if original sentence of sentence awarded. (*AA 53(3), RP 113(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

NO. 3 CDN MIL PRIS & DETN BKS (A)
DISCIP CENTRE - ALTON

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY THAT I HAVE THIS DATE MEDICALLY EXAMINED C 3437 ELLSWORTH E.W.

AND THAT HE IS FIT TO UNDERGO TRIAL BY COURT MARTIAL.

SIGNED AT ALTON

THIS 11 Jan/46

(J. E. DONAGHY) CAPT. RCAMC
MEDICAL OFFICER
DISCIP CENTRE - ALTON
3CDN MIL PRIS & DETN BKS (A)

TRIAL OF

G.9437 Pte ELLSWORTH GW ----- 1 C.G.P.U.

ON THE FIRST CHARGE

PROSECUTION

FIRST WITNESS FOR THE PROSECUTION

B.99757 Cpl MacPHERSON JA., No. 8 (Area) Provost Coy, Can Provost Corps, sworn, states:-

Q. Do you recognize the accused?
A. Yes sir.

Q. How do you happen to know this person?
A. I was detailed on the 15 Dec 45 for patrol duty in Waterloo Station and at 2040 hrs we checked this man for his pass and Pay Book Pt.I,II & III.

Q. Did he have a pass with him?
A. He didn't produce a pass.

Q. Did he strike you?
A. Yes sir.

Q. In what manner?
A. We were in the CMP office in the station and asked him for his pass and he only used profane language and slipped me across the head.

Q. What did he use?
A. His fist.

Q. Where?
A. Across the head.

Q. Did you give him any excuse to take a poke at you?
A. No sir.

Q. What did you do then?
A. We phoned to the Detn barracks and an escort came to pick him up.

Q. Did he seem to be under the influence of liquor?
A. No sir.

CROSS-EXAMINED

Q. You say you recognize the defendant, it is quite a while since the 15 Dec 45, have you had any occasion to see the defendant between the 15 Dec and now?
A. No sir.

Q. How do you know this man is Pte Ellsworth?
A. I recognize him sir.

Q. Even after the dozens and dozens of people that you escorted on your job seven days a week, you recognize this as a certain man that struck you on the 15 Dec?
A. Yes sir. It is like this, these things don't happen every day.

Q. About what time was it that you arrested him?
A. At 2040, pardon me sir, I mean 2140 hrs.

Q. You say that he struck you, could you demonstrate to the court just how Pte Ellsworth struck you?
A. Yes sir.

Q. Will you do that?
A. In the office at Waterloo Station I was trying to persuade

FIRST WITNESS FOR THE PROS (CONT'D)

to tell me who he was, all he could say was that we were a bunch of lousy cunts, then he hit me across the head with his right hand swinging his whole arm in a wide arc.

Q. What made you first check Pte Ellsworth at Waterloo Station?
Q. On saturday night the station must have been full of Cdn soldiers, did you have any special occasion to check him?
A. Yes sir, he came along with his tunic unbuttoned and he was covered with coal dust, especially his face and it looked like he had been riding on an engine.

Q. Was he walking under his own power?
A. Yes sir.

QUESTIONS BY THE COURT

Q. You have no doubt in your own mind that the accused did strike you?
A. No sir.

Q. It wasn't that on the questioning of him and having him by the arms that he tore himself away?
A. No sir.

Q. You say that the accused had not been drinking?
A. He might have had a drink but was not drunk.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH KD 83(B).

PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS FOR THE DEFENCE - -

B.110090 Pte WALKER, W., Soldier Undergoing Sentence Headley Detention Barracks, Sworn, states:-

Q. Do you recognize the accused?
A. Yes sir.

Q. Will you tell the court just who he is?
A. Pte Ellsworth, sir.

Q. Do you remember a certain incident that happened to Pte Ellsworth on a certain Saturday night in Dec 40?
A. Yes sir.

Q. You did see the defendant on that night?
A. Yes sir.

Q. Will you tell the court approximately what date it was?
A. Dec, 14th or 15th.

Q. It was a Saturday night?
A. Yes sir.

Q. Where did you see the Defendant?
A. At Store St Detention Barracks.

Q. About what time?
A. Roughly mid-night.

Q. Under what circumstances did you see the accused?
A. At this particular time I was in bed and I had permiss on to to the lavatory and was waiting for a sentry to let me out, there was a bit of commotion at the gate, coming in from the street and I stuck my face out as far as possible and I could see to the door and saw Pte Ellsworth in company

FIRST WITNESS FOR THE DEFENCE (CONT'D)

with two or three provosts, I don't know exactly how many. He was quite drunk and was being assisted. I asked again to be let out to the lavatory, they told me to wait until they had settled with Pte Ellsworth.

Q. In your opinion would you say that Pte Ellsworth at that time was incapable of normal performance?
A. No sir. All that I could make out at that time was that he was pleading to be let alone so that he could go to sleep, he said he had nothing to eat and was sick.

Q. He made no rumpus?
A. No sir.

Q. What was the condition of his dress?
A. He was properly dressed.

Q. Was he clean?
A. No sir, he looked as if he had been mauled around and there was blood on his face.

Q. Did you see what happened after they got him in?
A. They finally got him into the bull pen in was in with 15 or 16 other soldiers that had already gone to bed and they put him in there on a cot in the same room as me.

Q. Did he go to sleep?
A. He went right to sleep, in fact he was sleeping to sound the next morning that they had to wake him up.

Q. What was his condition the next morning?
A. Pretty bad sir.

Q. Would you say that it was the morning after the night before sort of thing?
A. Much more than that, he was still more or less under the influence of drink from the night before and on top of that I don't think his mother would have recognized him.

CROSS-EXAMINED

Q. When you first saw this man he came in with two or three other provosts?
A. Something like that there were quite a number of provosts moving around, I know there were two at least.

Q. He was standing up when you saw him?
A. More or less, he was being assisted.

Q. In what way?
A. They had hold of him by each arm.

Q. Where did they take him?
A. They were at the gate for just a second and went to a table where they took his name and number and then moved on to another place where they take the persons belongings.

Q. He walked of his own accord?
A. Yes sir, with the help of the others.

Q. Did you see him walk towards this place?
A. No sir, not on his own.

Q. This was at what time?
A. Roughly around twelve, I am not sure exactly we had no way of figuring the time.

Q. Were these provosts from the barracks where you were staying?
A. I think they are from that barracks but they were not on duty there.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. How far away from the accused were you when he was brought in?
A. Roughly I would say 30 or 40 feet and when they brought him down to where he was to be searched not more than five feet away.

Q. At that time he was very drunk and had to be supported to stand on his feet?
A. Yes sir.

Q. You attribute his condition to drink?
A. Absolutely sir.

Q. What was the condition of his clothing and general appearance?
A. From what I could gather he had been handled roughly quite a bit.

Q. What do you mean by that?
A. Mauled, in other words it appeared as though he had slept in them for about a week.

Q. There was blood on his face and dirt on his clothing?
A. Yes sir.

Q. Where was the blood?
A. Around his mouth.

Q. Was it bleeding or was it dry blood?
A. It hadn't quite congealed.

Q. It had been bleeding a short time before?
A. Yes sir.

Q. You say his face was dirty and it looked as though he had been sleeping in his uniform?
A. Yes sir.

Q. You don't for a moment suggest that his condition was caused by the accused being beaten up, it was caused by the accused being drunk, is that correct?
A. Yes sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 85(B).

ADDRESS BY THE DEFENDING OFFICER

I stress the point to the court that the witness for the Prosecution in demonstrating the way he was hit, the defendant had his right hand broken and favours that right hand whether drunk or sober up to the present because it was never properly healed.

REPLY TO THE DEF OFFR'S ADDRESS BY THE PROS OFFR

The Prosecuting Officer says that he rests his case on the evidence as submitted.

THE COURT IS CLOSED TO CONSIDER IT'S FINDING

THE COURT RE-OPENS

PLEA OF MITIGATION BY DEF OFFR (ATTACHED)

TRIAL OF

C.3437 Pte ELLSWORTH GW ----- 1 C.G.P.U.

ON THE FIRST CHARGE

PROSECUTION

FIRST WITNESS FOR THE PROSECUTION

R.99737 Cpl MacPHERSON JA., No. 6 (Area) Provost Coy, Cdn Provost Corps, sworn, states:-

Q. Do you recognize the accused?
A. Yes sir.

Q. How do you happen to know this person?
A. I was detailed on the 15 Dec 45 for patrol duty in Waterloo Station and at 2040 hrs we checked this man for his pass and Pay Book Pt.I,II & III.

Q. Did he have a pass with him?
A. He didn't produce a pass.

Q. Did he strike you?
A. Yes sir.

Q. In what manner?
A. We were in the CMP office in the station and asked him for his pass and he only used profane language and slipped me across the head.

Q. What did he use?
A. His fist.

Q. Where?
A. Across the head.

Q. Did you give him any excuse to take a poke at you?
A. No sir.

Q. What did you do then?
A. We phoned to the Detn barracks and an escort came to pick him up.

Q. Did he seem to be under the influence of liquor?
A. No sir.

CROSS-EXAMINED

Q. You say you recognize the defendant, it is quite a while since the 15 Dec 45, have you had any occasion to see the defendant between the 15 Dec and now?
A. No sir.

Q. How do you know this man is Pte Ellsworth?
A. I recognize him sir.

Q. Even after the dozens and dozens of people that you escorted on your job seven days a week, you recognize this as a certain man that struck you on the 15 Dec?
A. Yes sir. It is like this, these things don't happen every day.

Q. About what time was it that you arrested him?
A. At 2040, pardonnez sir, I mean 2140 hrs.

Q. You say that he struck you, could you demonstrate to the court just how Pte Ellsworth struck you?
A. Yes sir.

Q. Will you do that?
A. In the office at Waterloo Station I was trying to persuade

FIRST WITNESS FOR THE PROS (CONT'D)

to tell me who he was, all he could say was that we were a bunch of lousy cunts, then he hit me across the head with his right hand swinging his whole arm in a wide arc.

Q. What made you first check Pte Ellsworth at Waterloo Station?
A. On saturday night the station must have been full of Cdn soldiers, did you have any special occasion to check him?
Yes sir, he came along with his tunic unbuttoned and he was covered with coal dust, especially his face and it looked like he had been riding on an engine.

Q. Was he walking under his own power?
A. Yes sir.

QUESTIONS BY THE COURT

Q. You have no doubt in your own mind that the accused did strike you?
A. No sir.

Q. It wasn't that on the questioning of him and having him by the arms that he tore himself away?
A. No sir.

Q. You say that the accused had not been drinking?
A. He might have had a drink but was not drunk.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS FOR THE DEFENCE

B.110095 Pte HALE, W.M., Soldier Undergoing Sentence Headley Detention Barracks, sworn, states:-

Q. Do you recognize the accused?
A. Yes sir.

Q. Will you tell the court just who he is?
A. Pte Ellsworth, sir.

Q. Do you remember a certain incident that happened to Pte Ellsworth on a certain Saturday night in Dec 45?
A. Yes sir.

Q. You did see the defendant on that night?
A. Yes sir.

Q. Will you tell the court approximately what date it was?
A. Dec, 14th or 15th.

Q. It was a Saturday night?
A. Yes sir.

Q. Where did you see the Defendant?
A. At Store St Detention Barracks.

Q. About what time?
A. Roughly mid-night.

Q. Under what circumstances did you see the accused?
A. At this particular time I was in bed and I had permiss on to to the lavatory and was waiting for a sentry to let me out, there was a bit of commotion at the gate, coming in from the street and I stuck my face out as far as possible and I could see to the door and saw Pte Ellsworth in company

FIRST WITNESS FOR THE DEFENCE (CONT'D)

with two or three provosts, I don't know exactly how many. He was quite drunk and was being assisted. I asked again to be let out to the lavatory, they told me to wait until they had settled with Pte Ellsworth.

Q. In your opinion would you say that Pte Ellsworth at that time was incapable of normal performance?
A. No sir. All that I could make out at that time was that he was pleading to be let alone so that he could go to sleep, he said he had nothing to eat and was sick.

Q. He made no rumpus?
A. No sir.

Q. What was the condition of his dress?
A. He was properly dressed.

Q. Was he clean?
A. No sir, he looked as if he had been mauled around and there was blood on his face.

Q. Did you see what happened after they got him in?
A. They finally got him into the bull pen in was in with 15 or 16 other soldiers that had already gone to bed and they put him in there on a cot in the same room as me.

Q. Did he go to sleep?
A. He went right to sleep, in fact he was sleeping so sound the next morning that they had to wake him up.

Q. What was his condition the next morning?
A. Pretty bad sir.

Q. Would you say that it was the morning after the night before sort of thing?
A. Much more than that, he was still more or less under the influence of drink from the night before and on top of that I don't think his mother would have recognized him.

CROSS-EXAMINED

Q. When you first saw this man he came in with two or three other provosts?
A. Something like that there were quite a number of provosts moving around, I know there were two at least.

Q. He was standing up when you saw him?
A. More or less, he was being assisted.

Q. In what way?
A. They had hold of him by each arm.

Q. Where did they take him?
A. They were at the gate for just a second and went to a table where they took his name and number and then moved on to another place where they take the persons belongings.

Q. He walked of his own accord?
A. Yes sir, with the help of the others.

Q. Did you see him walk towards this place?
A. No sir, not on his own.

Q. This was at what time?
A. Roughly around twelve, I am not sure exactly we had no way of figuring the time.

Q. Were these provosts from the barracks where you were staying?
A. I think they are from that barracks but they were not on duty there.

FIRST WITNESS FOR THE DEFENCE (CONT'D)

Q. How farawway from the accused were you when he was brought in?
A. Roughly I would say 30 or 40 feet and when they brought him down to where he was to be searched not more than five feet away.

Q. At that time he was very drunk and had to be supported to stand on his feet?
A. Yes sir.

Q. You attribute his condition to drink?
A. Absolutely sir.

Q. What was the condition of his clothing and general appearance?
A. From what I could gather he had been handled roughly quite a bit.

Q. What do you mean by that?
A. Mauled, in other words it appeared as though he had slept in them for about a week.

Q. There was blood on his face and dirt on his clothing?
A. Yes sir.

Q. Where was the blood?
A. Around his mouth.

Q. Was it bleeding or whs it dry blood?
A. It hadn't quite congealed.

Q. It had been bleeding a short time before?
A. Yes sir.

Q. You say his face was dirty and it looked as though he had been sleeping in his uniform?
A. Yes sir.

Q. You don't for a moment suggest that his condition was caused by the accused being beaten up, it was caused by the accused being drunk, is that correct?
A. Yes sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

ADDRESS BY THE DEFENDING OFFICER

I stress the point to the court that the witness for the Prosecution in demonstrating the way he was hit, the defendant had his right hand broken and favours that right hand whether drunk or sober up to the present because it was never properly healed.

REPLY TO THE DEF OFFR'S ADDRESS BY THE PROS OFFR

The Prosecuting Officer says that he rests his case on the evidence as submitted.

THE COURT IS CLOSED TO CONSIDER IT'S FINDING

THE COURT RE-OPENS

PLEA OF MITIGATION BY DEF OFFR (ATTACHED)

Exhibit #3
Def

Plea for mitigation

G-3437 Pte Ellsworth G.W.

The defendant enlisted in March 1941, at the age of 16 yrs. He wanted to do his bit, being a single man.

He tried repeatedly to get overseas but was turned down. Finally, in Dec 1944 he succeeded in getting his name on a draft.

He had no crime prior to Aug 1945 when he committed a minor offence. Since then his only crime has been A.W.L.

This soldier is anxious to return to Canada as soon as possible, as his home has been practically broken up.

Only last week he had a judgement rendered against him for the payment of a child which he is not sure is his.

These troubles drove the defendant to the local pubs, trying to obtain a respite, even only for a few hours.

He had been drinking on the day in question, which caused him to go to London.

He had arrived in Aldershot, shortly before noon on the 4th Dec, which was a Saturday.

He tried to obtain a pass from his unit, but was refused, being informed it was too late.

He intended to return the same day, in fact he was at Waterloo Stn on his way back when he was apprehended.

This soldier is not a criminal, and I beg the court to be lenient in meting out punishment.

Exhibit A
as to Second Charge

SUMMARY OF EVIDENCE

In the case of C.3437 Private George William ELLSWORTH, RCASC, on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

"I Produce the following document pursuant to Overseas Routine Order 5352, which has been read over and shown to the Accused, and which is attached hereto as an exhibit."

(1) Certificate in Accordance with P.C. 2797 of 10 Apr 42, which declares that C.3437 Pte. Ellsworth, G.W. was apprehended at London at 2140 hours 15 Dec 45 by Canadian Provost Corps.
(Marked Exhibit "A")

(J.F. Hodgins) Captain.
Officer detailed to take the Summary of Evidence.

FIRST WITNESS for the Prosecution

B.99757 Cpl. MacPherson, J.A., No. 6 (Area) Provost Coy, Canadian Provost Corps.

The attendance of this witness, due to the exigencies of the Service, cannot in my opinion be readily procured. A statement purporting to be signed by him and marked "Appendix "A" and attached to the Summary of Evidence, has been read and shown to the Accused.

Appendix "A" is a statement signed by B.99757 Cpl. MacPherson, J.A. and corroborated by L.155871 L/Cpl Chadwick, C.E., to the effect that C.3437 Pte. Ellsworth, G.W., when asked to produce a leave pass and M.B.M. 1 Pts 1,2 or 3 at London at 2140 hours 15 Dec 45, could NOT produce a leave pass. When asked the name of his Unit, he struck B.99757 Cpl. MacPherson, J.A. in the face with his fist.

The Accused does not require the attendance of B.99757 Cpl. MacPherson, J.A., first witness for the prosecution, for the purpose of examination.

(J.F. Hodgins) Captain
Officer detailed to take the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The Accused reserves his defence.

The Accused does not call any witnesses.

Continued on page 2.....

SUMMARY OF EVIDENCE (Continued....page 2)

In the case of G.5437 Private George William ELLSWORTH.

"I certify that the above Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with."

...J.P. Hodgins...Capt.
(J.P. Hodgins) Captain.
Officer detailed to take the Summary of Evidence.

Field
27 Dec 1944

Exhibit "A"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I certify that No. G-3437 Rank Pte. Name Ellsworth G.W.

Unit No. 1 C.G.R.U. Was arrested at London (Place)

at 2140 (Hour) On 15-Dec.45 (date) and that at the time of his arrest he was wearing (Military uniform) or (~~Civilian clothes~~), Signature of Provost-Marshal, Asistant Provost-Marshal, or other officer or the Commanding Officer of the protion of His Majesty's Forces or the Officer, Warrantofficer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest (Strike out part inapplicable.)

London
16-Dec.45

(G.A. Rose) ~~XXXX~~Lieut.
~~XXXX

Appendix 14

626

Statement of EVIDENCE in the case of
G-3437 Pte. Ellsworth G.W.
No.1.C.G.H.U.

Sir;

At London at about 2140 hrs 15-Dec.45 I was on patrol duty at WATERLOO STATION in company with L/Cpl. Chadwick C.E. where I saw the s/m soldier. He was improperly dressed i/e his tunic was open to the full extent and he was not wearing his issue head-dress.

I approached him and requested to see his leave pass and M.B.M.1.pts.1.2.or.3. He could not produce a leave pass. He was A.W.L. When I asked him his unit. He stated." Go fuck yourself you no good cocksuckers." and struck me in the face with his fist.

I placed him under arrest and escorted him to No.6.(Area) Cdn.Provost Company Detention Office where I ordered him to tell me his unit. He again refused. I then turned him over to the N.C.O. i/c of cells to be detained.

London
15-Dec.45

.....Cpl.
B-99757 Cpl. MacPherson J.A.
No.6.(Area)Cdn. Provos t Coy.

Sir;

I have read over and corroborate the above statement.

REMARKS

London
15-Dec.45

.....L/Cpl.
L-155671 L/Cpl.Chadwick C.E.
No.6.(Area)Cdn. Provost Coy.

CHARGE

Army Form B 252
(See King's Regulations)

No. 1. C.G.R.U. Regiment
Battery / Squadron / Troop or / Company

CHARGE against No. G-3437 Rank Pte.

Name Ellsworth G.W.

Place London Date of Offence 15-Dec.-45

OFFENCE W.O.A.S. was (1) A.W.L. (2) Striking an N.C.O. of the Cdn Provost Corps while in the execution of his duty. (3) Improperly dressed. (4) Failing to comply with an order given by an N.C.O. of the Cdn. Provost Corps while in the execution of his duty.

Names of Witnesses:-

Cpl. MacPherson J.A. No.6.(Area)Cdn. Provost Co

L/Cpl. Chadwick C.E. No.6.(Area)Cdn.Provost Co

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

2 3.44 GHQ P.P. 2000

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only). Exhibit C2

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G.3437	Pte	George William ELLSWORTH	NO 1 CGRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, punishments being given for the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1)	2 times.
For AA Sec 40	1 times.
For	times.
For	times.

Date of first entry in Field Conduct Sheet 3 Aug 44

Date of last entry in Field Conduct Sheet 17 Oct 45

2. Previous convictions of the accused by a court martial ~~NONE~~ are set out in the Schedule overleaf.

*3. ~~The accused was not under stoppages for fines or forfeitures~~ beginning ~~with~~ from

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for 27 days in military custody, i.e., 0 days in open arrest, 27 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is ~~21~~ years

6. The date of his ~~attestation~~ enlisting or first military service is 22 Mar 1941

7. The service which the accused is allowed to reckon is

8. The accused is in possession of† CVSM & Clasp

9. ~~He was convicted by a court of N.C.O.~~ The accused was ~~reduced to the ranks~~ without reduction, to the rank dated

~~In the substantive rank of~~

~~In the war substantive rank of~~

~~In the acting rank of~~

*Strike out if not applicable.

†State the military decoration to which he is entitled.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(75307) W.3672/2701 30,000 9-44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	17-10-45	AA Sec 40 (3 charges)	90 da Detention	30 days remission of sentence Remitted 15 Dec 45

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 11 day of JAN 46

J. Thodgins Capt
Legal Officer
I.G.L.R.V.

No. G.3437 Name Ellsworth, G.W. Sqn, Battery, or Company | Corps RCASC | Date of enlistment 22 Mar 41 | RCC Badges | Proficiency Pte | Character Exhibit "C"

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Red Deer Alberta	2 Aug 44	Pte		AA Sec 40: approx 2205 hrs 2 Aug 44 was found urinating on the steps of the YMCA Bldg A-20 Red Deer.	Lt I MacRae	10 da pay	3-8-44	Col. J.J. Burton-Willson	Tot forf 10 days pay
Red Deer Alberta	18 Nov 44	Pte		AA Sec 15(1) AWL from 0200 hrs 18 Nov 44 to 0045 hrs 19 Nov 44 Abs: 22 hrs 45 min	Doc'y	7 da pay	20-11-44	Lt-Col.R.H. Merryweather	Forf 1 d.p. tot:8 d.p.
Field	20 Jun 45	Pte		AA Sec 15(1) AWL from 0700 hrs 20 Jun 45 til 1315 hrs 21 Jun 45 when he surrendered himself to the Unit Guard Room Abs: 1 da 6 hrs 15 min.	Cpl. Goody Doc'y	6 da pay	22-6-45	Lt-Col.W.J. Stewart	2 days pay tot:8 d.p.

3/17 MFM 6 (AFB 122) 40-PAS/130 (7808)

(PTO)

Place	Date of offence	Rank	Date of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	21 Sep 45	Pte		CHARGES: 1. AA Sec 40 WOAS at Colchester on 21 Sep 45 was improperly in possession of ten(10) army blankets the property of His Majesty's . 2. AA Sec 40 WOAS at Colchester on 21 Sep 45 did attempt to improperly sell 10 army blankets the property of His Majesty's Govt. 3. AA Sec 40 WOAS at Colchester between 1400 hrs & 2300 hrs 21 Sep 45 was concerned in the improper use of WD Veh CL-198669. FINDINGS: First Charge - Guilty Second Charge - Guilty Third Charge - Guilty CLOSE ARREST: Under close arrest (including time spent in Civil Custody from 2230 hrs 21 Sep 45 until 2400 hrs 16 Oct 45.		SENTENCE: To undergo Detn for a period of ninety (90) days. Released from Deten on 15 Dec 45 and granted 30 days remission of sentence.	17-10-45	F.G.C.M. CONFIRMATION Findings & Sent conf'd by Brig E.C.Plow, DSO, CBE Comd "C" Gp CRU	Forf 26 days pay PR&I 149(1)(c) Forf. 90 d.p. PR&I 149(1)(b) Tot:Forf:116 d.p.

No. 3437 Name Ellsworth, G.W. | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 22 Mar 41 | CC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (7898)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(Cont'd) (Total Close Arrest 26 days) PROMULGATED: In the Field 24 Oct 45.					
				Certified True Extract from Original MFM 4 held in my possession.					
				27 Dec 45 J.F. Hodgins Capt. (J.F. Hodgins) Captain					
				Officer having custody of original document.					

(FTO)

THE CASE OF G.3437 Pte George William ELLSWORTH

(i) LIST OF WITNESSES FOR PROSECUTION

B.99757 Cpl. MacPherson, J.A., No. 6 (Area) Provost Coy, Canadian Provost Corps.

L.155871 L/Cpl. Chadwick, C.E., No. 6 (Area) Provost Coy, Canadian Provost Corps.

(ii) LIST OF WITNESSES FOR DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certif in accord with PC 2797 of 10 Apr 42 concerning the app of G.3437 Pte. Ellsworth, G.W. at London at 2140 hrs 15 Dec 45 by Canadian Provost Corps. (Marked Exhibit "A")

(iv) LIST OF EXHIBITS FOR DEFENCE

Nil

(v) LIST OF APPENDICES FOR PROSECUTION

(a) Statement signed by B.99757 Cpl. MacPherson, J.A. and corroborated by L.155871 L/Cpl. Chadwick, C.E. to the effect that G.3437 Pte. Ellsworth, G.W. was found in London without a pass and that he struck a member of the C Pro C in the face with his fist. (Marked appendix "A")

(vi) LIST OF APPENDICES FOR DEFENCE

Nil

(vii) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence, taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charges under which I am being brought to Court Martial.

.....
G.3437 Pte. Ellsworth, G.W.

(viii) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of Lt. Fagan
if he is available.

.....
G.3437 Pte. Ellsworth, G.W.

Signed in the Field

this 5 day of Jan 19 46

5 V – 7 7

Ste Ellsworth, L. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G3457 Pte George William ELLSWORTH - 1 Cdn Adm Tpt Coy RCASC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	NOT GUILTY	GUILTY	
2nd	AA Sec 40	NOT GUILTY	GUILTY	
3rd	AA Sec 40	GUILTY	GUILTY	
4th	~~etc~~			
5th	~~etc~~			
6th	~~etc~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo detention for a period of Ninety (90) days.

(Sgd) ..... 17 Oct/45 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 13.

My decision on the finding(s) and sentence set forth in Part I is:
Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....
Date 20 Oct 45 Commanding "C" Group Can. Reinforcement Unit Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 574, 577.)

Accused. Date. Signature of Offr.

G3457 Pte Ellsworth G.W. 24 Oct 45 .....

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AE 1960 27-77

FIELD GENERAL COURT-MARTIAL

CPASS (In lieu of AFAA) 40/P & R/1698 (H44) 4/388

Convened by Order of Brig E.C. Plow, CBE DSO Comd "C" Gp CRU dated 12 Oct 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 320, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G3437	Pte	George William	Ellsworth	1 Cdn Adm Tpt Coy RCASC

PROCEEDINGS REVIEWED 22 NOV 45 REVIEWING OFFICER JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd (or Garrison) England on (date) 17 Oct 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AFS, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~/~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.(1)~~ Do you object to ~~Sgt~~ Lieut Grout CS as shorthand writer? Ans No Sir
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. Redpath VD	HQ CRU
Member	Major	G.W. Thompson	1 C GRU
Member	Capt	T.R. McFarland	1 Adm Tpt Coy
~~Judge-Advocate~~			
Prosecutor	Lieut	S.M. Johnson	1 Adm Tpt Coy RCASC
Defending Offr	Lieut	F.A. McKay	1 Adm Tpt Coy RCASC

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 80.)

A8. The accused ..... before arraignment make(s) (no) ~~(an)~~ plea(s).(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposal, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is asked both~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO-SIR (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (~~them~~) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and marking an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"Pin here Loose Sheets of Record."

1st and 2nd

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO-SIR (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) no opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT

(1. *RP 29(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case against~~ the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Give Evidence Do you intend to call witnesses on your behalf? Ans Yes Sir Are they witnesses as to character only? Ans NO-SIR

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(c).*) NOIC ATT

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)~~

~~Or,~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (b), RP 43, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The ~~accused having been found Guilty on one or more of the charges,~~ the proceedings are concluded by using Record Form E below. Balance CONTINUED

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1) Ans NO-SIR

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans BY BEFORE'S NOTE-ATT (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 119, 119(A), KR Can 308, 330, 563-566, Overseas RO 3208, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

To be tried by Field General Court Martial

Commanding 90th Group, Odn Reinforcement Units
(Convening Officer)

Bordon, Hants
12 Oct 45

CHARGE SHEET

The accused, G-3437 Pte ELLSWORTH, George William, No 1 Canadian Administrative Transport Company, RCASC, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Sec 40 A.A.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

At Colchester on 21 Sep 45 was improperly in possession of ten (10) army blankets, the property of His Majesty's Govt.

SECOND CHARGE
Sec 40 A.A.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

At Colchester on 21 Sep 45 did attempt to improperly sell ten (10) army blankets, the property of His Majesty's Govt.

THIRD CHARGE
Sec 40 A.A.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

At Colchester between 1400 hours and 2300 hours 21 Sep 45 was concerned in the improper use of W.D. Vehicle, CL-198669

(J.M. Zieglen) Lt. Col.,
Commanding Officer,
No 1 Cdn. Adm. Tpt. Coy.
R.C.A.S.C. C.A.(O)

Farnborough, Hants.
26 Sep 45

To be tried by Field General Court Martial.

(D.C. Spry) Maj-Gen
Commander
Cdn. Repat. Units.

In the Field

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 106-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G3457	Pte		George William	ELLSWORTH	1 Cdn Adm Tpt Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, (and upon oath duly taken before me). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior convening officer~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~There being no officer available to appoint as President of the Court, (I) a Judge Advocate~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	D.I. Redman, VD		HQ CMC

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	to be detailed by OC		1 CGMU
Capt	to be detailed by OC		1 Cdn Veh Coy

~~WAITING MEMBER.~~

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dat 12 Oct 45

E L M Burns Brigadier (Rank.)
(Signed personally. RP 105 fn 2.)

Commanding "C" Group, Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 95 (To Sect of AFA 3) 40/F & S/1827 (5143))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Con 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed ; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as " Notes ".)

1. RECORDING PROCEEDINGS : When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 96(C)), any objections (*RP* 96(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 85(A) and 114(B), may be recorded in narrative form as follows :

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states :

I am a cpl of the pl to which Pte Smith belongs. The accd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accd to go on parade. He refused and did not go on parade.

Cross-exam : He did not say he was sick. (*or*, None.)

Re-exam : None.

Exam by Court : He said—" I've had enough parades ".

RP 85(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 85(B) should be complied with. If taken verbatim, RP 85(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE : RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused :

(i) Opening address by Defending Offr. (*RP* 60(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA* (*RP* 40 *fn* 10)), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 3, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address *after* the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 61.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 46(*E*), *KR Can* 562(a).)

(vii) Summing up by JA, *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, *if any*, and then pinned by top left corner to p 2 of CF A 96 in following order :

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 557.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy as loss of original see KR Can* 560. *As to certified copies of regimental books see AA* 165 (1) (*g*) (*h*).)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 52(9), *RP* 118(C), *MML p* 759.)

4. The President or JA, *if any*, will return proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

NO. 1. CDN. ADMINISTRATIVE TRANSPORT COMPANY R.C.A.S.C. C.A.(C).

Medical Officer's Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No. C-3437 (rank) Pte. (name) Ellsworth C W
of 1 Cdn Admin Tpt Coy LILLE. DKS. and in my opinion he is ~~unfit~~ fit to undergo

trial by Court Martial.

Station Farnborough Hants.

Date 17 Oct 45

Sgd. J. M. Emmerson Capt.
(Medical Officer)

TRANSCRIPT BY: K-54016 Sgt GROUT NC

CASE OF

G-3437 Pte George William ELLSWORTH - 1 Cdn Adm Tpt Coy RCASC

TRIAL OF THE ACCUSED ON THE FIRST AND SECOND CHARGES

FIRST WITNESS

Lieut M. Cote, 1 Cdn Adm Tpt Coy, RCASC, having been duly sworn, is examined by the Prosecution:

Q. What was the nature of your detail on Friday, 21 Sep 45?
A. I was detailed to take 10 vehicles to Colchester, Roman Way Convalescent Hospital to pick up barrack stores. We arrived at the hospital at approx 1400 hours in the afternoon. We had a light lunch in the kitchen and immediately commences to load the vehicles. Once this was done I ordered all vehicles to be parked against the buildings inside the camp. I then got a lorry to bring the drivers to town and proceeded myself to town along with Lieut McIlveen in a jeep. On returning to the camp at approximately 2300 hours we passed by the vehicle park and I noticed one vehicle missing. I tried to find out where the vehicle was and on whose authority it was removed. This being impossible to find out I decided to proceed to Colchester and report the lorry as stolen. On arriving in town I met a policeman and we asked him if he had seen any of our lorries. He told me that they were holding a lorry and two Cdn soldiers in the police station which happened to be across the road from where I met the policeman. On entering the police station I noticed two Cdn soldiers sitting on a bench whom I recognized as Ptes Spurlock and Ellsworth, the accused, who is now in this room. Then the policeman on the desk told me why they were being held. I don't think the accused could hear him. He notified me of a lorry being in the yard. I then went outside to identify the lorry and found it to be the one missing from the park.

Q. At the taking of the Summary you said that the number of the vehicle was CL-198669. Is that true?
A. As far as I know it is, sir. I then asked the Camp SM if he had a Det or guard room where these two men could be placed under close arrest. On being informed that they had none I requested the civil authorities to keep them in custody until the following morning. I then warned the two accused that they were under close arrest and would be brought back to Farnborough under escort in the morning which was done. On arrival at our own guard room I turned them over to our Regimental Police.

Q. Were the men in your convoy instructed to take their blankets with them?
A. No, mess kits only.

Q. Then blankets were removed from camp without authority?
A. Without my authorization anyway.

CROSS-EXAMINED

Q. You are quite certain that it was specified that mess kit only should be taken?
A. Yes sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B)

SECOND WITNESS

Lieut. G.A. McIlveen, Cdn Sp Services, having been duly sworn, is examined by the Prosecution:

Q. Will you tell your story of the detail you were on on Friday, 21 Sep 45?

A. On Friday, 21 Sep 45, I was detailed to go to Colchester and pick up some ten truck loads of Cdn Bk stores. When we arrived at Colchester it was rather late and the drivers and the work party hadn't had anything to eat. They were given lunch and after that we began to load the sotres that were laid out by the QM. The trucks were loaded in a matter of 2 or 3 hours after which they were backed up against the building and left within the confines of the camp. The men were fed and transport laid on to take them to town. Lieut Cote and myself and two Sgts also went down town and returned to camp at approximately 2300 hours. At that time it was noticed as we passed the truck that one of them was missing. Therefore we proceeded down town again and met one of the Colchester policemen in the town. The policeman informed us that he had two of our men and a truck at the back of the court. We proceeded to inspect the truck and found that the lot of Bk stores was intact and that besides that there were ten Army blankets in the cab. The two men were at that time in the Court. They were left there overnight and brought back to this camp under escort.

Q. You stated that there were ten Army blankets found in the cab of the truck. Are these the blankets you saw in the truck?

A. These blankets are tied in the same way with the same string and I believe they are the same blankets.

Q. Who took charge of them at the time?

A. Lieut Cote.

THE TEN ARMY BLANKETS ARE MARKED EXHIBIT "1"

Q. As a Bks Officer can you identify these blankets as Army blankets?

A. Yes, they are.

CROSS-EXAMINED

Q. Did the blankets form any part of your lot of Bk stores that you were taking back?

A. No.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B)

THIRD WITNESS

Mr. H.J. Douglas, 60 East Hill, Colchester, having been duly sworn, is examined by the Prosecution:

Q. Would you just give your story of what happened after you first met the accused?

A. I was in the Fleece Hotel Tap on the 21 Sep 45 at about 6 or 6.30. I was having a drink. A Cdn soldier approached me. He asked me if I wanted some blankets or if I could dispose of any. I then asked how many he got. What colour were they. He said they were all colours. I asked him where they were. He said he was going back to the truck and would get them and

me here later. The other Can soldier was not more than two feet away from the soldier that was speaking to me and he could hear what was said. They decided to go and get the truck. Then they returned to the pub with the truck in the entrance to the car park. The road was too narrow for them to come down. I said there was no other way for them to come in. They were down to the Headgate Corner where they turned the truck around. That was a wider road to get into the car park. They had the blankets there in the truck when the truck got into the car park. While they had been gone for the truck I had notified the police. When they arrived with the blankets and told me where they were the Police arrived and I pointed the two men out to the police. They said they wanted 10/- a blanket.

Q. Do you see either of those two soldiers in this Court?
A. The accused was one of the soldiers. This is the fellow that did the talking first.

CROSS-EXAMINED

Q. Was there a dog in the Fleece Tap which you were feeding?
A. Yes.

Q. Where did you first see the truck that you refer to?
A. In the car park.

Q. Can you describe it?
A. It is very difficult. I see so many of them in a week.

Q. Was it a small English vehicle or a van or what type of vehicle was it?
A. More like an English vehicle.

Q. Did you see any blankets? I am referring to before the police came?
A. I didn't see any blankets before the police came.

Q. Did you see any blankets after they came?
A. Yes sir. in the truck. I couldn't say how many were there.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 53 (B)

FOURTH WITNESS

P.C. 30, Frederick William BESCH, Colchester Borough Police, having been duly sworn, is examined by the Prosecution:

Q. Will you give your story of what happened on this case?
A. About 1030 p.m. on Friday, 21 Sep 45, I was on duty in High Street, Colchester, in company with Police Sgt White and W.R. Kipps. In consequence of instructions received from Sgt White in company with Kipps I went to the Culver Street car park, Colchester, where I saw Mr. Douglas of 60 East Hill, Colchester. In consequence of what he said to me I went to the west end of the car park where I saw Ptes Spurlock and Ellsworth. I saw the accused and he was one of them. I said to them that they had been trying to sell blankets to civilians. I cautioned them and they replied "no". I asked them if they had a lorry on the car park and they replied "yes". I asked them what it contained and they replied furniture. I asked them if they had any blankets in the lorry and Spurlock replied "I have ten in the cab which I brought

from Farnborough." I told them I was not satisfied and that I was going to take them to the police station. I saw Lieut Cote of the Cdn Army at the police station who complained that a 30 cwt Cdn lorry had been stolen from Roman Way Camp at Colchester. I showed him the lorry and he identified it as the one stolen from Roman Way Camp. I showed him the blankets which had been in possession of these men but at the time he was unable to say if they had been stolen. He was seen by the duty inspector who asked that the two men be detained at the police station until an escort arrived in the morning.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 93 (3)

THE PROSECUTION IS CLOSED

FIRST WITNESS - DEFENCE

G-3437 Pte Ellsworth, G.W., 1 Cdn Adm Tot Coy, RCASC, the accused, having been duly sworn, is examined by the Defence:

Q. Will you tell the Court your version of that night?

A. On Friday, 21 Sep 45, I was ordered to go to Colchester as DR of a convoy and we were supposed to take our overnight kit with us. I also took my blankets along as I had been in the habit of taking one or two blankets out with me as the nights are pretty cold and we usually have to wait at the Station until the troops come in. We got there at 1400 hours, had a lunch, loaded the vehicles and around six we had supper and then we was told that there was a recreational lorry going to Colchester for our benefit that evening. I wasn't particular about going to Colchester. I had been working on my bike and was dirty and after around quarter after 7 I was washed up and cleaned up and when I was coming out of the wash room I met Spurlock. We got talking and decided we would go down town for a few beers. Seeing that Spurlock had a work ticket for a truck we decided to take his truck. At the time we wasn't planning on staying down any length of time. We drove down to Colchester which was about 12 miles from the camp. We parked the car in the car park which we found out to be behind the Fleece Pub. We then immobilized the truck and walked for about a block to a pub. We had three or four beers and got feeling not too bad. There wasn't anything going on there so we left that pub to see what the town looks like. We got down the street into another pub. This we found out after was the Fleece Tap. We had 3 beers there and getting to feel better all the time decided to see what we could have for some fun. About this time this old gentleman comes over to feed his dog in the corner so we thought we would see if we could have some fun with him if we could. Spurlock asked him if he wanted to buy some blankets. He said 'Yes' but I must see his friend. He goes to see two women in the corner. He comes back and asks how many we have got. We told him we could give him as many as he wanted. He said how much. I looked at him and didn't think he had much money so said 10/-. We had a couple more beers and he leaves us. We leave the pub and go out on the street to see if we could see any women. There didn't seem to be much doing there. That was about 0830. We go in this other pub and have a

beer and there is two women there. We get talking to them. We stay there about 20 minutes to half an hour. After they left we fealt like having some fun somewhere and went out on the street. We go to another pub and have a beer there. It is getting on near 10 o'clock and we decided we would go have a final beer and go back to camp. As the truck was behind the Fleece Tap we went in there. I left Spurlock outside as he went to the Lavatory. I went in and this old fellow who we had been talking to before comes up and asks me if I had the blankets. I decided that I would have some fun with him and said yes I got them in the truck. This time Spurlock comes in. The old man takes us out and asks us around the pub and in back to the car park and tells us we can bring them out there. Our truck is already parked in amongst American and English lorries. That is about 5 to ten then. He says he wanted to get a beer before closing time. He walked off to the pub in the back way. Spurlock goes to mobilize his truck as we were going back. I decided to have one last beer but the bar had closed. When I comes out the old guy came out with me and with his dog. When I get half way across the car park he leaves me and says he is going to get his sons car to get the blankets in. Then I go over to tell Spurlock that the old man must have seen that we were fooling him and pulling his leg and had gone home. Then a couple of RAF girls come over. We were kidding along with them and the driver came with their lorry and they left. We were going to get into our lorry and look around and see that the old man had come back with two cops. We stayed to hear what they had to say. The old man leaves the cops about half way across the car park. One of the cops says to us 'I hear you are trying to sell some blankets' and Spurlock answers 'no'. He asked us if we had a lorry and we said 'yes'. He asked us what we had in it and we said furniture. He seemed surprised but we go over and show him the furniture. He asked us what we had in the cab. We told him ten blankets which we had brought from Farnborough. He asked for the work ticket and took us over to the Police Station. We sat in one room and they went into the Inspector's Office. Shortly after that Lieut Cote and Lieut McIlveen came in.

Q. Why were you blankets in Spurlock's lorry?
A. I ride a motorcycle and I asked him to take them with him.

Q. Why did you quote a price of 10/0 and why at all?
A. If we hadn't of said something he wouldn't have wanted them. We weren't going to give them to him.

Q. Why did you mention blankets? Why not boots or clothes?
A. We were talking about people selling them on the continent. Spurlock had been on the continent and seen how they were sold there.

Q. Were you aware that such a conversation could be construed an offence under the Army Act?
A. No sir.

Q. Did you understand that mess kit only was to be taken on this trip?
A. No, I didn't.

Q. Is it customary amongst the men to take blankets out of camp and why?
A. I can't say any more than for myself. I have seen guys taking them out at night as it gets cold sitting and

waiting for trains at night.

Q. Waiting for trains for what?
A. Our platoon are hauling these fellows coming back from the continent.

CROSS-EXAMINED

Q. You said you were ordered to take out night kit? Who ordered you?
A. It comes out on a duty roster on the door.

Q. Did anyone else take blankets besides you and Spurlock?
A. I couldn't say that.

Q. How many did you take?
A. Five blankets.

Q. Normally you are only issued with 4? How did you get five blankets?
A. I had three issued. One on a 1098 and there was one blanket for a seat cover on a truck when I was up north. I used it for a pillow.

Q. Did you know that recreational transport was being laid on that night?
A. Yes sir.

Q. You didn't take advantage of that?
A. No sir, I wasn't ready to go.

Q. Didn't you think it was unusual taking a loaded vehicle into town on your own?
A. A little sir.

Q. You thought it was quite regular for the driver to take his truck after it had been lined up with the rest?
A. I have pleaded guilty to taking the truck.

QUESTIONS BY THE COURT

Q. Tell us how you took the five blankets in the morning and in what truck you put them?
A. I put them in Pte Spurlock's truck.

Q. Did you know he was taking any blankets?
A. Yes sir.

Q. How many did he take?
A. I suppose he took 5.

Q. Did you turn yours over to him?
A. Just that morning.

Q. What did you say to him?
A. Just if he would put my blankets in his truck.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B)

SECOND WITNESS - DEFENCE

K-71494 Pte Honcharuk, A., 1 Cdn Adm Tpt Coy, RCASC, having been duly sworn, is examined by the Defence:

Q. Will you tell the Court what your duties are at 1 Adm

A. Work with the RP escort duty.

Q. On the morning that Ptes Spurlock and Ellsworth were brought in were you the RP detailed to take them over and collect their kit?
A. That's right, sir.

Q. Did you find that they were deficient any kit?
A. They didn't have any bedding at all, sir.

Q. There were no blankets on either of their beds on that morning?
A. That's right.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B)

THIRD WITNESS - DEFENCE
CHATAUTEN

F-49688 Sgt Rushton, E.S., 1 Cdn Adm Tpt Coy, RCASC, having been duly sworn, is examined by the Defence:

Q. Will you tell the Court just what your duties are at 1 Adm Tpt?
A. Platoon Sgt of "D" Platoon and to look after Adm and travelling work such as DRs.

Q. Is Ellsworth in your platoon?
A. Yes. He is a DR in my platoon.

Q. Will you tell the Court what sort of work he has done for you?
A. DR was his chief job. He had other jobs, such as sweeping up, etc.

Q. How did he carry out this work?
A. He carried out his work well. An excellent DR. A good driver and the maintenance of his bike was always up to standard. In this special line of work I found him very capable.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B)

The Defending Officer submitted a certificate signed by the QM of 1 Cdn Adm Tpt Coy, showing that the issue price of a blanket is $3/9.

Certificate marked exhibit "P".

CLOSING ADDRESS BY DEFENCE

As written out and handed in.

CLOSING ADDRESS BY PROSECUTION

The Defending Officer has gone rather fully into contract law. The evidence establishes the fact that the blankets were taken contrary to orders. The orders were given to take mess kit only. Therefore the blankets were taken without authorization. They were offered for sale to Mr. Douglas which is

established by the evidence. As far as a contract is concerned it is only a meeting of the minds. I contend there was a meeting of the minds. The blankets were offered for sale, an offer was made of 10/-. As far as the two soldiers were concerned the deal had gone through. Mr. Douglas was there to collect the blankets. Both persons were sane and over 21 years of age.

CLOSING DEFENCE ADDRESS: Pres. & Members of the Court.

1. Charge No. 1 "Improper Possession"

It has been established that these men took their own blankets with them for a legitimate purpose.

It is therefore submitted that a charge of improper possession has not been substantiated.

NOTES:

6-3

2. Charge No. 2 "Attempt to sell"

In summing up I invite the attention of the Court to the following facts:

1. MOTIVE: There was no motive for any attempt to sell:

(a) a sale is consumated primarily for a profit motive, and there is obviously no profit in selling an article for 10 shillings when the net result is an immediate deduction from your pay of 3s9d -- a net loss of 27s 6d.

(b) consummating a sale would, in this case have had one of three immediate results:
(i) deliberate theft of blankets from a comrade --which the evidence of character witnesses precludes.
(ii) A charge of Losing by Neglect & deductions from pay.
(iii) do without blankets these cold nights & with winter coming on. motiv is therefore lack-

CLOSING ADDRESS (cont'd)

2. INTENT: There was no intent to sell:

(a) The conversation ~~xxx~~ with the old man in the Pub was of a jocular nature, initiated under the jovial spirit produced by a few drinks and carried further after a few more drinks had raised the tempo and made the defendants sense of judgement disproportionate.

Under normal circumstances neither would have engaged in such buffonery.

(b) Even under the circumstances, had the defendants any conception that it could be construed as an offence in relation to selling or attempting to sell they would not have engaged in such a conversation.

3. The elements of a sale are:

"goods offered in return for money at such a price as to make a profit.

~~IN~~ ~~THEREXXXX~~ The anticipation of such elements must therefore be inherent in any attempt to sell.

(a) There was no offer made such as "we will sell you blankets" NOR were blankets at any time offered to the old man.

(b) There could be no expectation of receiving money from this man as he appeared poor. NONE was asked for. NOR was any attempt made to ascertain if £5-0-0 (the cost of 10 blankets at 10s) might be procured from this man in spite of his indigent appearance.

(c) No profit could possible accrue.

These elements of a sale ~~xf~~ or an attempt to sale are therefore lacking.

M7

4. Attention is invited to the fact that, although there are two witnesses against on e in the Fleece Tav conversation, that no attempt has been made on the part of the defendants to dispute the statements of the old man, but they have been frankly admitted and adequately explained.

CONCLUSION:

As an attempt to sell presupposes the ultimate intention to consumate the sale it is submitted that evidence has shown that no such intention was present, and that the ~~evidence~~ apparently incriminating circumstances have been adequately explained, and therefore no charge of attempting to sell has been substantiated.

CLOSING ADDRESS (cont'd)

2. INTENT: There was no intent to sell:

(a) The conversation ~~xxx~~ with the old man in the Pub was of a jocular nature, initiated under the jovial spirit produced by a few drinks and carried further after a few more drinks had raised the temperature and made the defendants sense of judgement disproportionate.

Under normal circumstances neither would have engaged in such buffonery.

(b) Even under the circumstances, had the defendants any conception that it could be construed as an offence in relation to selling or attempting to sell they would not have engaged in such a conversation.

3. The elements of a sale are:

"goods offered in return for money at such a price as to make a profit.

~~in THEREXXXX~~ The anticipation of such elements must therefore be inherent in any attempt to sell.

(a) There was no offer made such as "we will sell you blankets" NOR were blankets at any time offered to the old man.

(b) There could be no expectation of receiving money from this man as he appeared poor. NONE was asked for. NOR was any attempt made to ascertain if £8-0-0 (the cost of 10 blankets at 10s) might be procured from this man in spite of his indigent appearance.

(c) No profit could possible accrue.

These elements of a sale ~~xx~~ or an attempt to sale are therefore lacking.

M7

Note:
Douglas first saw ash w. Park
in this story of maneuvering of
wife is ~~only~~ not evidence

4. Attention is invited to the fact that, although there are two witnesses against on e in the Fleece Tav conversation, that no attempt has been made on the part of the defendants to dispute the statements of the old man, but they have been frankly admitted and adequately explained.

CONCLUSION:

As an attempt to sell presupposes the ultimate intention to consumate the sale it is submitted that evidence has shown that no such intention was present, and that the ~~evidence~~ apparently incriminating circumstances have been adequately explained, and therefore no charge of attempting to sell has been substantiated.

2. REPORT:

1. This man has served his country for 41 years with three only minor crimes, two of which are AWL for less than 24 hours,

2. He is of good character and has done his work thoroughly and well.

In view of his long service, good character and efficient work, a plea for leniency is submitted.

E-3

FIRST WITNESS: Lieut. M. Cote, 1 Cdn. Administrative Transport Company, R.C.A.S.C., having been duly sworn states:

On Friday 21 Sep. 1945 I was detailed for a convoy to pick up stores at Roman Way Convalescent Hospital, Colchester. We arrived there at approximately 1400 hrs the same day. After having lunch at Camp we immediately began loading our vehicles with furniture and barrack stores. On completion of loading I ordered all lorries to be parked against two buildings. I then proceeded to the transport office of the Camp and arranged recreational transport for the drivers to go to Colchester that evening, as we intended to leave the following morning. This transport left the Camp at 1930 hrs. After having dinner, Lieut. McIlveen and myself, along with two Sergeants took my jeep and proceeded to town in it. We returned to Camp at approximately 0300 hrs, and on passing the place where the trucks were parked I noticed that one was missing. I immediately tried to find out where, and on whose authority the truck had left the car park. This being impossible I proceeded to Colchester with Lieut. McIlveen to report the lorry missing. As we came into the town I met a policeman and asked him if he had seen a lorry. He entered the Police Station which was across the road, and returned telling us that the lorry was in their yard, and that two Canadian soldiers were being detained. I recognised this vehicle as CL-196669, the missing lorry.

On entering the Police Station I noticed two soldiers sitting on a bench, and recognised them as the accused. The Constable on duty told me how they came to be in custody. On being told of the attempted sale of blankets, Lieut. McIlveen decided to check the remainder of the lorry. I accompanied him, and he was satisfied that the load was untouched. I re-entered the Police station and requested that the two accused be detained for the night, as we had no guard room in Camp. The following morning the accused were picked up and returned to Aldershott with the convoy, under escort. I then turned the accused into the unit guard room.

The accused declines to cross-examine the witness.

M Cote Lt.

MY

SECOND WITNESS Mr. Robert Joseph Douglas, 60 East Hill, Colchester, having been duly sworn states:

At 2030 hrs on Friday Sept. 21, 1945 I was in the Fleece Tap when two Canadian soldiers approached me. The taller one (Pte. Spurlock) asked me if I wanted any blankets. I asked how many they had and they said I could have as many as I wished. I asked the price, and they said 10 shillings each. I then asked them what colour they were, white or otherwise, and they said they were all colours, brown, grey, etc. I asked them where the blankets were and they said they would have them along presently, and where would they meet me. They said they would have to get the truck. The short one (Pte. Ellsworth) said he would get the truck, and then they said they would both go. I said I would remain in the Fleece Tap until they returned. We left together to go to Head Street Corner. I asked them where the truck was and they said they couldn't get the truck down that way. I then asked them where the truck was, again, and they said they would bring it to the Bus Park. Then the Police arrived.

Cross-examination

Q - Were you drinking alcoholic beverages on the evening of Friday, Sept. 21, 1945?

A - Yes, light beer.

Q - Did you not, at the Fleece Tap on the evening of Sept. 21, 1 1945 first ask us if we had any blankets for sale?

A - No.

Q - Did you inform the Police?

A - Yes.

Q - Did you say "I'll take all the blankets you have, because I can flog them myself?"

A - No. I said "I'll take what you have." but said nothing about selling them myself.

Q - Did you receive any blankets form us?

A - No.

Q - DID you give us any money?

A - No.

R Douglas.....

THIRD WITNESS: Lieut. G.A. McIlveen, Canadian Barrack Services, having been duly sworn states:

On Friday 21 Sep 1945, as barrack Officer, I was detailed to accompany Lt. M. Cote to Rosen Bay Convalescent Hospital, Colchester to pick up ten truck loads of barrack stores. We arrived at Colchester at approximately 1400 hrs. We had lunch and began to load stores. On completion of the loading, the trucks were backed against a building to be left until the next morning. Personnel were given dinner after which Lt. Cote laid on recreational transport to take the men to Colchester. Lt. Cote, myself, and two Sergeants left for Colchester at approximately 1900 hrs, and returned to Camp at approximately 2300 hrs. On passing the parked vehicles it was noticed that one of them was missing, therefore Lt. Cote and I went to Colchester to inform the police. It was found that the police had already taken into custody the two men which I recognise as the accused. The Police had, as well, the missing vehicle, the load of which was duly inspected and found to be intact. However there were ten Army blankets in the cab, comprising no part of the load. I present as evidence the ten blankets found in the cab, which I recognise as N.D. blankets.

The accused were left in custody of the police over night and returned under escort to Farnborough the next day.

The accused declines to cross-examine the witness.

G.A. McIlveen Lt.

FOURTH WITNESS: P.C. 30, Frederick William Beach, Colchester Borough Police, a statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in the Summary of Evidence and marked appendix "A"
Having regard to the expense and loss of time involved, the attendance of this witness cannot be readily procured.

S.M. Johnson Lieut
(S.M.Johnson, Lieut) Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence. The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

FARNBOROUGH, HANTS.
6 Oct 45

S.M. Johnson Lieut
(S.M.Johnson, Lieut.)
Officer detailed to take the Summary of Evidence.

EXA

COPY

STATEMENT

Statement by P.C. 30, Frederick William Besch, Colchester Borough Police

Arrest of two Canadian Soldiers

Sir,

I beg to report that at 1030 p.m. on Friday, 21st September, 1945 I was on duty in High Street in company with P.s. White and W.R. Kipps. In consequence on instructions from P.s. White, I went to the Car Park Culver Street with W. R. Kipps. On arriving there I saw Mr. DOUGLAS, 60 East Hill, Colchester, and in consequence of what he said to me, I went to the west end of the Park, where I saw Pte. No. G.3437 George William ELLSWORTH, R.C.A.S.C., also Pte No. B.126531 Harold Raymond SPURLOCK, both stationed at No. 1 Administrative Transport Company, R.C.A.S.C., Farnborough, Hants.

I said to them "I have received information to the effect that You have been trying to sell blankets to civilians." I cautioned them and the replied "No." I asked them if they had a lorry on the car park and they replied "Yes." I asked them what was on the lorry and they replied "Furniture." I asked them if they had any blankets, SPURLOCK replied "I have 10 in the cab which I brought here from Farnborough." I told them I was not satisfied and would take them to the Police Station.

On arriving there I saw Lieut. M.S. Cote, No. 1 Administrative Transport Company, R.C.A.S.C., Farnborough, Hants., who stated that a 30 cwt lorry had been stolen from Roman Way Camp. In consequence of what I said to him, I showed him the lorry which had been in possession of SPURLOCK and ELLSWORTH. Lieut. COTE identified it as the one stolen from Roman Way Camp. I showed him the blankets but he was unable to say at the time if they were stolen.

Lieut COTE asked if SPURLOCK and ELLSWORTH could be detained at the Police Station until the morning of 22nd instant, Lieut COTE had a conversation with Inspector Westley and these men were detained to await escort.

(Signed) Frederick William Besch

P.c. 30

I have read over the statement made by P.s. 30 Besch, I was with him at the time stated and can corroborate his statement.

J.S. Kipps

W.R. 72

Certified a true copy.

S.M. Johnson Lieut

(S.M.Johnson, Lieut) Officer detailed to take the Summary of Evidence.

Appendix "A"

FIRST WITNESS — Lieut. M. Cote, 1 Cdn. Administrative Transport Company, R.C.A.S.C., having been duly sworn states:

On Friday 21 Sep. 1945 I was detailed for a convoy to pick up stores at Roman Way Convalescent Hospital, Colchester. We arrived there at approximately 1400 hrs the same day. After having lunch at Camp we immediately began loading our vehicles with furniture and barrack stores. On completion of loading I ordered all lorries to be parked against two buildings. I then proceeded to the transport office of the Camp and arranged recreational transport for the drivers to go to Colchester, that evening, as we intended to leave the following morning. This transport left the Camp at 1930 hrs. After having dinner, Lieut. McIlveen and myself, along with two Sergeants took my jeep and proceeded to town in it. We returned to Camp at approximately 2300 hrs, and on passing the place where the trucks were parked I noticed that one was missing. I immediately tried to find out where, and on whose authority the truck had left the car park. This being impossible I proceeded to Colchester with Lieut. McIlveen to report the lorry missing. As we came into the town I met a policeman and asked him if he had seen a lorry. He entered the Police Station which was across the road, and returned telling me that the lorry was in their yard, and that two Canadian soldiers were being detained. I recognised this vehicle as the CL-1 6668, the missing lorry.

On entering the Police Station I noticed two soldiers sitting on a bench, and recognised them as the accused. The Constable on duty told me how they came to be in custody. On being told of the attempted sale of blankets, Lieut. McIlveen decided to check the remainder of the lorry. I accompanied him, and he was satisfied that the load was untouched. I re-entered the Police Station and requested that the two accused be detained for the night, as we had no guard room in Camp. The following morning the accused were picked up and returned to Aldershott with the convoy, under escort. I then turned the accused into the unit guard room.

The accused declines to cross-examine the witness.

M. Cote Lt.

[illegible] Mr. Robert Joseph Douglas, 60 Foot Hill, Colchester, having been duly sworn states:

I [illegible] on Friday Sept. 21, 1945 I was in the Fleece Top when two Canadian soldiers approached me. The teller one (Pte. Sparlock) asked me if I wanted any blankets. I asked how many they had and they said I could have as many as I wished. I asked the price, and they said 10 shillings each. I then asked them what colour they were, white or otherwise, and they said they were all colours, brown, grey, etc. I asked them where the blankets were and they said they would have them along presently, and where would they meet me. They said they would have to get the truck. The short one (Pte. Ellsworth) said he would get the truck, and then they said they would both go. I said I would remain in the Fleece Top until they returned. The left together to go to Head Street Corner. I asked them where the truck was and they said they couldn't get the truck down that way. I then asked them where the truck was, again, and they said they would bring it to the Bus Park. Then the Police arrived.

Cross-examination

Q - Were you drinking alcoholic beverages on the evening of Friday, Sept. 21, 1945?
A - Yes, light beer.

Q - Did you not, at the Fleece Top on the evening of Sept. 21, 1945 first ask us if we had any blankets for sale?
A - No.

Q - Did you inform the Police?
A - Yes.

Q - Did you say "I'll take all the blankets you have, because I can flog them myself"?
A - No. I said "I'll take what you have." but said nothing about selling them myself.

Q - Did you receive any blankets from us?
A - No.

Q - Did you give us any money?
A - No.

R. J. Douglas

MD

THIRD WITNESS: Lieut. G.A. McIlveen, Canadian Barrack Services, having been duly sworn states:

On Friday 21 Sep 1945, as barrack Officer, I was detailed to accompany Lt. M. Cote to Roman Way Convalescent Hospital, Colchester to pick up ten truck loads of barrack stores. We arrived at Colchester at approximately 1400 hrs. We had lunch and began to load stores. On completion of the loading, the trucks were backed against a building to be left until the next morning. Personnel were given dinner after which Lt. Cote laid on recreational transport to take the men to Colchester. Lt. Cote, myself, and two Sergeants left for Colchester at approximately 1900 hrs, and returned to Camp at approximately 2300 hrs. On passing the parked vehicles it was noticed that one of them was missing, therefore Lt. Cote and I went to Colchester to inform the police. It was found that the police had already taken into custody the two men which I recognise as the accused. The Police had, as well, the missing vehicle, the load of which was duly inspected and found to be intact. However there were ten Army blankets in the cab, comprising no part of the load. I present as evidence the ten blankets found in the cab, which I recognise as R.C.D. blankets.

The accused were left in custody of the police over night and returned under escort to Peterborough the next day.

The accused declines to cross-examine the witness.

G.A. McIlveen Lt.

FOURTH WITNESS: P.C. 30, Frederick William Beech, Colchester Borough Police, a statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in the Summary of Evidence and marked appendix "A"
Having regard to the expense and loss of time involved, the attendance of this witness cannot be readily procured.

S.M. Johnson Lieut
(S.M. Johnson, Lieut) Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence. The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

S.M. Johnson Lieut
(S.M. Johnson, Lieut.)
Officer detailed to take the Summary of Evidence.

PETERBOROUGH, HANTS.
6 Oct 45

EXA

COPY

STATEMENT

Statement by P.C. 30, Frederick William Beach, Colchester Borough Police

Arrest of two Canadian Soldiers

Sir,

I beg to report that at 1030 p.m. on Friday, 21st September, 1945 I was on duty in High Street in company with P.S. White and W.H. Kipps. In consequence on instructions from P.S. White, I went to the Car Park Culver Street with W. H. Kipps. On arriving there I saw Mr. DOUGLAS, 60 East Hill, Colchester, and in consequence of what he said to me, I went to the west end of the Park, where I saw Pte. No. G.3457 George William ELLSWORTH, R.C.A.S.C., also Pte No. H.126831 Harold Raymond SPURLOCK, both stationed at No. 1 Administrative Transport Company, R.C.A.S.C., Farnborough, Hants.

I said to them "I have received information to the effect that you have been trying to sell blankets to civilians." I cautioned them and the replied "No." I asked them if they had a lorry on the car park and they replied "Yes." I asked them what was on the lorry and they replied "Furniture." I asked them if they had any blankets, SPURLOCK replied "I have 10 in the cab which I brought here from Farnborough." I told them I was not satisfied and would take them to the Police Station.

On arriving there I saw Lieut. H.S. Cote, No. 1 Administrative Transport Company, R.C.A.S.C., Farnborough, Hants., who stated that a 30 cwt lorry had been stolen from Roman Way Camp. In consequence of what I said to him, I showed him the lorry which had been in possession of SPURLOCK and ELLSWORTH. Lieut. COTE identified it as the one stolen from Roman Way Camp. I showed him the blankets but he was unable to say at the time if they were stolen.

Lieut COTE asked if SPURLOCK and ELLSWORTH could be detained at the Police Station until the morning of 22nd instant, Lieut COTE had a conversation with Inspector Bestley and these men were detained to await escort.

(Signed) Frederick William Beach

P.C. 30

I have read over the statement made by P.S. 30 Beach, I was with him at the time stated and can corroborate his statement.

J.S. Kipps
W.R. 72

Certified a true copy.

S.M. Johnson Lieut.
(S.M. Johnson, Lieut) Officer detailed to take the Summary of Evidence.

Appendix "A"

QUARTERMASTERS STORES: 1 Cdn Admn Tpt Coy RCASC

E+V

This is to certify that the following extraction from Priced Scales of Issue dated 10th Feb. 1945 is correct.

Table 9

Section KC

KC 0576	Blankets brown single	$3.07	0 13 9

Signed A. MacDuff Capt. S.M.

No. 1 CDN. ADM. TRANSPORT COY. R.C.A.S.C.

ARMY FORM B.256 (War).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G-3437	Pte	ELLSWORTH, G. W.	No. 1 Cdn Adm Tpt Coy.

NOTE.—The Field Conduct Sheet is to be produced in Court with this Statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or disorder without leave, the entries for drunkenness or disorder, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 40, Conduct to the Prejudice ... 1 ... times.

For AA Sec 15(1) ANL ... 2 ... times.

For ... times.

For ... times.

Date of first entry in Field Conduct Sheet 2 Aug 44

Date of last entry in Field Conduct Sheet 20 Jun 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. [illegible]~~

~~Nothing to note~~ NIL

4. The accused has been awaiting trial on the present charges for 1 days in civil custody; and for ~~25~~ days in military custody, i.e., Nil days in open arrest, ~~25~~ days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 23 Years

6. The date of his attestation is 22-3-41

~~Nothing to note~~

7. The service which the accused is allowed to reckon is 4 years 5 months

†State the military decorations he is entitled to wear.

8. The accused is in possession of† CVSM and Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of ...

In the war substantive rank of ...

In the acting rank of ...

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

EXB 1161

(*24073) W1.30721/3701 [illegible] A.A.F.C.(2) Ltd. Gp.690

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17th day of October 1945 R.A. Cooper Lt
Adjt Admin Tpt Coy RASC

No. G-[illegible] Name ELLSWORTH, G.W. Sqn., Battery, or Company — Corps R.C.A.M.C. — Date of enlistment 13Mar 41 — G.C. Badges — Service or Proficiency Pay — M.F.M. 5

Date of last entry in Company Conduct Sheet: N/A — No. and date of last drunk: NIL — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Red Deer Alberta	28 Aug 44	Pte		AA Sec 40: Approx 2105 hrs 2 Aug 44 was found urinating on the steps of the YMCA Bldg. A-20 Red Deer	Lt. I. Macrae	10 days pay	3 Aug 44	Col J.J. Burton-Millison	Tot: Forft: 10 da pay
Red Deer Alberta	18 Nov 44	Pte		AA Sec 15(1) AWL from 0200 hrs 18 Nov 44 to 0045 hrs 19 Nov 44 TTA - 22 hrs, 45 Min.	Doe	7 Days Pay	20 Nov 44	Lt-Col R. H. Merryweather	Forft: 1 days Tot: 8 days
Field	20Jun 45	Pte		AA Sec 15(1) WOAS AWL from 0700 hrs 20 Jun 45 till 1315 hrs 21 Jun 45 when he surrendered himself to the Unit Guard Room. TTA 1 day 6 hrs 15 min.	Cpl Goody J.M. Documentary	6 days pay	22 Jun 45	Lt-Col W.J. Stewart	2 days pay TOTAL 8 days pay

CERTIFIED TRUE COPY

S. M. Johnson Lieut

(770)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 Sep45	Pte		AA Sec. 40 (Three charges) Finding: Guilty, Sentenced by F.G.C.M. to 90 days Detention	Documentary		on 17 Oct 45.	F.G.C.M.	

APPLICATION FOR DEFENDING OFFICER

To: G-3437 Pte ELLSWORTH, George William

With reference to my pending trial by Field General Court Martial

I wish ~~I do not wish~~ that an officer be assigned to act as defending officer.

If _____ is available, I wish that he may be assigned for this purpose.

(Signature)

List of witnesses for the Prosecution in the case of
G-3437 Pte ELLSWORTH, George William

Lieut. M. Cote - 1 Cdn Admin Tnt Coy R.C.A.S.C.

Lieut. G.A. McIlveen - Canadian Barrack Services

Mr. Robert Douglas - 60 East Hill, Colchester.

P.C. 30, Frederick William Dasch - Colchester Borough Police

X 28

FN ELMER, N

Correspondence to be PINNED here.

X28

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this twenty second day of December, 1914.

Whereas it appears to me, the undersigned, an officer in Command of 8 Can. Inf. Bde.

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint :—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

* Omit if not applicable.

Proceedings Reviewed [illegible] 5/12/15

36

JUDGE ADVOCATE.

CAPT. R.A. LITCHIE.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J. A. McNaughton	N. Shore R.

Members.

Rank.	Name.	Regiment.
Capt.	C. C. L. Tremain	N. Shore R.
Lieut	J. T. Alley	Q.O.R. of C.
Lieut	John Mackenzie	5th Can. Inf. Bde.

Waiting

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible]

Commanding 8 Can. Inf. Bde.

Convening Officer.

SCHEDULE.

Evidence and Charge Sheets (if necessary) to be PINNED here.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B63971 Rfn Norman Elmer O.R. of C.	First charge Army Act Sec 40 On act to the prejudice of good order an military discipline in that he on the night 29/30 June 1942, did make improper use of a Canadian Military Vehicle and petrol, and did cause said vehicle to be damaged to the estimated amount of £70-18-0	NOT GUILTY GUILTY	GUILTY To UNDERGO DETENTION FOR A PERIOD OF SIXTY DAYS AND TO BE PLACED UNDER STOPPAGES OF PAY IN THE AMOUNT OF £10-0-0 Dated 23 Dec 1942. Jas Mc Naughton Majr PRESIDENT.	Confirmed B.G.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) N Blackader Brig (Signed) Jas Mc Naughton Majr
Commanding 8 Cdn Inf Bde. North Shore Regt
Confirming Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23 day of December 1942, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~3. The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn. 5. The Judge Advocate

Signed this 23 day of Dec. 1942.

Jas Mc Naughton Majr.
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 370 of 1918 have been complied with.

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 26th day of Dec 1942.

N Blackader Brig
Confirming Officer.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of B63971 Rfn Elmer, N.

(a) (Dated) 26 Dec 1942 (Signed) H. L. McRae Lieut Adjt G.O.R. of C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

B2

The accused No. B63971 Rfn. Norman Elmer, 1st Bn. The Queen's Own Rifles of Canada, a soldier of the Canadian Army, Overseas, is charged with:-

FIRST CHARGE
Sec. 40
Army Act.

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

on the night 29/30 June, 1942, did make improper use of a Canadian Military Vehicle and petrol, and did cause said vehicle to be damaged to the estimated ammount of £70-18-0

In the Field
18 December, 1942

(J.S. [illegible]) Lt.-col.
Comd. 1st Bn. The Q.O.R. of C

To be tried by Field General Court Martial
21 Dec 42

8 Can Inf Bde

MEDICAL OFFICER'S REPORT

I certify that No. B63971 Rfn. Elmer, N.
of Q.O.R. of C is in a good state of health,
and fit to undergo Trial by Court martial.

R.D. MacLaren Capt.
Medical Officer
(R.D.MacLaren) Capt.
M.O. att. Q.O.R. of C. (AF)

Station In the Field

Date 23 December, 1942

M. F. B. 246

6

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at L.H. Field.

on the 23 day of December 1942 by order of

Brigadier K. G. Blackadder

Commanding 8th Cdn Infantry Brigade.

dated the 22 day of December 1942.

President.

Major J. A. McNaughton
N. Shore Regt

Members.

Capt. C.C. Gammon
N. Shore Regt

Lieut. J. G. Alley
Q.O.R. of C.

Capt. R.A. Ritchie, Judge Advocate.

Trial of* B.63971 Rfn Elmer N.
Q.O.R. of C.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves~~

~~, missing member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. H.S. McRae. Q.O.R. of C.

Counsel‡ or defending officer† Capt. E.F. Addison. R.C.A.P.C.

At 1130 o'clock the Trial commences.

The order convening the Court is read, and is marked B2 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

7

B

The President, members and judge-advocate are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

NOT GUILTY

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

~~The accused having pleaded Guilty to~~ charge the provisions of Rule of Procedure 35 (b) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

PROSECUTOR IN OPENING 32

The accused, B63971 Rfn. Norman Elmer of the 1st Bn. The Queen's Own Rifles of Canada is charged with misuse of a Canadian Army Vehicle and causing damage to same.

Involved with Rfn. Elmer in this accident was B63971 Cpl. Howard Church, who was employed as a Driver Mechanic with the Queen's Own Rifles of Canada.

Higher Authority has directed that both these soldiers be tried by F.G.C.M.

Following the accident in which these soldiers were involved, both were admitted to hospital. Cpl. Church is still in hospital.

Rfn. Elmer was admitted to hospital from a Field Ambulance 2 July '42 and discharged from No.6 C.C.S. 8 Sept. '42 and despatched to the Field 17 Dec. '42.

Efforts were taken to have Cpl. Church made available as a witness for the defence without success.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO.

The prosecutor makes an opening address ~~hands in a written address which is read, marked~~ , ~~signed by the President, and attached~~ to the proceedings.

The prosecutor proceeds to call witnesses.

First witness for prosecution. B.G3711 Ref. Bilton J.M.

being duly sworn, is examined by the prosecutor.

I am employed as a dispatcher with G.O.R. of C and in that capacity ~~and in that capacity~~ at 0235 hrs on the night of 29/30 June 1942 received a telephone call from the duty officer and at 0320 hrs on the same night received another telephone call. As a result of these calls I went, in company with Sgt Bradley, the transport Sergeant, to the roundabout on the Hailsham Rd - A11 near Hailsham. We had notified 37 LAD before leaving. At the roundabout we found that the Station Wagon CM 4202063 on charge to G.O.R. of C had mounted the island of the roundabout, all four wheels being on the island. The front ~~wheel~~ axle was damaged on the right and both doors were badly damaged. There was a skid mark for about 40 feet leading up to the place where the vehicle had left the road. The embankment of the island was about 3 feet high. The right front wheel was damaged.

C2

CROSS EXAMINED.

Q. What time did you arrive at the Scene of the accident.

A. About 0330 hrs. When I had first the vehicle had flash lights and we placed off the skid mark.

Q. Did you make any note of these events

A. On return to our barracks.

Q. Was a note made of the damage done?

A. No.

Q. Does this Sgt. that the vehicle had been in collision with another vehicle?

A. No the damage appeared to have been caused by hitting a mound of earth the vehicle was standing upright

Q. Had you seen the vehicle prior to the alleged accident?

A. No Sir.

Q. Was the vehicle stationed with the transport section where you were?

A. No it was stationed either at the Officers Mess or the B.O.R.

RE-EXAMINED.

Q. Do you know whether the 9 Cars had reached.

A. I am not sure.

BY DEFENDING OFFICER

Q. Did the Station Wagon come under your control for movement.

A. No under B.O.R. Control

C3.

Q. Who writes out the work tickets for this vehicle

A. An authority of either the 2 i/c or the Colonel.

RULE OF PROCEDURE 83 (B) COMPLIED WITH.

2nd WITNESS FOR PROSECUTION

B 64215 Sgt BRADLEY G.E. having been duly sworn stated: On the night of 29/30 June 1942 I accompanied Rfn Dixon to the scene of an accident just outside of Hailsham. I saw a ~~us~~ Ford Station Wagon on charge of D.O.R.C. standing on its four wheels on ~~the~~ an island in the middle of a roundabout, it was off the pavement. The glass except the left windscreen was smashed, the right mudguard and fender were crumpled and the right wheel was torn from its suspension and the axle was bent. The driver detailed to be in charge of this vehicle was Rfn Dicks. I know him in my capacity as Transport Sergeant for the Regiment. Dicks did not drive the vehicle at all ~~times~~ and in his absence it was detailed to Rfn Turner the accused. Rfn Dicks was absent ~~with~~ WITH leave on 29/30 June 1942.

CROSS-EXAMINED

Q. Did you make a list of the damages at

C4

the time of the accident. A. ~~HQ~~ I am not sure

Q. How ~~long~~ ~~(ok)~~ well did you know the vehicle

A. Not very well. It was operated direct from B.A.R.

Q. Is it a fact that this Station wagon was detailed for the general use of Officers?

A. Yes.

Q. Is it possible that the vehicle had deteriorated in value since you booked it on UNIT charge?

A. Yes, that is a natural assumption

Q. Did you turn the vehicle over to 37 LAD

A. Yes.

Re-EXAMINED.

Q. How many Station wagons were on charge to G.O.C R at 29/30 of June 1942

A. Two. There was one detailed to the Colonel and the other which I technically detailed to the 2 i/c was used, generally, by all Officers.

BY THE COURT.

Q. Who was responsible for the condition of this Station wagon?

A. The driver

Cs

Q. Was there a turnover check when D. Ltd turned the vehicle over D'Eluer.

A. Not as far as I know.

Q. How long had Rfn Dicks been away?

A. I don't know.

Q. Who arranged for his change of duties?

A. The Transport Officer I presume.

Q. How badly was the glass broken?

A. It was mostly out & the rest was shattered beyond repair.

Q. Is there any one who could say whether the glass was broken or cracked before the accident?

A. I do not know.

Q. Where is the log book of the vehicle?

A. The Mech log book not mark. ticket been in the vehicle when I boarded it.

R.P. 83(B) COMPLIED WITH.

C6.

THIRD WITNESS FOR PROSECUTION

CAPT. A.C. CAMPBELL having been duly Sworn States:

I am L.A.D. Officer of 37 L.A.D. on the night of 29/30 June 1940 - The 37 LAD took over a vehicle CM 4202063 a Red Station Wagon on charge ~~belonging~~ to the R.O.R.E.C. I examined the vehicle for damage and estimated the cost of repair at £ 70-18-0 of which £ 27-8-0 was Labour, the balance being material. The vehicle was then evacuated to 3 Coy Div Ord Workshop and in my opinion it will not be reconditioned. I know that it was evacuated beyond D.O.W.

CROSS-EXAMINATION

Q. Can you tell us the details of the damage done?

A. Damage to front Spring, front axle, frame, radiator and gaitle, engine mounting, spar, right front fender and right headlight, one side of the windshield, seven window panes, two doors, dash board and steering wheel.

Q. Does the £43-10-0 represent your estimate of replacement value of parts damaged. That is to say, replacement by new parts?

A. Yes.

Q Have you the log book for the vehicle?

A. No.

Q. Did you get it from at the time of the accident?

A No but I got it a number of weeks after the accident.

Q. Where is the log book now?

A. With Q.M.R. as far as I know, it was returned there as, by the time it had been received, the vehicle had been evacuated from B.D.O.W.

Q. Could you tell us when the date vehicle was put in to service?

A. Not from memory.

Q. Is it possible that your estimate of £43.10.0. is high.

A. It may have been high or low possibly.

Q. Assuming that the vehicle is back on the road, it would not necessarily have been

C 8

with new parts?

A. No it could have been repaired with second hand part which would have reduced the cost.

Q. Did you consider the damage & part from the mechanical angle or to depreciated?

A. No ~~I did not~~ I only considered the parts that had been damaged.

Q. Could the damage have been caused by another vehicle side-swiping this one?

A. It could have been possible but the main damage was on the front end.

Q. Could some of the damage have been caused prior to this accident?

A. Yes.

Q. What is the basis of the labour cost?

A. 137 hours at 4/- per hour.

BY THE COURT.

Q. Is it possible that as many as one half of the damaged part could have been replaced by used parts?

A. They might all have been replaced. My estimate is for 100% new part to replace the damaged one. RP 83(8) COMPLIED WITH.

Cq 22

FOURTH WITNESS FOR
THE PROSECUTION

LIEUT. R. FLETTING having been duly sworn states:

I was on duty on morning 29/30 June 1942 acting as Orderly Officer for Q.O.R. of C. At about 0255 hrs I received a telephone call from the Civil police as a result of which I checked the Station wagons in the lines near B.H.Q. and then telephoned the Transport Office and told him to check the Station wagons in their lines. I found one missing. As a result of further telephone conversation with police at about 0330 hrs I again phoned the Transport Office and instructed some personnel there to go & patrol on the Eastbourne-Haileybury road. I then phoned the Medical Officer and Adjutant telling them what I had done.

CROSS EXAMINED.

Q. How many Station wagons should have been outside B.H.Q. on the night in question?

A. I cannot say.

Q. Do you recognize the accused?

A. Yes.

R.P. 83(5) COMPLIED WITH

C10

CAPT. R.D. MACLAREN having been duly sworn states:

I am Medical Officer attached to Q.O.R. of C. On the night of 29/30 June 1942 Rfn Clunes. H, the accused, reported to the R.A.P. On this occasion he was complaining of injuries which he had received in an Automobile accident ~~with~~ while driving in a Station Wagon.

CROSS EXAMINATION:

Q. Is it true that on your examination of the accused, he was in a dazed condition?

A. Yes.

Q. Is the accused now in a normal condition

A. One of his arms has lost some of its use.

Q. Is it possible that that will be a permanent disability?

A. It will be in my opinion.

BY THE COURT

Q. Was anybody with the accused when he came to the R.A.P.

A. Yes Cpl CHURCH who was also injured.

Q. What were his accused injuries. A. A fractured left elbow & had suffered mild concussion. R.P. [illegible] with

26 C 11

CAPT. H.S. McRAE having been duly sworn deposes: I am the Adjutant of 2/2 O.R. of C.

I submit A.R.C. 3518 transport book ticket pertaining to Ford Station Wagon No: CM 4202063 dated 24 June 1942 bearing the signature of Rfn TURNER and Major PANGMAN the 2/c of the O.R. of C. The last authorised trip shown on this ticket is dated 27 June 1942 and I recognise Maj Pangmans authority.

CROSS. EXAMINED.

Q. Have you seen the log book relating to this vehicle since its accident.

A. To the best of my knowledge it has never been returned to the unit.

Q. To your knowledge was it a practice to make unauthorised trips from B.H.Q. to the M.O. homes.

A. Not to my knowledge.

BY THE COURT.

Q. I am right in saying that this ticket showed those many trips between 24 June & the end of that month

A. Yes.

Q. Where did you get this work ticket?

A. It was turned in to the ~~Battalion~~ ~~Orderly~~ Orderly Room by the Transport Officer.

R.P. 83(B) COMPLIED WITH.

LIEUT. D.D. OWEN having been duly sworn states:

I recognise the accused and I was the Officer detailed to take the Summary of Evidence in this case.

At the close of the evidence for the prosecution I cautioned the accused ~~him~~ in accordance with R.P. 4(2) and he made a statement, ~~which~~ under oath which I took down and now produce as Exhibit "J". (EXHIBIT "J" was read to the Court)

R.P. 83(B) COMPLIED WITH.

Jordan

3-0

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. NO

Question. Do you intend to call any other witness in your defence?

Answer. YES

Question. Is he a witness as to character only? *Answer.* NO.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence? YES.

Answer. The accused in his defence says:†

~~(he/she is/are a written address which is read) (and/or)~~

~~signed by the President and attached to the proceedings.~~)

The ✱ Station wagon C.M.P. 202063, when I took it over from Pte Dicks was damaged, by all windows being cracked and two of them completely out. I stuck in the broken ones and taped them up, the bumper was also damaged when I took it over. I did not sign for the vehicle. The vehicle was a 1939 Model and had approximately 2200 miles on it. While with B.C.R.C. It had been with four units previously the vehicle was in bad condition except for its motor.

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

B.64321.
Rfn DICKS. J.A. Lansing Canada duly
Sworn States:

I was driver by Lord S.W. 4202063
Driver on an M.T. Convoy on 29th 30 June
1942. Rfn Elmes was his Stand driver for
any vehicle. When I left, his vehicle was
in good running order. Only one window
was in good shape, his others were
locked and ~~one~~ two had been removed.
The right hand front door was always
sticking and the winding & door handles
were off both doors in front.

The vehicle had been used since 1939
by four or five units prior to it
being sent to his R.O.R. and according
to the log book it had been in Borden
for a year.

R.P. 83(B) COMPLIED WITH.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused B. 63971 Rfn. N. CLAGER

IS GUILTY OF THE CHARGE.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

CAPT. H.S. MacRae. is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked A.C., signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* YES.

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* YES.

Cross-examined by the accused.

This man has been with me with since June 1940 & has not had a previous charge related to the operation of a motor vehicle.

(Observations by the nature of the report of the evidence of the witness, or a statement of the character of the accused, the reading of the same should be omitted if any objection to such statement or allegation is made by the accused, or by the Court on the objection of the Court or the Court, and the Court shall receive into the nature and amount of the additional punishment.)

Question to the accused. Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

To undergo Detention for a period of Sixty days. and to be placed under stoppages of pay in the amount of £10-0-0.

Dated this 23 day of Dec. 1942

J a McNaughton Major
President F.G.C.M.

"J" L.A.

Page 6

First Witness for Defence.

The accused B63471 Rfn Elmer N., 1st Prov Queen's Own Rifles of Canada, having been duly sworn states,

I was in Eastbourne on the night of 24th June 1942. At about 9.00 at night I was on my way home when I met Corporal Chard. He asked me to buy him a beer which I did, then we started for camp at Rattle Park. Half way home, coming through Old Town, Corporal Chard said he could'nt go any further & asked me to get the station wagon to take him back to camp As I was employed as the driver of vehicle CM 4202063 I went & got it. I picked up Corporal Chard & started back to camp but went past the turn so I suddenly saw the roadsheet in front of me & tried to turn but crashed into the bank. I was thrown out of the vehicle I then helped Corporal Chard out of the vehicle & took to the R A P at the camp.

On his evidence being read to him the witness desires to make the following alteration.

I had no authorization, other than Corporal Chard asking me, to use the station wagon on the night of June 24th 1942.

The windows & doors were damaged & the front bumper was broken when the vehicle was handed over to my charge about three weeks before the accident, by Rfn Drake J.

N. Elmer

Defending Officer

On behalf of his accused I admit the unauthorised use of this vehicle but I do not admit his responsibility for the damage alleged. The estimate is out of all reason when all the facts are considered. The station wagon was old. The estimate is for new parts

Defendant Officer in Mitigation.

In view of this man's service record & the further fact that he has been incapacitated permanently, I ask for leniency in this case.

J. A. H.

J. A. H.

EXHIBIT ~~APPENDIX~~ "A"

M. Jerome

Army Form G 3518

TRANSPORT WORK TICKET.

No. U

Make of Vehicle Ford Class [illegible] W.D. No. [illegible] Date 24/6/42

Unit Corps Section Div HQ Driver's Name [illegible] Hour of Parade 1330

For whom journey is performed. (1)	FULL Details of load and service. (2)	ROUTE From (3)	ROUTE To (4)	ROUTE Via (5)	Signature of person authorising journey. (6)	TIME TAKEN From (7)	TIME TAKEN To (8)	Miles run. (9)
24/ Corps	Office D.D. Recreational	Unit lines	Test Ground		A BHP	1330	1710	12
24/ Corps	Recreational				B BHP	2000	0200	8
24/ Corps	Unit Boss	Unit lines	Test Ground		C BHP	1430	1530	8
27/ Corps	pick up exchanged battery	Unit lines	Shawbury Transport		D [illegible]	1430	1530	18
27/ Q.O.R.of.G.	Rec —	Unit lines	Ede		E BHP	1300	0200	50
					F			
					G			
					H			
					K			
							TOTAL	

SPEEDOMETER READINGS

Miles

(10) In ... ...

(11) Out 22784

Mileage

PETROL Galls.

(12) Held at Start ... ...

(13) *Add*—Amount drawn ... 4 ...

(14) *Deduct*—Remains on completion ...

(15) Quantity Consumed ...

(16) TOTAL hours out on duty

(17) *Signature of Driver* [illegible]

(18) *Countersigned* [illegible]

Rank [illegible]

INSTRUCTIONS TO DRIVER FOR COMPLETING TRANSPORT WORK TICKET.

Items (7) and (8) will be completed by the driver.

In the case of a number of details not requiring return to H.Q. until completion of the last detail, items (7) and (8) will be completed for each detail.

Item (9) will be completed by the driver after completion of each detail.

Items (10), (13), (14), (15), (16) and (17) will be completed by the driver after the last journey of the day.

Item (20) will be completed as necessary.

---

(19) Special instructions to driver.

---

(20) Driver's report on breakdowns, accidents, reasons for delay, alterations to route, running adjustments made, and anything which has appeared to him unusual in the running of the vehicle.

(21.) Reference to documentary authority (*e.g.*, Army Form F 756,) &c. where such exists (see instructions for items 6 and 18).

A

B

C

D

E

F

G

H

K

It is strictly forbidden to employ any M.T. vehicle other than a tank or dragon, without a Work Ticket, which is the only authority for journeys and must be shewn if demanded.

Summary of Evidence in the case of [redacted]

B63971 Rfn. Fisher N, 1st The Queen's Own Rifles of Canada

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution.

Lieutenant R. Fleming, 1st The Queen's Own Rifles of Canada, having been duly sworn, states:-

I was duty officer at 0255 hrs of the 20th June, 1942. The Surrey police telephoned & said that a vehicle which they thought was ours had been reported on an accident shortly before. The policeman asked me to check station-wagons of our unit. I checked the unit near B.H.Q. & telephoned the transport sergeant [redacted] found one missing so I telephoned the police. They gave me the location of the accident. I then telephoned the transport sergeant, the medical officer, & the adjutant. The transport sergeant told me he would send a party to either recover or guard the vehicle.

The accused declines to cross-examine the witness.

R. Fleming Lt.

Second Witness for Prosecution.

B63711 Rfn J M Bolton, 1st Bn Queen's Own Rifles of Canada,

having been duly sworn, states:-

I am transport dispatcher of the 1st Bn Queen's Own Rifles of Canada. At 0255 hrs 20th June 1942 I was informed by the Duty Officer by phone of an accident to a station wagon but with no details of the location of the accident were available. At 0320 the Duty Officer then phoned the location of the accident. I notified #374 A.D. & went to the scene of the accident with Sergeant Bradley. On arrival we found the station wagon, CM #22063, on the island in the centre of the round about, with right front wheel, headlamp, & fender badly smashed. Also both door right doors opened & damaged. There were two illuminated signs, one about 30 yds back from the round about, the other, approximately 6 ft by 3½ ft, at the round about. The vehicle had climbed an embankment approx 3 ft high which encircles the island. There were skid marks on the road about fourty feet in length. #374 L.A.D. were on the scene & towed the vehicle away.

The accused declines to cross-examine the witness.

B63711 Rfn J M Bolton

Third Witness for Prosecution R 64215 Sgt Bradley G.E.

I am transport sergeant of the 1st Bn Queens Own Rifles of Canada At 0325 hrs 30th June 1942, while stationed at Folkington Manor, I was awakened by Rfn Bilton who said one of our station-wagons had met with an accident Rfn Bilton & I proceeded to the scene of the accident, 014249 Sheet 177, where we found a station-wagon, CM 4102063, in a damaged condition. The vehicle had crashed through a bank of earth about 30 inches high in the island of the roundabout. The vehicle was sitting on its four wheels, the right front fender & side were driven back, damaging the fender, axle, head lamps, & the two right doors. All glass, except right windscreen, was damaged. The left windscreen was badly shattered also the left side of the dash board The ignition was still on. I stayed on the scene until the vehicle was towed away by 37 L.A.D at approximately 0400 hrs 30th June, 1942

Cross-examined by the accused

Q Were the windows not damaged before the accident?

A I don't know

B 64215 Sgt Bradley G.E.

Fourth Witness for Prosecution

Captain R D Mackeracken, R.C.A.M.C., having been duly sworn, states:-

I am Medical officer for the 1st Bn Queen's Own Rifles of Canada. At approximately 0145 hrs. 30th June, 1942, B 63971 Rfn Elmer N. + B 64171 Cpl. Church H. reported to the R.A.P. Their story of the accident was vague except the statement that they had ~~met with~~ been in a station-wagon that had met with an accident. Rfn Elmer had pain in the region of his left elbow + was unable to straighten the limb. There was some swelling + the area was remarkably tender.

The accused declines to cross-examine the witness.

D Mac Leren Capt
R.C.A.M.C.

4th Witness for Prosecution.

Lieutenant McRae H.S., Adjutant, 1st Bn. Queens Own Rifles of Canada, having been duly sworn, states:-

I hereby submit AFG 3518 transport work ticket pertaining to Ford station wagon # C.M. 42 02 063, dated 24 June 1942, last authorized trip for this vehicle is shown as being made 27 June 1942. I have held this in my custody since the time of the accident. ~~I also submit two copy of Road Accident Report completed to end of Part II. This report deals with accident & damage done to Ford station wagon # C.M. 42 02 063. Estimated damage amounts to a total of $70.00 Seventy~~

The accused declines to cross-examine this witness

H. S. McRae, Lieut.

Exhibit A. A.F.G. 3518 Work Ticket attached.
~~Exhibit B. Copy of Road Accident report attached.~~

D.D.Orson, Lieut.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing & may be given in evidence.

After the above caution the accused elected to give evidence as follows:-

The accused does not call any ~~defence~~ witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of seven pages was taken down by me in the presence of the accused & that Rules of Procedure 4 (C), (D), (E), & (F), have been complied with.

E.D. Owen, Lieutenant,
1st Bn. Q.O.R. of C.

No. B63971 Name Elmer, N. Sqn., Battery, or Company H.Q. Corps 1st Bn. Q.O.R.of C. Date of enlistment 19 Jun '40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 13-9-40 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. D.J. LeQuesne, Capt. Character

M.F.M. 6 A F B 122 12SM—7-40 (1273-30) H.Q. 1772-39-1032

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sussex,N.B.	15-4-41	Rfn.		A.A.Sec.15(1)-A.W.L. from 0800 hrs.15-4-41 to 1725 hrs.16-4-41	Sjt.Devlin	5 Days C.B.	17-4-41	D.J.LeQuesne Captain	Forf.2 Days FR&I 149(1)(a
Aldershot	6-9-41	Rfn.		A.A.15(1) A.W.L. from 2400 hrs. 6-9-41 to 2335 hrs.7-9-41 (23 hrs. 35 min)	Sjt.Phillips J.W.	7 Days C.B.	8-9-41	W.E.Barnard Major	Forf.1 Day Pay FR&I 149 (1(a)
Aldershot	12-10-41	Rfn.		A.A. Sec.15(1) AWL from 2359 hrs 12/10 to 1030 hrs.13/10/41 (10 hrs 31 min)	Sjt.Weeks?A.E.	5 Days C.B.		H.R. Downie,Capt.	Forf.1 Days Pay FR&I 149 (1)(a)
In the Field	7-12-41	Rfn.		A.A.15(2) A.W.L.from 2359 hrs. 7-12-41 to 1015 hrs. 8-12-41 Total time absent 10 hrs. 16 min	Cpl. Stevens	Forfeits 5 Days Pay 5 Days C.B.	10/12/41	H.C. MacKendrick Lt.-col.	Forfeits 1 Day Pay FR&I 149(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	11/12/41	Rfn.		A.A.40 Neglect etc. in thathe had dirty boots on hut inspection	CSM Rowell, C	2 Days C.B	12/12/41	Maj.J.E.C.Pangman	
Field	25-12-41	Rfn.		A.A.15(1) A.W.L. from 2359 hrs. 25 Dec. '41 to 2230 hrs. 28 Dec '41(Total 2 Days 22 hrs.30 min)	Cpl.Dermody	14 Days C.B. 14 Days Pay	29-12-41	H.C. Mac Kendrick Lt-col.	Forfeits 3 days Pay FR& I 149(1)(a)
In the Field	25/1/42	Rfn.		A.A.15(1)A.W.L. from 2359 hrs. 24-1-42 to 1830 hrs. 25/1/42 (17 hours)	Sgt. Hall Rfn.Brownlee Rfn. McQuade	5 Days C.B. 5 Days Pay	26/1	H.C. Mac Kendrick Lt.-col.	Forfeits 1 Days Pay FRI 149(1)(a)
In the Field	31/10/42	Rfn.		A.A.15(1)W.O.A.S.- A.W.L. in that he did absent himself while on Kitchen fatigue from 1520 hrs. 31/10/42 until 1540 hrs 31/10/42 (Total Time absent 20 min)	L/Cpl.O'Brien J.T.	5 Days C.B.	2/11/42	V.A. Gianelli Major	

CERTIFIED TRUE COPY
W. S. McRae Lieut.
(W.S.McRAE) Lieut.
Adjt. R.C.R. of C.(AF)

42 K C A

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
B63971	Rfn.	Norman ELMER	1st Bn.The Queen's Own Rifles of C

1. The following is a fair and true summary of the entries in the ~~regimental and squadron, battery or company~~ field conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court-martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not admitted to the proceedings.

† See para. 671 K.R., 1940.

* The numbers herein stated should correspond with the entries in the conduct sheets, per manner being given to the most serious offence in each entry, and to such recognised special acts of gallantry or distinguished conduct.

Instruction.—If the sheet is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec. 15 (1) A.A.	3 times	7 times.
For Sec. 40 A.A.	1 times	1 times.
For ~~[illegible]~~	~~times~~	~~times.~~
For ~~[illegible]~~	~~times~~	~~times.~~
For ~~[illegible]~~	~~times~~	~~times.~~

~~Number of occasions of gallantry or distinguished conduct~~ N/K.

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and cases in which trial has been dispensed with under section 71 of the Army Act, are as follows:~~

3. The accused is not under sentence at the present time, or ~~The sentence of the accused is as follows:~~

~~[illegible]~~

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 50pen Arrest days in military custody, making a total of 5 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 31 yrs 65 days

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 19 June 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~which is not mentioned in the next following paragraph~~.

~~[illegible]~~

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A dated

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (or corps or department) the rank of N/A dated

(Forms) W. 13082/183 325,000 8/41 A.G.R.W.Ltd. Gp.686

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B63971 Rank RFN. Name Norman ELMER of Q.O.R. of C. Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23 day of December 1942

N. L. McRae Lieut Adjt
1st Bn. Q.O.R. of C.

43

If this record has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion

To the rank of ..... years.

To the rank of ..... years.

To the rank of .....

(Signature) .....

(Appointment) .....

(Unit) .....

(Date) .....

(Where award has not been completed, the information must be supplied from such records as are available.)

H-132.

Spr. Elms. D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F. 1125 Sappr Gordon Elms RhMS

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	The Court records a special finding
2nd	NOT GUILTY	GUILTY	on the fourth charge in that the
3rd	NOT GUILTY	GUILTY	evidence fails to show absence before ~~0345~~ 0445 hrs on 25 Oct 44 making total
4th	NOT GUILTY	GUILTY	time of proved absence 5 hrs 55 mins.
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which no days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Six Months Detention

(Sgd) ——— 1 Nov 44 (Sgd) P. I. Maggs Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 51, MML p 63. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings of the Court on the Second and Fourth Charges. I do not confirm the findings on the First and Third Charges. I confirm the sentence of the Court but remit three months detention.

~~I direct that the accused be~~ (1)

(1. AA 57A. Delete if not used.)

Date 7 Nov 44 (Sgd) R. Gough Brigadier,
Commanding COMD ARMY TROOPS Confirming Offr.
FIRST CDN. ARMY

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 574, 577.)

Accused. Date. Signature of Offr

F. 1125 Sappr Gordon Elms 28 Nov 1944 C. Packard Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 2 DEC 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160 414-132

FIELD GENERAL COURT-MARTIAL (Appeal (to Usts of AFA3) as to Proc. (see Instrs) (Para))

Convened by Lt Col A. J. Kerry Comd CRE 2 Cdn A Tps dated 30 Oct 44

PROCEEDINGS REVIEWED Date 1 Dec 44 Offr 21 Army Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F. 1125	Sapper	Gordon	Elms	3rd Cdn Fd Coy.

PROCEEDINGS REVIEWED
Date 1 Dec 44
Offr 21 Army Gp

~~PROCEEDINGS REVIEWED~~
Date 1 Dec 44
Offr Deputy Assistant Judge Advocate General
A Branch
for ASSISTANT JUDGE ADVOCATE GENERAL, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 1 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 14/133.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~has~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~has~~) brought before the Court. At 0935 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~has~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter?~~ Ans ~~No~~

~~The Interpreter is sworn.~~(1) Do you object to WS 914 Sgt Bamberger as shorthand writer? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	P. I. Maggs	33 Cdn Fd Coy.
Member	Capt	D. F. Morton	33 Cdn Fd Coy
Member	Lt	R. C. Slee	33 Cdn Fd Coy.
Judge-Advocate	—	—	—
Prosecutor	Lt	R. B. Snyder	34 Cdn Fd Coy
Defending Offr	Lt	R. V. Darling	34 Cdn Fd Coy

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused E 1125 Spr Elms G. before arraignment make(s) (not) (~~no~~) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) ~~The President records the pleas in Part I of the Schedule.~~

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top ~~of p 5~~. The proceedings are continued on Record Form C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. ~~No~~ (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (2).*)

C2. The charges on which accused pleaded GUILTY are read to him (~~there~~) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ~~second and third~~ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ~~said~~ charge(s), and allowed on the ~~second, third and fourth~~ charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty of the latter charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. neither. Do you intend to call witnesses on your behalf ? Ans. No. ~~Are they witnesses as to character only ?~~ Ans.
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the findings of the Court on the second, third and fourth charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~B~~ and Ex ~~C~~ respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. ~~Yes~~ No.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or state anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 209, 2323, 3005, p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused E-1125, Spr Gordon ELMS, Royal Canadian Engineers, on strength of 34 Cdn Field Coy RCE, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:

WHILE ON ACTIVE SERVICE

First Charge Sec 6(2)(h) A.A.

WHEN A SOLDIER ACTING AS A PICQUET LEAVING HIS POST BEFORE HE WAS PROPERLY RELIEVED

in that he

in the Field, on 28 Oct 44 after being posted as a picquet at his pl post, left his post without having been regularly relieved.

WHILE ON ACTIVE SERVICE

Second Charge Sec 40 A.A.

CONDUCT T O THE PREJU DICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

without proper authority, used a Mil Veh, WD No CZ 4254853, for his own use.

WHILE OF ACTIVE SERVICE

Third Charge Sec 6(2) A.A.

COMMITTING AN OFFENCE AGAINST THE PROPERTY OF A RESIDENT OF THE COUNTRY IN WHICH HE WAS SERVING,

in that he

did negligently drive Mil Veh WD No CZ 4254853 into a building causing damage to the said building.

WHILE ON ACTIVE SERVICE

Fourth Charge Sec 15 (1) A.A.

ABSENCE WITHOUT LEAVE

in that he

in the field, did absent himself without leave from 0200 hrs 28 Oct 44, until he was put under close arrest by L/Cpl Goodwin G R at 0900 hrs 28 Oct 44.

(Abs 7 hours.)

E.H. Wright

(E.H.Wright)Major RCE
Officer Commanding
34 Cdn Field Coy RCE

In the Field

Date 30 Oct 44

To be tried by F.G.C.M.

30 Oct 44

Lt. Col. R.C.E.
A/Cdr, 3 Cdn Re Tpt

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E1125	Sapper	Gordon	Elms	34 Cdn Fd Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 30 Oct 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay this trial for reference to a superior qualified offr~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint the three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	P. J. Maggs	32 Cdn Fd Coy

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	D. F. Morton	33 Cdn Fd Coy
One lieutenant	to be detailed by O.C.	33 Cdn Fd Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
One lieutenant	to be detailed by O.C.	32 Cdn Fd Coy

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Date 30 Oct 44

(Signed personally. RP 105 fn 2.)

Lt.Col. R.C.E. (Rank.)

Commanding C.R.E. 2 Cdn A Tps. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (FAMS 150 SHEETS OF APAD) 40-P-M-(E1369-1401)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 95(C)), any objections (*RP* 95(B)), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 43 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn 1.*) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-47 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 86(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP 46 fn 10*)), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(*D*)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(*C*).)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), K.R Can 565(a).*)

(vii) Summing up by J.A. if any. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A. if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A. if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*K.R Can 557.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting in evidence a certified copy in lieu of original see K.R Can 566. As to certified copies of regimental books see AA 183 (3) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(8), RP 118(C), MML p 750.*)

4. The President or J.A. if any, will remain proceedings promptly with covering letter and in an envelope marked "Confidential", *or as otherwise directed.*

MEDICAL OFFICERS CERTIFICATE

I have this ~~date~~ DAY examined No. E-1125 Rank Spr

Name ELMS GORDON

and in my opinion he is Fit to undergo trial

by Field General Court-Martial.

1 Nov 44 .....RCAMC

FIELD GENERAL COURT MARTIAL

SPR ELMS G.

1 NOV 44

The accused E-1125 Spr ELMS GORDON, on strength of the 34 Cdn Field Coy RCE, Royal Canadian Engineers, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:-

1 WOAS, when a soldier acting as a picquet, leaving his Post before he was properly relieved. Sec 6(2)(h)

2 WOAS, Conduct to the prejusdice of good order and military discipline, Sec 40 AA

3 WOAS, Committing an offence against the property of a resident of the country in which he was serving,

4 WOAS, Absence without leave.

Ques? Spr Elms, how do you plead to the first charge?
Ans Guilty.

Ques? Spr Elms, how do you plead to the second charge?
Ans Not Guilty

Ques? Spr Elms, how do you plead to the third charge?
Ans Not Guilty

Ques? Spr Elms, how do you plead to the fourth charge?
Ans Not Guilty

Pres: Call the first witness.

FIRST WITNESS: Lt W.A.MOORE.

Pros; Lt Moore, will you tell the court in your own words the evidence you have in this case.

1 st Witness:
I, Lieut W A Moore officer i/c No 3 Pl 34 Cdn Fd Coy am the only man in my pl who may authorize platoon vehicles to leave the camp area. I did not authorize the accused, whom I now recognize to take said vehicle in question on the 28 Oct 1944. That is all.

Def: You did not authorize vehicle, do you know whether he took it?
Ans: No, I do Not.
Def: Have you standing orders for picquets in your Pl.
Ans: Yes I have. The transpot picquet is laid on daily by my tpt Cpl, he uses drivers and in some cases men from the section to make up this picquet, these men go on 2 hour shifts throughout the night as a one man picquet, in the pl veh park. Each picquet is responsible for the awakening of his relief.
Def: Purely a Transport picquet.
Ans: Yes
Def: What instrs are given when the picquet goes on duty?
Ans: Firstly he is directly responsible to see that no veh is to leave the tpt park unauthorized. Secondly, he must remain at his post properly armed for the whole of his shift. Thirdly he is responsible for awakening his relief.
Def: Is there any check made on picquets during the night? Is it true that you only found out when the next picquet has not been awakened?
Ans: There was no laid on check for this picquet.

SECOND WITNESS:

I, M 16284 Cpl Ryerse, C L, am the tpt Cpl in 3 Pl. I posted the accused, whom I now recognize to do MT picquet from 0100 hrs 28 Oct 44 until 0300 hrs 28 Oct 44. At 0600 hrs 28 Oct 44 I was informed that Spr Elms and veh CZ 4254853 were missing. I got on my m/c and went to look for the veh. I found it about 0845 hrs embedded in the end of a building in the village of VORSELAAR. I went back to Camp and got L/Cpl Goodwin to stand by the vehicle till further instructions. That is all Sir:.

Pros: How did you get your information?
Ans: I was informed by L/Cpl Goodwin,G.
Pros: What system was used to post the picquet?
Ans: It is posted on the notice board.
Pros: Could you give the details?
Ans: Just an ordinary sheet of paper with the names and shifts.
Pros: Had this system worked?
Ans : Yes satisfactorily.

Def: Cpl Ryerse, what instructions did you give regarding his duties as a picquet?
Ans: On previous occasions orders re picquet had been written at the bottom of the list, this particular night Spr Elms was issued with instructions to awaken his relief, Spr Girven.
Def: What were the instructions writtenon the bottom of the sheet?
Ans: First, to leave the car park, only to call the relief. Second, to stop any civvies in the car park. Third not to allow a veh to be taken out without proper authority. Fourth, to waken cooks and also personnel at Reveille.
Def: Did your whole pl sleep in the veh park.
Ans: No Sir.
Def: Could the picquet do these other duties without leaving the car park?
Ans: No Sir, but there was always somebody in the park sleeping in every vehicle.
Def: Do the drivers sleep in their own vehicles?
Ans: Yes Sir.
Def: Can you explain how this 15 cwt could be moved out of the park if the driver was sleeping in it?
Ans: That veh has no driver sleeping in it, the only one!
Def: What about the jeep?
Ans: We have no jeep.
Def: Did anyone sleep in that?
Ans: No sir.
Def: Was any check made on the picquets during the night to see if they were on the job ?
Ans: Several times it has been! That night I personally sent Spr Elms to the park at 0100 hrs. Sgt Bratvold had checked the picquet during the night onprevious occasions.
Ques; Do you know that Spr Elms went on dutyat 0100 hrs?
Ans I do Sir.
Def: Do you know what time Elms went off duty?
Ans: No Sir.
Def: Did you see Elms in the veh that was missing?
Ans; No Sir.

Pros: Had Spr Elms been placed on previous picquets with those instructions?
Ans: Yes Sir.

THIRD WITNESS:
I, B130903 Spr Girven E D, was on the list to be on the MT picquet after Spr Elms, and I was to be awakened at 0300 hrs and I was not awakened. I woke up on my own at 0345 hrs. I got up and I walked up and down the lanes on my duty. I noticed that a 15 cwt was not in its usual place, I woke up the man after me, Spr Arris and Spr Elms was not in the hall of Billets. At 0630 hrs, Reveille I reported the same to L/Cpl Goodwin.

Def: What were your duties as MT picquet?
Ans: My duties were to be properly dressed and to walk up and down the MT lines and see that everything was all right and that no one was to be allowed around the vehides Unless they were authorized to do so.
Def: Did you know where Spr Elms normally slept?
Ans: Yes Sir.
Def: Have you been on previous MT picquet?
Ans: Yes Sir.
Def: Have you found the system adopted for the relief of picquets to have worked out satisfactorily?
Ans: Yes Sir.
Def: Are you a driver Girwen?
Ans: Yes Sir.
Def: Where do you Sleep?
Ans: In my truck Sir.
Def: Do all the drivers sleep in the trucks?
Ans: No Sir.
Def: Can you tell me how many do sleep in their trucks.
Ans: Five.
Def: If you were on picquet at night and you had to leave the M/T park for some reason, do you make any arrangements for picqueting the vehs while you are gone?
Ans: Yes Sir.
Def: What arrangements ?
Ans: At the hours of meals times there is always one left there unitl he is relieved by someone who has eaten.
Def: Did you see Spr Elms in the veh that you missed?
Ans: No sir.
Def: At what time did you notice the vehicle in question missing?
Ans: At 0345 hrs when I got up.

FOURTH WITNESS:
I B 58534 Spr Eller L F was on duty and was relieved by Spr Elms at 0100 hrs the 28 Oct 44 which he was properly dressed and sober. That is all.
Pros: Did you have to wake up Spr Elms.
Ans: Yes Sir.
Pros: Where was he sleeping?
Ans: Down at the billets.
Pros: Did you see Spr Elms in the MT park?
Ans: Yes Sir.
Pros: At what time?
Ans: Just a few minutes after 0100 hours.

Def: Did you have to leave the park to waken Spr Elms.
Ans: Yes Sir:
Def: [redacted] Was anyone on duty while you were gone?
Ans: No Sir.
Def: Did anybody accopany Spr Elms when he took post at 0100 hrs?
Ans: No Sir, he was alone. Cpl Ryerse stated that he personally conducted Elms to his post that night. Can you throw any light on that?
Ans: When I saw Spr Elms he was alone.
Def: Exactly what time did you awaken Elms?
Ans: At 0100 hrs Sir.
Def: What did you do immediately after wakening Elms up?
Ans: I awoke Spr Elms and went back to the parking lot and waited.

Def: How long after you awoke Elms before he relieved you?
Ans: It was only a few minutes Sir:

Pres: Did you see veh CZ 4254853 15cwt at the time you were relieved?
Ans Yes Sir.

FIFTH WITNESS:
Sir, I, G28272 L/Cpl GOODWIN G R was awakened at 0350 hrs by Spr Girven reporting that he had not been awakened by Spr Elms for his tour of duty also reporting that a 15cwt truck CZ 4254853 was missing. I reported to Cpl Ryerse, he went looking for the missing veh, he found it and came back, took me to the scene of the accident. Spr Elms came out of a nearby house, I asked him, if he was driving the veh and had he caused the damage? He admitted he did, I immediately placed him under arrest and escorted him back to his unit lines, I saw three dead chickens, at the scene of the accident.

Pros: Was an accident report made out?
Ans: Yes Sir.
Pros: Did you make out the report?
Ans: Sgt Avery and myself.
Pros: Was Spr Elms present?
Ans: No Sir, he was escorted back to his lines immediately.
Pros: Did you show the completed report to Spr Elms?
Ans: Yes Sir.

Def: Did you see Spr Elms driving the veh taken from your unit lines?
Ans: No Sir.
Def: In your evidence, you state that you were awakened at 0350 hrs by Spr Girven. Spr Girven in his evidence states that he informed you at 0630 hrs. Can you account for thatdescrepancy of time?
Ans: Spr Girven has made a mistake in his time.
Def: What time did you get this alleged admission from Elms that he had driven the veh and caused the damage?
Ams: 0900 hrs.
Def: Did Elms appear perfectly normal to you at this time?
Ans: Yes Sir.
Def: Did he show no signs of nervousness?
Ans: No Sir.
Def: Do you think a man who had caused such an accident a short time previously would be under a strain at the time you obtained this admission?
Ans: Yes Sir I do.
Def: Can you tell the court exactly what questions you asked the accused to obtain this confession?
Ans: I asked the accused if he was driving the veh and had he caused the damage.
Def: Did Elms show any signs of having been drinking or did he appear perfectly normal?
Ans: No signs of having been drinking and he was perfectly normal.

The Defence sums up:
I would like to submit to the court that there is no prima facie of the case, first the prosecution has brought no witnesses who saw Spr Elms in the veh in question and secondly no witnesses showing that he was responsible for the accident and alleged admission by Elms, brought out in Cpl Goodwin evidence in my opinion is not sufficient to convict him on these two charges. With regard to the 4th charge, I'd like to submit , no evidence has been provided to show Elms AWL.

The Prosecution:

To begin with, just going over the defence in the case of the first two witnesses in particular, the defence kept pressin on the argument that there was no laid down check on the picquet. Spr Girven and Spr Eller both stated they had been operating under this system for sometime and definitely stated the duties the picquet were to perform. To my mind therefore Spr Elms must have definitely known what his duties were as had been on picquet duty many other times under identical conditions. Another arguement for the defence was the picquet could not carry out his duties without having to leave the vehicle park. At the time in question the only one of these duties that Spr Elms was to perform was to awaken the next relief, who was sleeping in the veh park. In looking back at the charge sheet the defence has pleaded guilty to the first charge and not guilty to the fourth. The defence who pleaded Guilty on the first chatge and not guilty on the 4th charge, does not seem to tie in in my mind. The main defence presented has been that no one actually saw Spr Elms in the vehicle in question. The prosecution admits this point but I would like to draw the Courts attention to page 72-2 MML Sec 13 - EVIDENCE. This is what we are baseing our case on in this case.

The Defence:

The first thing that strikes me in this case is the fact that there was some descrepancy in the testimony given by the prosecution witnesses, and most noticable ones, first the number of peolpe who slept in their vehs, and secondly the time. Ellers in his evidence says he informed L/Cpl Goodwin that Elms and the vehicle were missing after Reveille. L/Cpl Goodwin states that he was awakened and thathe was given this information at 0350 hrs. If mistakes like this are made in giving sworn evidence, I'm wondering how much of their evidence we can accept as the truth. The prosecution talks about the picquet system working satisfactorily until some thing goes wrong, and the weak points in the system are found.

The prosecution also mentioned points of the defence in summing up, I would like to correct that and say we have not presented any defence. A man has to shown as guilty before he requires any defence. The ovidence presented by the prosecution in my opinion is not sufficient to establish Elms's guilt. He was shown as missing from his billetat I believe, 0345 hrs, at the same time, a veh was known to have been missing. No evidence was presented to show that Elms took the missing veh. Elms is guilty on the first charge, in that he did not waken his relief for picquet duty. Because he missing from his billets at 0345 hrs does not infer that he was AWL from 0200 to 0900 hrs.

Since joining the army in 1940, Spr Elms, has had only minor crimes, I would say that for over 4 yrs of Active Service, his conduct could be considered reasonably good. I therefore ask the Court to take this into consideration in Spr Elms's sentence.

Ex "A"

SUMMARY OF

EVIDENCE

IN

THE CASE OF

E- 1125 Spr. ELMS. G.

34 CDN FD COY RCE

SUMMARY OF EVIDENCE

IN THE CASE OF

E-1125 Spr ELMS G.

FIRST WITNESS: - M-16284 Cpl RYERSE C.L., having been duly sworn, states:

I, M-16284 Cpl RYERSE C.L., 34 Cdn Field Coy RCE, am the M/T Cpl for No 3 Pl. I posted Spr ELMS G as M/T picquet from 0100 hrs 28 Oct 1944, to 0300 hrs 28 Oct 44 with the instructions to wake up his relief, Spr GIRVEN, E.D. at 0300 hrs who was sleeping in one of the vehicles, in the transport lines. At about 0600 hrs, I was informed that a 15cwt truck CZ4254853, also Spr Elms was missing. I then went out to see if I could find the truck and at 0845 hrs 28 Oct 44 I found the vehicle embedded in the end of a house in the village of VORSELAAR. I instructed L/Cpl GOODWIN G R to stand by the vehicle until further instructions.

C.L.Ryerse

.....
C.L.Ryerse, M-16284 Cpl

The accused declines to question the witness.

SECOND WITNESS: - B-130903 Spr GIRVEN E.D., having been duly sworn, states:-

I, B-130903 Spr GIRVEN E D was not awakened at 0300 hrs 28 Oct 44 by Spr ELMS G, for my tour of duty. At 0345 hrs, I got up and could not find Spr ELMS, I noticed that a 15cwt truck No CZ 4254853 was missing, I immediately reported it to L/Cpl GOODWIN G R.

E. D. Girven

.....
E.D.Girven B-130903 Spr

The accused declines to question the witness.

THIRD WITNESS: - B-58534 Spr ELLER,L.F., having been duly sworn, states:-

I, B-58534 Spr ELLER L.F., was relieved from picquet duty at 0100 hrs 28 Oct 44 by Spr ELMS G, whom I recognized. He was prop erly dressed and sober.

L. F. Eller

.....
L.F. Eller, B-58534 Spr.

The accused declines to question the witness.

FOURTH WITNESS: - G-28272 L/Cpl GOODWIN G R, having been duly sworn, States:-

I, G-28272 L/Cpl GOODWIN G R, was awakened at 0350 hrs 28 Oct 44 by Spr GIRVEN E D who reported he had not been awakened for his tour of duty by Spr ELMS G, he also reported a 15cwt Truck missing, WD No CZ 4254853. Cpl RYERSE C L went looking for the missing vehicle. He found it and came back and told me where it was. I went to the scene of the accident then Spr ELMS came out of the nearby house and I asked him if he was driving the vehicle and, had he caused the damage ? He admitted he had, I immediately placed him under close arrest and escorted him back to his Unitx lines. I saw three dead chickens at the scene of the accident.

G.R.Goodwin.....
G.R.Goodwin B-28272 L/Cpl

The accused declines to question the witness.

FIFTH WITNESS: - Lieut W.A.Moore, after having been duly sworn, states:-

I am Lt W.A.MOORE RCE, Offr i/c No 3 Platoon, 34 Cdn Field Coy RCE. I am the only person in my platoon who may authorize 3 Pl vehicles to leave the camp area. I did not authorize E-1125 Spr ELMS G to take vehicle CZ 4254853 from the camp area on the 28 Oct 44.

At approx 0830 hrs 28 Oct 44 I saw the damage done to the house owned by LIEKENS Emile of VORSELAAR by vehicle CZ 4254853, and estimate the cost of damage to be xx Five Pounds (£5 - 0 - 0)(this damage is now being repaired by Coy tradesmen).

.....
W.A.Moore Lieut RCE

The accused declines to question the witness.

Certified that Rules of Procedure 4 (b) (c) (d) (e) (f) has been complied with.

Taken down by me in the presence and hearing of the accused, this 30 October 1944.

.....
Signature of Offr taking Summary.

Ex "B"

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E 1125	Spr	ELMS G	34 Cdn Field Coy RCE

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with the statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A A 15 (1)	1 times	4 times.
For A A 40	times	3 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

[redacted]

2. [redacted] or

[redacted]

3. [redacted]

4. The accused has been in confinement, awaiting trial on the present charge for [redacted] days

[redacted] 4 [redacted] total of 4 days,

of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] Attestation is 23

6. The date of his [redacted] attestation specified in his [redacted] Attestation is 22 Jun 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 4 mnth

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 4 months service.

9. The accused is entitled to reckon 4 yrs 4 months service for the purpose of determining his pension, etc.

10. The accused is in possession of [redacted] is in possession of [redacted] C.V.S.M. & CLASP

11. [redacted]

12. [redacted]

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ____ Rank ____ Name ____ of ____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30 day of Aug 44

[illegible]

24/6 24 Firm Sgt.

[illegible] Regiment

In the rank of [illegible]

Date [illegible]

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
H 1125	Spr	ELMS G	34 Cdn Field Coy RCE

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, proper reference being given to the serial number in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A A 15 (1)	1 times	4 times
For A A 40	times	3 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct, Nil

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

~~Previous convictions of the accused by a court martial or a civil court, statutory awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for ~~days in civil custody, and~~ 4 ~~days in military custody, making a total of~~ total of 4 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service ~~attestation paper~~ is 23

6. The date of his ~~enrolment~~ attestation specified in his record of service ~~attestation paper~~ is 22 Jun 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 4 mnth

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 4 months service.

9. The accused is entitled to reckon 4 yrs 4 months service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or entitled to, no military decoration or military award~~ (or is in possession of, ~~or entitled to~~ (state any military decorations or rewards)). C.V.S.M. & CLASP

11. ~~If the accused is a warrant officer, the accused before he was made a warrant officer was held the regimental~~ ~~of~~

12. ~~(If he ceased to be an officer.)~~ The accused held in the army the rank of ~~last~~

~~on his regiment (or corps or department) thereto~~ ~~dated~~

W1/5430/1750 20,000 10/42 A.S.S.W.Ltd Gp.679
W1/5424/1486 12,000 6/44

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(*INSTRUCTION*—*A verbatim extract from the regimental books, stating there convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30 day of Feb 44

W. W. Davy Capt. R.C.E.
3 i/c 34 Field Coy. R.C.E.

13 The accused has served as a non-commissioned officer continously, without reduction, to the present date.

Date of Promotion.

In the rank of _____ years, _____

In the rank of _____ years _____

In the rank of _____ years, _____

In the rank of _____ years, _____

(Instructions.—*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such courts as are available and the paragraphs completed accordingly.*)

No. E11.26 Name ELMS, G. Sqn., Battery, or Company — COPY — Corps RCE — Date of enlistment 22.6.40 — G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F. B.122) 40/P & /3136 (2965)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Oct 44	Spr	Nil.	(I) When acting as a picquet leaving post before he was properly relieved. A.A. 6(2)(h)	Maj. Roche, G. Capt. Spence, R.C.E. Capt. Hall, R.C.E.	6 months detention. ~~FUCM~~	1 Nov 44	FUCM	Forfeits 6 months pay. Art. 149(1)(b) FR&I.
				(II) Conduct to the prejudice. A.A.40.					
				(III) Committing an offence against civilian property. A.A.6(3).					
				(IV) AWL 7 hours. A.A. 15(1).					
				CERTIFIED TRUE COPY		Capt. R.C.E. Adjt. H.Q. R.C.E. 1 Cdn A. Tps.			(F.T.O.)

Ex C

MFM 6 (AFB 122) 20/PAS/136 (34386)

No 5-1125 Name ELMS G | Sqn, Battery, or Company | Corps RCE | Date of enlistment 22-6-40 | QC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 21/11/40 | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine N.A. | Sheet No 1 | Signature OC Company, etc ??????????? Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 18 Nov 42: last entry 21.11.40 Nil cases of drunkenness Signed W T Woods Capt					
Field	14.8.41	Spr		WOAS Conduct to the prejudice in that he brought 2 Sprs, into Officers Mess and creating a disturbance A.A.Sec 40	L/C Alcock Pte Cardy	4 dys C B	14 Aug 41	E Arnason Major	
Field	9.12.41	Spr		WOAS Neg,ect to the prejudice in that he broke blackout Regs by showing a light A.A.Sec 40	L/C Stewart Spr Webb	7 days CB	12.12.41	E Arnason Major	
Field	14.3.42	Spr		WOAS AWL from duty from 1330 hrs 14.3.42 until 2145 hrs 14.3.42 (Abs 8 hrs 15 min) AA Sec 15(1)	L/C Leeman L/C Woolmer	8 7 dys FF with forf of pay	17.3.42	A.J.Kerry Major	Total Forf 8 days pay
Field	30.4.42	Spr		WOAS Neglect to the prejudice AA Sec 40	Sgt Cooper L/Sgt Buie	7 days CB	1 May 42	E Arnason Major	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
					CSM Hall				
Field	19 Apr 43	Spr		Sec 15(1) AA AWL 1 day 11 hrs 45 min		14 dys CB 12 dys Pay	20 Apr 43	W Odlum Major	Forf 2 days pay Total Forf 14 days pay
Field	1 Aug 43	Spr		WOAS Sec 15 (1) AA AWL (8 hrs 25 min)	L/C Hollinger Cpl Pemberton	7 days CB	4 Aug 43	E G Moogk Major	Forf 1 days pay FRI 149(1)(a)
Field	1 May 44	Spr		WOAS Sec 15 (1) AA (1 dy 14 hrs 30 min)	Sgt Reasor G B	7 days CB	5 May 44	E H Wright Major	Forf 2 dys pay FRI 149(1)(a)

Certified true Copy.

Capt. R.C.E.
R.C.F.

HP-131

Lps. Elms W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-41469 Gnr Elmes WA 1 Reckoning Spare Parts (Elmes) Gr. 1 R. 1 Elm Bn Welch Regt Coy

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 41	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 8.)

At present under sentence for [illegible] beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF 8355 or AF B206.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF 8355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labour for two years.

(Sgd) Gordon N. Jermyn 5 Jan 46 (Sgd) [illegible]
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sentence back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison on detention barracks until further orders.~~ (1.)
(1. AA 57A. Delete if not used.)

(Sgd) Keough Brigadier
(JRA Keough)
Date 9 Jan 45 Commanding A Tps Area, First Cdn Army
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E41469 Gnr Elmes W	5 Jan 45	[illegible] Capt.

Officer Commanding
1 Welch Regt, Pte Coy
Corps Troops Depot

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180 412-131

FIELD GENERAL COURT-MARTIAL

CFAAB (To form of AFAAB 40/1 & 2, 1898 (1901)) 4/38B

Convened by Order of Brig J.R.A. Keough Comd A Tps Area dated 31 Dec 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-41469	Gnr	William	Elmes	1 Welch Regt attd 1 Welch Regt

PROCEEDINGS REVIEWED
[illegible] Capt.
21 Feb 45
PROCEEDINGS OF THE FIELD GENERAL COURT-MARTIAL HELD AT CMHQ
PROCEEDINGS OFFICE

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 5 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns to RPs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1800 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete, if not applicable. Dr Marcel Faribault. Papiyans Sheet. 4 in Sheet No 2 in

A5. President to accused: Do you object to ~~[illegible]~~ as interpreter? Ans No

The Interpreter is sworn.(1) ~~Do you object to [illegible] as shorthand writer?~~ Ans ~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 108, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.C.L. Costigan	OIC 11 Bn CDRB
Member	Capt.	B. Roberge	OIC 11 Bn CDRB
Member	Capt	J.L. Rogerson	OIC 11 Bn CDRB
Judge-Advocate	Capt	J.N. Jermyn	HQ A Tps Area & Cdn Base Sy
Prosecutor	Capt.	RHM. Bradsley	1 Elm Bn Welch Regt Pte Coy RSE
Defending Offr	Capt.	C.L. Perkins	1 Elm Welch Regt Coy RSE

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ~~[illegible]~~ before arraignment makes(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 110), or in bar of trial (RP 35), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 34, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(1) The President records the pleas in Part I of the Schedule.

(1. RP 37, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 496 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 2. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your pleas and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO SIR .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90. 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s) (2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. I would do neither. Do you intend to call witnesses on your behalf ? Ans. I do not. Are they witnesses as to character only ? Ans. NO SIR
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AAS. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes to Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Para 2 of the Schedule is dated and signed.(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D respectively.(3)
(*1. MFB 233 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. I do not by my defending officer.(2)
(*1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to person on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of records after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Jail.

CHARGE SHEET

The accused, E-41469 Spr. William ELMS, Royal Canadian Engineers, on strength of 1 Machinery Spare Parts (Base) Section, RCE, attached to 1 Cdn Mechanical Equipment Park Company, RCE, a soldier of the Canadian Army, Overseas, is charged with:-

FIRST CHARGE A.A. Sec. 41 When on Active Service committing a Civil Offence, that is to say, Robbery with Violence contrary to Section 23(1)(b) of the Larceny Act, 1916,

in that he,

In GHENT, BELGIUM, on or about 0100 hrs. 8 Dec 44 robbed MARTHA ROYAERT, Cafe Cietax, 16 Zwynaarde-steenweg, GHENT, of a sum of money between 8000 and 9000 Francs (Belgian) and at the time of or immediately before or immediately after such robbery, did use personal violence to the said MARTHA ROYAERT.

(C. H. GERRARD) CAPT., RCE,
Officer Commanding,
1 Cdn Mechanical Equipment Park Company., RCE.

In the Field,
14 Dec 44.

Approved on behalf of the J.A.G.,
Cdn Army Overseas, pursuant to
K.R. (Can) 540 and Overseas RO
4756 (13).

Capt.,
(G. H. Jermyn)
ADJA Army Troops Area

In the Field,
15 Dec 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(JRR Gough) Brig.
ComdA Tps Area,
First Cdn Army

In the field
31 Dec 44

Exhl. 2.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, Ins, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E.41469	Spr	Spr	William	ELMS	1 Cdn Mech Eqpt Pk Coy RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 31 Dec 44 endorsed by me, ~~(or by an offr of my staff (or me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J.E.L. CASTONGUAY, CIC		11 Bn CBRB

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	R. GUENET, CIC		11 Bn CBRB
Captain	B. ROBERGE, CIC		11 Bn CBRB

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain	G.E. BERGERON, CIC		11 Bn CBRB

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Captain	G.H. JENNYN, ADJA		HQ A Tps Area, First Cdn Army

On Active Service in the Fd

in BELGIUM (Country.)

Date 31 Dec 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(JRR Gough)

Commanding A Tps Area, First Cdn Army

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (For Army of Occ) (For Army of Occ) AFA1 40/7 A.G.(Gen) (40)

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 763, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP 95(C)*), any objections (*RP 95(E)*), and any statements by accused, may be summarized and, the evidence, subject to RP 95(A) First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 65 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (*or*, None.)

Re-exam: None.

Exam by Court: He said—"I've had enough parades".

RP 83(B) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 95(A), be taken by him verbatim. (*RP 95 fn* 1.) If the evidence is taken by him in narrative form, RP 83(B) should be complied with. If taken verbatim, RP 83(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP 122.*) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP 95(C), 87(C), 92(C) (D).*)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or JA (RP 40 fn 10)*), or evidence by accused, as to facts or his character or both. (*See RP 41 fn 3, 46 fn 1, 80.*)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP 46 fn 1.*)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP 86(B)*), or to prove previous convictions when accused has called witnesses as to character. (*RP 86(C).*)

(v) Closing address (*on matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP 40 fns 8-12, 87(C), 92(C) (D).*) Both Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP 61.*)

(vi) Closing address by Prosecutor. (*See RP 40 fn 7, 87(C), 92(C) (D). Prosecutor has no right to address Court on subject of sentence except as provided by RP 46(E), KR Can 563(a).*)

(vii) Summing up by JA, if any. (*RP 82.*)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or JA, if any. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or JA, if any, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (*On top.*)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can 567.*)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting as evidence a certified copy in lieu of original see KR Can 566. As to certified copies of regimental books see AA 163 (1) (g) (ii).*)

(vi) Summary of Evidence, if not already an exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP 95(D).*) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA 52(2), RP 118(C), MML p 759.*)

4. The President or JA, if any, will return proceedings promptly with covering letter and in an envelope marked "Confidential", or as otherwise directed.

Add'l. 3.

The Court satisfy themselves that Capt. R Guenet CIC 11 Bn CBRB is not available to serve having been posted away as reinforcement.

Capt. G E Berg now CIC 11 Bn CBRB is ordered to take his place as a member of the court.

G E Berg Capt
JA

Appdx. 4.

MEDICAL OFFICERS CERTIFICATE

K.R. (Can) Para 557.

I certify that I have this morning examined No. E-41469 Gr Elms, William of 1 Cdn Mechanical Equipment Park Company, RCE and in my opinion he is fit to undergo trial by Court Martial.
~~unfit~~

In the Field,

Date 5th Jan 45.

Medical Officer

Prosecution
First Witness
C-38818 C.S.M. Tait, T.B. #1513. Pte. Clo Army. sworn states.

I on 11 Dec 44 met Cl. Walker 1 Can Mech Regt Pte Reg R.C.E. I interviewed the accused Spr Chan. I told him who I was and what I was enquiring about. I cautioned the accused. I wrote out the caution which was read over by the accused and signed by him. He then made a statement which I wrote down. The statement is in three parts. This is the statement.

The defending officer states that he has no objection to the statement being produced even though the inclusion of the question is improper.

Statement produced, read to the court. Exhibit "A"

No Cross-examination.

R.P. ¶3 (b) complied with.

Second Witness

Madame M. Della Reyent, Cafe Bistro 162 Queen Street. Sworn, states.

On 5 Dec about 0100 I was standing behind the counter in the cafe. This soldier (points to accused) came running into the cafe and came straight up to me and hit me in the face. I fell on my back behind the counter. I saw this soldier take the purse that was in a bag behind the counter. Then I fainted. My lip was cut and my chin was cut. Exhibits large bruise all on chin. My nose was bleeding. There was between $ 000 and $ 000 pesos in the purse. I don't know exactly how much. My husband, my father in law and two other soldiers whom I do not know but who took no part in the fighting were in the cafe.

Cross-examination

I know it was 1 o'clock because the cafe was open after hours. I was also behind the counter. My father in law was in front of the counter. My husband was near him. They could see me.

Spr Chan is brought into court.

I know I clearly see this soldier. I notice also Spr Chan. He was here in my cafe. He was there the night this happened but I don't remember whether he was still there at the time or not.

By the Court. The purse was in a blue bag which stood on the floor

shelf of the counter. The blue bag was open. I kept all my money in it. There was 7500 francs in the purse at the beginning of the day and I estimate my sales at about 6900 francs from the empty bottle. I did not pay any money out of the purse that day.

RP § 3(b) complied with.

Third Witness

Albert Roy sert. Café Britey. sworn states

On 4 dec at about 10 o'clock in the morning my wife was standing behind the counter in the café Britey. The accused ran into the café. He struck her in the face. I saw her fall behind the counter. I stood in front of the counter. The accused fell on top of my wife.

Two other soldiers came in with the accused one came to the centre of the café the other remained by the door. The accused ran out the door followed by the two other soldiers. I ran to the counter. I saw my wife had fainted. I saw the blue bag off the shelf. The purse with the money in it and my wife's identity card were gone.

My wife had a lip cut and her nose was bleeding.

Cross examination

The café closed at 2 2:00 hrs. There was my father my wife, myself and three soldiers with whom I was speaking were in the café. I saw the accused strike my wife. ~~He then~~ ~~was opening the door and~~ I can get behind the counter though am opening ~~my side door~~ about a yard wide. The counter is about 1½ yds high and about 2 feet wide. If would come up to the pocket flaps of accused. After he hit my wife he fell on top of her behind the counter. The three other soldiers did not do anything. I am not sure but I think it was the right hand that he hit my wife with.

By the Court

The accused had been in the café earlier that night. about 11 o clock. He was in the café almost every day.

RP § 3(a) complied with.

7 month witness

Nkomian boy asst. Cafe Lester sworn states,

On 8 Dec 48 about 1 0'clock in the morning I was in the cafe. The accused ran into the cafe followed by two other soldiers one of whom came up to the counter the other remained at the door. The accused hit my daughter in law in the face and she fell behind the counter. The accused fell on her. I tried to go to her assistance but was prevented by one of the soldiers who was with him who struck me twice in the face. I would not recognise the soldier who hit me.

Cross-examination

There were three soldiers, my son, my daughter in law and their little girl in the cafe at the time the accused came in. My daughter in law was standing in the entry to the counter. I was about 1½ yds away I saw my daughter in law struck. The blow was with the right hand. The cafe was closed about half an hour later.

RP 83(2) complied with.

7 month witness

B-3013 CSM Lucas, F.E. 1 Edn Bn att Hq 1st Coy RCE sworn states.

At about 1730 hrs 8 Dec I saw Spr Elmo and the O.C. The contents of Spr Elmo pockets was on the floor. There were 1450 francs. I searched the accused quarters and found 1200 francs in the Nkomo pouch and 1200 francs in the cooperator haversack. I produce to the court 3850 francs.

3850 francs produced marked Ex. B

The following day at 1330 hrs. I attended an identification parade. The man was in 3's in open order. Two civilian witnesses identified Spr Elmo by stepping in front of him and putting their hands on his shoulder.

Cross-examination

Spr Elmo was the only coloured in our or parade.

R.P. 83(2) complied with.

D-5 Defence

Friend witness H. 5250 Spr Amos, T.B. - 1 Edn Bn att Hq 1st Coy.

I was in the cafe Lester on night of 7 Dec until the cafe was closed. I saw Nkomian. He shook hands with me when I left I did not see any money to him.

Cross-examination

I left a few minutes after twelve. I did not return.

By the Court

I went into the cafe with Spr Elms from a dance up the street. ~~He went out~~ We went in around 11 o'clock. We stayed on and danced for a while. I went out for about 15 minutes. When I returned he was gone. I left a few minutes after midnight and did not go back to the cafe.

R.P. S 3 (3) complied with.

Def. Offr. closing address

The accused admits possession of the guns but says that he was under the influence of liquor and doesn't remember stabbing the woman. Difficult to stab a woman behind as with a bar. Spr Elms was to the west. No obscurity evidence available but only guilty person on the spot. Conclusion, he is not type of person to walk into a cafe and stab a woman and not remember it.

Prosecuting offrs closing address

Evidence of 3 witnesses is clear and unmistakable. Spr Elms came into the cafe. Attack on Adams by accd. Had enough to make the lips and nose bleed. No attempt taking the money and the intent is clear from the action of hitting it. The offence initiates was with Elms the first time he was in the cafe not at the time of the incident.

Summing up by J.A.

7 members court on burden of proof. Defines elements of robbery with violence. That if court finds accused not guilty of robbery with violence they may without an alternative charge, being laid find him guilty of robbery or of simple larceny. Presumption of innocence until proof of guilt beyond reasonable doubt. Defines reasonable doubt.

Def Offr in mitigation

This is the only coloured soldier in unit. His education is not of a very high standard. He was under influence of liquor and would not have done what he has done had he been sober.

Lt Gen[l] Capt
J.A.

EXHIBIT "B"

Statement of E 4414469, Pte. E.L.M.S. William
No [redacted] M.E. Pack Coy R.C.E. EXHIBIT "A"

11 Dec 1944

I have been cautioned by C.S.M. Sait, S.B. No 1 Special Investigation Section, Provost Corps Army, that I do not have to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence. E.W.E.

I am William Elms age 22 years, and I was born at Upper Big Tracadie, Nova Scotia, on 9 May 1922. I joined the Canadian Army 23 June 1941, in the Royal Canadian Engineers. I came to England in November 1941 and I arrived in France on the 22 June 1944.

Last Thursday night I left camp at about 7 o'clock in the evening. Captain Rowe was with me. We went to a liquor store and bought a bottle of cognac. We went to the café that supposes to have the trouble and drank the cognac. Then we went to a dance down town. Then we came back to that café and I bought a bottle of gin off that woman and drank that there. Then there was quarreling and fighting, everybody was hitting each other. I don't know, I wasn't fighting. Then I got pushed behind the counter and I seen some money on the floor in a little purse so I picked it up. I came back to camp. I don't know how much money there was, I was drunk. That's all.

Witness [redacted] E.W.E.

No 1 Sec. 21st December 1944

Statement of E 41469 Dan Evans

continued

Q. Just where did you find the purse containing the money.

A. It was inside a big purse in a cupboard near the floor. Both purses were there.

Q. Where was the woman, who runs the café when you found the purse.

A. I don't know where she was. I don't remember seeing her.

Q Did you see Dan Evans after you had found the bottle of gin.

A. I don't remember seeing him.

Q. Do you remember what you did with the money when you came home.

A. No. I don't remember anything about it. Evans

Voluntary Statement

After outside at night, I was going to take the money back that I found in my pocket in the morning but I was searched and it was taken away from me. Evans

Bjurstrom

EXHIBIT C 11

M.F.B. 355
22M—6-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E-41469	SAPPER	ELME, W.,	1 M.E. Fk Coy RCE

1. The following is a fair and true summary of the entries in the Field [illegible] Conduct sheets [illegible] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For AA 40	three	times	four	times
For AA 15(1)	two	times	two	times
For [illegible]	[illegible]	times	[illegible]	times
For [illegible]	[illegible]	times	[illegible]	times

Number of instances of gallantry or distinguished conduct [illegible]

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [illegible]

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which Nil days were spent in hospital. Absconded 8 6 18 Dec. 40.

5. The present age of the accused according to his attestation paper is 22 YRS 7 MONTHS

6. The date of his attestation specified in his attestation paper is 23 JUNE 1941

7. [illegible]

8. [illegible]

9. The accused is entitled to Cdn Vol Ser Medal & Clasp

10. [illegible]

11. (In the case of an officer.) The [illegible] Royal Canadian Regiment [illegible]

12. The [illegible] is to be [illegible]

To the end of [illegible] years

To the end of [illegible] years

To the end of [illegible]

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number E-41469 Rank Spr. Name Elms, W., of 1 Mech Eqpt Park Coy RCE Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15 — 5 day of December January

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

EXHIBIT D

MFM 6
(AFB 122)
40/P&S/136 (3435)

Revised in accordance with C.A.R.O 2084 27 Nov 42

No. 41469 Name Elms, William | Sqn. Battery or Company | Corps R.C.E. | Date of enlistment 23-6-41 | OC Badges | Service or Proficiency Pay |

Company Conduct Sheet Date of last entry in | Nil | No and date of last drunk | Nil | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed on completion of six months service			23-12-41	K.R. (Can.)	1524 (c)
Field	3-4-43	Spr.		WOAS an offence under Sec 40 A.A. Smashing plate glass window	Documentary	14 dys Fd. Pun. with Forf. of 14 days pay Art 149 (2) FR&I	5-4-43	Major G.C. Tyrrell, R.C.E.	
Field	18 Mar 44	Spr		(1) AA 15(1) AWL from 2200 hrs 18 Mar 44 to 1705 hrs 19 Mar 44 (Absent 19 Hrs 05 mins. (2) WOAS Cond to the Prejetc was in improper poss of MBM 1 & CFA 24 belonging to Spr. Ponych, P. (3) WOAS AA 40 Cond to the Prej etc did make use of MBM 1 & CFA 24 knowing they were not his own	Doc.	27 Dys Detn	22 Mar 44	Major H McLachlin	Fifts 1 Dys Pay FR&I 149(1)(a) 27 Dys Pay 149(1)(b)

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				(4) A.A. 40 WOAS Cond to the Prej etc was improperly dressed when appre. by Cdn Provost Corps (5) A.A.40 WOAS Cond to the Prej etc was not in possession of his MEM 1 and identity discs when appre by C.P.C.					
Field	19 Nov Spr 44			AA15(1) AWL from 1800 hrs 19 Nov 44 to 2210 hrs 19 Nov 44 when detailed for picquet duty, thereby having to be replaced.	L/Cpl. Thompson, G.F.	7 days F.P. Forf 7 days Pay FR&I 149(2)	20 Nov 44	Capt. J.D. Whittaker	Forf 1 days pay FR&I 149 (1) (a)

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody

W.T. Sargent Lieut. Lieut., RCE.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

Summary of evidence in the case of No. E41469 Spr. Elms, William, on strength of No 1 Cdn Mech Eqpt Park Coy RCE. A soldier of the Canadian Army Overseas.

FIRST WITNESS
For the
Prosecution

Martha Royaert of Cafe Cietax, 16 Zwynaerdesteenweg, Ghent, having been duly sworn, states as follows:-

At Cafe Cietax, on Friday, the eighth of December, at approximately one o'clock in the morning, I was standing behind the counter when Spr Elms, William, whom I now recognize, ran into the cafe. Spr Elms, William, ran straight over to the counter and struck me a blow in the face, knocking me down behind the counter. The accused then fell on top of me and grabbed the purse which was in a blue bag. The accused then jumped up and ran out of the cafe. This purse contained between eight and nine thousand francs. The blue bag with the purse in it was used to keep all the money taken in during the day. At the time the accused grabbed the purse it was inside the blue bag on the bottom shelf of the counter.

Two soldiers ran into the cafe immediately behind the accused. One of the soldiers ran over to my father-in-law, who was standing at the front end of the counter. I did not see what happened between this soldier and my father-in-law as I had been knocked to the floor. The last I saw of the third soldier was just before I was hit and he was standing near the door of the cafe. I had not seen these two soldiers before and I am not able to recognize them.

The next thing that I remember was being helped up by my husband and my father-in-law. My lips were badly cut and bleeding and my nose and mouth were bleeding. I was very sick and my husband put me to bed.

On Friday afternoon I went to the clinic, where the accused was known to live, and reported this occurence to an officer or non-commissioned officer.

Martha Royaert
(Martha Royaert)

I certify that the above statement made by Martha Royaert is a true translation and was translated by me to the best of my ability.

(Marcel Verhulst) Interpreter

The accused declines to cross-examine the witness.

SECOND WITNESS
For the
Prosecution

Albert Royaert of Cafe Cietax, 16 Zwynaerdesteenweg, Ghent, having been duly sworn, states as follows:-

At Cafe Cietax, on Friday morning, the eighth of December, between one o'clock and one fifteen, I was standing near the window with three soldiers when the accused entered the cafe, followed by two soldiers. The accused whom I now recognize, ran

SECOND WITNESS For the Prosecution (Cont'd)

over th the counter and struck my wife a blow in the face. I saw my wife fall behind the counter and the accused fall on top of her. The accused then jumped up and ran out of the cafe. I immediately went over to the counter to see about my wife. I saw the blue bag lying on the floor behind the counter. My wife, who was now sitting on the floor, looked into the blue bag to see if the purse containing our money was gone. The purse was not there. The purse contained the money taken in by the cafe, and my wifes identity card. I have bot seen the purse or the card since.

The first soldier who followed the accused into the cafe ran over to my father ~~in-law~~ and struck him on the face. The third soldier waited at the door. These two soldiers ran out of the cafe with the accused. I had not seen these two soldiers before and I am not able to recognize them again.

The accused had been in the cafe at least twice the same evening, before the attack on my wife. While there, he drank and danced. He did not appear to be drunk. The second time he was in the cafe, about half past ten, he ordered a half bottle of gin. He said that he had no money and promised to pay for the gin later.

Albert Royaert

(Albert Royaert)

I certify that the above statement made by Albert Royaert is a true translation and was translated by me to the best of my ability.

(Marcel Verhulst) Interpreter.

The accused declines to cross-examine the witness.

THIRD WITNESS For the Prosecution

Domien Royaert of Cafe Cietax, 16 Zwynaerdesteenweg, Ghent, having been duly sworn states as follows:-

At Cafe Cietax on Friday, the eighth of December, between one o'clock and one fifteen in the morning I was standing near my son and was speaking with two soldiers whom I do not know. I saw the accused, whom I now recognize, come into the cafe followed by two other soldiers. The accused went straight to the counter and struck my daughter-in-law, Martha Royaert, in the mouth. My daughter-in-law fell behind the counter with the accused on top of her. At this moment the second soldier who had run up to me, struck me twice in the nose with his fist. The third soldier remained at the door. The accused and the other two soldiers then ran out of the cafe. I had not seen the second and third soldiers before and I am unable to recognize them again. The two soldiers who I was talking to, before the attack on my daughter-in-law, then walked out of the cafe.

I had seen the accused in the cafe at least twice during this same evening. I didn't see the accused drinking but I did see the accused dancing. He did not appear to have been drinking, and in my opinion he was not drunk.

I then helped my daughter-in-law to a bed in the kitchen. Her face was cut and bleeding around the mouth and nose.

Royaert Domien

(Domien Royaert)

THIRD WITNESS For the Prosecution (cont'd)

I certify that the above statement made by Domien Royaert is a true translation and was translated by me to the best of my ability.

(Marcel Verhulst) Interpreter

The accused declines to cross-examine the witness.

FOURTH WITNESS For the Prosecution

B-3013 CSM Lucas, F.E., of No 1 Cdn Mech Eqpt Pk Coy RCE, having been duly sworn states as follows:-

At approximately 1715 hrs. on the eighth of December 1944 I was walking from my quarters through the first wing of the clinic, when I saw the O.C. with the accused, Spr Elms, William, whom I now recognize. The accused had been searched and all his money, cigarettes, personal effects, were in a pile on the floor. The O.C. asked me to pick up the money and count it. I did this in his presence and found fourteen hundred and eighty francs. I then placed Spr. Elms, W. under close arrest.

I then spoke to the civilian woman who had made the complaint. She was very nervous and told me that the accused had struck her in the mouth, her lips were very swollen.

At approximately 1910 hrs., eighth of December, 1944, in company with S/Sgt Donahoe, I searched the quarters of the accused and I found the following:-

1200 francs in the accused's ammunition pouch.
1200 francs in the accused's respirator haversack.

At approximately 2000 hrs. the same evening I sent for the accused and produced both the ammunition pouch and the respirator haversack and he identified them as his own property.

I produce thirty eight hundred and eighty francs which I confiscated from the accused and from his quarters.
Marked Exhibit "A"

On the ninth of December 1944, at 1315 hrs. I held a muster parade for the purpose of affording the civilians an opportunity to identify any personnel of this unit who were concerned in the affair of the night of the seventh or morning of the eighth. The woman whom I had seen the night before, and had made the complaint, was the first to view the parade. She identified Spr. Elms, William.

The next to view the parade was Albert Royaert. He identified Spr. Elms, William.

The next to view the parade was Domien Royaert. He identified Spr. Elms, William.

The accused declines to cross-examine the witness.

(B3013 C.S.M. Lucas, F.E.)

FIFTH WITNESS
For the
Prosecution

C-30818 CSM. Tait, T.B, having been duly sworn, states:-

I am C-30818 CSM. Tait, T.B., of No. 1 S.I.S., First Cdn Army. On the eleventh of December 1944, in the presence of Lieut. W.J.K. Walker, of 1 Cdn Mechanical Equipment Park Company, RCE, I interviewed E-41469 Spr. Elms, W, whom I identify as the accused. The interview took place at the unit Headquarters. I informed Spr. Elms, W, as to whom I was, and that I was making inquiries into an assault and theft of monies from the Cafe Cietax, Ghent, on the night of the seventh of December, 1944. I cautioned Spr. Elms, W, the caution, being reduced to writing, was read over by the accused and signed by him. He then made a voluntary statement, the same being dictated by him and reduced to writing by me, which he also read over and signed.

This statement consists of three parts;

Part 1. The Initial Statement
Part 11. Questions and Answers.
Part 111. A voluntary statement, made by the accused, after completion of interview.

This statement I now produce as evidence, marked Exhibit "B".

No threats or promises of favour were held out or extended to this man to induce him to make this voluntary statement.

The accused declines to cross-examine the witness.

(C-30818 CSM. Tait, T.B.)
No. 1 SIS, First Cdn Army.

The accused was cautioned as follows:-

Do you wish to make a statement, or give evidence on Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on Oath.

(E-41469 Spr. Elms, W.)

I certify that the foregoing Summary of Evidence, consisting of four pages, was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c) (d) (e) and (g) have been complied with.

(W.J.K. Walker) Lieut., RCE,
Officer taking Summary of Evidence.

In the Field,
14 Dec 44.

Exhibit "B".

STATEMENT OF E-41469 SPR. ELMS, William, No. 1 Cdn M.E. Park Coy., RCE.

11 Dec 44.

I have been cautioned by CSM. Tait, T.B., No. 1 Special Investigation Section, First Cdn Army, that I do not have to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence.

(Signed) Elms, W.

I am William ELMS, age 22 years, and I was born at Upper Big Tracadie, Nova Scotia, on 9 May 1922. I joined the Canadian Army 23 Jun 1941, in the Royal Canadian Engineers. I came to England in November 1941 and I arrived in France on the 22 Jun 1944.

Last Thursday night I left camp at about 7 o'clock in the evening. Sapper Amos was with me. We went to a liquor store and bought a bottle of cognac. We went to the cafe thats supposed to have the trouble and drank the cognac. Then we went to a dance down town. Then we came back to that cafe and I bought a bottle of gin off that woman and drank that there. Then there was quarreling and fighting, everybody was hitting each other. I dont know, I wasnt fighting. Then I got pushed behind the counter and I saw some money on the floor in a little purse so I picked it up. I came back to camp. I dont know how much money there was, I was drunk. Thats all.

(Signed) Elms, W.

Witness:

(Signed) T.B. Tait.,
No. 1 SIS.
11 Dec 44.

Statement of E-41469 Spr. Elms, W., continued

Q. Just where did you find the purse containing the money.
A. It was inside a big purse in a cupboard near the floor. Both purses were open.
Q. Where was the woman, who runs the cafe, when you found the purse.
A. I dont know where she was. I dont remember seeing her.
Q. Did you see Spr. Amos after you had drunk the bottle of gin.
A. I dont remember seeing him.
Q. Do you remember what you did with the money when you came home.
A. No. I dont remember anything about it.

(Signed) Elms, W.

VOLUNTARY STATEMENT

After supper at night, I was going to take the money back that I had found in my pockets in the morning, but I was searched and it was taken away from me.

(Signed) Elms, W.

T.B. Tait. Certified true copy: (W.J.K. Walker) Lieut RCE.

59P

Re Elsworth, J A

See 5 3 M for 1st case.

O. H. M. S.

M. F. B. 270

H-16127 Pte. Elsworth, J.A.
No. 15 Cdn Gen Hosp

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 29th day of September, 19 42

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~xxxx

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
H-16127 PTE. ELSWORTH, J.A. No. 15 Cdn General Hospital.	First Charge A.A. sec 9(2)	Not Guilty	Guilty	
	Alternative Second Charge A.A. sec 40	Not Guilty	Not Guilty	
			to undergo detention for one hundred and twenty days.	
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) ... Brigadier (Signed) ... Maj.
Commanding Cdn Reinf Units — Concerning Officer (*e*) — President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of September 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) mjl. gmo.
*(4. ~~The officers under instruction~~) mjl. gmo.

were duly sworn.

Signed this 30 day of Sept. 19 42.

M.J. Clemmer Maj.
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~day of~~ n/a 19 .

President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what confirmation I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 5 day of Oct. 19 42.

... Brig.
Confirming Officer.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of Pte. J.A. Elsworth.

(*a*) (Dated) 7.10.42 (Signed) ... Lt.-Col.
O.C. 15 Cdn Gen Hosp (CD)

Promulgated and extracts taken in the case of

(Dated) ... (Signed) ...

Promulgated and extracts taken in the case of

(Dated) ... (Signed) ...

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, H-16127 Pte. Elsworth, J.A. P.P.C.L.I. attached to No. 15 Canadian General Hospital, a soldier of the Canadian Army Overseas, is charged with:

First Charge
See 9(2)
Army Act

While on Active Service, Disobeying a Lawful Command Given by His Superior Officer,

in that he

At No. 15 Canadian General Hospital, on 23 Sep 42 at approximately 1250 hrs, on being ordered to report for duty by Cpl. Bickerdyke, Corporal of the Guard at No. 15 Canadian General Hospital did not do so.

Second Charge
ALTERNATIVE
See 40
Army Act

While on Active Service, Conduct to the Prejudice of Good order and Military Discipline,

in that he

At No. 15 Canadian General Hospital on 23 Sep 1942 on being ordered by Cpl. Bickerdyke, Corporal of the Guard at No. 15 Cdn General Hospital to relieve Pte. Conrad for lunch, said he would not do so.

.....Colonel
(R.M. Harvie, E.D.) Officer Commanding

Bramshott
24 Sep 42.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Reinforcement Units.
Convening Officer

Farnborough, Hants
This 29th day of Sept 42.

MEDICAL OFFICER'S REPORT

I certify that No. H16127 Pte. Elsworth, J.A.
of P.P.C.L.I. is in a fit state of health,
and able to undergo Trial by Court martial.
Having examined this man this morning.

Medical Officer

Station Dranoholt

Date 30 Sep.42

M. F. B. 246

Evidence taken down at the trial by FGCM of H-16127 Pte. Elsworth,J.A.,P.P.C.L.I.,attached to No.15 Canadian General Hospital,Canadian Army, on active service Overseas, held at Laurentide Camp, Witley,Surrey, on 30 Sept. 1942.

The Order convening the Court, the charge sheet, and the summary of evidence, are laid before the court. The Court complies with Rs2. 22 and 23.

At 1115 hrs the Court opens.

The accused and all persons including all witnesses are now brought in.

Prosecutor.- Lieut. D.C. Balsillie,Seaforths of Canada, No. 15.CGH.

Defending Officer.- Lieut. M.J.Geller,Perth Regt, No.5 C.I.R.U.

The medical certificate is laid before the court, and signed by the president.

The convening order is read by the President to the accused. The President and Members of the Court answre to their names.

By the President to the accused?

Q.1.- Do you object to be tried by me as President or by any of the officers whose names you have heard read?

A.1.- No. Sir.

The President and Members are duly sworn.

The Court is constituted as follows:

President.- Major, M.C.Clennett, West N.S.R. No.1. CDIRU

Member.- Capt.C.H.E.Askwith,R.H.C. No.2. CDIRU

Member.- Lieut. J.B. Dumont, R 22e R, No.1. CDIRU

At the request of the defence and the prosecution concurring, the provisions of R.P. 83 b are waived.

The charge sheet is signed by the President and annexed to the Proceedings.

The accused is arraigned separately on the charges in the above-mentioned charge sheet.

By the President:

Q.2.Are you guilty or not guilty of the first charge against you which you have heard read?

A.2.- Not. Guilty.

Q.3. Are you guilty or not guilty of the second charge against you which you have heard read?

A.3.- Not Guilty.

Rule of procedure 39 A is now complied with.

The Prosecutor does not make an opening address.

1st Witness for the Prosecution:K 52748 Cpl. Bickerdyke,J. Seaforths of Canada,No.1.CDIRU, attached to No.15 CGH, having been duly sworn is examined by the prosecutor.

Q.4.- What is your number, rank, name, and unit?

A.4.- I am K 52748 Cpl. Bickerdyke,J., Seaforths of Canada, attached to No. 15 CGH.

Pros. 1st Witness

Q.5. Tell the court what you know with respect to the accused on the morning of the 23rd Sept. 42.

A.5. On Wednesday morning of the 23rd Sept 42 at 1250 hrs, I went to the Guard quarters and told Pte. Elsworth to report to Ward "A" West Wing, and relieve Pte. Conrad to enable this man to go for lunch. He said he would not do so, and that as a man he was entitled to two hours break. I then told him to consider himself under open arrest. He still refused to go to the ward. I reported the incident to Sgt. Beggs. Pte. Elsworth was to relieve Pte. Conrad at 1300 hrs. The guard are warned for duty at a duty parade every morning at 0915 hrs. The men are warned what wards they are to work in and the times they are to be ready for duty. We change guard at 0930 hrs and then for a period of 24 hrs we do a period two hrs on and two hours off, with the exception of the meal parade and instead of going on at 1330 hrs the guard is changed at 1300 hrs. This enables the guards to get a hot meal. I have here the notices which were posted that morning warning the men on the guards for duty. (These are marked Exhibits A and B, and having been signed by the President are attached to the Proceedings.) These notices were posted in the guard room. The name of the accused was called on the morning of the 23rd when the men were warned for guard.

Cross-examined by the defending officer:
I was on duty on the 23rd Sept. 42. I warned the Guard on that morning, concerning their tour of duty. I warned the men by calling the men by name and detailing them for different shifts. In this way I warned the accused that he would be on duty in a certain ward at a certain time. (The defending officer produced a file of guard reports which the witness identified as being the Guard reports for the 15th CGH for the period 21 to 26 Sept. 42.) (These reports are marked Exhibit "C" and having been signed by the President are attached to the proceedings.) According to Exhibit "C" the hours for the Guard for Monday 21 Sept. 42 are a straight two hr period and there is no break at noon. This means that the shift which goes on at 1130 hrs was not relieved until 1330 hrs. There is a different NCO on this guard. He apparently had one system and I had another. The Saturday previous to 23 Sept. 42 a parade was held and the duty officer indicated to the men the various regulations regarding the guards. In this parade he mentioned that the tour of duty was for two hours followed by two hours off.

Re-examined by the Prosecutor:
The system of changing guards was changed from the one previously established, on Monday 21 Sept. 42 in order to enable all the guards to get a hot meal.

Re-examined by the defending officer:

The hours which were established on Monday were , 0930 to 1130 hrs, then 1130 hrs to 1300 hrs. This was to enable the men to get a hot lunch. I warned the accused at 1250 hrs, to be ready for 1300 hrs.

Examined by the Court:
In order to carry out the order I gave to the accused, that is, to relieve Pte. Conrad at 1300 hrs, it was necessary for him to get ready and leave as soon as he got the order. The accused was a member of a guard of which a was a cpl. on the guard.

2nd Witness for the Prosecution: G17556 Pte. Moore, R. Carleton and York Regt., No.1. [illegible], attached to No.15, CGH, having been duly sworn is examined by the Prosecutor:

Q.6. What is your number, rank, name, and unit?

A.6. I am 317556 Pte. Moore, R. Carleton & York Regt, attached to No. 15 CGH.

Prosecution
2nd Witness

Q.7 Tell the court what you know of an incident between the accused and Cpl. Bickerdyke, on 23 Sept. 42.

A.7.- On 23rd Sept. 42 at approx 1245 hrs I was standing by my bed in my hut when Cpl. Bickerdyke entered the hut and went to the bed of Pte. Elsworth. He told him to relieve one of the sentries so he could go to dinner. Pte. Elsworth told Cpl. Bickerdyke that he was off duty for two hours. The corporal said" It is an order and you can consider yourself under open arrest"

Cross-examined by the defending officer:
I was not on parade when Cpl. Bickerdyke detailed the men. The tour of duty for the guards is two hours off and two hours on. This was given by the duty officer.

Examined by the Court:
I was present when the Cpl. told the accused to relieve one of the sentries for dinner. In order to carry out the order it was necessary for the accused to have carried out the order as soon as it was given. The manner of the accused was not insubordinate at that time.

By the President to the Accused?
" Do you wish to give evidence under oath or do you wish to make a statement not on oath? You do not have to do either. If you elect to give evidence on oath, you are liable to cross-examination as any other witness. If you make a statement you will not be sworn and you will not be cross-examined, nor will you be obliged to answer any question. Evidence on oath carries more weight than a statement. If you make a statement it will be taken down in writing and will be given due consideration."

Q.8.- Do you wish to give evidence yourself as a witness?

A.8.- Yes, Sir.

Q.9.- Do you intend to call any other witnesses on your behalf?

A.9.-Yes, Sir.

Q.10.- Are they witnesses as to facts or as to character orboth?

A.10.-They are witnesses as to character.

The defending officer makes no opening address:

1st Witness for the defence: the accused, H16127 Pte. Elsworth, J.A., P.P.C.L.I., attached to No. 15 CGH, having been duly sworn is examined by the defending officer:

Q.11.- What is your number, name, rank, and unit?

A.11. I am H 16127 Pte. Elsworth, J.A., P.P.C.L.I., attached to No. 15, CGH.

A.12.- Tell the court about your military and civilian background and about the incident with Cpl. Bickerdyke, on 23 Sept. 42.

A.12.- I am 28 yrs old. I have been on active service two yrs and nine months. I enlisted in Sept. 1939. I began my military career at the age of ten yrs as a member of the Queens Own Cadet Corps., Then I served with the 1st Sqn, Medium M.G., then with the 17th Battery, RCA, then in 1936 with the P.P.C.L.I., then back to the 17th Battery RCA, I joined for active service in Winnipeg.

Defence
1st Witness

I have had one year of university education at the University of Manitoba. At this time I came into contact with the officers of the unit in which served. At this time some of these officers suggested I take a commission in their units. Major Mason was one of these officers. He was from the Queen's Own Camerons of Canada. I did not accept such an offer because I joined the P.P.C.L.I. as a private. I was employed at this time as an insurance agent. I had a satisfactory income at this time. However I sacrificed this income of forty dollars per week to join the army as a private soldier at one dollar and thirty cents a day. I did this because I preferred to join a unit and serve Overseas rather than wait for a commission in Canada.
Cpl. Bickerdyke warned me for duty on 23 Sept. 42 by calling out the first eight names for the first relief and the second eight names for the second relief. Then he warned some men for escort duty. Cpl. Bickerdyke read out the times of duty from 0930 hrs to 1130 hrs and the second relief from 1130 - 1330 hrs. The duty officer laid down previously a schedule of two hours on and two hours off for twenty four hours, and then twenty four hours off duty. I finished my first shift at 1130 hrs. I understood that I was to go on duty next at 1330 hrs. When the Cpl. warned me at 1250 hrs for duty at 1300 hrs I told him I was going on at 1330 hrs. I told him that my duty was two hours on and two hours off. I received a letter from home on that day. It was from a cousin of mine. I was reading it when the cpl. warned me for guard at 1250 hrs. It was concerning an estate of eighty-five thousand dollars of which I had a twenty-five pet cent interest. I was very disturbed over the letter, in fact, so much so, that I wanted to have the matter looked into by the Adjutant General's Department.

Cross-Examined by the Prosecutor:
Cpl. Bickerdyke gave me an order to go on duty. I replied that I was going on duty at 1330 hrs. I knew the responsibility of a soldier to obey an order. I did not make any remarks about an NCO. I did not ask the corporal to be excused this duty.

Examined by the Court:
I intended to go on duty at 1330 hrs. I did not intend to go on duty at 1300 hrs.

2nd Witness for the Defence: Capt. R.M.Snider, Queen's Own Camerons of Canada, having been duly sworn is examined by the defending officer:

Q.13. What is your rank, name, and unit.

A.13.- I am Capt. R.M.Snider, Queen's Own Camerons Of Canada.

Q.14. Tell the Court what you know of the civil and military character of the accused.

A.14. I am the transport officer of the Queen's Own Camerons of Canada. I know the accused. I have known him for fifteen years. I was interested in the Queens Own Sgt since 1931. At that time I was aware that Pte. Ellsworth received an offer to take a commission. I know that the accused was educated for one year at the University of Manitoba. He was a respectable business man in Winnipeg before enlistment. I know his family very well. They are a respectable Winnipeg family. He began his military career in the Cameron Cadets in which he served four yrs. He also served with P.P.C.L.I. for three months. He was liked by the officers of these units. His background, intelligence, and general military experience entitled him to be considered as officer material. I was surprised considering these things that he joined the Army and came Overseas as a private.

3rd Witness for the defence: H/Capt. S.B.East,C.C.S. attached to P.P.C.L.I. having been duly sworn is examined by the defending officer:

Q.15. What is your rank, name and number?

A.15. I am H/Capt. S.B.East, C.C.S. attached to the P.P.C.L.I.

Q.16. Tell the Court what you know about the character of the accused.

A.16. I was attached to the P.P.C.L.I. as chaplain in Oct,1940, and have been with that unit ever since. I met the accused not long after I came to the Regt. I was attracted to him because he was one of a group which was interested in books and had an education above the average. I had frequent discussions with him on subjects of common interest. I have only missed one battalion exercise. In particular I was on one exercise in which the Regt. marched seventy-five miles in three days. Towards the end of the third day I was marching in the same platoon as Elsworth. I noticed him particularly because having marched for two days I was very tired and Pte. Elsworth helped to cheer me up. He was in excellent spirits and very cheery. Pte. Elsworth was one of those soldiers in the Regiment who had a good record.

The defence closed:

The prosecutor declined to make a closing address, relying on the evidence submitted.

The defending officer made a closing address. (A copy of this address in writing prepared by the defending officer is attached, signed by the President and marked Appendix A.)

The Court is closed for consideration of the finding.

The Court find that the accused No.H16127 Pte. Elsworth,J.A. is Guilty of the first charge.

The court find that the accused No.H16127 Pte. Elsworth,J.A. is Not Guilty of the Second charge.

The court is reopened.

The finding of the Court on the Second Charge is read to the accused.

3rd Witness for the Prosecution: Lieut.D. G.Balsillie, Seaforths of Canada, No.15,CAH, Canadian Army.Overseas,is duly sworn.

Q.17- Have you any evidence to produce as to the character and particulars of service of the accused?

A.17- I produce MFB 355 and certified copy of MFM 6 sir.

MFB 355 and certified copy of MFM 6 are signed by the President and annexed to the proceedings.

Q.18.- Is the accused person named in the statement you have read?

A.18.- Yes,sir.

Q.19.- Have you compared the contents of the above statement with the Regimental books?

A.19.- Yes,sir.

Q.20.- Are they true extracts from the Regimental Books, and

is the statement of entries in the conduct sheets a fair and true summary of those entries?

A.20.-Yes, sir.

Q.21.-Have you any other evidence?

A.21.-No sir.

The accused declines to cross-examine this witness.

By the President to the accused:

Q.22 Do you wish to address the Court in mitigation of sentence?

A.22.Yes, sir.

The defending officer makes a plea in mitigation of sentence. (A copy of this address in writing prepared by the defending officer is attached, signed by the President and marked Appendix "B".)

The court is closed for consideration of the sentence.

Defending Officers Closing address

Appendix A

Both prosecution witnesses have established the fact that the tour of duty for the Guard was laid down as two hours on and two hours off. The Guard report confirms this fact.

Pte Moore, a prosecution witness, stated in his evidence that the conduct of accused on being warned for duty was not insubordinate.

The accused, on oath, has stated that it was his undersatnding that his next tour of duty did not commence until 1330 hrs and that he intended to report for duty at that time.

The accused had received news from home on the date of the offence and this news was of a disturbing nature sufficient to cause the accused great anxiety. It may well be that the accused in this state of mind did not fully realize that his failure to report for duty immediately he was warned would result in a charge being placed against him. Especially is this so, since the tour of duty calling for two hours on and two hours off was so firmly fixed in his mind.

It was not the intention of accused to flagrantly disobey a lawful command. The facts which have been brought out in evidence reveal that there was lack of uniformity in the conduct of Guard Commanders in relation to the hours covered by the tours of duty. This resulted in misunderstanding. The accused shared in this misunderstanding. The accused should be given the benefit of the doubt.

Appendix "B"

Defending Officers Plea in Mitigation of Sentence

Capt. Snider has testified that he has known the accused for a good number of years. He has testified to the general good conduct of the accused. He has referred to the respect in which the accused was held in his native city of Winnipeg. He has referred also to the esteem in which accused was held by officers of the Q.O. H.C. of Can. and of the fact that a promise of a commission was held out to the accused if he joined that unit. Capt. Snider has said that despite this offer the accused left a good job to enlist as a private in another unit in order to go overseas sooner.

Capt. East, Padre and Educational Officer, P.P.C.L.I. was attracted to the accused while accused was a member of the field unit. He has testified that he was much impressed by the intelligence of the accused which he had an opportunity to examine in many discussions with the accused. Capt. East has emphasied the soldierly qualities of the accused and referred in particular to the cheerful conduct of the accused on a unit 70 mile march.

Accused was distracted by receipt of a letter on the date of the offence. He laboured under an honest misunderstanding in respect to the tours of duty. A light sentence under the circumstances would serve the ends of justice.

SUMMARY OF EVIDENCE IN THE CASE OF H.16127 Pte. Elsworth, J.A.

P.P.C.L.I., 1 C.D.I.R.U. Attached to No.15 Gen.Hosp. R.C.A.M.C.

The Commanding Officer directs that the evidence shall be taken on oath.

1st Witness: K.52748 Cpl. Bickerdyke, J., Seaforth of C., 1 CDIRU, attached to No.15 Gen.Hosp. RCAMC, having been duly sworn, states:

"I am a corporal of the guard at No.15 Gen.Hosp. RCAMC, and as such was on duty on the 23rd Sep 42. At approx.1250 hrs. on the 23rd Sep 42, I went into the guard's quarters. Pte. Elsworth was lying on his bed. I told him to report down to Ward "A", West Wing and relieve Pte. Conrad for lunch. Pte. Elsworth said he would not do this. I then told him that it was an order and he said that he still would no do so, as he was entitled to a two hour break between shifts. I then told him to consider himself under open arrest, and then to report for duty at the West Wing. He stated that any man under open arrest could not be made to do duties, and that he would make an awful fool of the N.C.O. who made him do so. That is all, sir.

Question by Lieut. Balsillie: What is the rotation and tours of duty for men on the guard?

Answer by Cpl. Bickerdyke: Nine-thirty to eleven-thirty on duty, and eleven thirty to thirteen hundred hours, off, 1300 hrs.to 1530 hrs.on, 1530 to 1730 hrs. off, and so on for a total tour of 24 hours, at the end of which the guard is relieved and the off coming guard then have 24 hrs. off. A roster to this effect is posted in the guard-room daily, and is called out on parade every morning at mounting of the guard, and Pte. Elsworth was so detailed today.

.....

Question: Pte. Elsworth, do you wish to cross examine this witness?

Answer: The accused declines to cross examine this witness.

2nd Witness: G.17556 A/L/Cpl. Moore, R., C.Y.Regt., 1 CDIRU, attached to No.15 Gen.Hosp. RCAMC, having been duly sworn, states:

"I am a Lance-corporal of the guard at No.15 Gen.Hosp. RCAMC, and as such was on duty on the 23rd Sep 42, between the hours of 0730 and 1700. I was in the guard quarters at 1230 hrs. on the 23rd Sep 42, and at approx. 1245 hrs. I was standing by my bed when Corporal Bickerdyke entered the hut. The Corporal went over to Pte. Elsworth's bed and asked Pte. Elsworth to relieve one of the guards for dinner. Pte. Elsworth said that he was off duty for two hours. Cpl. Bickerdyke then told him that that it was an order and that if he didn't go he would be placed under open arrest. Corporal Bickerdyke then told Elsworth that he was under open arrest, and then left the hut. I returned to the front office and Sgt. Baker, sergeant of the guard, ordered me to take Ptes. Richards and Escotte and escort Pte. Elsworth to the guard-room. I have nothing else to say, sir.

.....

Question: Pte. Elsworth, do you with to cross examine this witness?

The accused declines to cross examine this witness.

Sheet 2.

Pte. Elsworth, do you wish to make any statement or to give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence

The accused declines to make any statement.

I certify that the foregoing summary of evidence, consisting of one and a half pages, was taken down by me in writing in the presence of the accused, and the rules of procedure 4(c)(d)(e) and (f) have been complied with.

23rd Sept 1942.
No.15 Gen.Hosp. R.C.A.M.C.

.....Lieut.

Summary of Evidence in the case of H 16127 Pte. Elsworth J.A. C.O.D. 6. L.S., 16. D.J.R.H. attached to 16 Gen. Hosp. R.C.A.M.C.

The Commanding Officer directs that the evidence shall be taken on oath.

1st Witness: K 52748, Sgt. Dickerdyke J., Asperth of C., 16. D.J.R.H., attached to 15 Gen. Hosp. R.C.A.M.C., having been duly sworn, states:

"I am a corporal of the guard at 15 Gen. Hosp. R.C.A.M.C. and as such was on duty on the 23rd Sept. 42. At approx. 1250 hrs. on the 23rd Sept. 42, I went into the guards quarters, Pte. Elsworth was lying on his bed. I told him to report down a Ward "A", West Wing, and relieve Pte. Conrad for lunch. Pte. Elsworth said he would not do this. I then told him that it was an order and he said that he still would not do so, as he was entitled to a two hour break between shifts. I then told him to consider himself under open arrest, and that to report for duty at the West Wing. He stated that any man under open arrest could not be made to do duties, and that he would make an awful fool of the N.C.O. who made him do so. That is all, sir.

Question by Lieut. Debellis: What is the rotation + hours of duty for men on the guard?

Answer by Sgt. Dickerdyke: Nine thirty to eleven thirty on duty, and eleven thirty & thirteen hundred hours, off, 1300 hrs to 1530 hrs on, 1530 to 1730 hrs off, and so on for a total hours of 24 hrs. at the end of which the guard is relieved and the off coming guard then have 24 hrs. off. A roster to this effect is posted in the guard room daily, and is called out on parade every morning, at standing of the guards, + Pte. Elsworth was on detailed today. Sgt. Dicke. Sgt to cross

Question: Pte. Elsworth, do you wish to cross examine this witness?

Answer: The accused declines to cross examine this witness.

2nd Witness: G 17554 A/Cpl. Moore R., C.Y. Regt., 16. D.J.R.H., attached to 15 General Hosp. R.C.A.M.C. having been duly sworn, states:

"I am a Lance corporal of the guard at 15 Gen. Hosp. R.C.A.M.C. and as such was on duty on the 23rd Sept. 1942 between the hours of 1730 and 1700. I was in the guard quarters at 1230 hrs on the 23rd Sept. 42, and at approx 1245 hrs. I was standing by my bed when Corporal Dickerdyke entered the hut. The Corporal went over to Pte. Elsworth's bed and asked Pte. Elsworth to relieve one of the guards for dinner. Pte. Elsworth said that he was off duty for two hours. Sgt. Dickerdyke then told him that it was an order and that if he didn't go he would be placed under open arrest. Corporal Dickerdyke then told Elsworth that he was in open arrest, and then left the hut. I returned to the gua

office and Sgt. Baker sergeant of the guard ordered me to take Pte. Richards & Decott and escort Pte. Howarth to the guard-room. I have nothing else to say, sir. Dott marked R.

Question: Pte. Howarth, do you wish to cross examine this witness?

The accused declines to cross examine this witness.

Pte. Howarth, do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement.

I certify that the foregoing summary of evidence consisting of one and a half pages was taken down by me in writing in the presence of the accused and the rules of procedure 4(c)(D)(E) & (F) have been complied with.

23rd April. 1942.
15 Fpk. Regt. R.C.A.M.C.

J. Dalsilles
Lieut.

POST ROLL — 23 SEPT 42

Exhibit A
2 Colorful Pics

1 ST SHIFT

		0930 - 1130	1300 - 1530	1730 - 2130	2130	2330	0130 - 0330	0530 - 0730
SJ	FLYNN							
MM	LEDOUX							
MH	KOVAC							
WG	ROBOCKI							
WA	ELLSWORTH		OR					NEWMAN - REITER
WB	CORFY							
WA	CHIVERS							= BACOTTR - HALLIDAY
GR	MERRYLEES							

CLOCK ARREST — LEAVE

2 ND SHIFT

		1130 - 1300	1530 - 1730	1930 - 2130	2330 - 0130	0330 - 0530	0730 - 0930
SJ	BLANCHETTE						
MM	GALLANT						
MH	BISSELL						
WG	LAUZON						
WA	CONRAD						
WB	HARRIS						= CHIVERS
MG	ISENOR						
GR	HITCHCOCK						

LEAVE

ESCORTS = ROBERTSON - RICHARDS - MARR

Edwards placed under arrest at 1250 — 5 men placed under arrest

at 1330 — 2 placed in quarters

H.38215 Pte. Wigby, C.

Time From	Time To	Days	WOW	Destination	Address
0800.4.9.41.	0800.11.9.41.	2nd	wow		
0800.21.9.41.	0800.28.9.41.	Weekend.		Salisbury.	
0800.13.10.41.	0800.15.10.41.	Day	Off.	Oxford.	
0800 28-10-41	1700 4-11-41	3rd	WOW	Edinburgh	

POST PASS

CEASED

9-30 TO 1130	1130 TO 1300	1300 TO 1530	1530 TO 1730	1730 TO 1930	1930 TO 2130	2130 TO 2330	2330 TO 0130	0130 TO 0330	0330 TO 0530	0530 TO 0730	0730 TO 0930
1ST SHIFT	2ND SHIFT.	1	2	1	2	1	2	1	2	1	2

Exhibit B (cont.) to Deposition of Plaintiff

TIMES ON & OFF

Left Jacksonville

Dec 21-43

GUARD REPORT. Exhibit C

0930 hrs. 20th SEPT. – 0930 hrs. 21st SEPT. 1941.

Post No.	0930 hrs – 1130 hrs	1130 hrs – 1330 hrs	1330 – 1530 hrs	1530 – 1730 hrs.
1.	K92077 RIPLEY-H	K85336 HILL-G.T.	RIPLEY-H	HILL-G.T.
2.	E39859-GARNEAU-L H17360	E5181-BELANGER-R F40986	GARNEAU-L	BELANGER-R
3&4	Deromanette H17382	Lyons E.F. F40986	Deromanette	Lyons E.F.
3&3	Murray J. C4363	Kelsey L. K85426	Murray J.	Kelsey L.
5.	Loft A. K52332	Yates A.L. FF7582	Loft A.	Yates A.L.
6.	Morrison R.E. K52365	DeYoung F.J. 1375206	Morrison R.E.	DeYoung F.J.
7.	Yamplosky M. 1375097	Szwyk A. M15797	Yamplosky M.	Szwyk A.
8.	Sfero C.	Larkin	Sfero C.	Larkin

Post No.	1730 – 1930 hrs	1930 – 2130 hrs	2130 – 2330 hrs	2330 – 0130 hrs
1.	RIPLEY-H	HILL-G.T.	RIPLEY-H	HILL-G.T.
2.	GARNEAU-L	BELANGER-R	Garneau L.	Belanger R.
3&4	Deromanette	Lyons E.F.	Deromanette	Lyons E.F.
3&3	Murray J.	Kelsey L.	Murray J.	Kelsey L.
5.	Loft A.	Yates A.L.	Loft A.	Yates A.L.
6.	Morrison R.E.	DeYoung F.J.	Morrison R.E.	DeYoung F.J.
7.	Yamplosky M.	Szwyk A.	Yamplosky M.	Szwyk A.
8.	Sfero C.	Larkin	Sfero C.	Larkin

Post No.	0130 – 0330 hrs	0330 – 0530 hrs	0530 – 0730 hrs	0730 – 0930 hrs
1.	RIPLEY-H	HILL-G.T.	RIPLEY-H	HILL-G.T.
2.	Garneau L.	Belanger R.	Garneau L.	Belanger R.
3&4	Deromanette	Lyons E.F.	Deromanette	Lyons E.F.
3&3	Murray J.	Kelsey L.	Murray J.	Kelsey L.
5.	Loft A.	Yates A.L.	Loft A.	Yates A.L.
6.	Morrison R.E.	DeYoung F.J.	Morrison R.E.	DeYoung F.J.
7.	Yamplosky M.	Szwyk A.	Yamplosky M.	Szwyk A.
8.	Sfero C.	Larkin	Sfero C.	Larkin

ESCORTS. – PTE. HARRIS. H.
– REITH. DM.
– MERRITT. W.

LEAVE. – PTE DUFFUS. T.D. Tel. Sandy 12 and 6 A.M.
– PITRIE. E.J. Tel. 2389 12 and 6 A.M.

HOSPITAL. – CLAIRMONT. A.

WILLIAM BOOTH, FOUNDER

GEORGE L. CARPENTER, GENERAL

BENJAMIN ORAMEL, COMMISSIONER

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ON ACTIVE SERVICE with the CANADIAN FORCES

OVERSEAS WAR SERVICES DEPARTMENT, 17 COCKSPUR STREET, (TRAFALGAR SQUARE), LONDON, S.W.1

194

SOLDIERS UNDER GUARD.

WARD. S.J.	WARD. M.N.	WARD. M.H.	WEST WING.
Pte RANDOLPH. E.A.	Pte. MASONNEUVE. A.	Pte. AUSTIN. J.D.	Pte. STOREY. H.J.
" DUROCHER. A.J.	" NICKWL.	" THIBODEO.	" BRITZLEY.
" KLASSEN.	" EMPEY.	" PEARCE.	" WALKER.
" TETREAULT.		" DUVAL.	" DAISLEY.
" BARKER.		" DUCUAY.	" WEBSTER.
" HOPPER.		" LATHAM.	" WALLACE.
" CHOVINARD.		" PATTERSON.	" WITTLER.
		" IVES	
		" DESGANGE.	
		" HACHEY.	
		" WILSON.	
		" SUTHERLAND	
		" PORTER	

21st Sept. 1942.

REPORT.

The Guard was visited by the Sgt a Guard (Lieut) found Correct. I visited my S.W.S. found all correct.

SIGNED - [signature] N.C.O. i/c GUARD.

GUARD TAKEN OVER. MEN UNDER CLOSE ARREST CHECKED AND ALL FOUND CORRECT.

[signature] N.C.O. RELIEVING GUARD

0930 hrs. 21st SEPT. 1942.

CONRAD REPORT

0130 Hrs 21st Sept. — 0930 Hrs 22nd Sept.

POST No.	0730 hrs – 1130 hrs	1130 hrs – 1830 hrs	1930 hrs – 2330 hrs	2330 hrs – 0730 hrs
1	ISENOR	BECOTTE	ISENOR	BECOTTE
2	BLANCHETTE	ROGOCKI	BLANCHETTE	ROGOCKI
3	COUSINS	KOVAC	COUSINS	KOVAC
4	BISSELL	CONRAD	BISSELL	CONRAD
5	GALLANT	RICHARDS	GALLANT	RICHARDS
6	MARR	NEWMAN	MARR	NEWMAN
7	LAUZON	ROBERTSON	LAUZON	ROBERTSON
8	MERRYLEES	HITCHCOCK	MERRYLEES	HITCHCOCK

POST No.	1730 hrs – 1930 hrs	1930 hrs – 2130 hrs	2130 hrs – 2330 hrs	2330 hrs – 0130 hrs
1	ISENOR	BECOTTE	ISENOR	BECOTTE
2	BLANCHETTE	ROGOCKI	BLANCHETTE	ROGOCKI
3	COUSINS	KOVAC	COUSINS	KOVAC
4	BISSELL	CONRAD	BISSELL	CONRAD
5	GALLANT	RICHARDS	GALLANT	RICHARDS
6	MARR	NEWMAN	MARR	NEWMAN
7	LAUZON	ROBERTSON	LAUZON	ROBERTSON
8	MERRYLEES	HITCHCOCK	MERRYLEES	HITCHCOCK

POST No.	0130 hrs – 0330 hrs	0330 hrs – 0530 hrs	0530 hrs – 0730 hrs	0730 hrs – 0930 hrs
1	ISENOR	BECOTTE	ISENOR	BECOTTE
2	BLANCHETTE	ROGOCKI	BLANCHETTE	ROGOCKI
3	COUSINS	KOVAC	COUSINS	KOVAC
4	BISSELL	CONRAD	BISSELL	CONRAD
5	GALLANT	RICHARDS	GALLANT	RICHARDS
6	MARR	NEWMAN	MARR	NEWMAN
7	LAUZON	ROBERTSON	LAUZON	ROBERTSON
8	MERRYLEES	HITCHCOCK	MERRYLEES	HITCHCOCK

" COREY / LEAVE. DUFFELL C.

ESCORTS - FLYNN. " FITZEL L.V.

ELLSWORTH - HARRIS / HOSPITAL. CLAIMMA.
LEDOCKI

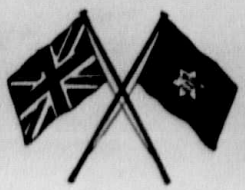
WILLIAM BOOTH, FOUNDER — GEORGE L. CARPENTER, GENERAL — BENJAMIN ORAMEL, COMMISSIONER

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ON ACTIVE SERVICE with the CANADIAN FORCES



194

SOLDIERS UNDER GUARD.

WARD S.T.	WARD M.N.	WARD M.H.	WEST WING
RANDOLPH	MAISONNAVE.	AUSTIN.	STORRY
DEROCHAR	NICK.	PEARCE.	FRITZLEY
KLASSEN	EMPEY	DUVAL	WARREN
TETREAULT		LATHAM	[illegible]
BARKER		PATTERSON	DAISLEY
HOPPER		IVES	WEBSTER
CHOVINARD		DESGANGES	WARACC.
		MACHEY	WIPPER
		PORTER	
		UNIT. B.R.	
		WILSON	
		SUTHERLAND	
		THIBODEAU	
		DUBUAY	

REPORT. 23rd Sept. 42.

Much all Cases I guard & each time I checked the B.M.P. when I took over this man there was three B.M.P. in the Guard room & after C.O. this there was four found in there, there was no entered incidents. Relieved 5 Guards on the Guard at 0900 [illegible] N.C.O. IC. GUARD

GUARD TAKEN OVER. MEN UNDER CLOSE ARREST CHECKED. [illegible] N.C.O. IC. GUARD

AND ALL. FOUND CORRECT. [illegible] N.C.O. RELIEVING GUARD 0900 hrs. 0900 hrs 23 Sept.

GUARD REPORT

0930 hrs 22nd Sept. - 0930 hrs 23rd Sept.

Post No.	0930 hrs - 1130 hrs	1130 hrs - 1300 hrs	1300 hrs - 1530 hrs	1530 hrs - 1730 hrs
1	Merritt	Reith D.M.	Merritt	Reith D.M.
2	Dell S.T.	Loft A	Dell G.T.	Loft A
3	Yate S	Murray J	Yate S	Murray J
4	Kelsey L	Deromanette	Kelsey L	Deromanette
5	Garneau L	Belanger R	Garneau L	Belanger R
6	Deyoung	Marrison S	Deyoung	Marrison S
7	Sywyk	Yamfokky M	Sywyk	Yamfokky M
8	Ripley	Harris H	Ripley	Harris H

Post No.	1130 hrs - 1930 hrs	1930 hrs - 2130 hrs	2130 hrs - 2330 hrs	2330 hrs - 0130 hrs
1				
2	Hill S.T.	Lofts A	Dell G.T.	Lofts A
3	Yate S	Murray J	Yate S	Murray J
4	Kelsey L	Deromanette	Kelsey L	Deromanette
5	Garneau L	Belanger R	Garneau L	Belanger R
6	Deyoung	Marrison S	Deyoung	Marrison S
7	Sywyk	Yamfokky M	Sywyk	Yamfokky M
8	Ripley H	Harris H	Ripley	Harris H

Post No.	0130 hrs - 0330 hrs	0330 hrs - 0530 hrs	0530 hrs - 0730 hrs	0730 hrs - 0930 hrs
1				
2	Duffe	Hill G.T.	Lofts A	Dell G.T.
3	Reith A	Yate S	Murray J	Yates S
4	Merritt	Kelsey L	Deromanette	Kelsey L
5	Garneau L	Belanger R	Garneau L	Belanger R
6	Deyoung	Marrison S	Deyoung	Reith A
7	Sywyk	Yamfokky M	Sywyk	Duffe
8	Ripley H	Harris H	Ripley	Harris H

SPERO
ESCORTS. AARKIN
LYONS.

LEAVE PETRIE 23rd Sept. 7:11 23 Sept
PASS. CAMPMONT 7:11 00 hrs 24 Sept
LEAVE CHIVERS 7:11 00 hrs 25 Sept

WILLIAM BOOTH, FOUNDER

GEORGE L. CARPENTER, GENERAL

BENJAMIN ORAMEL, COMMISSIONER

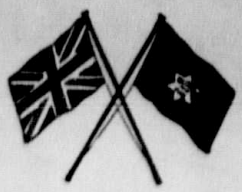
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OVERSEAS WAR SERVICES DEPARTMENT

17 COCKSPUR STREET, (TRAFALGAR SQUARE), LONDON, S.W. 1

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194

SOLDIERS UNDER GUARD

WARD S.J.	WARD M.N.	WARD M.H.	WEST WING A & B.
Randolph.	Maisonneuve	Champagne	Storey
Klassen.	Empty	Austin	Fritzley
Letreault.	Cota - T.F.	Pearce	Walker
Barker.		Duval	Daisley
Hopper.		Latham	Wallace
		Patterson	Kittler
		Ives	Webster
		Desgange	SPINKS.
		Dackey	
		Porter	

REPORT.

No Cakies for the bed ins the Guard Room? 23rd Sept 44.
The Guard be visited every two hours in found all correct?

SIGNED - F Deschatelets Cpl
N.C.O. I/C. GUARD.

GUARD TAKEN OVER, MEN UNDER CLOSE ARREST CHECKED & FOUND CORRECT - J Burleigh Cpl
N.C.O. I/C RELIEVING GUARD
0430 hrs 23rd Sept 44.

23 SEPT 42

POST ROLL

	0930-1130	1130-1300	1300-1530	1530-1730
SJ	FLYNN	BLANCHETTE	FLYNN	BLANCHETTE
MN	LEDOUX	GALLANT	LEDOUX	GALLANT
MH	KOVAC	BISSELL	KOVAC	BISSELL
WG	ROGOCKI	LAUZON	ROGOCKI	LAUZON
WH	~~NEWMAN~~ ELSWORTH	CONRAD	NEWMAN	CONRAD
WO	CORRY	HARRIS	CORRY	HARRIS
MG	COUSINS	CHIVERS (SENORO 5:30)	COUSINS	CHIVERS
GR	BECOTTE	HITCHCOCK	BECOTTE	BECOTTE

	1730-1930	1930-2130	2130-2330	2330-0130
SJ	FLYNN	BLANCHETTE	FLYNN	BLANCHETTE
MN	LEDOUX	GALLANT	LEDOUX	GALLANT
MH	KOVAC	BISSELL	KOVAC	BISSELL
WG	NEWMAN	CONRAD	NEWMAN	CONRAD
WH	CORRY	HARRIS	CORRY	HARRIS
WO	ROGOCKI	LAUZON	ROGOCKI	LAUZON
MG	COUSINS	CHIVERS	COUSINS	CHIVERS
GR	BECOTTE	HITCHCOCK	BECOTTE	HITCHCOCK

	0130-0330	0330-0530	0530-0730	0730-0930
SJ	FLYNN	BLANCHETTE	FLYNN	BLANCHETTE
MN	LEDOUX	GALLANT	LEDOUX	GALLANT
MH	KOVAC	BISSELL	KOVAC	BISSELL
WG	ROGOCKI	LAUZON	ROGOCKI	LAUZON
WH	~~CORRY~~ NEWMAN	CONRAD	NEWMAN	CONRAD
WO	CORRY	HARRIS	CORRY	HARRIS
MG	COUSINS	CHIVERS	COUSINS	CHIVERS
GR	BECOTTE	HITCHCOCK	BECOTTE	HITCHCOCK

ESCORTS

ROBERTSON
RICHARDS
MAHER.

WILLIAM BOOTH, FOUNDER

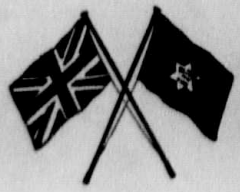
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OVERSEAS WAR SERVICES DEPARTMENT:
17 COCKSPUR STREET, (TRAFALGAR SQUARE), LONDON, S.W. 1

S. U. S.

Soldiers under Pastoral Guardianship

194

S. J.	M. N.	M. H.	W. W.
RANDOLPH	MAISONNAVE	AUSTIN	STOREY.
KLASSEN	EMPEY	PEARCE.	FRITZLEY
TETREAULT	COT A. T. F.	DUVAL	WALKER
BARKER		LATHAM	DAISLEY
HOPPER		PATTERSON	WEBSTER
ABBOTT.		IVES	WALLACE
		DESGANGES	WITTLER
		HACHEY	SPINKS
		CHAMPAGNE	
		PORTER.	

REMARKS

Made all changes I heard while on the air at 1230 & also Capt Baker changed time at 12.30 Lt Blanch reported to & asked him make an error & notified Capt Baker who in turn notified the R.S.M. & Lt Babcock & they & made no effort to make corrections I attended the S.O. office for morning [illegible] & gave it to Miss Sillaker who has a written to do after office hrs gave his address also Lt Blanch was

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THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANDIDIAN FORCES

NCO i/c Guard 194

In Charge

Signed Pte Bickley
NCO 8th Guard

I found all armed + in
order + a total of 37
P W D in the Lockup

Signed J Deschatelets Pte
(New Guard)

Issued today out.
Lantern locked.
All prisoners in order, checked
& found correct.

NCO Relieving Guard

Continuation

escaped back to the guard room, this man supply was picked up by Pte Richards & taken up to the guard room at 17.50 hrs at 2345 I picked up the mess duffle at the mess hall & brought same to the guards hut & each man had 2 full mess tins & knife & fork & each man was well satisfied at the present time there is at the present 27 persons in the hospital split up as follows S.T 6 M.T. 3 M.H. 10 W.W. 8 at 0930 hrs I handed the guard over to the new guard, the old guard was dismissed & I guard at 0930 hrs of the 2-4-9-42 after completing a full 24 hrs

GUARD REPORT

0930 hrs 24 R Sept — 0930 hrs 25 R Sept. 1902

Post No.	0930 hrs – 1130 hrs	1130 hrs – 1330 hrs	1330 hrs – 1530 hrs	1530 hrs – 1730 hrs
1	Loft. a	CARNEAU.	LOFT. a	CARNEAU.
2	RIPLEY.	YATES.	RIPLEY.	YATES.
3	BELANGER.	SPERO.	BELANGER.	SPERO.
4	DEROMANETTE.	HARRIS.	DEROMANETTE	HARRIS.
5	MURRAY.	MERRITT.	MURRAY.	MERRITT.
6	MARRISON.	CLAIRMONT.	MARRISON.	CLAIRMONT.
7	DEYOUNG.	KELSEY.	DEYOUNG.	KELSEY.
8	Yamfekky	Syvyk	Yamfekky	Syvyk

Post No.	1130 hrs – 1930 hrs	1930 hrs – 2130 hrs	2130 hrs 2330 hrs.	2330 hrs – 0130 hrs
1	LOFT. a	Garneau.	Loft. a	Garneau.
2	Ripley	YATES.	Ripley	Yates
3	Belanger	Spero	Belanger	Spero
4	Deromanette	Harris	Deromanette	Harris
5	Murray	Merritt	Murray	Merritt
6	Marrison.	Clairmont	Marrison	Clairmont
7	Deyoung	Kelsey	Deyoung	Kelsey
8	Yamfekky	Syvyk	Yamfekky	Syvyk

Post No.	0130 hrs – 0330 hrs	0330 hrs – 0530 hrs	0530 hrs – 0730 hrs	0730 hrs – 0930 hrs
1	Loft a	Garneau	Loft a	Garneau
2	Ripley	Yates	Ripley	Yates
3	Belanger	Spero	Belanger	Spero
4	Deromanette	Harris	Deromanette	Harris
5	Murray	Merritt	Murray	Merritt
6	Marrison	Clairmont	Marrison	Clairmont
7	Deyoung	Kelsey	Deyoung	Kelsey
8	yamfekky	Syvyk	yamfekky	Syvyk

ESCORT Hill

ESCORT Duffus.

H.Q. Orderly Petrie

Rift Shore

Kyan Ecclage

WILLIAM BOOTH, FOUNDER

GEORGE L. CARPENTER, GENERAL

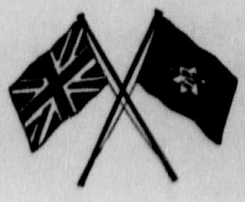
BENJAMIN ORAMEL, COMMISSIONER

"Keep in touch with the folks at home"

THE SALVATION ARMY

OVERSEAS WAR SERVICES DEPARTMENT:
17 COCKSPUR STREET, (TRAFALGAR SQUARE), LONDON, S.W.1

ON ACTIVE SERVICE with the CANADIAN FORCES



194

SOLDIERS UNDER MILITARY CUSTODY.

WARD S.T.	WARD M.N.	WARD M.H.	WEST WING.
RANDOLPH.	MAISONNAVE	CHAMPAGNE. E	STOREY.
KLASSEN.	COTA. T.T.	AUSTIN.	FRITZLEY.
JETREAULT.		PEARCE.	DAISLEY.
BARKER.		DUVAL.	WALLACE.
HOPPER.		PATTERSON.	WITTLER.
ABOTT.		IVES.	WEBSTER.
BOLDUC.		DESCANCE	COLEMAN. V.E.
		HACHEY.	SPINKS.
		PORTER.	MILLER.
			JONES.

N.C.Os. REPORT. SEPT. 25th. 1942.

Each man of the Guard received a cup of hot (tea) Bovril. I visited all my sentries is found all correct.

SIGNED - [illegible] N.C.O i/c GUARD

Guard tubes over, the under clothes changed checked and all found correct. SIGNED - [illegible]

N.C.O i/c RELIEVING GUARD

POST ROLL

25 SEPT 42

	0930 TO 1130	1130 TO 1300	1300 - 1530	1630 - 1730
SJ	ROBERTSON	CHIVERS	ROBERTSON	CHIVERS
MN	RICHARDS	FLYNN	RICHARDS	FLYNN
MH	NEWMAN	KOVAC	NEWMAN	KOVAC
WG	MARR	ROSOCKI	MARR	ROSOCKI
WA	BECOTTE	BISSELL	BECOTTE	BISSELL
WB	COUSINS	HARRIS	COUSINS	HARRIS
MG	BLANCHETTE	LEDOUX	BLANCHETTE	LEDOUX
GR	CORRY	CONRAD	CORRY	CONRAD

	1730 - 1930	1930 2130	2130 2330	2330 0130
SJ	ROBERTSON	CHIVERS	ROBERTSON	CHIVERS
MN	RICHARDS	FLYNN	RICHARDS	FLYNN
MH	NEWMAN	KOVAC	NEWMAN	KOVAC
WG	MARR	ROSOCKI	MARR	ROSOCKI
WA	BECOTTE	BISSELL	BECOTTE	BISSELL
WB	COUSINS	HARRIS	COUSINS	HARRIS
MG	BLANCHETTE	LEDOUX	BLANCHETTE	LEDOUX
GR	CORRY	CONRAD	CORRY	CONRAD

	0130 - 0330	0330 0530	0530 - 0730	0730 - 0930
SJ	ROBERTSON	CHIVERS	ROBERTSON	CHIVERS
MN	RICHARDS	FLYNN	RICHARDS	FLYNN
MH	NEWMAN	KOVAC	NEWMAN	KOVAC
WB	BECOTTE	BISSELL	BECOTTE	BISSELL
WA	COUSINS	HARRIS	COUSINS	HARRIS
WG	MARR	ROSOCKI	MARR	ROSOCKI
MG	BLANCHETTE	LEDOUX	BLANCHETTE	LEDOUX
GR	CORRY	CONRAD	CORRY	CORRY

ESCORTS

LUZON
GALLANT
HITCHCOCK

WILLIAM BOOTH, FOUNDER — GEORGE L. CARPENTER, GENERAL — BENJAMIN ORAMEL, COMMISSIONER

"Keep in touch with the folks at home"

THE SALVATION ARMY

OVERSEAS WAR SERVICES DEPARTMENT
17 COCKSPUR STREET, (TRAFALGAR SQUARE), LONDON, S.W.1

ON ACTIVE SERVICE
with the
CANADIAN FORCES

S. U. S. Rohh.

194

S. J	M. N.	M. N.	W. W.
RANDOLPH	MAISONNEUVE	AUSTIN	STOREY
KLASSEN	COTA.	PRARCE.	FRITZLEY
TETRAULT		DUWAH	DAISLEY
BARKER		PATTERSON	WEBSTER
HOPPER		IVES	WALLACE
BOLDUC		DESGANGE.	WITTLER
		HACHEY	SONAS
	2	CHAMPAGNE	GLOVER
	UNIT GUARD ROOM	PORTER	GAROL
	ELLSWORTH.	ABBEY	ROBINSON
			COLEMAN
6	1	9	10 JONES

REMARKS

TOTAL S.U.S. ~~23~~ 31

I changed all guards & checked all the S.U.S & found them to be all correct & I had a complaint from Klassen in the unit & he is not getty back all like a rich off yesterday I hope it all up & for his name & he get the 5th guard back.

Sgt. Sandwich — S.U.S. Guard — A.C.O. — J. Sickaluk. Sgt.

2320 hrs

RELIEVING N.C.O

One complaint from the guards that they would like to have a shelter for the guards & there has been noted T.O.C.O. on 2-2-43

26-Sept 42. to 27 Sept 42.

GUARD REPORT.

1030 - 1130	1130 - 1330	1330 - 1530	1530 - 1730
CLAIRMONT.	HARRIS.	CLAIRMONT.	HARRIS.
DELANGER.	CARNEAU.	DELANGER.	CARNEAU.
DEROMANETTE.	KELSEY.	DEROMANETTE	KELSEY.
RIPLEY.	YATES.	RIPLEY.	YATES.
WILSON.	MARRISON.	WILSON	HILL.
MURRAY.	DUFFUS.	MURRAY.	DUFFUS.
REITH	LOFT.	REITH	LOFT.
SPERO.	HILL.	SPERO.	MERRITT.

1730 - 1930	1930 - 2130	2130 - 2330	2330 - 0130
CLAIRMONT.	MARRISON.	CLAIRMONT.	MARRISON.
DELANGER.	CARNEAU.	DELANGER.	CARNEAU.
DEROMANETTE.	KELSEY.	DEROMANETTE.	KELSEY.
RIPLEY.	DUFFUS.	RIPLEY.	DUFFUS.
HILL.	WILSON.	YATES.	HILL
MURRAY.	PITRE.	MURRAY.	PITRE.
REITH	LOFT.	REITH.	LOFT.
HARRIS.	SPERO.	MERRITT.	HARRIS.

0130 - 0330	0330 - 0530	0530 - 0730	0730 - 0930
CLAIRMONT.	Marrison	Clairmont.	Marrison.
DELANGER.	Harrison	Delanger.	Harrison.
DEROMANETTE.	Kelsey.	Deromanette.	Kelsey.
RIPLEY.	Duffus.	Ripley.	Duffus.
Wilson.	Yates.	Hill.	Wilson.
Murray.	Pitre.	Murray.	Pitre.
Reith.	Loft.	Reith.	Loft.
Spero.	Merritt.	Reith.	Spero.

YAMPOLSKY.
DEYOUNG.
SYWYK
} ESCORT

Soldiers under Military Custody.

Det.	Det.	Det.	Guard	Guard Room
RANDOLPH.	MAISONNEUVE	CHAMPAGNE	STOREY.	ELSWORTH.
KLASSEN.	COTA	AUSTIN.	FRITZLEY.	
JETREAULT.		PEARCE.	DOISLEY.	
BARKER.		PATTERSON.	WALLACE.	
HOPPER.		IVES	WEBSTER.	
ABOTT.		DESCANCE.	COLEMAN.	
DOLDUC.		HACHEY.	SPINKS.	
		PORTER.	MILLES.	
		ASPREY.	JONES	
			ROBINSON.	
			CAREL.	

R.C.D's Report

I checked soldiers Robinson in soldiers under military custody every two hours found correct. Private me Guard his found correct?

J. Deschatelets Pte

Guard mount over.
Sentries posted.
All soldiers in custody checked and found correct.

J. Deschatelets Pte

Buckled E. My Clerk to Mg: Cons

M.F.M. 6
A.F.B. 122
17M—7-41 (1510—39)
H.Q. 1772-48-1652

No. 816127 Name Elsworth, J.A. Sqn., Battery, or Company HQS Corps R.P.C.L.I. Date of enlistment 24 Sep. 39 G.C. Badges NIL Service or Proficiency Pay NIL

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. A.P.M. Pacific Command | Character Major

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Delville Brks.	18/4/40	Pte		WOAS Causing wilfull damage to Government Property	pcw.Clarke J.C.	7 days C.B. Stoppages of pay $3.8.5.	1.5.40	Lt.R.P. Clarke	
Oldham	18/8.40	A/L/C		WOAS Improperly dressed & wearing a revolver when walking out.	Ptes Lafontaine Dugan and Taylor	Reduced to rank of private	19/8/40	Capt.Stedman	
Witley	13/3/41	Pte		WOAS A.W.L. from 0630 hrs. 13/3/41 until 1250 hrs. 15/3/41. (Absent 2 days 6 hrs. 20 min) (AA Sec.15(1)		10 days pay	20/3/41	Lt.Col. Redman	Forfeits 3 days pay by PRAI.149 (1)(e) Cost of apprehension and return $1.19 9d.

PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley	12/4/41	Pte		WOAS Insubordinate language to an N.C.O. A.A. Sec.40.	Cpl.deFonseca Cpl.Williamson	7 days detention	15/4/41	Lt.Col.Redman	
O.A.S.	12/5/41	Pte		WOAS an offence under AA Sec.9 (1)	Sgt. Lewis	7 days C.B.	15/5/41	R.A. Starke Major	
O.A.S.	11/6/41	Pte		WOAS Offences under AA Sec.11, AA Sec.40	Cpl.Strom,C. L/C Pritchard	3 days C.B.	13/6/41	Lt.S.A. Cobbett	
O.A.S.	11/6/41	Pte.		WOAS offence under AA Sec.14(1)	L/C. Popham	168 hrs. detention	17/6/41	Lt.Col.R.F.Keller	
O.A.S.	26/5/41	Pte		WOAS an offence under AA. Sec.15(2)	Cpl.Crabtree J.C.	7 days C.B.	27.6.41	R.A.Starke Major	

No. H16127 Name Elsworth, J.A. Sqn., Battery, or Company nil Corps P.P.C.L.I. Date of enlistment 14 Sep. 39 G.C. Badges nil Service or Proficiency Pay nil

M.F.M. 6
A.F.B. 122
(15M—7-41 (1210-20)
H.Q. 1752-21-1651

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. A.F.T. Pacific Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
O.A.S.	3/7/41	Pte		WOAS an offence under AA Sec. 9(1) 1.	Cpl.Falconer,J	7 days C.B.	4/7/41	R.A.Starke,Major	
O.A.S.	4/7/41	Pte		WOAS Offences under Sec.15(1) (absent 11 days 21 hrs.) 2. Sec.9(1) 3. Sec.18 (1)	Cpl.Strom,C. L/C.Humeworth Documentary	21 days Detention		Lt.Col.R.A. Lindsay	Forfeits 12 day say by PRAI 149(1)(a) Total forfeiture 33 days say, cost of apprehension and return.

(P.T.O.)

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
O.A.S.	20/4/42	Pte		WOAS an offence under AA Sec.15(1) (Absent 3 days, 9 hrs, 30 mins)	Sgt.Klywchuk,W.	10 days detention	27.4.42	Lt.Col.Lindsay	Forfeits 4 days pay by PR&I 149(1)(a)
O.A.S.	2.5.42	Pte		WOAS 1st Charge AA Sec.9(1) 2nd Charge AA Sec.9(1)	Sgt.Strom, S.A Pte.Longmuir	90 days detention	16.5.42	F.G.C.M. Confirmed by Brigadier W. 2nd C.A Inf Bde.	

CERTIFIED TRUE COPY

(R.M. Harvie, E.D.) Officer Commanding.

Exhibit D-44
my Clerk Pte.

M.F.B. 355
5M-10-39 (2492)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H.16127	Pte.	Elsworth, J.A.	1 CDIRU att. #15 Gen. Hosp.

1. The following is a fair and true summary of the entries in the ~~Regimental~~ Service and General Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Army Act~~ Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For Sect.9(1) A.A.	nil	times	three	times
For Sect.15(1) A.A.	one	times	four	times
For Sect.15(2) A.A.	Nil	times	one	times
For Sect.40 A.A.	nil	times	four	times

Number of instances of gallantry or distinguished conduct NIL

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial ~~or a civil court, of summary awards under Air Force Act~~ A.F.A. 73 ~~Section 47 of the Army Act and dispensations with trial under A.A. 73~~ are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for _____ beginning on the _____ day of _____~~

4. The accused has been in confinement awaiting trial on the present charges, for N/K days in civil custody, and 7 days in military custody, making a total of 7 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 28 years ~~attestation paper is~~

6. ~~The date of his commission specified in his record of service is attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. The accused is entitled to reckon 3 yrs. service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to an air force decoration, or air force reward (or a military) in possession of or entitled to). State any air force decoration or reward. military~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N.A.

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force (RCAF)

~~_____ dated _____, and in his regiment (or corps), the rank of~~

~~_____ dated _____~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

_____ Date of promotion.

In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~

Of convictions by a court-martial ~~or civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with~~ of accused, Number R.16127 Rank Pte.

Name Elsworth, J.A. of 1 CBINU att. #15 Cdn.Gen.Hosp Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	2 May 42 In the field	1st charge: Sect.9(1) AA 2nd charge: Sect.9(1) AA	90 days detention.	29 days remissio under rules for Detention Bar- racks and Mil- itary Prisons

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of Sep 42 W.M. Harris Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked _____ signed by the president, and annexed to the proceedings.

I, H16127, Private J.A. Elsworth, desire to have H16050, Pte. Mulvey, C., 1 CDIRU (PPCLI) (Barrister) assigned to represent me at my trial.

Failing Pte. Mulvey, I wish to have Lt.Col. Lawson, M.C. (1 CDIRU) assigned to represent me.

24 Sep 42.

J.A. Elsworth

Pte. J.A. Elsworth, H.16127

-53-M
H-1617 Pte. Edwards J.A.

O. H. M. S.

M. F. B. 270

53-M

CONFIDENTIAL

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this Eleventh day of May, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of 2nd Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

~~*(1. Five Officers to form the Court.)~~

*(2. A Field Officer as President.) Capt

for the following reasons, namely :—]

due to the exigencies of the service.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVIEWED

8 Sep 42

President.

Rank.	Name.	Regiment.
Capt	D.T. Pugh	Carleton & York

Members.

Rank.	Name.	Regiment.
Lieut	W.D. Robinson	Nfld R
Lieut	R.A. MacDonald	Nfld R
Lieut	F.C. Hall	Regiment of C

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may simply be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Arthur Potts

Commanding 2nd Can Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	Confirmation, etc., and Date of Execution
11617 Pte. [illegible] F.F.Y.M.R.	1st Charge A.A. Sec 7 (1) Guilty Did [illegible] such a [illegible] of authority. 2nd Charge A.A. Sec 7 (1) Did [illegible] such & manner as [illegible] of authority.	Guilty Guilty	40 Days Detention Awarded Brigade Cadre Lieut Col	Sentence Confirmed Arthur E Pott Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 30 (d)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) Arthur E Pott (Signed) R. Lungs Capt. Lieut Col. President.
Commanding 2 Inf. Bde. Confirming Officer (e) Lieut Col. President.

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns on the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 16th day of May A.D. 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. ~~The witnesses~~
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 16th day of May A.D. 1942.

R. Lungs Capt.
President of the Court Martial.
Lieut Col.

* See footnote (a) on page 782 M.M.I. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentences.

Signed this day of 19 .

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the confirming officer who has authority to commit to prison, detention barrack, or having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 19 day of May 1942

Arthur E Pott Brigadier,
Confirming Officer. Comdg. 2nd Can. Inf. Bde.

Promulgated and extracts taken in the case of

(Dated) 19 May 42 (Signed) R. Lungs Capt. Lieut Col. Commanding, P.P.C.L.I.

Promulgated and extracts taken in the case of

(Dated) 20 May 42 (Signed) for J.C. Jeffrey Capt. Lieut Col. Deputy Judge Advocate

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

I direct that the record of the conviction in the case of the prisoner mentioned in the margin hereof be confirmed and that the sentence of 40 days detention be carried into execution.
Brigade Headquarters, Canadian Section, 6th Corps Education Centre
16th May 1942

P 5-4-1
P.P.C.L.I.
6 May 42

2 Can Inf Bde.

B.296 - Statement of Character

The s/n form, in the case of H16127 Pte. Elsworth J.A., cannot be submitted due to the fact that the necessary forms cannot be obtained at the present time.

R.A. Lindsay

(R.A. Lindsay) Lieut-Col.
Commanding, P.P.C.L.I.

I, H16127 Private John Arthurs ELSWORTH, desire that an officer be assigned by the Convening Officer to represent me at my trial, if available.

(H16127 Pte. Elsworth J.A.)
P.P.C.L.I.

C.A.S.
6 May 42

"B"

CHARGE SHEET

The accused, H16127 Private John Arthurs ELSWORTH, Princess Patricia's Canadian Light Infantry, a soldier of the Canadian Army Active Force, is charged with, while on Active Service:

1st Charge
N.D.A. Sec 9(1)

DISOBEYING IN SUCH A MANNER AS TO SHOW WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS REGIMENTAL POLICE ESCORT, IN THE EXECUTION OF HIS DUTY

in that he

At Hassocks, Sussex, at about 2010 hrs on the 2 May 42, when personally ordered by H16489 Pte. Longmuir W.G., Regimental Policeman in charge, P.P.C.L.I., to scrub some stairs, said: "You go fuck yourself".

2nd Charge
N.D.A. Sec 9(1)

DISOBEYING IN SUCH A MANNER AS TO SHOW WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER, IN THE EXECUTION OF HIS OFFICE

in that he

At Hassocks, Sussex, at about 2010 hrs on the 2 May 42, when personally ordered by KD5230 Sgt. Strom C.A., Regimental Provost Sergeant, P.P.C.L.I., to scrub some stairs, said: "I refuse to do it".

R.A. Lindsay
(R.A. Lindsay) Lieut-Col.
Commanding, P.P.C.L.I.

O.A.S.
6 May 42

Arthurs Roth

To be tried by field general court martial

Brigadier,
Comdg. 2 Cdn. Inf. Bde.

This is to certify that I have examined H16127
Pte. Elsworth J.A., P.P.C.L.I., and find him
fit to undergo trial by Court Martial.

(J.G. McCarroll) Capt.
R.C.A.M.C.

O.A.S.
16 May 42

- Proceedings of a Field General Court Martial on Active Service held in the Field on the 16 th day of May 1942 by order of Brigadier Arthur E. Potts, Commanding 2 Cdn Inf Bde dated the 11th day of May 1942.

President

Capt. D.V. Pugh, Seaforth of C

Members

Lieut. H.S. Robinson, Edmn R
Lieut. W.G. Roxburgh, Edmn R
Lieut. F.C. Hall, Seaforth of C

Trial of H16127, Pte. Elsworth, J.A., Princess Patricia Canadian Light Infantry.

The Court satisfy themselves that Lieut. H.S. Robinson is not eligible to serve owing to not being commissioned one year.

Lieut. F.C. Hall, waiting member, takes his place as a member of the Court.

The court satisfy themselves as provided by Rules of Proced re 22 and 23.

The accused is brought before the Court.

Prosecutor:- Lieut. C.H. McDougall P.P.C.L.I.
Defending Officer: Lieut. J.H. Lynch P.P.C.L.I.

At 1345 o'clock the trial commences.

The order convening the Court is read and marked "A", signed by the President and attached to the proceedings.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as president or by any of the officers whose names you have heard read over?

Answer. No.

The President and Members are duly sworn.

The following officers under instruction is duly sworn:-

Lieut. H.S. Robinson, Edmn R.

The Charge Sheet is signed by the President, marked "B" and annexed to the proceedings.

The accused is arraigned upon each charge in the above centioned charge-sheet.

Are you guilty or not guilty of the first charge against you which you have heard read?

Answer. Guilty

Provisions of Rule 35 (b) are complied with.

Are yo guilty or not guilty of the second charge against yo which you have heard read?

Answer. Guilty

Provisions of Rule 35 (b) are complied with.

The accused does not wish to make any statement with reference to the first charge nor to the second charge under rule 37 (b).

The Summary of evidence is read, marked "C", signed by the President and attached to the proceedings.

Do yo wish to make any statement in mitigation of punishment?

Answer. Yes.

The accused in mitigation of punishment hands in a written statement which is read, marked "D", signed by the President and attached to the proceedings.

Do yo wish to give evidence yourself or to call any witnesses as to character?

Answer. No.

Prosecutor produces statement of character in lieu of one which is marked "E", the prosecutor produces Exh 6 (certified copy) of the accused which is marked "F", signed by the President and attached to the proceedings.

Medical certificate was handed in before commencement of proceedings and is appended hereto, signed by the President and marked "G".

The Court is closed for the consideration of the sentence.

President

D.V. Pugh Capt.
Seaforth of C.

"D"

In my plea for mitigation of sentence I wish to draw the attention of the court to the following:- On the day in question Pte. Longmuir told me that I had to scrub the ~~basement~~ stairs, clean up the basement hall, two very filthy cupboards, the passageway and the outside stairs. He further told me that if I did not hurry up & get it finished that I would be there all night & he would remain there with me. All this work was over & above what the remainder of the prisoners were called upon to do. Private Longmuir seemed to take great delight in making things as unpleasant as possible for me.

Prior to being placed in detention I was in the regimental sick bay for some period ~~with~~ with chest trouble. I was placed on light duty by

the M.O. pending an X-ray. Up until May 2nd, whilst in detention, I was called upon to do the work of the average full duty man in detention, with the exception of pack drill. Because of this I became quite fatigued early in the afternoons, with the result that my work slowed up and the R.P. in charge was continually trying to hurry me along.

This, coupled with, in my idea, the unfair distribution of the work to be done, provoked me into saying that which I did.

[signature]

[signature]
Capt.
Leavenworth D. C.

President

Summary of Evidence in the case of H16127 Pte. ELSWORTH John Arthurs, "C" Coy, P.P.C.L.I. "C"

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

1st WITNESS for the PROSECUTION

K85230 Sgt. Strom, C.A. Provost Sgt, P.P.C.L.I., having been duly sworn, states:

"On the 2 May 42 at 2010 hrs I was standing at the top of the stairs on the ground floor at Bn. H.Q. when I heard Pte. Longmuir order the accused to start scrubbing the stairs. The accused said to Pte. Longmuir, "You go fuck yourself," using these exact words. I then approached the accused and Pte. Longmuir and heard the order repeated. The accused then said to Pte. Longmuir, "I won't do it." I then personally ordered the accused to scrub the stairs immediately. The accused turned around to me and said "I refuse to do it." I ordered him marched to the guard room where I informed him a charge would be laid.

K85230 C.A. Strom Sgt

The accused declines to question the witness. (R.P. 4(D)

2nd WITNESS for the PROSECUTION

H16489 Pte. Longmuir, W.G., Regt'l Police, P.P.C.L.I., having been duly sworn, states:

"On the 2 May 42 at 1600 hrs I was in charge of the fatigue party provided by the soldiers under sentence, whose task was to scrub the entire Bn. H.Q. About 2010 hrs when on the last staircase I ordered the accused to go up and scrub the stairs, he said to me, "You go fuck yourself." I repeated the order and he replied, "I will not go." I repeated the order again, saying, "Pte. Elsworth, you go up and scrub them stairs right now," but he replied, "I will not do it." Sgt. Strom then approached and repeated the same order. The accused said to him "I will not do it." Sgt. Strom then marched him to the guard room.

H.16489 W.G. Longmuir Pte.

The accused declines to question the witness. (R.P. 4 (D).

The Accused having been duly cautioned in accordance with Rules of Procedure 4(E) reserves his defence.

Certified that Rules of Procedure, 4 (C) (D) (E) (F) have been complied with.

Taken down by me in the presence and hearing of the accused, this 5th day of May 1942, at Hassocks, Sussex, in the Battalion Orderly Room, P.P.C.L.I.

C.M. McDougall Lieut.
(C.M. McDougall) Lieut.
P.P.C.L.I.

D. Strong Capt
Toronto Scottish R.C.

"E"

SHORT STATEMENT AS TO PARTICULARS OF

SERVICE OF THE ACCUSED

(a) The accused has been in close arrest awaiting trial on the present charges for four (4) days. None of this time was spent in Hospital or Civil Custody.

(b) The present age of the accused according to his Attestation Paper is Twenty-eight (28) years.

(c) The date of his attestation specified in his Attestation Paper is 14 Sep 39.

(d) The accused is in possession of, or entitled to no Military decoration or Military award.

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

R.A. Lindsay

(R.A. Lindsay) Lieut-Col.
Commanding, P.P.C.L.I.

O.A.S.
6 May 42.

President

No. H16127 Name [illegible]sworth J.A. Sqn., Battery, or Company "C" Corps P.P.C.L.I. Date of enlistment Sheet No. 1 G.C. Badges Service or Proficiency Pay "F" M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Pelville	18/4/40	P.	-	W.O.A.S. Causing wilfull damage to Government property.	P.S.M.Clark L/C.Falconer	7 days C.B. stoppage of pay 23.8.5	1/5/40	Lt. Clarke S.P.	
Oldham	17/8/40	A/L/C.	-	Improperly dressed & wearing a revolver when walking out.	Pte.Lafontaine Pte. Duncan Pte. Taylor	Red. to the rank of Pte.	19/8/40	Capt Stedman	
Witley	13/3/41	P.	-	W.O.A.S. A.W.L.from 0630 13/3/41 until 1250 hrs 15/3/41. (Absent 2 days, 6 hrs, 20 min)Sec.15(1)		10 days pay	22/3/41	Lt.Col Redman	Lt.Col Redman forfeits 10 day pay as of apprehension.21.IV.9
Witley	12/4/41	P	-	Insubordinate language to an N.C.O. Sec 40.	Cpl.Lafontaine Cpl.Wilkinson	2 days Det.	15/4/41	Lt.Col.Redman	

(P.T.O.)

Plea	Date of offence	Rank	Name or No. of prisoner	OFFENCE	Witness or witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
O.A.S.	12/5/41	-		W.O.A.S. Disobeying in such a manner as to show wilful defiance of authority, a lawful command given personnaly by his Superior Officer, in that he on 12 May 41 when ordered to do his share of the work being done, replied, "I'll see the M.O. first" and though again ordered to do so refused.	Sft. Lewis W.	7 days C.B.		Major R.A. Starke	
O.A.S.	12/6/41	-		W.O.A.S. Failing to comply with Standing Orders of the Regimental Police in that he let unauthorized persons enter the Guard Room. 2) Failed to waken Provost sleeping in Guard Room.	Cpl. Strom C. L/C Pritchard	3 days C.B.	13/6/41	Lt. S.A. Cobbett 'Adj)	

No. H16127 Name Elsworth J.A. Sqn., Battery or Company "C" Corps P.P.C.L.I. Date of enlistment Sheet No. 2 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 122)

Files	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
O.A.S.	13/6/41	Pte	-	W.O.A.S. Sec 15(1) Breaking out of Barracks, whilst a Defaulter	L/C. Popham E.	168 hrs Detention	17/6/41	Lt.Col H.F.L. Keller	
O.A.S.	18/6/41		-	2 A.W.L. from 2215 hrs 13/6/41 until 1400 hrs 18/6/41. (Absent 1 day, 14 hrs.)					
O.A.S.	24/6/41		-	A.A.15(2) WOAS Failing to appear at a place of parade appointed by his Company Commander, i.e. absent from tattoo roll call.	Cpl. Crabtree	7 days C.B.	27/6/41	Major R.A.Starke	
O.A.S.	3/7/41			A.A.40 WOAS Conduct to the prejudice of good order & military discipline in that he by word of					

(710)

Rank	Date of offence	Amt	Date of award	OFFENCE	Witness	Punishment awarded	Date of award or of Order dispen. may now cease	By whom awarded	Remarks
				mouth and action did show wilful disobedience to his Superior Officer.	Cpl. Falconer J.	7 days C.B.	4/7/41	Major R.A.Starke	
O.A.S.	4/7/41	-		WOAS Sec.15(1) AWL from 1800 hrs 4/7/41 until apprehended by CMP in Scotland at 1510 hrs 16/7/41 (Absent 11 days 21 hrs.)	Cpl. Strom L/C.Humeston & Documentary	C.21 days Det. Forfeits 12 dys pay by FRI Total forfeiture of pay 33 days. Stoppages to makegood cost of apprehension		Lt.Col R.A. Lindsay	
	19/7/41			2) Sec 9(1) Failing to comply with an order given by his Superior Officer in that he refused double and refused to go on P.T. Parade when ordered to do so. 3) Sec.18(1) Malingering, in that he on 20 July 41 feigned sickness with intentions of evading his duties					

M.F.M. 6
(A.F.B. 122)

No. H16127 Name Elsworth J.A. Sqn., Battery, or Company C Corps P.P.C.L.I. Date of enlistment Sheet No. 3

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | G.C. Badges | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.A.S.	20/4/42	"		W.C.A.S. A.A.15(1) Absenting himself without leave from 2200 hrs 20/4/42 until 1930 hrs 24/4/42. (Absent 3 days, 9hrs, 30 mins)	Sgt. Klywchuk W.	10 days Detention forfeits 1 day pay FRI deprived of 2 days pay	29/4/42	Lt-Col R.A. Lindsay	

CERTIFIED TO BE A TRUE COPY.

A.E.T. Paquet

(A.E.T. PAQUET) MAJOR,
COMMANDING "C" COY P.P.C.L.I.

(P.T.O.)

Y 4

PTE ELTER, C.J.

Correspondence to be PINNED here.

Army Form A.3.

Y.4

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A."
Order convening the Court.

On Active Service, this 29 day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

~~a) not available to appoint~~
~~b) three officers from the Army~~
~~c) two Field Officers (if Practicable)~~
~~d) three Officers having more than one year's~~
~~service~~
~~e) the following reason, namely:-~~

In my opinion, military exigencies, namely, the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistant with Appendix "A" to D.R.O.702 on the trial of the person named in the annexed schedule.

1145

President.

Rank.	Name.	Regiment.
Major	W.J. Gilmour	HQ 2 Cdn Div

Members.

Rank	Name	Regiment.
A Major to be appointed by OC R.H.C.		R.H.C.
A Lieut to be appointed by OC R.H.C.		R.H.C.
A Lieut to be appointed by OC Calg Highrs	WAITING MEMBER	Calg Highrs

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Lt. Col.
A/Comd 5 Cdn Inf Bde
Commanding

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-100706 Pte. Carl, Jacob, ELTER. The Calgary Highlanders, a soldier of the Canadian Army Overseas	FIRST CHARGE AA.Sec.15(4) (See attached charge sheet)	not guilty	guilty	
	SECOND CHARGE AA.Sec. 40 (ALTERNATIVE) (See attached charge sheet	not guilty	not guilty.	
			Six Months detention 1st Feb 1943 J.F.Gilmour Maj a/DCA	I confirm the finding and sentence. G.R.S.

* Question to be asked of accused, if he pleads not guilty (K. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary): No.

(Signed) [illegible] Lt. Col
A/Comd 5 Cdn Inf Bde
Commanding

(Signed) J.F.Gilmour Maj a/DCA
Convening Officer (e) / President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the First day of February '43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*~~3. The interpreter~~ 3&4.
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this First day of February 1943.
J.F.Gilmour Major
President of the Court Martial.

C. Certificate in case of death sentence.

I certify that the terms of *A.C.I. 570 of 1919 have been complied with.

* See footnote (i) on page 762 M.M.L. 1939.

Signed this [illegible] day of [illegible] 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further ordered.~~ G.R.S.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 3 day of Feb 1943.
G.R.Gibbon Brig.
Confirming Officer BDE.

Promulgated and extracts taken in the case of M.100706 Pte. Elter, C.J., The Calg Highrs
(a) (Dated) 4 Feb 43. (Signed) E.C.Howard Lieut A/AA,t

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused M-100706 Pte. Carl Jacob Elter, The Calgary Highlanders, a soldier in the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec. 18 (4)

Stealing property belonging to a person subject to Military Law,
in that he
In the Field, 21 Jan 43, stole a package of Sweet Caporal Cigarettes, the property of Pte. Townsend, G. The Calgary HighlandersC.A.(O). a person subject ot Military Law.

SECOND CHARGE
Army Act
Sec. 40
(ALTERNATIVE)

Conduct to prejudice of good order and military discipline,
in that he
In the Field, on the 21 Jan 43 had improperly in his possession a package of Sweet Caporal cigarettes, the property of Pte. Townsend, G. The Calgary Highlanders.C.A.(O)

Dated this 23rd day of January 1943

MacLauchlan
(D.C.MacLauchlan) Lieut-Col,
The Calgary Highlanders, C.A.(O).

JAN 27

To be tried by F.S.C.M.

B/ [illegible]
COMD. 5 CDN. INF. BDE.

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the Field
on the first day of February 1943 by order of
Lt. Col. S. D. Cantlie
acting Commanding 5 Cdn Inf. Bde
dated the 29th day of January 1943

President.

Major F. J. Gilmour H.Q. 2 C.I.B. Div.

Members.

Major W. Lavigne R. de Mais.
Lt. J. D. Hood Road R.H.R.

Trial of* M 100706 Pte Carl Jacob Elter
The Calgary Highlanders

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ~~ is not available to serve owing to ~~ ~~waiting arrival. Takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut B O'Meara Calg. Highrs

Counsel‡ or defending officer† Capt J Bright Calg Highrs

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

J Gilmour Major
Pres

CHARGE SHEET

The accused M-100706 Pte. Carl Jacob Elter, The Calgary Highlanders, a soldier in the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec. 18 (4)

Stealing property belonging to a person subject to Military Law,
in that he
In the Field, 21 Jan 43, stole a package of Sweet Caporal cigarettes, the property of Pte. Townsend, G. The Calgary HighlandersC.A.(O). a person subject ot Military Law.

SECOND CHARGE
Army Act
Sec. 40
(ALTERNATIVE)

Conduct to prejudice of good order and military discipline,
in that he
In the Field, on the 21 Jan 43 had improperly in his possession a package of Sweet Caporal cigarettes, the property of Pte. Townsend, G. The Calgary Highlanders.C.A.(O)

Dated this 23rd day of January 1943

(D.C.MacLauchlan) Lieut-Col,
The Calgary Highlanders. C.A.(O).

JAN 29

To be tried by F.S.C.M.

A/ COMD. 5 CDN INF BDE.

STATEMENT OF THE ACCUSED

I,
M-100706 Pte. Elter, C.J. a soldier in the Canadian Army In the Field, do desire the services of an officer to defend me at my trial by F.G.C.M.
Should Capt. J. Bright be available I should like to avail myself of his services as defending officer.

Witness.....

.....

Signed in the Field.

This ..... day of Jan 43

B

The President, members and ~~judge advocate~~ are duly sworn. HS

The following officers under instruction are duly sworn.

Lieut R. Gordon
The Calgary Highlanders

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 45 (3) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty. *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

HS

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the Field
on the first day of February 1943 by order of
Lt. Col. S. D. Cantlie
acting Commanding 5 Cdn Inf. Bde
dated the 29th day of January 1943

President.

Major F. J. Gilmour H.Q. 2 Cdn Div

Members.

Major W. Lavigne R. de Mais.

Lt. J. D. Proctor NOAD R.H.R.

Trial of* M 100706 Pte Carl Jacob ELTER
The Calgary Highlanders

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that ~~[illegible]~~ is not available to serve owing to

~~[illegible]~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut B O'Meara Calg Highrs

Counsel‡ or defending officer† Capt J Bright Calg Highrs

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] WAR/4410-68. 30,000 pds. 1/40. R. & B. Ltd. 6627/11. Forms A 9/39.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked ~~ ~~signed by the President, and attached to the proceedings).~~

The prosecutor proceeds to call witnesses.

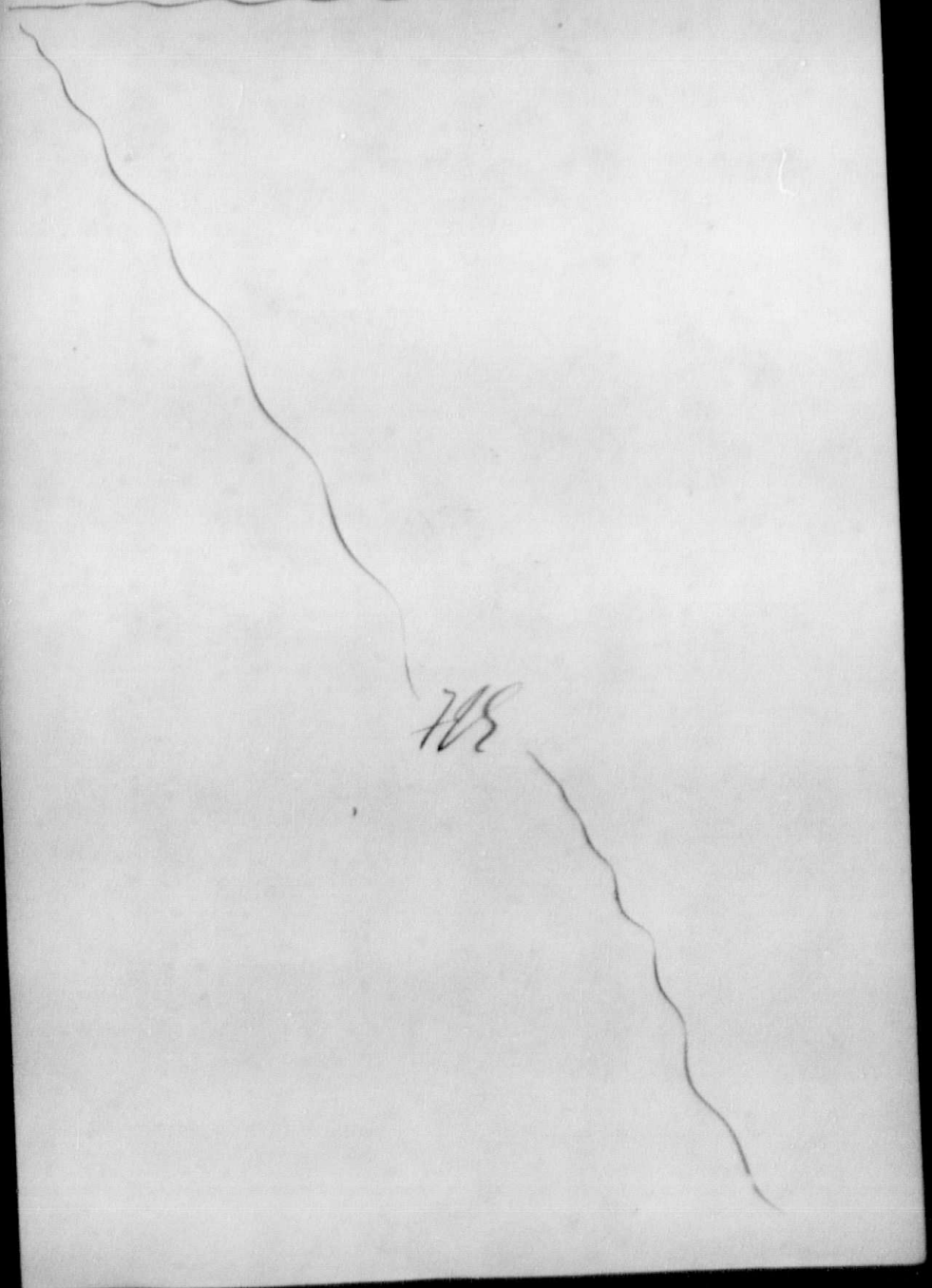
First witness for prosecution. M11774 Pte G. Townshend The Calgary Highlanders.

being duly sworn, is examined by the prosecutor.

On Monday Jany 11/43 about 10 in the morning I went to my kit bag to get 2 packages of cigarettes. I found that 15 packages were missing. The carton had been taken. It was a 1000 Cigarette Carton. They were Sweet Caporal Cigarettes. The Carton had been opened by me. Ten packages had previously been taken out by me. There were 15 packages left after I missed the 15. I took 2 packages for myself & marked the remaining 13 packages. The mark I made was a long scratch on the wax paper on the bottom of each package. I threw the 13 packages & locked my kit bag. I locked it with a padlock. Each night I checked my kit bag. On Thursday the 21st of January another six packages were missing. I reported the whole matter to Sgt Kroesing. About midnight on Thursday the 21st of Jany Sgt Kroesing woke me & showed me a package of 25 Sweet Caporal Cigarettes which I identified as mine by my identification mark. I identified as mine.

H. Townshend
P.T.O.

C2 commenced
in error on reverse of
page D.



~~Dft~~ 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

The Sgt then went out keeping the package of cigs. Pte Elter the accused came in the door as Sgt Kreesing went out. Elter asked me if I had been losing cigarettes & I told him I had lost 6 packages that day. I asked him "Where did you get that package?" I was referring to the package Sgt Kreesing had shown me. The accused said he got them from the shanpert that he had been in the habit of selling him cigs from the shanpert. Sgt Kreesing came back in & placed Elter under close arrest. The accused & I were in the same room no one else - just the two of us lived in that room. This one package of my marked cigarettes is all that has been located. Later I gave two of the packages of cigs which I had marked and which had not been stolen to Sgt Kreesing as evidence.

Cross Examined: No one was with me when I marked those cigs. It was ~~3 days after the~~ ~~of~~ ~~June~~ Saturday morning the 23rd June 1943 that I showed the marked cigarettes to Sgt Kreesing. I deny that before the C.O. I stated that I had sold cigarettes to Elter.

Re-Examination: I produced the Elter marked cigs to Sgt Kreesing on the 23rd of January because Sgt Kreesing asked to see them.

To the court: On the 9th of January 1943 I gave Elter one package of cigarettes.

H Anderson.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.*

No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (ii) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (~~=~~). Commencing at D 1.

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says:~~ †

~~[hands in a written address which is read, marked~~ and ~~signed by the President and attached to the proceedings.]~~

H/G

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

They were not out of the same carton as the missing cigarettes but from a previous shipment. Before I missed any of the cigarettes from this carton I had given 4 packages to another soldier Pte Pringelly. They were not marked in anyway. I never gave a note or otherwise disposed of any of my cigs to Pte Shanfort. I did not know Shanfort. I have been with the unit since we left Calgary. I have known the accused since he came to us for the holding unit is about 3 months ago. I sold no cigarettes to the accused. On Monday or Tuesday prior to the time that I gave Elton the memorandum referred to above he asked me for 2 packages & said he would pay me on pay day. I gave him the two & said that some day I would be out & if so I could call on him for him. None of the cigarettes which I gave the accused were from the carton where the stolen cigarettes came from.

R.P. 83(b) Complainant

[illegible]

C4

2nd Silvers
for Pte.

M10865 Sgt. George
Kroesing - The Calg. Highrs
duly sworn states -

I am in charge of the billets known as 77 Fairway. On Jany 21/43 at about ~~Pte~~ 1930 hours Pte Townshend made a report to me about Cigarettes. I went to 77 Fairway billets and questioned the Host Soldiers. As Pte Elder is on ~~charge~~ a room mate of Townshend I waited for Elder to come in. He came in about 2345 hours. I stopped him in the hall & led him into the kitchen. I asked if he had any Cigarettes on him. He said yes & produced a crumpled package of Sweet Caporal Cigs. It was squashed flat & had no wrapper Celophane or wax on them. I did not look inside to see how many cigarettes there were. I then told him six packages of Cigarettes had been stolen sometime during the day & asked him if he would let me search his belongings & the clothing he was wearing. He replied yes & proceeded to search himself.

W. G. Gibson

He unbuttoned his battle dress blouse & among other things he pulled out was another packet of Sweet Caps - Cigarettes. The wax covering was still on this packet of Cigarettes. I noticed a tiny scratch along the bottom of the packet. The scratch was on the wax covering. I had previously been told by Townshend that he had put a scratch identification mark on the bottom of his cigarettes. I took this one packet with the scratch from Elton & was left it in the Townshends room. Townshend woke up - examined the packet & said it was his. I completed searching the effects of the accused but found no more cigs. I then put the accused under close arrest. I asked when the accused produced the first packet where he got it & he said from Stanfort & I asked the same question when the accused produced the packet with the scratch & he said from Stanfort - After arresting

Hutchinson sig.

the accused I turned the identified packet of Cigs taken from the accused over to C.S.M. ~~Bowen~~ Bowen. Because of previous theft of Cigarettes, Hut orderlys had been previously warned to pay special attention to there jobs. At the time I showed Townsend the package of Cigs I had taken from Utes. Townsend offered to show me other cigarettes of his which he had marked in the same way. I believe the accused had followed me in, because when I turned around he was standing in the doorway - but I told Townsend I did not want to see Utes. On the morning of 23rd January I had Townsend bring some packets of his cigarettes with identification & Corbury Adams for comparison. The comparisons showed the marks were similar. There was no doubt Townsend took part in packing the cigs for comparison when asked.

H Gibson
Sergt
RA

Cross Examined: On the 23rd of January when I asked Townshend to produce some of his cigarettes for inspection he was in the hall of his billets:

To the Court. I identify this as the package of cigarettes I took from the accused (Exhibit "G") It has the same scratch on the bottom of the box & from its general appearance. The witness is shown two other packets of same Cpl Elder & states "these both have scratches along the bottom similar to the scratch on the bottom of Exhibit G & they are similar to the 2 packages that Townshend showed me on Jany 23/43 Elder & Townshend are the sole occupants of the room they share.

RP. 83 (b) Complainant.

RP. 16 complied with

Third Witness for Pros. M 10719 C.S.M. Bowen B.O. Caly. Hughes duly sworn states: —

I identify Exhibit G by a cross marked X which was put on by Major Stott in the support Camp. After I got down on Jany 22nd I was there when the X was put on. I also identify it by a scroll on the back of the paper. This was given to me by Sgt Kroesing at 0030 hours Jany 22nd when Sgt Kroesing was making his report to me. I witness these cigarettes given to Sgt Stott who was investigating the charge against the accused. This + 2 other packages with scrotches were kept in the sergeants Mess.

Cross examined. The packages is still the same. It is crushed + was crushed when first I saw it but it is now distinct. I am now unable to identify the scroll which I first saw on the wax wafer

H.J. Bowen.

Re examined - No the pointed out the scratches to me - I noticed them myself - I see a scratch now on the long edge of the package that I did not notice before + I do not see the scratch on the short edge at end of the packet that I first noticed when it was handed to me

RP 83 (b) complied with

Fourth Witness for Pros. M 11062 Pte T. C. Elliott called Highes duly sworn.

I was a hut orderly for 77 Tailoring house on Jany 21st. I took over duty at reveille + was in complete charge of the house for the following 24 hours. About 15 & 16 people live in the house. The men went on parade at 0830 hours + I was the sole occupant until at 0900 hours when Pte Knowling came in + went directly to his room. Then Pte Townsend came in + fixed up his bed + left immediately

TH

Pte Elton was the next to come & he cleaned a rifle in the kitchen - Elton came in between 9 & 10. He was warned while in the kitchen to go on a Brigade fatigue party & he then went into his room & was there not very long & then left for the Brigade fatigue. A platoon Orderly left the inspected the billets but did not go in the room to Townsend & Elton. I was away about 5 minutes at 11.30 to get my dinner & came right back. Pte Allenbattle relieved me as Post Orderly while I was having lunch & again while I was having lunch & again he relieved me at 1.30 to 2 P.M. when I went to repair my Motor Cycle. No one else came in the house until the men were dismissed from parade at 4.30 P.M. Elton went for supper - was not relieved as the whole section was in the hut & I was gone for about 10 minutes - Pte Elton returned from his fatigue about 4.30 P.M. Between 6.30 & 7.30 Pte Townsend asked me if I had seen anybody take his cigarettes. I said no & he showed me the

JH

identification mark on some of his cigs
shortly after Sgt Kroesing asked me
questions. Ltn Lange & myself
after supper. Townsend came in
shortly after 6 PM & then returned
box of cigs to me. The identification
Townsend showed me early in
the evening of Jan 24 was a
scratch along the bottom of the
packet on the wax wrapper.
Cross Exam. It is usual to walk
into all rooms as last orderly. I
looked into Ltn's & Townsend's room.
I don't know if Townsend's flat was
locked. I did not see Ltn in his
room but I could see him walking
in his room. at times. He was waiting
for Brigade Surgeon
R.P. 83 (b) complied

The Court explain to the
accused his rights as defined
by R.P. 40.

see page 12.

D1

First Witness for Defence. The accused M-100706 Pte Earl Jacob Otter duly sworn states.

Pte Shanfer of D coy is a good friend of mine. On the 21st of Jany 1943 I left the support coy lines about 5.30 P.M & went to the lines of D coy. I asked Shanfer for cigs & he gave me this package - (Identify & Exhibit G.) I went up town & saw a bout & a fight. Shanfer did not give me cigarettes from Shanfer. I got a package from him the day before. I bought some cigarettes from Townsend, 3 packages on January 17th.

Cross Examined. Sgt Pleasance asked me for a smoke so I produced the package that was there. I got that package from Shanfer the day before. There was about 5 left in it. No one was there when Townsend sold me cigarettes.

To the Court. I went to see Shanfer the night of 21st of Jany - thinking he would go to the show & the boxing match with me. I don't know how the scratch got on the bottom of the box.

Otter

that Shamper gave me. (Witness examines Exhibit G + 2 other boxes of cigarettes produced from Howard) + says "I never noticed any of these scratches before - they have never been shown to me.

R.P.83 (b) complied with

2nd Witness for Defence M 10928 R.S.M. Stanley E.V. duly sworn states:

I was present on Jany 23rd when the accused was present before his Commanding Officer on a charge of theft of cigarettes + I heard all the evidence. Townsend gave evidence accused cross examined Townsend + asked Townsend if he had sold him any cigarettes + Townsend in answer did not actually say that he had sold him cigarettes but he gave him several packages + he the accused could return in kind + the money for them. The C.O. asked the accused if he wanted a charge laid against Townsend for selling cigarettes + the accused said yes. This was right

H Whitmore

D 3

after the previous question but so
far as I know no charge of selling
Cigarettes has been laid against
Townsend.

R.P. 83(b) complied with

3rd Witness
for Defence. M10985 Pte L C Larsen
Calg Highrs - duly sworn.
I am a member of the Regd Police. I
was escort for accused before C.O. on
June 2nd. I heard the evidence.
After asked Townsend if he had sold
after cigs at Penrose Sunday. Townsend
did not reply that I can remember.
The C.O. asked Townsend if he was in
the habit of selling cigarettes & Townsend
said he exchanged cigarettes for cash
or traded Cigarettes.

Cross Examined The C.O. asked
after if he wished to lay a charge
against Townsend for selling
Cigs & after said no.
R.P. 83(b) complied

H Jackman
Major

D 4.

Fourth Witness
for Defence. M 100022 Pte L. Schaefer
Calg. Highrs duly sworn states.

I know Elter - I have known him six months - We are in the habit of exchanging cigarettes. I was working in D Coy Kitchen on 21st Jany 1943 - Thursday night - Elter came in at 5.30 He asked me if I was to go up town with him - I said no I am C.B. to the Camp - He asked me for a package of cigarettes - I gave him one package of 25 Player's Cut Cigarettes. He left to go to the boxing at a quarter to seven. It was a good package.

Cross Examined. The package I gave Elter was not Marked. They had been issued to me by the Post O.M. I have been receiving other packages too - I put them all loose lockers up in my kit bag. I am quite positive there was no mark on the package of Cigs I gave to Elter.

7 Witnesses

D5

To the Court:

I believe that previous to the night that Elter called & asked me to go to the box-ing when I gave him a package of cigarettes - namely the night of January 21st 1943 Thursday that the last previous occasion when I gave him cigarettes was the Saturday previous. We were up town to the show on Saturday - I gave him cigarettes then & I am sure I gave him no more cigarettes until Thursday the 21st & [illegible] I don't know Townsend - I never got cigarettes from him.

The Defending Officer asks the Court to put to the witness this question:

Q Did Elter not go to your billets on Wednesday & ask you to go to the Lido Club.

A. No Sir.

RP. 83 (b) complied with.

P.T.O.

The defending officer makes a closing address. submits that Townsend was an unsatisfactory witness. denied selling cigarettes & yet before C.O. virtually admitted selling cigarettes. Accused had a watch in his pocket & thus may have made the scratch

The Prosecutor Replies

Sentence

W. H. Gilman
Maj.
Pres

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused M-100706 Pte Carl Jacob Elter is guilty of the first charge.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lt. B. O'Meara is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes M.F.M.6 and copy + A.F.B.296.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes except he has 2 dependents + the rest are thousands are.

[Cross-examination—If in cases of the entries of the service of the accused in a Australian corps, or otherwise, the Judge of the Court considers that there is any exceptional circumstance in addition to that or to counsel to the Court the prosecutor must call the attention of the Court to the fact, after the Court must report both the letters and answer to this additional paragraph.]

Cross-examined by the accused.

No Sir.

Question to the accused.

Do you wish to address the Court? *Answer.* No but the defending officer will

~~The Court is closed for the consideration of the finding.~~

(5)

J Gilmour
Maj
1 Aus

F

Sentence.

~~The Court sentence the accused~~ to be dismissed the service.

The Defending officer points out that the accused has a good conduct while in the army no entries in conduct sheet.

The Court is closed to consider sentence

J. Fahmon
Major
Pres

SUMMARY OF EVIDENCE IN THE CASE OF M100706 Pte. Elter. C.J.
1st. Bn. The Calgary Highlanders. C.A.(O) a soldier of the Canadian Army.
The C.O. directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION M11774 Pte. Townshend. G. Support Coy,
The Calgary Highlanders. C.A.(O)., sworn, states:
On Monday, the 18 Jan 43 I went to my kit-bag and found the carton containing my cigarettes torn and fifteen packages missing. I took two packages out and marked the remaining thirteen packages by marking a scratch along the waxed paper on the bottom of the package with a pin.
On Wednesday night at 1930 hrs I checked my cigarettes and there were no more missing. On Thursday, 21 Jan. 43, at 1930 hrs, I checked them again and six packages were missing. I looked for my platoon sgt., Sgt. Kroesing, to report the loss. I found him at the K of C Canteen. I told him about it and told him my cigarettes were marked but not how they were marked. He went back to my billet to investigate and I went back about 15 minutes later. He told me there were none of my cigarettes in the billet and there was only one more man in the billet to question, my only room-mate, pte. Elter. Sgt. Kroesing said he would wait and question Elter when he came in. I went to bed about 2230 hrs, and was awakened around 2400 hrs and a package of cigarettes put in front of me by Sgt. Kroesing, and I asked, "ARE THESE MINE?" I examined them and said,"yes". Pte. Elter came in and asked me, have you been loosing cigarettes? I said, "Yes, six packages". He said, "well I didn't take any cigarettes", I suspected that Sgt. Kroesing had got the package which he showed me from pte. Elter, so I asked him, "where did you get that package? Elter said he had got them from Shaufert, Sgt. Kroesing then placed Elter under close arrest. On Saturday morning I was told to report to the Orderly Room and they asked me to bring two of the marked packages which I had left, with me. CSM Bowen took them. None of my other missing cigarettes have shown up.

Cross-examined by the Accused:
Q1. Did you not sell me cigarettes about a week ago last Sunday?
Answer. "NO"
Q2. Were you in all night on Wednesday 20 Jan 43., or did you go to a show at the Lido Club?
Answer. I went to a show at the Lido Club.

G.T. Townshend

Second Witness for the Prosecution M10865 Sgt. Kroesing. G. Support Coy,
The Calgary Highlanders. C.A.(O), sworn, states:
I am in charge of 77, Fairway, a billet of Support Coy. At approx 1930 hrs on the 21 Jan 43, pte. Townshend reported to me at the K of C canteen that six packages of cigarettes which he had marked were missing from his kit-bag. I went to the billet, and as only one or two men were in the billet I did not hold a kit inspection. The hut orderly, on being questioned told me that there had been no one other than Townshend and Elter in their room to his knowledge on that day. As I was leaving to report the matter to the Coy Orderly Room, Townshend mentioned that he had marked the cigarettes by scratching the waxed paper on the bottom of each package, in a long line. I returned to the billet to await pte. Elter who was out on late pass, as I thought he might be able to give some assistance, since he is Townshend's room mate. Elter came in about 2345 hrs. In conversation with him, I asked him if he had any cigarettes, and he produced a partly used package, from which of course, the waxed paper had been removed. I then told him that cigarettes were missing from Townshend's kit-bag, and asked him if he would mind being searched. He agreed, and started to search himself, and produced among other things, an unused package of Sweet Caporal cigarettes with waxed paper covering on them

H. Kroesing

Fourth Witness for the Prosecution M36954 Pte.Ollenbittle D.Support Coy. The Calgary Highlanders,C.A.C.,sworn,states;

On 21st Jan.'43 I relieved Elliot as hut orderly between the hours of 1130 and 1135,and again between the hrs.of 1330 and 1400.During the time I was on duty I am sure that nobody entered the room occupied by Townsend and Elter.

Accused Declines to Cross-Examine.

D Ollenbittle

I examined them and found a mark on the bottom, a long scratch along the waxed paper on the bottom which looked as if it had been done by some pointed instrument. I then took them to Townshend, who was in bed, and asked him whether he could identify the cigarettes as his. He took the package, turned the bottom up, and pointed out the scratch along the bot bottom, replying. Yes, that is the way I marked them. About half a minute had elapsed since I had taken my eyes off Elter and I know told him that I was now going to search his kit which I did assisted by Elter. The search did not reveal any more of the missing cigarettes. I then had Elter placed under close arrest and placed in the detention room. Townshend then offerred to show me more marked packages, but I did not bother looking at them. I turned the package which I had taken from Elter, over to CSM Bowen.

Cross-examined by the Accused:
Qu. Where was I between 0930 hrs and 1630 hrs on the 21 Jan 43.
Answer. I beleive you were on Brigade fatigue.
Q2. Did you tell Townshend who you got the cigarettes from when you took the package from his room?
Answer. "No"
Q3. When Townshend went down to the K of C Canteen did he return with you to the billet?
Answer. No, he was still there when I left.

Question by the officer taking the summary:
When to your knowledge did Townshend first produce other marked packages?
Answer. At the Coy Orderly Room on Saturday morning.

H. Kroesing

Third Witness for the Prosecution M11062 pte. Elliott. T.C. Support Coy The Calgary Highlanders. C.A.(O)., sworn, states:
At 0600 hrs 21 Jan 43, I went on duty as hut orderly of the billet at 77, Fairways. I was on duty when pte. Townshend left the billet in the morning. Pte. Elter came in between 9 and 10 to clean a rifle. While he was doing it he was warned to go on Brigade fatigue and he went out of the kitchen and into his room, he came back into the kitchen shortly afterwards and left the billet. I went for lunch at 1130 hrs, and was back in the billet about 5 minutes later. I left again at 1330 hrs and returned about 1400 hrs. Pte. Ollenbittle took over my duties of hut orderly while I was away. I was away from about 1630 hrs to 1640 hrs to get supper. No one was left in charge at that time as the whole section was around. Elter came in while I was at supper and Townshend came in shortly after 1800 hrs. During the time I was on duty I am sure that no one except Elter and Townshend was in their room. About 1900 hrs pte. Townshend told me that some of his cigarettes were missing. He showed me a few marked packages and said the missing cigarettes wer marked in the same way. They were marked by a thin scratchy line along the bottom on the waxed paper. He went to get Sgt. Kroesing who came to the billet shortly afterwards to investigate.

Cross-examined by the Accused:
Qu. Did you see me enter my room between 0900 hrs and 1000 hrs 21 Jan?
Answer. No, but I saw you come in, leave the kitchen, and heard you walking around in your room, and you were the only other person in the billet.

T.C Elliott

Fourth Witness for the Prosecution M36954 pte. Ollenbittle B. Support Coy The Calgary Highlanders. C.A.(O)., sworn, states:
In the 21 Jan 43, I relelved Elliott as hut orderly between the hrs of 1130 and 1135, and again between the hrs of 1330 and 1400 hrs. During the time that I was on duty I am sure that nobody entered the room occupied by Townshend and Elter.

Accused declings to Cross-examine.

The Accused, having been duly cautioned in accordance with R.P.4.(E) says. "I will be sworn in".

The Accused, M100706 Pte. Elter. C.J., sworn, states;
On the 21 Jan 43, I was on Brigade fatigue. I went on parade at 0830 hrs and returned to my billets at about 0900 hrs to clean a rifle. I did not enter my room but cleaned it in the kitchen. While I was there I was warned for the fatigue and went out about 1000 hrs, and did not return until about 1630 hrs. I then changed and had supper, and at about 1730 went over to Don Coy to see pte. Shaufert. I was short of cigarettes and asked him for some, and he gave me a package of Sweet Caps, and I then went down town alone. I returned to my billet at about 2330 hrs. When I went in the kitchen Sgt. Kroesing asked me if I had any cigarettes and I offerred him the package I had been using. He then asked me if I had any more and I produced the package which Shaufert had given to me. He asked me if I would mind being searched. I said I did but produced everything I had on me for him to examine. He took the package of cigarettes and told me that Townshend was missing some cigarettes and took them in to Townshend. When I went in about half a minute later Sgt. Kroesing told me that he would have to search my kit, which he did.

C. J. Elter

First Witness for the Defence M100022 pte. Shaufert. L. 1st. Bn. The Calgary Highlanders. C.A.(O)., sworn, states:
At about 1730 hrs on the 21 Jan 43 Elter came over to see me, He asked me for a package of cigarettes and I gave him a package of Sweet Caps. He went away at about 1845 hrs.

Examined by offiver taking the summary:

Q1. Where did you get the cigarettes you gave him?
Answer. Out of my kit-bag, they were issued to me a few days before.
Q2. Was there any marking on the paper cover of the package?
Answer. Not that I noticed, not likely.
Q3. Were you in the habit of lending cigarettes to Elter.
Answer. "Yes, we often swopped them when one of us was short."

Accused declines to Cross-examine.

L Shaufert.

Certified that R.P.4 complied with.
In the Field.
26 Jan 43.

Lieut

LIST OF WITNESSES FOR THE PROSECUTION

M 11774 Pte. Townsend G. The Calgary Highlanders, C.A.(O).

M 10865 Sgt. Pressing G. " " " "

M 11062 Pte. Elliott T.C. " " " "

M 86154 Pte. Glenbittle " " " "

LIST OF WITNESSES FOR THE DEFENCE

M 166027 Pte. Schaurepf L. The Calgary Highlanders, C.A.(O).

(Substitute for A.F.B.296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE A.C USED

No. M100706 Name Pte. Elter, C.J. Unit The Calgary Highlanders, C.A.(

Age 24 Married or Single Married No. of Dependants Two

Date of Attestation 8 Jan. 42

No. of Days Spent in Close Arrest (To date of trial)

Civil Nil Military 10 Hospital Nil Total

Dates of Promotions, Appointments and Confirmations of Rank, if any

N/A

A certified True Copy of M.F.M.6 must Accompany this form

(Officer i/c Records)
[illegible] Lieut A/Adjt Unit

Dated at
This 1 day of Feb 1943

(To be dated and signed as of date of trial)

K 765

THE CALGARY HIGHLANDERS C.A.(O).

MEDICAL CERTIFICATE.

I certify that I have this morning examined No. M 100706 Pte Ellens C.J.

of THE CALGARY HIGHLANDERS and in my opinion he is Fit to undergo trial by Court Martial.

Station Authuried.

Date. 1 Feb 43

Medical Officer.

No. M/10096 Name Ritter, Carl Joseph Sqn., Battery, or Company Calgary Highlanders Corps Date of enlistment 8 Jan 42 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine N.A. Sheet No. 2 Signature O.C. Company, etc. W.D. Hayland Major Character

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		First	Sheet destroyed after 6 months service 8 July 42					W.D. Hayland Major	

Certified a true copy
W.E. Howard Lieut A/Adjt
Calgary Highlanders

(P.T.O.)

NN-145
GNR ELVIDGE D.F.

WN-145

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this fifteenth day of August, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of RCA 2 Cdn Corps, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [xxxx

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-12008 Gnr Elvidge, D. F. 6 Cdn LAA Regt RCA	First Charge Stealing Public Property - AA Sec 18 (4) (See charge sheet attached)	GUILTY	GUILTY	I confirm the finding of the Court but remit the sentence to 6 months detention and stoppage of pay to the amount of $22.3.2.
	Second Charge (Alternative) Conduct to the Prejudice of Good Order and Military Discipline - AA Sec 40 (See charge sheet attached)	WITHDRAWN		
	Third Charge Absence without Leave - AA Sec 15 (1) (See charge sheet attached)	GUILTY	GUILTY To undergo detention for 8 months and to be put under stoppages of pay in the amount of $2.3.2 in respect of the cost of returning him to his unit	

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (4)) —
"Do you wish to apply for an adjournment on the ground that any of the rules relating to matters to be dealt with before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) —

18 Aug 43

(Signed) (A. E. D. TREMAIN) Brigadier
Commanding RCA 2 Cdn Corps
Convening Officer (e)

(Signed) J.R.Kennedy
Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

The accused D-129008 Cpl. Donald Frederick ELVIDGE, 6 Cdn. L.A.A.Regiment, Royal Canadian Artillery, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec.18(4)A.A. WHEN ON ACTIVE SERVICE STEALING PUBLIC PROPERTY

In that he

in the field on 13 July 43 stole a pair of rubber boots on issue from stores to A-69054 Cpl. Meyer, K.H., a member of the 6 Cdn.L.A.A.Regiment, R.C.A. and sold same to a civilian, Mr. Fred Davies.

Second Charge
Alternative
Sec.40 A.A. WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

in the field on 13 July 43 was improperly in possession of a pair of rubber boots the property of A-69054 Cpl. Meyer, K.H. a member of the 6 Cdn.L.A.A. Regiment, R.C.A.

Third Charge
Sec.15(1)A.A. WHEN ON ACTIVE SERVICE ABSENCE WITHOUT LEAVE

In that he

in the field while under sentence of Field Punishment absented himself without leave from 0130 hrs. 15 Jul 43 until surrendering himself to the Military Police at 2030 hrs. 5 Aug 43, total absence 20 days 23 hrs.
Cost of return to his Unit being £2-3-0.

In the Field
14 August 43

DuDuitt
(E.A.Phipps) Major
Commanding Detachment
6 Cdn.L.A.A.Regt., RCA,
Canadian Army England.

To be tried by Field General Court Martial
15 Aug 43

[illegible] Brig'r
C.C.R.A. 2 Cdn Corps.

[illegible] Major
Assistant

[illegible]

MEDICAL OFFICER'S REPORT

I certify that this morning I examined No. D-12008, Gnr. Elvidge, D.F. - RCA and he of 6 Cdn. LAA Regt., is in a good state of health, and fit to undergo Trial by Court martial.

J. M. Middleton Capt.
Medical Officer

Station In the Field

Date 18 Aug 43.

J.D.K. remedy Major
President of the Court.

M. F. B. 246

B.M.—6-43 (1742)
H.Q. 1772-99-680

Record of Proceedings of a Field General Court Martial

Held in the Field in Eng Land (Country) on 18 Aug 43 (Date) to try

Accused D-12008 (Number) Gnr. (Rank) Ronald Frederick Elredge (Christian Names) (Surname) 6 Coy R.A.A. Regt. R.C.A. (Unit)

	Rank	Name	Unit
President	Maj.	J. E. Kennedy	19 Coy S.P. Regt R.C.A.
Member	Capt.	J. R. Seybold	2 Coy Corps C.B.O. Staff R.C.A.
Member	Capt.	J. White	23 Coy S.P. Regt. R.C.A.
Judge Advocate (if any)	Capt.	T. H. Jennings	H.Q. 2 Corps Engrs.
Officers Under Instruction (if any)	Capt.	J.W. Monahan	23 Coy S.P. Regt. R.C.A.
Prosecuting Officer	Capt.	M. C. Ross	6 Coy R.A.A. Regt. R.C.A.
Lawyer? Ans NO			
Defending Officer	Lt.	F. J. Kurstead	6 Coy R.A.A. Regt R.C.A.
Lawyer? Ans YES			

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(\) and Summary of Evidence. (Rs.P.17(E), 22(A)). JFK

(If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22, fn 1) reads the Convening Order and the Charge Sheet(\) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted (A.A.49: Rs.P.106, 107), that the accused is (\re) amenable to Military Law, and that each charge discloses an offence (Rs.P.23,108). JFK JFK

3. The accused is (\re) brought before the Court and at 1030 hours the trial commences. JFK

4. The Prosecuting Officer produces a Medical Certificate under K.R.(Can) 557 (See CMHQ Circular Letter 173) that the accused has (\ve) this day been examined and is (\re) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings. JFK JFK

(Over)

~~5. President to accused:~~

~~Q - Do you object to _____ as interpreter?~~
~~A - _____~~

~~The interpreter is duly sworn. (Form of oath on Page "D").~~

~~Q - Do you object to _____ as shorthand writer?~~
~~A - _____~~

~~The shorthand writer is duly sworn. (Form of oath on Page "D").~~

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A - No, SIR.

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto, (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate and Officers under Instruction are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

9. The Charge Sheet(\) is (are) signed by the President.

10. The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(8), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), such pleas and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	GUILTY.	Fifth Charge	
Second Charge	WITHDRAWN.	Sixth Charge	
Third Charge	GUILTY	Seventh Charge	
Fourth Charge		Eighth Charge	

(For procedure on alternative charges, see R.P. 97(A) and in. 2). (For form of record see M.M.L. p. 744 Instructions).

Further proceedings are recorded on pages hereto attached.

PAGE 2.

(For use when accused pleads "Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The President complies with R.P.35(B) by ascertaining that the accused understands the nature of the charge(s) (fn. 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) & fn. 3) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. The finding(s) of the Court \ (are) recorded on p. 2 of A.F.A.3.

3. President to accused:

Q - Do you desire to make any statement of the circumstances in reference to the charge(s)? (R.P.37(B)).

A - NO SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

4. The Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

(If no sworn Summary, sufficient evidence for determination of the sentence is taken and recorded on separate sheets, initialled by the President and attached hereto). (R.P.37(B)).

5. President to accused:

Q - Do you wish to make any statement in mitigation of punishment? (R.P.37(C)).

A - YES SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(If from paras. 3, 4 or 5 it appears to the Court that the accused did not understand the effect of his plea see Man.M.L. 37(B) fn. 3; 37(C); 37(D) fns. 5 & 6; M.M.L. p. 147 Variations).

6. President to accused:

Q - Do you wish to give evidence yourself or to call any witnesses as to character? (R.P.37(C)).

A - NO SIR

(Sworn evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

7. Statement of Character and Service (A.F.B.296 or M.F.B.355) and Field Conduct Sheet (M.F.W.6), signed in the manner required by A.A.163(1)(b) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked " X ", and " Y ", signed by the President and attached to the proceedings. (R.P.46; Overseas R.C.31(1)).

8. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)).

A - NO SIR

(Address (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(Over)

9. Sentence to be announced:

"The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

10. The Court is closed to consider the sentence.

11. The sentence is recorded, dated and signed by the President (R.P.50) on p. 2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; K.R.(Can)563-566; Overseas R.Os.309, 2323).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L. p.756-759).

12.

J.D. Kennedy Major
(Signature of President)

J. Tremayne Capt
J.A.

[2 Can Corps 15-6-43]

Mr President & Members of the Court.

You have the evidence before you and there is no need to
review it any further and you have also heard my clients
plea to the charges. Must before the court deliberates on the
case I should like to ask that due consideration be given
to his record prior to the events which are now before this
court. As you will see from his conduct sheet he enlisted
in April 1942 and up until now this year had no crimes
of any nature against him. He is a young man and did not
realize the serious nature of his act. He has already admitted
his wrongdoing and by his action in giving himself up has
shown that now he realizes his offence. In view of his prior
record and also in view of the fact that he is just 20 years
of age, I would ask that the court deal as leniently with
him as possible.

It has often been the case in the past for a man through
some misguided sense of superiority, or perhaps lack of morale
to become fed up with his surroundings and do things which
he deeply regrets afterwards. He would appear to be under
in this case and as I have already stated there is no evidence
to show he does realize now the seriousness of the offence but
at the time did not. I should like therefore, to enter a
plea of mitigation on his behalf.

I firmly believe that of this man is dealt with leniently
he will become a first class soldier and a credit to
his country.

J. H. Kennedy Major
President of the Court.

This is Exhibit 'A' referred to in the Summary of Evidence in the case of D-12008, Gnr. Elvidge, D.F., taken before me this 14th Day of August, 1943.

Capt. & Adjt.,
(W.C.C.Ross)
6 Cdn.L.A.A.Regt., R.C.A.

File No. [illegible]

Officer Commanding,
[illegible] 6 L.A.A. Regt. R.C.A.
Re:- D 12008 Gnr. Elvidge, D.F.

1. Forwarded for your information and necessary action, please, and disposal under C.A.R.O. No. 366 dated 29 Oct. 40.

Capt.
(W.Vern) D. A. P.M.,
London Area.

London
[illegible] Aug 43.

No complaint

988

DEFENCE (FORCE AND AIDS) ACT, SECTION 165 (I) (J)

I, ... certify that

Re. No. D 42606 Rank Gnr. Name Elvidge, D.E.

Regt. 6 Light Anti-Aircraft Regt. (RCA)

R.N.W.

If it .....

Stated at .....

Surrendered himself to ..... 4256626 L/Cpl. ROBBS G. .....

of the CORPS OF MILITARY POLICE. .....

on the 5 day of Aug 43, at 2050 hrs from New St. Station Mansfield.

.....

at the time of his submission to (hearing (military uniform) or (~~his identification~~)

Signature of provost-marshal, assistant provost-marshal or other officer or the Commanding Officer of the portion of His Majesty's forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender.

(Strike out part inapplicable)

.....Lieut.

Officer i/c Detention Room,

No. 6 Can. Provost Coy.

LONDON

8 Aug 43.

CERTIFICATE OF SURRENDER UNDER SEC.165 (1) (1) A.A.

I....Lieut. B.Clark.....certify that No.D.J.2008.....Rank...Gnr.....

Name.EDWARDS.D.E.....Coy.L.(1st) H.R.C.(Royal Canadian Artillery)...Regt.....surrendered

to No.47.....Rank...L/C.....Name...HARRIS...P.....C.M.P. at

Birmingham....on 5 Aug 1943 (20.30 hrs) as an absentee without leave.

Station.Birmingham

Date.....6th Aug.1943.

Signed.....B.Clark Lieut.
O.C. Birmingham Detachment,
C.M.P.

H.Q. Squadron / Battery / Company / Detachment — 6.L.A.A. Regt — Unit or Battalion

8 Aug 43 19

MORNING SICK REPORT

Regt'l No.	RANK AND NAMES (Christian Name in full)	Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
12008	Bdr	ELVIDGE D F	20	C of E	Fit	S	

Medical Officer — Orderly N.C.O.

M.F.H. 292
40/F & S/145

(OVER)

Hospital A & D No. 4033

A.M.D.2—1
In lieu of A.F.W. 3017
40/P & S/2 (2540)

HOSPITAL DISCHARGE NOTIFICATION

To: Officer Commanding # 3 R.C.A.R.U. & 6 Rec. Coy. (Unit)
Bramshott

It is notified for your information that the undermentioned was discharged from Military Hospital, R.C.A.M.C., admitted 8 August 43

on ..... 194..., Disch./~~Trans.~~ on 11 August 43. 194...

He shall attend the first Unit Sick Parade after reporting to his Unit. This document must be passed to the Medical Officer of the Unit immediately. 6 L.A.A. R.C.A.

Name ELVIDGE ~~ELUDGE~~, D. F. No. D.12008 Rank Gnr.

Diagnosis SCABIES 1204 (code) M.O. i/c Case R.E.C. Anderson,

(code)

(code)

Precis Case History:

History of white discharge after urination.
No discharge seen at any time.
Urinalysis normal. No smear obtained.
Has an acute attack of scabies.

Recommendation:

To continue treatment for scabies at Unit and return to usual duties.

To # 3 C.A.R.U.

For Officer Commanding

CANADIAN PROVOST CORPS

Registrar,
No. 18 Cdn. Gen. Hosp.,
R.C.A.M.C.

D-12008 Gnr. Elvidge, D. F.
6 Lt. A. A. Regt., R.C.A.

Sir,

1. The a/m soldier surrendered himself to the C. M. Police at Birmingham at about 2030 hrs., 5th Aug., 1943 as being A.W.L.

2. On arrival at this H. Q., he requested to see an M. O. and was taken to the M.O. at C.M.H.Q. who ordered his despatch to No.18 Cdn. Gen. Hosp.

3. As the a/m soldier is under close arrest, may this H.Q. be advised when he is due for release, so that an escort can be arranged to return him to his unit.

4. For your information and necessary action, please.

London
8 Aug. 43.

W. G. Jaffrey, Capt. for Capt.,
(W. Fern) D.A.P.M.,
C. M. H. Q.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No D.12088 Rank Gnr Name Elvidge, A.S. Unit 6 Lt AA Regt RCA

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
13 Aug 43	Escorts return fare from LONDON To Eastbourne		9	9
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Eastbourne		4	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		14	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. S. Simpson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-43
40/P & D/483

Expense Voucher Re—

Ref: K.R. & O. (Can) 539

Reg. No. 012008 Rank Gnr. Name Elridge, D.T. Unit 62 A.A. Regt, R.C.A.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Birmingham

Date	Particulars	Amount £	s	d
9 Aug 43	Escorts return fare from LONDON To Birmingham		17	0
	Prisoners single fare to LONDON From Birmingham		8	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Rest~~. Meals, Bus fares		3	0
	Total £	1	8	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense Duties Capt.
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000 5/4
60/P & S. 483

This is Exhibit 'E' referred to in the Summary of Evidence in the case of D-12008, Gnr.Elvidge, D.F., taken before me this 14th Day of August, 1943.

Capt.& Adjt.,
(W.E.C.Ross)
6 Cdn.L.A.A.Regt., C.A.C.A.

CHARGE

Army Form B.252
(See King's Regulations)

ROYAL CANADIAN ARTILLERY Regiment

6TH L.A.A. RGT. Battery / Squadron / Troop or Company

CHARGE against No. D12008 Rank GNR

Name ELVIDGE D.F

Place Date of Offence

OFFENCE W.O.A.S. Absent from ? until surrendering himself to the Military Police at NEW ST. STATION, BIRMINGHAM at about 2030 hrs, 5 AUGUST 1943.

O.C. Birmingham Detachment, C.M.P.

Names of Witnesses:—

L/Cpl G HOBBS C.M. POLICE

L/Cpl BROWN C.M. POLICE

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

12/8/43.

D 12008 GNR ELVIDGE D.

6th CANADIAN L.A.A. R.S.T.
ROYAL CANADIAN ARTILLERY
PENYSONT. RADNORSHIRE
N. WALES

EVIDENCE

REMARKS

SUMMARY OF EVIDENCE

in the case of

No. D-12008, Gnr. Elvidge, D.F., R.H.Q., 6th Canadian Light A/A Regt., R.C.A., C.A.O., a soldier of the Canadian Army placed on active service.

CHARGES

1. Stealing Public Property, Sec. 18 (4) A.A. in that he at Penybont, Wales, on 13 July 43 stole a pair of rubber boots on issue from stores to A-69354, Gnr. Meyer, K.R., a member of the 6th. Can. Lt.A.A. Regt., R.C.A. C.A.O.

2. Conduct to the prejudice of good order and military discipline Sec. 40 A.A. in that he, at Penybont, Wales, on 13 July 43 was improperly in possession of a pair of rubber boots, the property of A-69354 Gnr. Meyer, K.R. a member of the 6th Cdn. Lt.A.A. Regt., R.C.A., C.A.O.

3. Conduct to the prejudice of good order and military discipline, Sec. 40, A.A., in that he on or about 13 July 43 sold a pair of rubber boots on issue from the Q.M. Stores of the 6th Cdn. Lt.A.A. Regt., R.C.A. C.A.O. to Mr. Fred Davies.

The Commanding Officer directs that the evidence be be taken on oath.

1st. Witness A-69354, Gnr. Meyer, K.R., R.H.Q., 6th Cdn. Lt.A.A. Regt., R.C.A., C.A.O., having been duly sworn states: "I am Gnr. Meyer, K.R. I lost a pair of rubber boots. On the morning of the 13th July and at approximately 1300 hrs. I took these rubber boots off and put on my leather boots. That night I looked for my rubber boots and they were not in the tent where I had left them. There was a pair of anklets web in them when I left them. When I looked for the rubber boots they were gone but the anklets web were still there. The next morning, 14th July, I reported to Lieut Rivers and told him my rubber boots were missing."

Q. When did you next see your rubber boots?
A. Yesterday, the afternoon of 14th July. Mr. Davies a civilian who lives in Penybont district was in the Regimental Orderly Room and he was wearing a pair of rubber boots which looked like mine. I asked him to take them off so I could identify them, which he did, and they were mine.
Q. How could identify them?
A. By a buckle on one of them which was bent, and by the insoles. These insoles I had purchased myself and put in the boots.
Q. Here are a pair of rubber boots, can you identify them?
A. Yes, these are mine. You can see the bent buckle on the right boot, and here are the insoles which purchased in Colchester.

(Rubber boots accepted by the court and marked "A")

Q. Did you ask Mr. Davies where he had obtained the rubber boots?
A. Yes Sir, he said he had bought them from a soldier in the Severn Arms Hotel on the afternoon of July 13th. He said he paid the sum of eight shillings for them.

K.R. Meyer
K.R. Meyer

The accused declines to cross examine the witness.

2nd Witness: Lieut. J.S. Rivers, H.H.Q., 6th. Cdn. Lt.A.A. Regt., R.C.A., C.A O., having been duly sworn states:

"I am Lieut. J.S. Rivers. As A/Quartermaster of the 6th. Cdn. Lt.A.A. Regt., R.C.A., C.A.O., I learned of the disappearance of the rubber boots issued to Gnr. Meyer. On the morning of July 14 I drove to the Severn Arms Hotel, Penybont, where I picked up William Lloyd, and employee. With Mr. Lloyd as a guide I proceeded to the farm residence of Fred Davies At the time of my arrival Mr. Davies was wearing rubber boots of army issue. He informed me that he had purchased these boots at Penybont on the previous day for eight shillings froma young dark Canadian soldier who wore a moustache. Mr. Davies consented to return with me to H.Q. of the 6th L.A.A. Regt. bringing with him a spare pair of his own boots. On our arrival Mr. Davies identified Gnr. Elvidge, D.F. the accused as the soldier who had sold him the boots."

Q. Here are a pair of rubber boots. Can you identify them?

A. These are the rubber boots which Gnr. Meyer identified yesterday, July 14th, as being his.
Q. Has Gnr. Elvidge, D.F. a pair of rubber boots on charge to him from Regimental Quarter Stores?
A. His records show he has no such boots on his charge.

J.S. Rivers
Lieut. J.S. Rivers

The accused declines to cross-examine the witness

3rd Witness: Mr. Alfred Davies, a civilian resident of Bwlchllwyn, parish of Cfnllwys, Penybont, having been duly sworn states:-

"I am Alfred Davies. On July 13th I was in the stable yard of the Severn Arms Hotel, Penybont, where I met a Canadian soldier chap and he offered to sell me a pair of rubber boots. I bought the boots from him for eight shillings."

Q. Can you identify the soldier who sold you these rubber boots?
A. Yes. He is that man sitting there. (3rd Witness points to Gnr. Elvidge, D.F., the accused)
Q. Have you seen a pair of rubber boots like these marked "A" before?
A. Yes, those are the boots I bought from that soldier.
Q. Did you know these boots were Canadian Government property?
A. No Sir, I did not. I thought they were his own personal belongings.
Q. Was anyone else present whenthis transaction took place?
A. William Lloyd called me down to the stable yard to see this soldier who was carrying the boots with him.
Q. What else happened in connection with these boots after you had brought them and gone home?
A. The next morning, July 14th, Mr. Rivers came to my house and asked me if I could identify the soldier whom I had bought the boots from. I

925

3rd Witness (Cont'd)

accompanied Mr. Rivers down to the Regimental Headquarters of the Canadian Unit where I saw this soldier (points to accused) and identified him as the soldier who had sold me the rubber boots.

Q. What did you then do with the rubber boots?
A. I took them off and gave them to Mr. Rivers and another soldier looked at them and said they were his.
Q. Do you recognize this man? (Gnr. Meyer is brought before the court)
A. Yes, he is one of the soldiers who was here when I took off the rubber boots.

Alfred Davies
Alfred Davies

The accused declines to cross examine the witness

4th Witness: Mr. William Lloyd, a civilian employee of the Severn Arms Hotel, Penybont, being duly sworn states:

"I am William Lloyd, an employee of the Severn Arms Hotel, Penybont. On July 14th I met a Canadian soldier in the court yard of the Severn Arms Hotel carrying a pair of rubber boots which he offered for sale to a man by the name of Mr. Fred Davies. Later on I saw Mr. Davies with the boots under his arm walk back into the hotel."

Q. Can you identify the Canadian Soldier who had the rubber boots for sale?
A. Yes sir, he is sitting over there now. (Points to accused).
Q. Do you recognize this pair of rubber boots marked "A"?
A. They look like the rubber boots the Canadian soldier was carrying yesterday.
Q. Do you recognize t is man? (Lieut. J.S. Rivers is brought before the court)
A. Yes sir. He is the man I guided to Mr. Davies' farm yesterday.
Q. Was Mr. Davies wearing rubber boots when you and the officer, Mr. Rivers, visited his farm?
A. Yes Sir, he was wearing a pair like those marked "A".

William Lloyd
William Lloyd

The accused declines to cross-examine the witness

Question to the accused

Do you wish to make any statement or to give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by accused:

"I wish to give evidence under oath.

D-12008 Gnr. Elvidge, D.F. R.H.A., 6th. Cdn. Lt.A.A. Regt., R.C.A., C.A.C. having been duly sworn states:-

Statement of accused (Cont'd)

"I am D-12008, Gnr. Elvidge, D.F. of H.H.Q. 6th Cdn Lt.A.A. Regt., R.C.A. On July 13th I stole a pair of rubber boots from Gnr. Meyer's tent while he was absent and took them down to the Severn Arms Hotel where I sold them to a gentleman, Mr. Davies, receiving in return eight shillings.

D.F. Elvidge
D.F. Elvidge.

I certify that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

Taken down by me in the presence of the accused in the field this 15th day of July 1943.

F.L. Purtington, Capt, R.C.A.
F.L. Purtington, Capt. R.C.A.

J.T. Kennedy, Major
President of the Court

SUMMARY OF EVIDENCE

in the case of

No.D-12008, Gnr.Donald Frederick Elvidge, R.H.Q., 6 Cdn.L.A.A.Regiment, Royal Canadian Artillery, a soldier of the Canadian Army placed on Active Service.

CHARGES:

1. Absence without leave.Sec.15(1) A.A. In that he, in the field, while under sentence of Field Punishment, absented himself without leave from 2130 hrs. 15 July, 1943 until surrendering himself to the Military Police at 2030 hrs. 5 August, 1943. Total absence 20 days 23 hours. Cost of Return to his Unit being £2-3-2.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS No.D-118736, A/R.S.M.Parkin, A.E. having been duly sworn stated as follows:

" Sir, I am the Regimental Sergeant-Major of the 6 Cdn.L.A.A.Regiment. On the 14 July, 1943, Gnr.Elvidge, a member of the R.H.Q.staff, whom I now recognize as the accused, was brought before the Commanding Officer on a charge under Sec.40 A.A., for which he received a sentence of twenty-eight days Field Punishment. At this date the Regiment was at Penybont Camp, Wales, under canvas with no provision available for keeping a soldier under sentence in close custody. For this reason, the punishment awarded to Gnr.Elvidge consisted of general fatigues. Amongst those fatigues was the tending of fires for the W.V.S.Canteen. He was on this fatigue on 15 July 1943. The Canteen closed at 2100 hrs. and Gnr.Elvidge should have been back at his tent by 2120 hrs. At 2130 hrs I checked his tent and he was not there. I again checked his tent at 2300 hrs and he still was not present. I checked his tent at reveille at 0600 hrs. 16 July, 1943, he was still not present. I called the roll every day and Gnr.Elvidge has not answered his name since then. I did not see or hear of Gnr. Elvidge until 13 August 1943 at 1345 hrs. when he was turned over to me by a member of the Canadian Provost Corps. The member of the Canadian Provost Corps also turned over to me certain documents, namely; (a) A Certificate under the Army Act, Sec.163 para(1) sub-para (j),(b) MFB.292-Daily Sick Report(c) AMD2-1, Hospital Discharge Notification and (d) two Expense Vouchers amounting to the sum of £2-3-2, being the cost of return of Gnr.Elvidge to his Unit. I now tender these documents in evidence."

The accused declined to cross examine.

A.E. Parkin A/R.S.M.
(D-118736, A/R.S.M. A.E. Parkin) Produced, Read over to the accused, marked Exhibit 'A', signed by me and attached hereto.

(M.C.C.Ross) Captain

SECOND WITNESS No.4586616, L/Cpl.Hobbs, G., Corps Military Police.

Document purporting to be a statement of the evidence of 4586616, L/Cpl.Hobbs, G., Corps of Military Police, was read over to the accused marked Exhibit 'B' and attached hereto.

I certify that in my opinion owing to the exingencies of the service including the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence cannot readily be procured.

(Capt.M.C.C.Ross)

QUESTION TO THE ACCUSED:

" Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give will be taken down in writing, and may be given in evidence."

ANSWER BY THE ACCUSED:

" I have nothing to say."

D.F. Elvidge
(D-UCCS, Gnr. Elvidge, D.F.)

I Certify that Rules of Procedure 4(C), (D), (E) and (F) have been complied with.

Taken down by me in the presence of the accused at Trevin Towers, Eastbourne, Sussex, this 14th Day of August, 1943.

M.C.C. Ross
Capt. & Adjt.,
(M.C.C. Ross)
6 Cdn. L.A.A. Regt., R.C.A.

J.E. Kennedy Major
President of the Court

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13.7.43	Gnr.		Conduct to the prejudice of good order and military discipline. Sec.40 A.A. Attempting to sell W.D.Petrol	Lt.J.S.Rivers D.W.Davies (Documentary)	28 days F.P. 28 days F&A	14.7.43	Lt-Col. H.M.Dow	Forf.28 days Pay F.R.&I.1939(2)

Certified a true copy from the Regimental Records in my custody.

Capt.& Adjt.,
(M.C.C.Ross)

J.J.K-cmedy Major
President of the Court.

EXHIBIT "Y"

M.F.M. 6
(A.F. H.127)
40/P & /8138 (2665)

No. D-12008 Name ELVIDGE, D.F. Sqn., Battery, or Company — Corps R.C.A. — Date of enlistment 8.4.42 — G.C. Badges — Service or Proficiency Pay

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc. C.G.Wood, Capt. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	24.6.43	Gnr.		Conduct to the prejudice, etc. Failing to report for duty at the proper time after being duly warned. Sec.40 A.A.	R.S.M.Parkin, A.E.	14 days C.B.	24.6.43	Lt-Col. H.M.Dow	
Field	26.6.43	Gnr.		Conduct to the prejudice, etc. in that he on the 26.6.43 at 1930 hrs. was found to be in possession of equipment from a vehicle not on charge to him; namely, one mirror and one gear shift knob.	Lt.R.Masters	7 days F.P. 7 days Pay	27.6.43	Lt-Col. H.M.Dow	Total Forf. 7 days P&A.

(see over)

(P.T.O.)

LIST OF EXHIBITS

Exhibit "A" - Boots, Lumbermen's, Rubber, Prs., 1

Exhibit "B" - AFB 252

STATEMENT OF THE ACCUSED AS TO WHETHER OR NOT HE DESIRES TO HAVE AN OFFICER ASSIGNED BY THE CONVENING OFFICER TO REPRESENT HIM AT THE TRIAL.

I desire the Convening Officer to detail an Officer to represent me at my forthcoming trial by Field General Court Martial.

In the Field
14 Aug 43

D Z Elvidge
(D-1ECOM, Cmr. Elvidge, D.P.)

I acknowledge that I have been notified that it is proposed to detail an officer with legal qualifications to act as Prosecutor at my forthcoming trial by Field General Court Martial.

In the Field
14 Aug 43

D. F. Elvidge
(D-12006, Cpl. Elvidge, D.F.)

EXHIBIT "X"

M.F.B. 353
7M—8-40 (6400-21)
H.Q. 1772-39-620
A.F.B. 294

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-12008	Gunner	ELVIDGE, D.F.	6 Cdn.L.A.A.Regt., R.C.A.

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Conduct to the prej. etc. 3 times	Conduct to the prej. etc. 3 times
For	times	times
For	times	times
For	times	times

2. The accused has not been previously convicted

The accused at the present time is under sentence for 28 days beginning on the 16th day of July, 1942.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which 8 days were spent in hospital.

5. The present age of the accused according to his record of service is 20 years 11 months

6. The date of his attestation specified in his record of service is 8 April 42

9. The accused is in possession of or entitled to no military decoration, or military reward

SCHEDULE

Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18 day of Aug 43

(M.C.C.Ross) Capt.& Adjutant,
6 Can.L.A.A.Regt.,R.C.A.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked J.E.K. Kennedy Major, signed by the president, and annexed to the proceedings.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 18 Aug 43 day of , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. B. Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The Interpreter~~ JJK
4. The officers under instruction)

*Omit if not applicable.

were duly sworn 5 Judge advocate.

Signed this 18 day of Aug 1943

J. Farmer Capt. J.A. — J.H. Kennedy Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 761 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 670 of 1918 have been complied with.~~

Signed this day of 19

JJK

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer if he has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 18 day of Aug 1943

J.J. Kennain

Confirming Officer. Brig. Adjt C.C.R.A. 2 Can Corps

Promulgated and extracts taken in the case of D12008 Gnr Ellerington 2nd Fd Regt RCA.

(a) (Dated) 25 August 1943 (Signed) H.M. Rees Lt Col

Officer Commanding 6th Can. Lt. A.A. Regt. RCA.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20764) W1-47543-2-42. 25,000 7/42 A.E.F.N.O.A. Gp.698
(1764) W1-13606-1-43 40,000 7-43 " "

GG-144

SGN ELY P

GG·144

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 11th day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*[and that it is not practicable to delay the trial for reference to a superior qualified officer;]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*[I am unable to appoint~~

~~a)—Three Officers (to form the Court),~~

~~and—A Field Officer as President),~~

~~for the following reasons, namely:—]~~

*Omit if not applicable.

122

Judge Advocate: Captain G.M. Graham, A.D.J.A. 1 Cdn Corps

President.

Rank.	Name.	Regiment.
Major	G. Gibb	47 Cdn Gen Tpt Coy, RCASC.

Members.

Rank.	Name.	Regiment.
Captain	F.N. Fairbank	RCAPC Hq 1 Cdn Corps

A Captain to be detailed by C.C. 1 Cdn Corps Grd Fd Pk, RCOC

Capt. D.W. Ingram. RCOC. 1 Cdn Corps Army Tps Sub Park

*Signed 9.6. McCusker (E.A.McCusker) Brigadier

Commanding D.D.M.S. 1 Cdn Corps *Convening Officer.*

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-21191 Sigmn Patrick ELY	First Charge Section 41 Army Act	Not Guilty	Guilty.	Confirmed 3 1 Pa B.A.
No 2 Coy Sigs 1 Cdn Corps	Second Charge Section 41 Army Act	Not Guilty	Not Guilty	
	Third Charge Section 41 Army Act	Not Guilty	Guilty	
	Fourth Charge Section 41 Army Act	Not Guilty	Guilty	
	Fifth Charge (Alternative to 4th charge) Section 40 Army Act	Not Guilty	Not Guilty Guilty	
	(As per charge sheet attached)		The court finds that the accused D21191 Sigmn Patrick Ely No 2 Coy Sigs 1 Cdn Corps to undergo 120 days detention in the field 16 Jun 43	

* Question to be asked of accused, if he pleads not guilty (R. of P. 36 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G.A. McCusker (Signed) [illegible]
(G.A.McCusker) Brigadier — Capt
Commanding D.D.M.S. 1 Cdn Corps — *President.*
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16th day of June 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
*(4. The officers under instruction)

were duly sworn.

Signed this 16th day of June 1943

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I ~~direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) 3 1 P

Signed this 17th day of June 1943.

[illegible] Brigadier
C.R.C. 1 Cdn Corps
Confirming Officer.

Promulgated and extracts taken in the case of D-21191 Sigmn Patrick ELY

(a) (Dated) 19 Jun 43 (Signed) Patrick Major
(C.A. Peck) Major
A/ O.C. Sigs 1 CdnCorps

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.S.E.W.Ltd. Gp.499

B2

CHARGE SHEET

The accused, D-21191 Sigmn Patrick Ely, No.2 Coy, Sigs, 1 Cdn Corps, a soldier of the Canadian Army Overseas, is charged with, when on active service: -

FIRST CHARGE

Sec 41 Army Act

Committing a civil offence, that is to say, assaulting a civilian Police Officer in the execution of his duty

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, did assault William Stanley Tozer, W.R. 66, "B" Division, Metropolitan Police, by striking him in the face with his right fist, while said William Stanley Tozer was coming to the assistance of Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, in the arrest of D-21078 LCpl D.F. Riddell.

SECOND CHARGE

Sec 41 Army Act

Committing a civil offence, that is to say, obstructing a civilian Police Officer in such a manner as to enable a prisoner to escape

in that he

in Trafalgar Square, London, at or about 2155 hours 6 Jun 43, by assaulting William Stanley Tozer, W.R. 66, "B" Division, Metropolitan Police, as set out in first charge, while said Police Officer was coming to the assistance of Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, in the arrest of D-21078 LCpl D.F. Riddell.

THIRD CHARGE

Sec 41 Army Act

Committing a civil offence, that is to say, assaulting a civilian Police Officer in the execution of his duty

in that he

in Cannon Row Police Station, London, on 6 Jun 43, did assault Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, by punching him in the stomach.

FOURTH CHARGE

Sec 41 Army Act

Committing a civil offence, that is to say, using threatening language to a civilian Police Officer

in that he

in Cannon Row Police Station, London, on 6 Jun 43, when in arrest, did throw off his jacket and say to Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1 Police Station, "200 lbs you bastard, I'll fucking well kill you", or words to that effect.

B2

CHARGE SHEET (Cont'd)

FIFTH CHARGE

Sec 40
Army Act
(Alternative
to Fourth Charge)

Conduct to the prejudice of good order and military discipline

in that he

in Cannon Row Police Station, London, on 6 Jun 43, did use threatening language to Frank Beavis, Police Sergeant 40, "A" Division, Metropolitan Police, Cannon Row, SW 1, Police Station, by throwing off his jacket and saying to said Frank Beavis, "200 lbs you bastard, I'll fucking well kill you", or words to that effect.

(A.E. Wrinch) Lt-Col.,
Comd Sigs 1 Cdn Corps.

In the field,
10 Jun 43.

To be tried by Field-General Court-Martial.

(E.A.McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

Field,
11 JUN 43

MEDICAL CERTIPICATE (K.R. (Can) 557)

I certify that I have this morning examined No. D-21191
Sigmn Ely, P. of Sigs 1 Cdn Corps and, in my opinion,
he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date 16 Jun 43

(H.C. ~~Johnson~~) Capt,
R.C.A.M.C.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Ad. Field on the 10th day of June 19 43 by order of Brigadier E. A. McCreery Commanding 2 Div. 8 Cdn. Corps. dated the 11th day of June 19 43

President.

Major G. Gibb
#1 Cdn. Gen. Tpt. Coy, RCASC.

Members.

Captain P. E. Fairbank
RCOrdC, HQ 1 Cdn. Corps.
Captain R. L. Sorgeant
Corps Army Tps. Sect. Park
RCOC.

Capt. S. M. Graham, 4 Q & A, 1 Cdn. Corps. Judge Advocate.

Trial of* D 21191 Sapper Fishkid Ely
No 2 Coy. Sigs.
1 Cdn. Corps.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available.~~

~~, writing member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt. W. S. Smith, 1 Cdn. Corps Signals.

Counsel‡ or defending officer† Lieut. M. I. Friedman 33 Cdn. Corps Tps. Coy. R.C.A.S.C.

At 10.15 o'clock the Trial commences.

The order convening the Court is read, and is marked 'A' signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] Form A 9.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.
Lieut. R. A. Forrester - 1st Cdn. Army Fd. Coy R.C.E.
Lieut. R. L. Gowe - 32 Cdn. C.T. Coy. R.C.A.S.C.
Lieut. J. F. Letheren - 44 Cdn. Gen. Tpt. Coy, R.C.A.S.C.
Lieut. A. W. Bunnin - 1 Cdn. Corps Ord. Fd. Park R.C.O.C.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

Are you guilty or not guilty of the fifth charge against you, which you have heard read? *Question.* Not Guilty. *Answer.*

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked _____, signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. See attached sheet

being duly sworn, is examined by the prosecutor.

C 6

Police Sgt. Frank Beavis, 40 "A" Division,
Metropolitan Police,
having been duly sworn, states:
I recognise the accused. About
9.55 p.m. on the 6 June I was on
duty in uniform at Trafalgar Sq.
London S.W.1. when I saw and heard
about 11 or 12 Canadian soldiers
approaching me from the corner of
Northumberland Ave. They were in
high spirits & taking up a considerable
portion of the roadway causing
traffic coming from Whitehall to
suddenly stop. They were all
shouting and one remark was
overheard regarding "your women
country". They came towards me
and then they rushed me
I asked them to be quiet
as they were in uniform and
to behave themselves when
L/Cpl. who was in front of the
and facing me shouted: "You're
asking for fighting tonight - get
out of it - come on boys, start on up"

Gwg

6 (Cont.) Beaver

with that they all came round me and the L/Cpl struck me on the chest. I immediately caught hold of him and told him I would take him into custody for using unnecessary violence and for assaulting me and at once ~~took~~ took hold of one of the arms and eventually the L/Cpl managed to get his scope.

At that time I had a Canadian soldier on my back who also caught my throat and was being held when the police finally reached me."

(Mr. Redman objected that this was not the subject of a specific charge. The objection was sustained.)

At that moment two Reserve 66 "E" Div. Police cars arriving some distance and Ely immediately arrested, but him on the mouth with

Cont

C 3 Bears

his eyes got knocking him clean over. Actually a black servant at got up at his nose and went bleeding. I managed to get rid of the wretch from my back and retired at Ely and caught hold of him, by the time the Cambridge Volge Club had got up. Another relief then arrived at us, (the prince, Cambridge T. and myself) we dragged bodily towards the ends and made a prisoner of the ogress shortly by which time I started Ely was lugged bodily over the fence bringing us on one side of the wall, as Ely on the other. There, with prisoner there about four feet ~~high~~ six ~~wall~~ high as 2 feet thick. I tried to retain hold of Ely during the ogre on of his

Goats

Cit Bears

barbedwire but was eventually
forced to release my hand
by being pulled in one direction
by Cpl Bears behind me and the
pressure was being pulled by
others in back of him, one of
them was a R.C.C.S. Sgt. who
repeatedly punched my hand,
and [illegible] as a consequence I
had to release my hold.

[the a.s.g.a. other than Bears]

Ely got away run up hollers
Hill along the north side of
Progress Sq. then out the
end of a police car shed as
passing I caught him, put
him in the police car and
brought him back to the
R.C. corner of Progress Sq.
I brought him to that corner
because I wasn't sure what
else was happening down there.

CS Bears

Austin Wedin was arrested and both were charged by Canada Customs Police Officers when they were detained pending arrival of escort. At the station Ely Lees had been arrested for he had been using abusive behavior, swearing and obstructing police and he jumped up, slung his backpack blame off and shouted: "I've hundred pounds ya bastard I'll fucking see him" and struck me. Glen in the stomach with his fist. I did not retaliate. Ely went into the police station what my hands. Ely questioned Dave Olle that about half an hour afterwards. 2. "Mr. Spencer" "Then ya owe the accused but Toby that can only you said.

Gary

C6 Bears

Q: That he might be badly hurt
and I sent [illegible] against him?

Cross-Examined by defence counsel Hudson,

Bears states: I did not hear them
singing - some of them may have
been singing but the majority were
shouting. I asked them to be
quiet. They were in my long line
across the wood. The battle was
proceeding down towards Hill - and
they were cutting across it. There
was a bus and a cab in the
procession. A Lieut in the
centre took exception to my
asking them to be quiet. I had
not spoken to the soldiers
prior to this. The Lieut struck
me just before I spoke to him.
I was surrounded by the soldiers
just before I was struck. I was
struck several blows - coming from
all sides. One of the soldiers
shouted at my back after I answered
the Lieut. I was only able to keep
on with Lieut for a minute or so.
I was forced to let him go.

C. Bears

I started after him but I was held away from him by the man pulling on my back by other pulling at me from behind. My first got was to get rid of the man on my back which I did. Then I received a blow on the stomach just before I got rid of the man on my back. As that received from Ely she had swung away from Ely we came face to face with the Lion Keeper and struck him in the [illegible] the Light had gone by this time. Ely struck Tolzer a few seconds after. The whole affair took very few minutes - perhaps ten minutes at least.

Objection by the defence: I submit I am entitled to cross-examine them as to the writing by contradicting the evidence that this is my writing by saying that I am not the writer but by referring to inconsistent statements made previously as to any note record whether such statements are recorded in writing

C (8) years

I am entitled to ask the
witness whether or not in certain
statements were made and if
refresh his memory by referring to
the specific occasions. The fact if
that such statements were
made before a court is
a contradiction and the whole
matter goes to credibility of W.

Ruling of Judge Advocate - I
In military courts-martial such cases
stand and I decide on the
merits. The case now being tried
must be determined by the court
only on evidence brought before
it by witnesses for the prosecution
or defence. The A witness may
be challenged on variations
between his statement at the
inquiry & evidence and his
oral evidence before the court.
I therefore rule that evidence
which the witness may have
given in another case may not
be introduced in this case.

(9) (Bearis) (continued) Renewal of
Cross-examination by Defence:
Bearis states: On first night of the
accused was with the armed convoy
across the road. He had a sergeant
with the shotgun and I noticed him
by his size. I next noticed him
when I received a blow in the stomach.
After I had shaken myself free
I went for the man in my back
I went for Ely after I had seen
him hit Tolzer. I caught hold of
him and Tolzer had got up to
and caught hold of him too. [to via rapid interrogation
[Questioned about a statement about
Cavadrais, Bearis denies that
he had made any statement about
Cavadrais either in the particular statement
or elsewhere.]
Re-examined by prosecutor:
Bearis states: It only took a few
seconds before Tolzer and myself
after he had been hit.
Questioned by the court:
Bearis states: I don't think the remark
made was in the statement referred
to by my weight. Ely was booked in
about 10.30 p.m.
Guard

C (10) Tolzer

P.C. TOLZER, William Stanley — [redacted] Met Reserve Constable 66 "E" Division, Metropolitan Police; having been duly sworn, states:

I recognise the accused. About 9.55 p.m. on 6 June 43 I was on duty in the Strand, W.C. 2, when in consequence of what I was told I went to the S.E. corner of Tropolgar Sq. where I saw Sgt. Bears 40 "A" Div. surrounded by a number of Canadian soldiers who were assaulting him. One of the Can soldiers was on his back. I went into his assistance and when I almost reached the Sgt. who was against the wall I caught hold of right Ely and he struck me on the nose and mouth, knocking me down. I got up but was pushed away by other Can soldiers.

C.I [Tokyo]

I later saw him, partly held
by Sgt. Bears but with the
assistance of the soldiers
he managed to get out the door
and ran away. Later I saw
him in the police car and he
was taken to Camp Roi.
The sgt. left the charge room
at the station and later
he came back and Ely
struck the sgt in the stomach
saying: "Two hundred pounds
you bastard - I'll fucking well
kill you."

Justice of the peace, Tokyo
state: Ely was facing the sgt
when I saw his fist. [illegible] him he
when I both turned around and struck me.
I clinched Ely to fly and break
up the fight. As I was hit
I remember help to Sgt
Bears for a few minutes - but
I broke up the fight for a minute.

Bath

Cr (Dodge)

I went back station in the police car with the Sgt. and Sly.

Q: Would you say they went peacefully with station?

A: Definitely not.

Tyler states: They did not walk with the station very quietly.

Q: They did not want to arrest very easily.

A: No.

Q: Yes - the charge was all the time

A: Yes - except she I was further waiting with for we got the accused.

Q: You stated that Sly made a statement to the Sgt. Was there any reason for this?

A: No, I don't. I. It surprised me. I could see no reason for it. She was purely friendly when to question down. They was still in the station she I left at 12.30.

Gus

Cir Tolge

C. I. by defence:

Tolge states: Ely struck the Sgt. in the charge room - He had been talking quietly with the other medics - Sgt. Bean came in a little later. Ely jumped up about as one of the Sgt. came in and struck him - I do not recall the Sgt. making any remark. The Sgt. had gone up again to Trafalgar Sq. with the police wagon. I was with the prisoner the whole time.

Tolge states: I had a good look at Ely she he turned around after I had grabbed him. He paused and then hit me. - I caught hold of him - he swung around - paused - then struck me. I didn't see it until it almost reached me. It happened in a matter of seconds.

Q: How did you recognize his face

A: I knew him - because I got up right away and was face to face - I'm absolutely certain.

Gmb

D

The prosecution is closed.

R.P. 40 Evidence 2. complied with.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No

Question. Do you intend to call any other witness in your defence?

Answer. Yes.

Question. Is he a witness as to character only? *Answer.* Yes.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says:†~~

~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

Instruction

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

See attached sheets.

D-3. (Drury)

B-85-796. Lieut. Drury, Reg't 2 Cdn Regt, 1 Cdn. Corps, having been duly sworn, states: I was in London a few days & met other soldiers of my company. They was out as a body & some time we went to C.M.H. 2. Regt garage and then to the Lear. We put a bus got there about eight o'clock & we left at approx quarter to ten. There was lots of us. We did get a bit of drinking. We came out and started across Trafalgar Sq. to get to the garage. There was an altercation with the police. We then went down the street in twos and threes. They wanted to know if we 2: Did you see [illegible] at all just before you left the pub. A: I saw him in the pub and later in the car when he was under arrest. They was in the pub with the others.

Gunby

D-4 (Drury)

We were back later with the Canon St. police station & they told us to sit down in a small room. The police sgt. was sitting behind a desk when we got in & then Sly told his story as after Sgt. Beavis gave his evidence, Sgt. Beavis was told by the desk sgt. was told to take a run and pick up some of the other men involved. Sgt. Beavis then turned and spoke to the door as Sly got there he turned and said: "I got something else we are wanting but wait". Sly then got up, and hit the sgt. in the stomach. The police sgt. took a swing at Sly. then we began the sgt & then took to Trafalgar Sq.

Dr (Drury)

Sy and I had been sitting
and talking together when we
was about halfway between us
and the door, and we
ft. away -
2: Ya was at Trafalgar
Sq when the guns roared!
Sq when the guns roared!

A: Yes
2: Did ya see Constable Tozer
about by anybody
A: No sir. —

Cross-exam. by prosecution,
Drury states: I recognised
all the soldiers coming out
about. I could have said
who he was but I noticed Sy
because of his age. He is small -
they are in mess a lot, spend
at. Take they are a crowd.
I didn't see him again until
I was in the police car.

D-6 (Dhuy)

All the twelve of us crossed the road. I figured I was half-way back. ~~when~~ There were none on my right or left. I was near the corner of the road that way. I met the twelve of us were in the canal on the S.E. corner when the shots occurred. I recognized Capt. McKenzie being there.

[Defence objected to the questioning as to the others who were there stating that they were only witness on the accused.

The J.G. ruled that ~~the~~ the questioning was directed to the question of credibility.]

Q: By presumption. Do you know who the others were?

A: I did not see them but it is possible I was there.

Q: Was your name on the police station?

A: No sir. I have no idea why they took his off.

D. 2 (Drury)

Ely and I weren't arguing - it was just a conversation. I'm clear about what Sgt. Beaini said because it struck me - my Ely took it his hair, I think I moved. the desk sgt. didn't have anything to say. Constable Tye may have been there. he was there afterwards. I think it was Tye who got me a drink of water. I couldn't swear he was there all the time.

[Defence counsel asked if he could ask the witness about the number of police there were at Trafalgar Sq.

Sq.

The J.A. states that the question was not to be asked.]

Drury said he was a warder at the steel house and the game in Jan 6 ended at 1700 hrs. Before 1700 and 2000 hrs. Drury said they were back C.H.2. Prisoners at exercise up and later ate. Nothing deputy had been arranged for later.

Hall

D-5 (Drury)
Most of the boys started to go out.
We went met at our place near
there. There were about twelve of
us - (by the J. A.)
Asked, who they were, the writing
could be used not like to answer
the question.
Asked how many were for #2 by
Rigs, Drury replied there were seven
the first morning we saw Ch. H. 2
Rigs. Dec.
~~the coin a needle strong about mark~~
~~the pistol was~~
~~K. Corby~~
Q. A:
Q: Tell the court the number of
the men for Ch. H. 2 Rigs.
A: One sergeant, two lieut. corporals
and two privates.
Q: Was that the usual thing
are the numbers?
A: I couldn't say
Q: You did not see the band any?
A: No
Q: Then on the 25th?
A: I don't know we heard you.

D. 10

Q: Was this Sgt take off his tunic?

A: I am not quite sure.

Q: You don't know why he took it off?

A: No, sir.

Q: Did he make any remarks when he did it?

A: No sir.

Q: Did you see Tyer struck?

A: No sir. I didn't see him until he arrested me.

Q: Where were you hit?

A: I was hit in the eye.

Q: How much had you to drink?

A: Quite a bit.

Q: Had lunch + beer?

A: Beer.

Q: Were you at this Inquiry?

A: No I was at Inquiry when we were drinking.

Q: Did you think this Sgt was under the influence of the drink or not?

A: He was pretty high - but not staggering.

Dismissed

D-9 (Burg)

Q: You were half way back - you were coming the street. How many cars ahead of you -

A. Four or six - something like that.

Q: While they were talking please how many civilian police did you see?

A: At the end towards the fire.

Q: How many were at the actual fire.

A. Possibly also by the end.

Q. Were there any M.P.'s

A. I did not see any.

Q. As the chief moved off Sgt. Bears started for the door that was at the rear - when he made the statement.

A: The det sgt., Sgt Bears and possibly Inger

Q: When you talking it over - were you worried?

A. Yes sir

Q: You were annoyed because you were at the parade - were you angry?

A: I was -

D-11 (Drury)

2: Who was in charge of your party?
A: Mr Short came to London but
left us after the first game - that
was Cpl. Mackenzie.
2: Back in the police station offi-
Sgt. Bears words he overheard - that
did Sgt say to him
A: He said something like "you
(you bastard)
effin' Pole" but I'm not sure
like that.

Question by court:
Q: That was the Sgt. Bears was
giving out the law?
A: Yes sir
2: It wasn't that he was using
bad language Sgt.
A: No sir

D-12

Defence counsel address:
He argued that there were two questions - was there an offence committed and did the accused commit the offence. He contended there was some doubt as to whether Sgt was the man who struck Tozer. The evidence of Sgt. Beavis was that he saw the blow struck just as he was clearing a man off his back and fighting off others and trying to release a light he had previously arrested. In the confusion Sgt. Beavis might well have been mistaken. Tozer's evidence was that he had grabbed the accused from behind and that the accused had turned around, paused and struck him. On that basis Tozer, he argued, would be unable to identify the individual. Tozer's evidence did not prove that the assailant knew he was striking a policeman. Unless the court was satisfied that the identity of the accused was established the first charge should be dismissed.

D-63

At the close of the second charge the defence submitted that a case had not been made out. Even if the identity of the accused had been established, it was pure speculation whether the L/Cpl would not have escaped if Tyler had not been hit. There was no evidence that a L/Cpl was under arrest or had escaped arrest. As to Sgt. Bearis' evidence that he ~~[illegible]~~ ceased to chase the L/Cpl to ~~[illegible]~~ go to Tyler's assistance, that was not a matter for evidence but only a decision for Sgt. Bearis. On the merits of the attack on Sgt. Bearis in the station the defence admitted the attack but there was a divergence of evidence as to the circumstances of that attack. There was a conflict of evidence and Sgt. Bearis denied making any statement as alleged by Drury. As to whether the statement as made if Bearis made it he could regard L as would not like to admit it. Tyler may not have heard it because of absence from the room

D-14

it was reluctant to admit it: if the statement was made, in view of the general excitement it must be considered that Sgt. Bears knew he was "storing things up against" it was a reasonable action of the accused resented it and there was reasonable provocation for the assault. He was greatly incited as a Canadian and at a time when he was in a state of excitement and by a person he thought particularly abusive. The court shared again if it believed the words were spoken.

Prosecutor's address:

He stated he wished to stress the seriousness of the charge but in fairness both accused that there must be remembered that there were others involved. The Metropolitan police should be assisted not hindered. The police had men worked certain things in trying to keep the peace. The evidence for the defence was clear on points that

D-16

On the last three charges the defence rested & therefore a certain statement had been made by the police ofct. It was a question of the balance of the weight of evidence.

Ultimately must be found an innocent man unless the court finds that the charges were proven against him and these charges must be proven beyond a reasonable doubt. Barring reasonable doubt the accused must be found guilty. If there was reasonable doubt it must be resolved in favour of the accused.

Unless a witness's evidence for the prosecution challenged a prima facie case had been established. Unless the evidence was challenged by just as cogent evidence as produced for the prosecution the charges must be held to be proven. The court was referred to R. v. R 13 and R. v. R. 11.

would help the accused and
vague as points that would involve
the accused - Tyler would recognise
the man who he saw in front of
him waiting to shoot him - He
was also recognisable for his
stature - He contended there could
be no doubt as to the guilt of the
accused and that Sgt. Bean was
determined to arrest the man who
had assaulted Tyler.
On the remaining charge the prosecutor
said that he would resist remarks
about Canadians but not on the
particular day here - It was the
word of two Metropolitan police
against two Canadians who had
drunk considerable -

Judg. Advocate's address:
The function of the J. A., he said,
was clear - The court ruled the
questions of fact but on questions of
law the J.A's rulings were final
and could only be disregarded
for serious reasons that must be
recorded -

S 47

The charge sheet was in two parts. The offence for which the accused was charged and the particulars of the charge. There was provision for dealing with a charge even if all the particulars were not proved. The accused could not be convicted of both charges in the alternative. But he could be acquitted of both but could only be convicted of one or the other.

D-2491, Dig. Ely, Patrick #2 Cy Dupl.
+ Ch Corps

His character is so far as I am aware is unimpeachable.

3rd Character Witness.

Douglas George Hayes, Millcroft, Church Lane, Burstow, Surrey. Having been duly sworn states.

I am headmaster of Crawley Down School & have known the accused for a period of eight months. He is connected with the youth movement which is patronised by the older boys of my school. He has assisted me in training these boys. Much of the good work in this youth movement is produced by imitation of their elders & in this case they have been affected by E.G.'s advantageous personality. He is held in high regard by the boys parents & those who know him in the village.

The defending officer addresses the court:

His soldier joined up in 1939 has practically been conducted sheet. He has not only done good work for his C.O. but has used his spare time in assisting the local population in training their own children. I ask the court to consider the case in the light of the evidence they have just heard. There were a number of soldiers concerned in the fracas on 6 Jan. 43 & some of these have not been apprehended & appeared in front of a court. I think that the court should consider the

circumstances under which the charges were laid. There are several incidents in this soldiers case. He is very evidently a good soldier, a good citizen & a definite asset to the Canadian Army. There is no evidence of serious physical injury to either recipients of his blows.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused D21191 Signa. Private E/g. 1 Coy 1 Batn. Corps Sigs. is Not Guilty on the 2nd charge & the 5th charge but guilty of the 1st, 3rd & 4th charges.

G.A.O.2.0.3262 complied with -

Findings of not guilty given in open court. Sgd

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Capt. A. J. Smith 1 Bde. Corps Sigs. is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes I produce A.F.B. 2540 & extract from copy of Regulars A.F.W.6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked M1 & M2 signed by the President, and annexed to the proceedings.

Question by the President. ~~Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*~~

Question. ~~Have you compared the contents of the above statement with the regimental books? *Answer.*~~

Question. ~~Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*~~

~~Cross-examined by the accused.~~

[Instruction.—If in cases of the nature of the service of the accused on a disciplinary corps, or otherwise, the finding of the Court requires but little or any recapitulation, punishment to be given to this is essential by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* Nothing I can say in defending myself. I do not propose to.

The Court is closed for the consideration of the sentence.

G.A.O.R.O. 3262 complied with

F

Sentence.

The Court sentence the accused D21191 Sapper Patrick Gallagher of No 2 Coy 1 Cdn. Corps Sigs. to undergo 120 days detention.

In the Field
16 Jan. 17.

[illegible] Lt-Col
President

Lieut. A.J. Smith No 2 Coy. Sigs. 1 Cdn. Corps a character witness having been duly sworn states:

I know the accused he is in one of the sections I command. He has been with me seven months & has given me no trouble. He is popular & has a reputation for gambling.

2nd Character Witness:

Alfred William Hill, ordained in Holy Order late Chaplain to His Majesty's Colonial Forces - Heatherton Manor, Turners Hill, Sussex having been duly sworn states.

I know the accused well & have known him for seven months. He is connected with the Youth Movement in my church. He is also giving all his spare time in training the boys & has spent his money in equipment for them. Both myself & the boys parents hold him in high regard & the boys have become a credit to the village because of their contact with Pte.

METROPOLITAN POLICE. No. 995.

STATEMENT OF WITNESS.

Cannon Row *Station.* "A" *Division*

6th *day of* June. 1943

Name Frank Beavis.

Address Police Station,

Cannon Row. S.W.1.

Age Occupation Police Sergeant 40 "A" Division.

Statement At 9.55 p.m. on 6th June, 1943, whilst on duty at Trafalgar Square, London, S.W.1., I saw about 12 Canadian soldiers, the majority of whom were N.C.O.'s cross the roadway from Northumberland Avenue, towards the south ~~west~~ corner of Trafalgar Square. They appeared to have been drinking and were shouting at the tops of their voices, and deliberately walked in front of oncoming traffic causing a bus and ~~xx~~ other vehicles to stop suddenly, shouting out some remarks about " your rotten country". As they approached me, strung out in a long line right across the roadway, I asked them to behave themselves, and to be a little quieter. A lance Corporal, not in custody, said to me " You're asking for fucking trouble, get out of it. Come on boys smash him up". They all got round me, pushing me back along the footway, when the lance corporal struck me in the chest. I at once seized hold of him and told him I should arrest him for insulting behaviour, and for assaulting me. I immediately received a rain of blows, and they commenced to wrench the lance Corporal away from me. A soldier whom I now know as Private Drury, No. B. 85796 attached to the R.C.C.Signals jumped on my back shouting let him go you bastard" half choking me with his arms. This and the pulling of the other men eventually caused the escape of my prisoner. At this point Private Patrick ELY, No. D. 21191 also attached to the R.C.C.S. attacked me, but I managed to get free from Drury and as I went to run after the escaping prisoner, Ely seeing another Police Officer running to my assistance, jumped straight at him and knocked him down with a blow in the mouth with his right fist. I at~~x~~ once caught hold of Ely, and the War Reserve who was able to get up also caught hold of him when we were again set upon by Drury and his companions and forced to leave go. Ely run up Trafalgar Square, and I finally caught him in Whitcombe Street, with the aid of a passing motor car, conveying him back to Trafalgar Square. He fought all the time. Immediately on my return Drury, and another Canadian rushed at me, and Drury shouting "You can't' touch Canadians in this country you bastard " they both attacked me. I closed with both of them and caught ~~xx~~ hold of them but in the melee which ensued I could only manage to retain hold of Drury, and this only with the help of several civilians who came to my assistance. In this melee I struck Drury several times as he was fighting madly. I finally told ~~him~~ that he was being arrested for (1) using insulting behaviour likely to cause a breach of the peace, (2) assaulting me in the execution of my duty, and obstructing me in such a manner as to enable a prisoner to escape, when he said "its nothing what I'll do to you when this lots over". Ely and Drury were conveyed to Cannon Row Police Station, where they were detained pending enquiries and escort. Ely was then told that he had been arrested for Obstructing Police, Assault on Police, and insulting behaviour". When I told him this, he flung off his jacket and jumped at me punching me in the stomach, shouting "

Signature

Signature witnessed by P.T.O.

S.P. 14164/30,000. Mar. 1938. w182 [3]

" 200 lbs you bastard, I'll fucking well kill you".
They were detained pending arrival of escort.

B. Beaurie P.S. 40 "A"

METROPOLITAN POLICE. No. 995.

STATEMENT OF WITNESS.

Cannon Row *Station.* "A" *Division*

6th *day of* June. 1943.

Name William Stanley TOZER

Address Police Station.

Bow Street.

Age Occupation War Reserve Constable 66 "E" Division.

Statement About 9.55 p.m. on 6th June, 1943, when on Duty in the Strand, W.C.2., in consequence of what I was told I ran to the South ~~XXX~~ East corner of Trafalgar Square, where I saw Police Sergeant 40 "A" Division, surrounded by a number of Canadian soldiers, about ten or twelve, who were attacking him. One of the Candian soldiers was on the Sergeants back. As I went in to his assistance, and as I had almost reached the Sergeant, I went to catch hold of Private Ely, No. D21191, who was attacking him, he swung round jumped at me and struck me in the mouth and nose with his right fist, knocking me down. I jumped up and caught hold of him, but the soldiers with him finally forced us to relinquish out hold and he ran away, up to the North side of Trafalgar Square. A few minutes later the Sergeant returned with the man Ely, and when he arrived again, I saw Drury and another man go for him. Another scramble or ~~struggle~~ ensued and Dury was finally arrested. They were ~~both~~ conveyed to Cannon Row Police Station, where they were told they had been arrested for insulting behaviour, assault on police and obstruction, Ely who had half taken off ~~at~~ his blouse, jumped up and struck P.S. 40 in the stomach shouting out " 200 pounds you bastard, I'll fucking well kill you". He was finally prevailed upon to keep quiet. They were detained pending arrival of escort.

William Tozer. W.R. 66 "E"

Signature

Signature witnessed by

M.P.-14104/50,000. Mar. 1938. W165. (8).

Summary of Evidence in the case of D21191 Signm Ely P, No 2 Coy, Sigs 1 Cdn Corps.

The Commanding officer directs that the evidence shall be taken on oath this 8th day of June 1943.

First Witness

Wn "Reserve Constable "66" William Stanley Iyer of "E" Division Metropolitan Police.

I certify that in my opinion the attendance of William Stanley Iyer is owing to the expense & loss of time involved not readily procurable and a written statement of his evidence signed by him has been read to the accused and is attached hereto as exhibit "A".

W. S Smith

I do not require the attendance of this witness for the purpose of cross examination.

Private Ely

Second Witness

Police Sgt "75" Frank Beavis, "A" Division of Metropolitan Police.

I certify that in my opinion the attendance of Frank Beavis is owing to the expense and loss of time involved not readily procurable and a written statement of his evidence signed by him has been read to the accused and is attached hereto as exhibit "B".

W. S Smith

I do not require the attendance of this witness for the purpose of cross examination.

Private Ely

The accused was cautioned as follows in accordance with KP46 - "Do you wish to make any statement or give evidence on oath; you are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or call any witnesses for his defence.

I certify that the foregoing summary of evidence consisting of 2 pages was taken down by me in writing in the presence of the accused & rules of procedure & C.D.E. & F have been complied with

W. A. Smith
Capt.
Sig. 1 Cdn Corps.

In the Field
8 Jun 43.

No D21191 Name Ely, P. | Sqn., Battery, or Company: 2 Coy Corps Sigs 1 Cdn Corps | Date of enlistment: 15Sep39 | G.C. Badges: | Service or Proficiency Pay: 1/1 | M.F.M.6

Date of last entry in Company Conduct Sheet: 22Jun40 | No. and date of last drunk: nil | Period not reckoning towards freedom from extra fine: | Sheet No.: | Signature O.C. Company, etc.: "C.A. Peck" Major | Character: V.G.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Entries
				Old sheet destroyed - 10 Jun 43.					E.M. Graham Capt
Kingston	22Jun40	Sigmn.		WOAS AA15(1) AWL from 1100 hrs 22 Jun to 1725 hrs 25 Jun 40. (absent 3 days 6 hrs 25 mins).	Sgt Elder Sgt Ratcliffe	14 days CB	26 Jun 40.	Lt Goodorham, W.J.	Forf 4 dys py FR&I 149(1)(a) "C.A.F."

CERTIFIED TRUE COPY

W.S. Smith

(W.S. Smith) Capt.,
Officer in charge of Regimental Books.

(F.T.O.)

A.F.W. (O.M.) B/296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be)
D-21191	Sigmn	Ely, P.	Sigs 1 Can Corps.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this statement may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be prefixed to record with this statement for answer to the proceedings.

† See para. 677, K. R., 1940.

* The numbers herein stated should correspond with the number of entries on the conduct sheets, past instance being given in the most serious case in each entry, and any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is drunkenness the entries for drunkenness must be dated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL (3 dys 6 hrs 25 mins) AA15(a)		1 time
		times
		times
Fine		
Fine		
Fine		

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement, awaiting trial on the present charge, for one day in civil custody, and nine days in military custody, making a total of Ten days.

5. The present age of the accused according to his record of service is 21 yrs of age

6. The date of his attestation specified in his record of service is 15 Sep 39.

10. The accused is not entitled to, no military decoration or military award

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D-21191 Rank Sigmn Name Ely, P. of Sigs 1 Cdn Corps Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the disposing authority.	Punishment remitted.
		N.A.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16th day of June 1943.

W.S. Smith
(W.S. Smith) Capt.,
Adjt, Sigs 1 Cdn Corps.

W.S.S.

COUNTER NUMBER 5 647 84

HOUR 21 30

OPERATOR'S INITIALS JW

RELIEVING OPERATOR E.M.

5 V – 64

Bdv. Emard, S.L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 100881 Bdr Edmond Laurence Lorieau.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. sec. 11	GUILTY	GUILTY	
2nd	A.A. sec. 40	NOT GUILTY	NOT GUILTY	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~present under sentence for~~ Beginning on (date): (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of thirty days.

(Sgd) K.Y. Dick Capt. Judge-Advocate, if any. 10 Nov. 1945 Date awarded. (Sgd) E.D. Bell Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison (or detention barracks) (only) for the period(s)~~ (1. AA 57.)

(Sgd) H.D.G. Crerar Brig

Date 17 NOV 45 Commanding CRA 3 Cdn Inf Div (CDA) Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

M100881 Bdr Edmond L.L. 17 Nov 45 Ronald Pte HQ RCA

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 20 Nov 45 JAG BRANCH

PROCEEDED AT CMHQ IN AB 160 5V-6

FIELD GENERAL COURT-MARTIAL

CPAM# (To View of AFAS) 40/P.A.F. 1000 (6144) 4/38B

Convened by Order of Brig L.O. Clarke, OBE Comd ROA 3 Cdn Div dated 7 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt B. (b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
M 100881	PROCEEDINGS REVIEWED Bdr	Lawrence Locus	EKARD	13 Fd Regt Cda

21 Nov 45 L.J. Brady Maj REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 10 Nov. 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. This Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to 84576 Lt J.R. Alphonse as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member returns. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E. D. BELL	19 Cdn A. Fd Regt R.C.A.
Member	Capt	C. H. Kydd	3 Cdn Med. Regt R.C.A.
Member	Lieut	A. W. McLAUGHLIN	19 Cdn A. Fd Regt R.C.A.
Judge-Advocate	CAPT	K. Y. DICK	HQ 3 Cdn Inf Div Cdn.
Prosecutor	CAPT	J. E. LENNOX	13 Cdn Fd Regt R.C.A.
Defending Offr	CAPT	C.C. LOCKE	3 Cdn Med Regt R.C.A.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans YES.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused M 100881 Bdr LAWRENCE LOCUS Lorieau before arraignment makes(s) (no) ~~of~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C & D(2).

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 CII P 85

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*II*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-86; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans YES.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* L3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on FIRST charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 17(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans I wish to give evidence. Do you intend to call witnesses on your behalf? Ans YES. Are they witnesses as to character only? Ans YES.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*b*), *RP* 45, 120(*f*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans YES.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (iii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 255 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(2), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *Where several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 130, 182, *RP* 46-52, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas Rs* 309, 2323, *MML p* 60, 757-758. *As to sentences assigned for civil offences by the law of England see AA* 40(2), *MML p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), 68(1), *KR Can* 564. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

10 Nov 45

M 100 801 EMARD, Bdr. L.L.
has been medically examined as
of above date and found fit to
stand trial by court martial.

S.A. Simon Capt.
M.O. 13 Field Regt. R.C.A.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, Ins, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M 100661	Bdr	Lawrence Locus	EMARD	13 Fd Regt Cda

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 NOV 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)

(Delete part in brackets where not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(b), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	C.D. BELL (Must be named. RP 106.)	19 Cdn A Fd Regt (Unit.)

MEMBERS.

Capt (Rank.)	C.H. KYDD	3 Cdn Med Regt
Lieut (Rank.)	A.W. McLAUGHLIN (Named or detailed. RP 106.)	19 Cdn A Fd Regt (Unit.)

WAITING MEMBER.

Lieut (Rank.)	To be detailed by C.C. (Named or detailed, if any. RP 106.)	13 Fd Regt Cda (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	K.Y. DICK (Must be named, if any. RP 106.)	HQ 3 Cdn Inf Div Cda (Unit.)

On Active Service in the Fd in Holland (Country.)

Dat 7 Nov 45

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding RCA 3 Cdn Inf Div Cda Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

4/38A (CFA 66 (In lieu of AFA 3) 40/P & S/1601 (E143))

100

CHARGE SHEET

The accused M-100881 Bombardier EMARD, Lawrence Louis, of the Canadian Field Regiment, RCA, a soldier of the Canadian Army Overseas, is charged with,

FIRST CHARGE (NEGLECT TO OBEY REGIMENTAL STANDING ORDERS)

"NEGLECT TO OBEY REGIMENTAL STANDING ORDERS" in that he, on the 23rd of September, 1945 carried civilian passengers in a Canadian Military Vehicle No. CZ4255855 without first obtaining his Commanding Officer's permission, so to do, contrary to Regimental Order No. 533, dated 28th of June, 1945.

SECOND CHARGE (CD 40)

"CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE" in that he, on the 23rd of September, 1945, wrongly and without authority gave permission to L-66686, Gunner BORROWS, W.A. to drive a Canadian Military Vehicle No. CZ4255855.

Remanded for trial by F.G.C.M.

J.D. Baird

.....
(J.D. Baird) Lt.-Col.,
Comd 13th Fd Regt. RCA (Cda)

To be tried by F.G.C.M.

L.G. Clarke

.....
(L.G. Clarke) OBE, Brigadier.
CRA 3 Cdn INF DIV CdA

Holland
7 Nov 45.

F.B.C.M. M100881 Pfc Emard [illegible] L.T.

D-2

Defending offer assumes the court and states that defense is willing to admit 2 facts:

① There was a work ticket properly signed by Capt. Gotland issued to Pfc. Emard to drive ~~[illegible]~~ Cdn Mil Veh # C2 425585 5 from Lauterau to Brunnen + Dieren on 23 Sept. 45.

② That Pfc Emard did in fact give Gnr Burrows permission to drive the said vehicle.

Prosecuting offer states that ~~he has~~ in view of the ~~fact~~ admission made by the defence, he has no evidence to call.

D-6. First witness for the defence - the accused. M100881 Pfc. Emard L.T. having been duly sworn states:

"I am an above named. about 2045 or 2100 hrs Gnr Burrows came to me + asked permission to drive to Dieren to see some friends. I knew he was a qualified driver + I gave him permission because he was in a fit condition to drive. I gave him the rotor arm + the work ticket.

X-exam

I didn't know of any regulation that makes this giving of permission ~~un~~ unauthorized but. I have been driving for 3 yrs. civil + I have been in the army. I have had a licence for 3 yrs. civ + I qualified as a driver

By the court

I have only been with this regiment 2½ months. but to my knowledge it was always

2883

O.K. for one qualified driver to take over from another qualified driver in case the one driver got hurt or anything like that. I understand that when a work ticket is made out to me I am responsible for the vehicle. I ~~think~~ figured that when I had handed over the work ticket & given permission to another driver to drive, the vehicle is then in his care & I am relieved of responsibility. I have never read any order to prohibit handing over a vehicle to another driver. Being a N.C.O. I thought that I could give that permission.
R.P. #3(B) applies with

Prosecuting Officer cross ex:

It is true that there are no orders produced to show that a driver may not turn over a vehicle. Accused says it is all right to do so if a driver got hurt or anything like that. That may be so in extenuating circumstances but in this case there were no such circumstances.

Accused has driven for 3 yrs. Any Officer & N.C.O in the army for that length of time knows that without proper authority, a driver may not drive a vehicle. The work ticket was in favour of Cpl Reed & does not authorize anybody else to drive. It authorizes only Reed to drive & it does not authorize Reed to turn the vehicle over to anyone else.

Exhibit

Defending Offr sums up.

I the defence submits that

(i) I the fact that the accused statement shows no criminal intent

(ii) I the fact that the circumstances must be granted

(iii) I the fact that the accused is an N.C.O. and therefore can be assumed to have some power and discretion

(iv) I the fact that he gave the waste ticket to Barnes

all show that the giving authority was not in fact wrongful and without authority

C.A. Forbes Capt R.A.C.

J.A. Sums up.

The charge can be broken down into two parts.

1. Statement of offence - conduct to the prejudice of good order & military discipline
2. The particulars alleged to support the statement of the offence.

Re the particulars. They are not in dispute. The accused himself has admitted them — in evidence under oath.

You must find that these particulars amount to the prejudice of both good order & military discipline before you can convict.

In deciding whether or not any set of particulars amount to the prejudice of good order & military discipline you are entitled to draw on your ~~military~~ experience. You are all regular officers & you have had varying lengths of military experience and you are well qualified to answer that question.

B-2. Statement by the accused:

On 23 Sep. after dinner I got permission from BSM to be in charge of a liberty vehicle to Bremen & Diepholz. About 1600 hrs. Burrows came to me & told me that 2 Br civilians had come down from Diepholz on business & they would like to get a ride back to Diepholz. I told him to tell the civilians to see with me & I would get a civilian release. I went to the Sty Office & asked the W.C.O for a civilian release from & he gave me one. Then going to the Offrs Mess to find either Capt. Gotland or Capt. Lennon to get them to sign the release. I told the civilians would like to get back to Diepholz with us in the vehicle. They told me that the civilian release had to be signed by the O.C. They first asked the adjt if he could give permission & the adjt said No. It was late in the afternoon. So, after leaving the offrs mess, I went to my own mess hall for supper. I had told 3 or 4 of the fellows who were going with me that I would meet them at the billets with the truck. So at 1700 hrs. I drove the truck up to the billets & there I waited for the rest of the fellows. On arrival of Burrows & the 2 civilians, I told them that I could not get the civilian release signed. It was now 1730 hrs. and knowing that the civilians had already waited 1½ hrs in order to go with me, I decided to take them with me. ~~Before~~ I had told the civies that they would have to sign the civilian release. They both signed their names. Then we proceeded to Diepholz.

R.P. 93(b) applies each.

1 civilian was found in the back of one vehicle & 1 civilian was found in the back of another vehicle. I told Capt Gotland & Capt Lennon about this & they were both very displeased.

E-1

E-1 Character evidence.

M - ~~4444~~ 43961 Sgt. J.C. Hartley, 13 Fd Sqt. R.C.A. having been duly sworn states:

"Guard came to 22 Bty early in Aug. & was posted to my troop. He has been a good N.C.O. He always discharged his duties promptly & kept orders ~~prompt~~ without question. I have never known him to misconduct himself & I have heard of him doing so.

R.P. - ~~E-3-(B)~~ complied with

Lieut H.E. Leith. 13 Fd Sqt R.C.A. having been duly sworn states:

"~~Guard~~ I have known Guard 2½ yrs & in that time he has never caused any trouble. I always believed him & he was a good character - an efficient soldier. I am Sgt Guards troop. ~~Offr~~

R.P. ~~E-3-(B)~~ complied with

E-3 -

Lives in Dunsdale Alberta - is one of 4 brothers & 3 sisters - 1 Bro. killed in action - 1 Bro. now home discharged after 6 yrs service -

Guard 3¾ yrs service - a clean service sheet - Enlisted in Toronto at end of June '14 with 1st Bty - 3 A/T Sqt R.C.A & served there until Armistice. Father has bought for him a lunch counter in Dunsdale, expecting him to return home. Believe doing his own job of plain elevator operator, he is attempting to keep the lunch counter going until Guard gets home. In view of these circumstances, the court should be lenient.

SUMMARY OF EVIDENCE IN THE CASE OF M66686, GUNNER BARROWS, WILLIAM ALBERT, 13th CANADIAN FIELD REGIMENT (CDA), A SOLDIER OF THE CANADIAN ARMY PLACED ON ACTIVE SERVICE, AND M100881, BOMBARDIER EMARD, LAWRENCE LOUIS, 13th CANADIAN FIELD REGIMENT (CDA), A SOLDIER OF THE CANADIAN ARMY PLACED ON ACTIVE SERVICE.

BY DIRECTION OF THE COMMANDING OFFICER THE EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS:- 13075173 Sergeant RAINE, M.W., 603 CMP, Coy. (VP) having been duly sworn, states:

"On the 23rd of September, 1945 at about 2255 hours, I was called to the scene of an accident at Brummen. On arrival at the scene, I learned that one man had been killed, one injured and taken to hospital. Both these people were civilians. The driver, a soldier was removed to No. 1 Cdn. Gen. Hospital. The vehicle involved was a ~~UP~~ ~~matic~~. It was facing towards Brummen on the left side of the road. The rear wheel assembly was torn from the undercarriage and the front of the truck was badly damaged. The RCEME tow truck could not remove the vehicle, therefore, a RCEME transport was called in. The road at the scene of the accident has a left bend as it approaches Brummen from Dieren. The camber of the road is normal from right to left. The road is twenty-one feet wide with a cycle path, three feet wide on both sides. There is no curb on either side of the road. I couldn't find any work ticket or authorisation for carriage of civilians in the W.D. vehicle. The road surface was dry and it was a moonlight night, causing the trees on the east side of the road to cast a shadow. I queried those persons at the scene of the accident and discovered no actual witness at the time of the accident. I obtained a statement from Bombardier Emard, L.L. who said that he was in charge of the vehicle, but was not riding in the vehicle at the time of the accident."

(13075173 Sgt RAINE, M.W.)
603 CMP Coy. (VP)

Both the accused decline to cross examine.

This a certified true copy of the original statement. [signature] Capt.

RECORD WITNESS:- Doctor Anton Aorteweg of A194 Brummen, Holland having been duly sworn states:

"On the 23rd of September, 1945 at about 2200 hours on the main road between Dieren and Brummen, I heard an accident and went to the scene immediately. I must have been there within three minutes. I was the first person at the scene of the accident. I saw a vehicle burning slightly on the west side of the road and found three persons; one soldier and two civilians.

cont'd

The soldier was lying head downwards out the open door, being clamped in that position by his shoe being caught under the dash-board. On the east side of the road, I found two other persons, the first one opposite the vehicle with his head in the direction of Brummen, the other one three metres south with his head in the direction of Dieren. The soldier was conscious. With the help of some civilians who arrived after me, we lifted the soldier out of his position and laid him on the east side of the road. He was badly hurt on the head. My first impression was that he had concussion. I ordered him to lay down, but after some minutes, he got up by himself. With my assistance, he walked to a car which had driven up. I asked the driver to take the soldier to the hospital in Zutphen for treatment. The civilian lying with his head in the direction of Brummen was dead. He must have broken the back of his skull by being thrown onto the hard stone road. The other civilian was lying on his back, but he was conscious and could talk to me. He had broken his leg beneath the knee and had some slight injuries on his head. In my profession, I am usually asked in situations such as this, whether my impression of the driver's condition led me to believe he was drunk. I therefore checked on this possibility. My impression was that he was not drunk. I spoke to him and he tried to answer, but the injuries to his mouth made speech impossible."

Dr. Anton Korteweg

Both the accused decline to cross-examine.

This is a certified true copy of the original statement. H.R. Lemmon Capt

THIRD WITNESS:- Sergeant Hendrick Dokter of KONINKLIJKE MARECHAUSSEE and Derk Jan Koekkoek (Cpl) (Dutch Civilian Police) of Brummen, Holland, having been duly sworn states:

"In the evening of the 23rd September, 1945 at about 2200 hours, the undersigned, Hendrick Dokter and Derk Jan Koekkoek, both attached to the a/m group, heard while we were on night duty at Brummen, a heavy blow. Immediately we proceeded into the direction of the sound and found that the blow was caused by a military four-wheeled vehicle, which had struck two trees along the highway, Dieren-Brummen, between LEUVENHEIMSCHEERZEK and the house of Belmonte under the commune of Brummen. We observed that a physician, Dr. A. Korteweg living at Brummen was rendering first-aid to a civilian, lying alongside the road with a broken right leg and injuries about the head. Another civilian was lying dead a little further on. A totally wrecked vehicle was standing at the other side of the road. The injured civilian is named Korinus Pieper, born at Rheden, 11th November 1910, butcher, living at Dieren, 2 Spoorstraat. We the undersigned state that Pieper's breath was smelling of liquor. The person who got killed is Hendrikus Heggelaar. We conveyed the body to the mortuary at the General Cemetery at Brummen, where we showed it the same night to Gradus Smeltink of Dieren and Hendrik van Tent Beeking of Dieren, who both separately,

identified the body. Pieper was conveyed to the General Hospital at Zutphen. Our opinion about the accident is that the vehicle had been travelling too fast. The condition of the road was favorable (dry). The road makes here a slight bend. The road consists of bricks. It is possible that the accident is partly due to the consumption of liquor, as a part of a stone bottle was found in the wrecked car. This piece has been handed over to the M.P."

Hendrik Bokter.

Derk Jan Koekkoek

I declare that this is a true translation of the joint statement above made by Hendrik Bokter and Derk Jan Koekkoek, 31 October, 1945 at CMP, H.Q., Dieren, Holland.

G. Scheskin (Interpreter)
Employed by 603 CMP Coy (W)

Both the accused decline to cross-examine.

This a certified true copy of the original statement. H C Lennox Capt

FOURTH WITNESS:- Gradus Smeltink, a baker, living at 56 Harderwijkerweg, Dieren, Holland, having been duly sworn states:

Part I Exhibit

"On the evening of 23rd September, 1945, at about 2000 hours, I, together with Pieper and Heggelaar and four Canadian soldiers, whom we had met at Cafe de Slaus at Dieren, went in a military motor vehicle to Brummen to a dance. When we had been there for a little while, our comrades, Pieper and Heggelaar, beckoned us and indicated to us that they were going for a little while. As we were dancing at that time, we did not bother much about it. Later on we heard that there had been an accident on the Brummen-Dieren road, and that Heggelaar was dead and Pieper injured. We went then to the scene of the accident and continued from there to the Mortuary at the General Cemetery at Brummen. Two Dutch civilians policemen took us there from the scene of the accident. I identified the dead body as that of Hendrikus Heggelaar.

Gradus Smeltink

I declare that this is a true translation of the statement made by Gradus Smeltink, 31st October, 1945 at CMP, HQ, Dieren, Holland.

G. Scheskin (Interpreter
employed by 603 CMP Coy (W)

Both the accused decline to cross-examine.

This is a certified true copy of the original statemnt. H C Lennox Capt

FIFTH WITNESS:- Hendrik van Tent Beeking, carpenter, of 9 Prinsenstraat, Dieren, Holland, having been duly sworn states:

"On the evening of 23rd September, 1945 at approximately 2000 hours, I, together with Pieper, Heggelaar and Smeltink and four Canadian soldiers whom we had met in the Cafe de Sluis at Dieren, went in a military motor vehicle to a dance at Brummen. About half an hour after arrival and while I was dancing, Pieper and Heggelaar waved to me indicating they were leaving the dance. At about 2215 hours, the band suddenly stopped playing; the band leader asked for Smeltink and they informed Smeltink and myself that there had been an accident on the Dieren-Brummen road. A little boy had brought the information to the band leader including the fact that Heggelaar had probably been killed as a result. Smeltink and I then went to the scene of the accident and there we saw two Dutch civilian policemen who took us to the Mortuary at the cemetery. There I identified the body as that of my comrade, Heggelaar."

Hendrik van Tent Beeking

I certify that the above statement is a true translation as made before me at CMP-HQ, Dieren, Holland, 1 Nov 45.

G. Scheskin (interpreter employed by 603 CMP Coy (VP)

Both the accused decline to cross-examine.

This is a certified true copy of the original statement J.E. Lennox Capt

SIXTH WITNESS:- Marinus Pieper, butcher, of 2 Spoorstraat, Dieren, Holland, having been duly sworn states:

"On the evening of 23 September, 1945 at about 1830 hours, after finishing my supper and after meeting my three friends, Smeltink, Beeking and Heggelaar, went to the Cafe de Sluis for a dance. This was at about 1945 hours. When we arrived in the Sluis we were informed that no dance was to be held that evening. We heard there was a dance at Brummen. At the Cafe we met four Canadian soldiers and Freriks and we all went together to Brummen. This was about 2030 hours. We were carried there in an army vehicle driven by one of the Canadian soldiers, who was a small man with no moustache. The other driver who drove Heggelaar and I back from Brummen, was tall, black hair and a small moustache, resembling one of the two soldiers standing before me, (indicating Gunner Borrows). At the dance-hall at Brummen, I had a dance and one and a half glasses of beer, and Heggelaar, a Canadian soldier and myself decided to go back to Dieren for more beer.

con'd

We informed the others and left. We arrived at Dieren at 2130 hours and went to the Cafe de Sluis where Heggelaar and I had four or five beers. The Soldier drank not as much as Heggelaar and I, four or possibly five beers. At about 2150 hours, we left Dieren for Brummen. On the road I felt we were travelling too fast and I remarked on this to Heggelaar who replied that the driver was a good one. I remember nothing immediately prior to the accident; it all happened so suddenly.

Marinus Pieper

I certify that the above statement is a true translation as made before me at General Hospital, Zutphen, Holland, 1 Nov 45.

G. Scheskin (interpreter employed by 603 CMP Coy. (VP)

Q1. -"Was the driver who drove the vehicle from Dieren to Brummen the first time, the same driver who drove the vehicle from Brummen to Dieren and then back from Brummen to the scene of the accident?"

A1. -"No."

This is a certified true copy of the original statement. H Elgood Capt

SEVENTH WITNESS:- Captain C.H. Beevor-Potts, R.C. in attendance at No. 1 Canadian General Hospital, having been duly sworn, states:

"On the night of 23rd September, 1945, I was on duty. Towards midnight, I was called to attend Gunner Borrows, who had just been admitted to the M.I.R. He was suffering from multiple lacerations about the face and the head, fracture of the third left metacarpal and concussion and shock. He was given first-aid attention, which included temporary dressings to his wounds and was admitted to the surgical ward, where he was allowed to rest during the remainder of the night under appropriate treatment. Next morning he was taken to the operating room and his lacerations were repaired."

(C.H. Beevor-Potts,)Capt.
No. 1 Cdn. Gen. Hospital.

Q1. - (Gunner Borrows).-"Do you think, sir, that in your opinion, I was drunk?"

A1. - "Due to the extent of this man's injuries, I cannot say whether he was drunk or not."

Q2. - (Gunner Borrows)- "Does shock or concussion give the same effect as drunkenness?"

A2. - "Yes." "It may do so."

This is a certified true copy of the original statement. H Elgood Capt

EIGTH WITNESS:- M-103093 Gunner Werbitsky, D. of 22nd Battery, 13th Canadian Field Regiment (Cda) having been duly sworn states:

"On the night of 23rd September, 1945, we went to a dance at Dieren. We went in a vehicle from 22nd Battery about 1730 hours. In the vehicle were Bombardier Emard driving, Gunner Borrows, Gunner Sperling, Gunner Bell, Gunner Marks, myself and two civilians, one girl and a man. On arrival at Dieren, we unloaded the bicycles and the civilians went to their house. The civilian man returned with a bottle of gin which seven of us drank by the vehicle park. After that we went to the Cafe de Sluis, this party including Gunner Bell, Gunner Sperling, the civilian man who is called "William" and myself. Bombardier Emard and Gunner Borrows went to see their girl friends. The four of us stayed in the Cafe for about an hour. There we had a few beers. Later Bombardier Emard and Gunner Borrows came to the Cafe. A civilian told us that there was a dance at Brummen. About fifteen minutes after the arrival of Bombardier Emard and Gunner Borrows, we left the Cafe to go to Brummen. In the vehicle were Bombardier Emard driving, Gunner Borrows, Gunner Sperling, myself, and about four civilians. I am not sure of the exact number of civilians, because I was in the rear of the vehicle and it was dark. On arrival at the dance-hall, we had a glass of beer each, then went inside the dance-hall. About half an hour later, Gunner Sperling called me outside to have some gin given by the civilians. About an hour later the orchestra leader made an announcement that I could not understand. Immediately afterwards, I heard that there had been an accident to a Canadian vehicle not very far away from the dance-hall."

M-103093 Gnr. Werbitsky, D.
22nd Bty., 13th Fd Regt. (Cda)

Both the accused decline to cross-examine.

This is a certified true copy of the original statement. H Bezeau Capt

NINTH WITNESS:- M-102664, Gunner Sperling, J. of the 22nd Battery, 13th Canadian Field Regiment (CDA), having been duly sworn states:

"On the night of 23rd September, 1945 at 1730 hours, we left Lunteren for Dieren to go to a dance. In the vehicle were Bombardier Emard driving, Gunner Marks, Gunner Bell, Gunner Borrows, Gunner Werbitsky, myself, and a civilian man and a girl. When we arrived at Dieren which was approximately 1900 hours, we unloaded the two bicycles belonging to the civilians and the civilians left the vehicle. The civilian man returned to the vehicle with a bottle of gin and we all drove to the car park. We drank the bottle of gin there, the seven of us. After that Gunner Werbitsky, Gunner Bell and myself and the civilian called "William" went to the Cafe. When we got to the Cafe, we found out there was no dance. We had a few beers.

cont'd

We were there approximately an hour when Bombardier Emard and Gunner Borrows came in. The civilians told us there was a dance at Brummen. About fifteen minutes after Bombardier Emard and Gunner Borrows arrived at the Cafe, we left for Brummen in the vehicle. We were in the vehicle Bombardier Emard driving, Gunner Werbitsky, Gunner Borrows, myself and approximately three civilians. After we arrived at Brummen, we went into the dance. Later I went outside and had a drink of gin from the civilians. Later on while dancing, Bombardier Emard told me that our vehicle had been in an accident."

M-102664 Gnr. Sperling, J.
22 Bty. 13th Fd Regt. (Cda)

Q1. - (Bdr. Emard) "Do you know any of the civilians from whom you had the drink of gin at Brummen?"

A1. - "No."

Q2. - (Bdr. Emard) "What was the night like?"

A2. - "I think it was dark."

Q3. -(Bdr. Emard) "Do you recollect anything, I said to you on the way to Dieren about the way the truck was handling in regard to the steering?"

A3. - "Yes." "You said that it was vibrating and you found it hard to keep it on the road."

This is a certified true copy of the original statement. H.E. Lennox Capt

TENTH WITNESS:- M-56576, Gunner Lewis, H.R. of 22nd Battery, 13th Canadian Field Regiment (CDA), having been duly sworn states:

"I am Gunner Lewis employed as mechanic on 22nd, Battery vehicles."

Q1. - (Bdr. Emard) "Was the truck which I took to Dieren on the night of 23 Sep 45 in good running order?"

A1. - "No." "About the only think that was wrong with it was the steering." "It shimmied at certain speeds. Also when taking corners or curves, due to the shimmy the steering wheel would at times give violent jerks."

Q2. - (Bdr. Emard) "Previous to my trip, had there been work done to fix this fault?"

A2. - "Yes." "I had the vehicle under observation and had been working on the steering for approximately a week, but finding I was unable to repair it, I decided to take it to the L.A.D the next day, Monday, the 24th September.

cont'd

Q3. - (Bdr. Emard) " To your knowledge did you know the cause that made it shimmyR"

A3. - "No."

Q4. - (Bdr. Emard) "Tyour knowledge, did you know that it was necessary to put a lot of pressure on the foot-feed to make it accelerate, that is the spring was sticky?"

A4. - "yes." "I knew the spring was stiff, but to my knowledge did not interfere with the running order of the motor.

Q5. - (Gnr. Borrows) "Did the vehicle always shimmy at the same rate of speed?"

A5. - "To the best of my knowledge, after several road-tests, it did."

Q6. - (Gnr. Borrows) "At what speed did you notice this?"

A6. - "The shimmying started between 30 mph and 31 mph, and reached its peak at 34 mph to 35 mph.

M-56576 Gnr. Lewis, H.R.
22nd Bty. 13th Fd Regt (Cda)

This is a certified true copy of the original statement. J.E. Jarrow Capt

ELEVENTH WITNESS:- Valeria Szabo of 3 Stargardlaan, Bussum, Holland, having been duly sworn states:

" on the night of 2 3 Sep 45, at 2300 hours, a Canadian soldier was brought in to the Roman Catholic Hospital at Zutphen. I was on night duty that night with two other nurses. I telephoned the doctor who came to the Hospital and said to me that the patient was not in great danger and as there was not room for him in our hospital, the Dutch soldier who had brought the soldier in, told me to phone Appledoorn to the military hospital. I could not do so, as I did not know there was a military hospital there, nor did I know the phone number. The Dutch soldier went out and returned later and told me that he had made arrangements for a vehicle to come from Appledoorn to pick up the injured soldier. At 2400 hours the vehicle came with two red-cross soldiers andtook the injured soldier away.

Q.1 - (Gnr. Borrows) "What condition in your opinion was I in the time I was under your care?"

A.1 - " You were in pain and suffering and asking all the time for the doctor. The Dutch soldier said to me." "It was always drunken Canadian soldiers causing accidents." although he did not say absolutely that you were drunk." I got the impression the m that you were drunk. Your breath smelled of alcohol.

cont'd

It was not so strong but in the beginning, I could smell it. We put a blanket around you to keep you warm and washed the blood off your face and hands and we bandaged your head. You were very unquiet all the time, wanting to put your hand on your bandage. We therefore could not leave you alone.

Valeria Szabo

This is a certified true copy of the original statement J.E. Lennox Capt

TWELFTH WITNESS:- Lt-Col W.C. Riley, ADOS, 3 Canadian Infantry Division, (CDA). Statement of this witness's evidence being Army Form G998 is read over to the accused and attached hereto as Appendix "A"

Certified that due to exigencies of the service the attendance of this witness cannot be readily procured.

J.E. Lennox Capt
(G.E. Lennox) Capt.
13th Fd Regt. (CDA)

The accused do not require the attendance of this witness for the purpose of cross-examination.

M66686 Gnr. Burrows, W.A.

M100881 Bdr Emard, L.L.

This is a certified true copy of the original statement. J.E. Lennox Capt

EXHIBIT "A" - Work ticket No. 17 for MD vehicle CZ4255855, 22nd Battery, 13th Fd Regt. (CDA) made out in favor of Bdr. Emard, L.L. driver, for night of 23 Sept 45, to travel on recreation to Brummen and Dieren.

Q. - (put by Capt Lennox) "Bdr. Emard, is this the work ticket for your trip to Brummen and Dieren on the evening of 23 Sept 45?"

A. - "Yes."

J.E. Lennox Capt
(sgd)(G.E. Lennox) Capt.

Q1. - "Do you, Bdr. Emard and Gnr. Burrows, wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A1. - (Bdr. Emard). "I have nothing to say."
A1. - (Gnr. Burrows) "No, sir, I have nothing to say."

I certify that the Rules of Procedure 4 (c), (d), (e) and (f) have been complied with. Taken down by me in the presence of the accused, Bdr. Emard and Gnr. Burrows, in the field this 2nd day of November, 1945.

J.E. Lennox Capt
(G.E. Lennox) Capt.
13th Fd Regt. (CDA)

SUPPLEMENTARY SUMMARY OF EVIDENCE IN THE CASE OF M-66886, GUNNER BORROWS, William Albert, 15th CANADIAN FIELD REGIMENT (CDA) A SOLDIER OF THE CANADIAN ARMY, PLACED ON ACTIVE SERVICE, AND M-100001, BOMBARDIER HAZARD, Lawrence Louis, 15th CANADIAN FIELD REGIMENT (CDA), A SOLDIER OF THE CANADIAN ARMY PLACED ON ACTIVE SERVICE.

By the direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS:- Captain R.C. Wyld, Adjutant 15th Canadian Field Regiment (C DA) having been duly sworn, states:

"I am Captain R.C. Wyld, Adjutant 15th Field Regiment (CDA). I have held this appointment wef 20th October, 1943. As I am, and has been the custom to distribute Regimental Part 1 orders down to Battery level with more than sufficient copies to cover notice boards, mess halls and files. I hereby submit certified true copies of Regimental Part 1 order No. 333 dated 28th June, 1945."

(R.C. Wyld) Capt.
Adjt. 15th Fd Regt. R.C.A. (CDA)

Certified true copy of Regimental Part 1 order No. 333, dated 28th Jun 45, attached as Exhibit "B".

(O.F. Lennox) Capt.

Both the accused decline to cross-examine.

This is a certified
true copy of the
original statement.

SECOND WITNESS:- K-7033 BSM Church, R.K. (C.S.M.) 22nd Battery, 15th Canadian Field Regiment (CDA) having been duly Sworn states:

"When Regimental Part 1 orders are received at this unit, they are distributed as follows: One copy to the orders board in the Battery mess hall, one copy to ordnance board in Bakur Troop Billets, one copy to the Battery files and one copy to myself. According to my records, Bombardier Hazard came to this Battery approximately 7th August, 1945, and Gunner Borrows approximately 3rd August, 1945. To my knowledge these orders are usually left posted for about a couple of months, that is, until the file gets so large there is no room to post additional copies and so the copies below must be destroyed. The duty despatch rider normally post orders."

RK Church
K-7033, R.K. Church (C.S.M.)
22nd Bty. 15th Fd Regt (CDA)

Both the accused decline to cross-examine.

This is a true copy
of the original state-
ment.

Q1.- "Do you, Bdr. EMARD and Gnr. BORROWS, wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A1. -(Bdr. Emard), "No sir, I have nothing to say."
A1. -(Gnr. BURROWS) "No, sir, I have nothing to say."

I certify that the Rules of Procedure 4 (c) (d) (e) and (f) have been complied with. Taken down by me in the pressence of the accused, Bdr. Emard and Gnr. Burrows, in the field this 6th day of November, 1945.

(G.E. Lennox) Capt,
13th Cdn Fd Regt. (CDA)

LIST OF STORES belonging to 13 Cdn Fd Regt, RCA(Cda) reported destroyed APPENDIX "A"

ARTICLE	New Value at Vocabulary rates or Actual Cost of Repair
Chevrolet HUP CZ 4255855	$ 2400. 00
2 % Cost Inland Tpt	48. 00
TOTAL	2448. 00

Price Certified Correct

(Signed)
(W C RILEY) Lt-Col
ADOS 3 Cdn Inf Div (CDA)

Certified True Copy of
Army Form G 998 d/ 4 Oct 45

(R.C. WILD) Capt
Adjt 13 Cdn Fd Regt, RCA(Cda)

6

Exhibit "A"

Army Form G 3518 (Revised 1942)

TRANSPORT WORK TICKET

TO BE COMPLETED IN INK WHENEVER PRACTICABLE

No. 17

MAKE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	C.Z. No.	MONTH & YEAR
Chev	HUP	13 Cdn Fd. Regt. R.C.A.		Bdr. Euard, L.L.	4255855	Sept 45

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORISING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn At End (11)	FUEL GALLONS Used (12)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER How Many (17)	SPEEDOMETER Days (18)
22.9.45	22 Bty	Recr.	Lunteren	Ede	return	E.C. Gothard						1745	2215			
23.9.45	22 Bty	Recr.	Lunteren	Brummen & Dieren		E.C. Gothard						1745				

This is a certified
true copy of the
original work ticket

M.P.G. for week ..... or totals carried over.

Exhibit "D"

This is a certified true copy of Part I Order No. 333 8/75 dtd 4 Jun 45.

Carriage of Civilians in MD Vehicles

1. The carriage of civilians in MD vehicles is NOT permitted except to and from authorized Unit functions as approved by Unit Comd.

2. Where authority is granted for the carriage of civilians in MD Vehicles under para 1 above, the driver must be in possession of a properly completed civilian release form.

R. G. Ward
Lt Col, FA
Asst Div Adj Gen

This is exhibit B. Gribbin says Pro. J.A.G.M.

ARMY FORM B.256.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M100881	Bdr	Emard R L	13 Bty 7th Regt RCA RCA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this statement may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers hereto stated should correspond with the number of entries in the conduct sheets, permanence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For nil	times	nil times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct,~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted. or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and nil days in military custody, making a total of nil days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~identification paper~~ is 24 years 2 months 3 days.

6. The date of his ~~commission~~ ~~attestation~~ specified in his ~~record of service~~ ~~identification paper~~ is 20 Sept 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 3/4 years

8. The accused is entitled to deferred pay or gratuity in respect of 3 3/4 years service.

9. The accused is entitled to reckon n/a service for the purpose of determining his pension, etc.

10. The accused is in possession of ~~or entitled to any military decoration or military award (or is in possession of or~~ entitled to (*state any military decoration or reward*) 1939-45 Star, France-Germany Star, Defence Medal - 6 Bath Ribbon

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of n/a

12. (*In the case of an officer.*) The accused holds in the army the rank of n/a dated and in his regiment (or corps or department) the rank of n/a dated

(P.P.C.) W1.8490/1120 20,000 3/42 A.& E. W. Ltd. Gp.686
(2nd ed.) W1.8490/1436 10,000 8/42 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating those convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the disposing authority	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of November

R.C. Hyde Capt.
Adj. 13 C.F.R. Regt.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of _____ years, _____

In the rank of _____ years, _____

In the rank of _____ years, _____

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. M 10088 Name EBORD L L | Sqn, Battery, or Company | Corps RCA | Date of enlistment 20 Apr 42 | Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 132) 48/PAM/136 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drink | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | (Signed) J A Biggar, Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of promulgation of order dispensing with trial	By whom awarded	Remarks
Sheet Destroyed 5 Jan 43. Last entry 19 Jun 42. No Cases of Drunkeness (J A B)									
Certified True Copy 9 Nov 43 H C Hyde Capt, Adg									

This sheet is a true copy
Pte 9 Nov 43

(PTO)

M100881 Bdr. Emard, L.L.
13th Cdn Fd Regt. RCA (Cda)
5 Nov 45.

Commanding Officer,
13th Cdn Fd Regt. RCA (Cda).

Sir:

I wish to request an officer to represent me at a F.C.C.M.

I would like Capt. C. Locke 3 Med Regt. RCA (Cda) if he is available.

If Capt. Locke is not available to represent me, may he choose an officer to do so.

L L Emard

HHHH5

PTE EMBREE-DS

ENTERED IN RECORDS OF C.M. MAY-45

FIELD GENERAL COURT-MARTIAL

CFA96 (To Back of AFA83) 410 P & S 8/1608 (2004)

Convened by Order of Brig J.R. Stewart Lough Comd "D" Group CRU dated 3 Apr 44
DSO, MC, VD

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number	(a) Print R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.35196	Pte	Douglas Seymour	EMBREE	WNSR A CIRU

PROCEEDINGS REVIEWED
R. Beaulieu
Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 4 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for baths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 101, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1040 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 343(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter ? Ans .....
~~as shorthand writer ?~~ Ans .....
The Interpreter is sworn.(1) ~~Do you object to~~
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 86 (MML p 742.))

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj.	J.G. CHAPMAN	(WNSR) HCIRU
Member	Capt	J.R.S. Spencer	(HYFLR(T)) HCIRU
Member	Lieut	A.J. Dalpé (A1SA)	HCIRU
Judge-Advocate			
Prosecutor	Lieut	G.J. Gillespie (UGR)	HCIRU
Defending Offr	Lieut	M.A. Carigg (UGR)	HCIRU

Questions by President: Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans Yes.(2)

(1. RP 26, 27, 109, 111. List of offrs under instrs will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (6) and fn 2 were not followed. See (2) p 3.)

A8. The accused F.35196 Pte EMBREE, D.S. before arraignment makes(s) (has) ~~no~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 34), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p. 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 112. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F.35196 Pte Douglas Seymour EMBREE - WNSR - 4 CIRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 4.)

(1) At present under sentence for ..... beginning on (date) .....
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 58 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: TO UNDERGO DETENTION FOR A PERIOD OF SIX (6) MONTHS AND PLACED UNDER STOPPAGE OF PAY UNTIL HE HAS MADE GOOD THE SUM OF ONE POUND, TEN SHILLING, CAUSED BY HIS (HER) BEING HELD COST OF APPREHENSION AND RETURN TO UNIT

(Sgd) ..... Judge-Advocate, if any. (Sgd) J.G. Chapman Maj President. (RP 45, 52.)
Date awarded. 4 APRIL 44 May 44
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 3, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:
I confirm the finding of the Court but remit ninety (90) days detention

I direct that the accused be not ~~committed to~~ prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) J.R. Stewart Lough
Date 4 Apr 44 Commanding ..... Commission "D" Gp Can R(C) Units
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F.35196 Pte Douglas Seymour Embree	4 Apr 44	J.G. Chapman Capt. Captain Adjutant, 4 Cdn Inf Rein Units.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(B).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witness for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecution makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A)(B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2-9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF AF5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ..... No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer (i) to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or MFB 296.* 2. *RP 56 fn 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... Yes (2)
(1. *RP 37(C), 46(2).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) No
(1. *When several accused tried separately see RP 22(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-344. Overseas RO 309, 2322. MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. F 35196 Private DOUGLAS SEYMOUR EMBREE, of the West Nova Scotia Regiment on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

WHILE ON ACTIVE SERVICE, Absenting himself without leave,
in that he
In the Field, absented himself without leave from 0815 hours, 5 February 1944, until he surrendered himself to the C.P.C. at 1210 hours, 1 March 1944, thereby incurring expenses for himself and escort to the value of £1/10/11.
(Total Absence 25 days, 3 hours, 55 minutes.)

IN THE FIELD
30 MARCH 1944

(J.H. Christie) Col.,
Officer Commanding,
4 Cdn Inf Rft Unit, C.A.O.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

3 Apr 44

(J.R. Stewart Lough) Brigadier,
Commander "D" Group,
CANADIAN REINFORCEMENT UNITS.

Convening Officer.

FIELD GENERAL COURT-MARTIAL

CFAAG (In lieu of AFAS)
410/FM&/1697 (S868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.35196	Pte	Douglas Seymour	EMBREE	WNSR 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[s] named above as the accused, being subject to military law, has ([has]) committed the offence[s] set forth in the Charge Sheet[s] attached and on (date) 3 Apr 44 endorsed by me, ([illegible]), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[s] should be tried by an ordinary General Court-Martial; [and that it is not practicable that the accused should be tried by any other Court-Martial.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[s], and to consist of the Offrs appointed or detailed hereunder.

4. [I hereby appoint the undermentioned officer to be Judge-Advocate at the said trial.]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [I appoint the undermentioned officer to be waiting member.]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.C. CHAPMAN	Nth NS Highrs 4 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by C.O.	4 CIRU
A Lieutenant	to be detailed by C.O.	4 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 3 Apr 44

J.R. Stewart Lough
(Signed personally. RP 103 fn 2.)
(J.R. Stewart Lough)

Brigadier
(Rank.)

Commanding "D" Group, Cdn. Rft. Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. F.35197 ...
PTE. EMBREE. D.S. ... of 4 C.I.R. ...
and in my opinion, he is fit ... to undergo trial by Court Martial.

Station. Field. ...

Date. 4. April. 42. ... (Sgd.) A.E. Wright, Capt. ...
(Medical Officer)

(Canadian Reinforcement units Routine Order No. 3, para 27, d/d Jan 42)

STATEMENT BY F 35196 Pte. EMBREE, D.S., 4 C I R U PURSUANT TO R.P. 40 (d) at F.G.C.M. 4 April 1944

I enlisted in the Army on 1 April 1942 and received Basic and Advanced Training in Canada. I wanted to be a fighting soldier. My Pay Book shows that I qualified Class II, and Class I in range work on the rifle and L.M.G. respectively.

When I arrived overseas in November 1942, I did six weeks Basic Training with "B" Coy 7 C I R U and passed all my T.'s on B.T. At the completion of my training I was put on kitchen duty as a cook contrary to my wishes. I was paraded several times to be put on draft to the field. After approximately two months in the kitchen I was sent to "A" Coy for a short time, then to "B" Coy again for three weeks training. My Coy Comd promised to get me on the next draft. However instead I was put on the R.P. Staff and remained there for two and a half months.

On being paraded again, I was put on scheme "Hot-dog" in October 1943. I was taken off before the draft left without any reason being given. I was promised that I would go on the next draft. In January 1944 I was again taken off a C.N.F. draft without a reason being given.

I didn't like life at the Reinforcement Unit and they weren't sending me to my unit as they had promised so many times. My wife wasn't writing to me regularly and I hadn't heard from her for weeks before going absent. I was worried about my child. All of this made my morale very low so I went A.W.L. I realized my mistake and surrendered myself on March 1, 1944. I would like this Court to recommend also that I be placed on an overseas draft at the completion of whatever punishment is awarded.

Witness 2nd Lieut. Reginald Officiating Officer.

D.S. Embree
(F 35196 Pte. Embree, D.S.

Ex D

Ex F. Plea in Mitigation of Punishment: re Sunbeam Court-martial
Apr 4/44

1. The statement made by the accused is self explantory and I do not see any reason to believe that the statements made are not reasonably correct. In my own experience and in the experience of the members of this Court we have seen men "pushed around" in Reinforcement units. This is not intentional but due mainly to the system. There is an ever changing ~~personnel~~ instructional staff. Officers and NCO's are going to and from Courses - to and from the field, leave etc. Platoon comdrs like myself very often slip up with regard to the men's problems because they platoon comdrs and men never really get a chance to become known to one another. Even Coy. Comdrs sometimes make mistakes or take ~~not~~ the men's point of view a little too lightly

2. The C.O. probably thought that he should not have dealt with this case but had all the circumstances been properly presented to him as we are considering them to-day I think he would have awarded his own punishment. Nervousness, fear, lack of education makes it very difficult for a man to put his case properly before the C.O.

JAG

(5)

2

3. The accused surrendered himself on mar 1/44
It is now Apr 4/44 and the accused has been in detention awaiting ~~35 days~~ on court-martial for 35 days.
This is unusual but understandable to a certain extent in view of the change from 7 C/RK to 4 C/RK and the later change in locality of 4 C/RK.
The date of the award of a crt-martial, as you know, is ~~to date or which the sentence~~ the effective date of as far as the sentence is concerned. The 35 days spent in detention should be given serious consideration and I submit that the accused should not in any case be more than C O's punishment.

Richard Casey Lieut.
Officiating Ppen

JAG

EXHIBIT "A" JCP

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Field on the 3rd day of March 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F35196 Pte Embree D.S.

DECLARATION.

The Court declare that F35196 Pte Embree D.S., West N S R on the strength of 7 CIRU absented himself without leave from 7 CIRU at 0815 hrs 5 Feb 44 and is still so absent and that on the 3rd Mar 44 he was deficient articles of kit and equipment to the value of £7.8.2 as listed in appendix "A" attached hereto.

Names of President and Members

President Lt. M.D. Morton - N Shore R - 7 CIRU

Member CSM Tanner M.T. - West N S R - 7 CIRU

Signature of Commanding Officer Col J.R. Calkin

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

(G.W. Rahm) Capt/Adjt
7 Cdn Inf Bde

(115851) W3-5621A-1/42 75,000 10/09 A.A.& W.Ltd. Cp.499 Forms B115/16
(13444) W3-4072-1/42 225,000 3/43

APPENDIX "A"

List of deficiencies of kit of F35196 Pte Embree D.S., West N S R, on strength of 7 Cdn Inf Rft Unit as of 3 Mar 44.

		VOCABULARY PRICE			APPRAISED VALUE		
Boots, ankle prs 2	2	3	0	1	12	4	
Drawers woollen prs 2	0	10	6	0	8	0	
Gloves, woollen prs 1	0	2	7½	0	2	0	
Sweater, jacket 1	0	6	9	0	5	1	
Shirts angola drab 2	0	18	2	0	13	8	
Shoes canvas prs 1	0	3	4	0	2	6	
Socks woollen prs 4	0	6	8	0	5	0	
Shirts woollen 2	0	0	4	0	1	4	
Trousers serge prs 1	1	7	11	1	15	11½	
Badges cap 1	1	0	4	0	0	4	
Badges Canada prs 1	0	0	1	0	0	1	
Braces prs 1	0	1	3½	0	0	1	
Brushes button 1	0	0	8	0	0	1	
Brushes shaving 1	0	1	4	0	0	1	
Brushes boot polish 1	0	1	3	0	0	1	
Comb hair 1	0	0	2	0	0	0	
Forks table 1	0	0	5	0	0	0	
Holdall 1	0	2	9	0	0	1	
Housewife 1	0	0	3½	0	0	0	
Knife table 1	0	1	10½	0	0	1	
Razor safety 1	0	3	10½	0	0	1	
Shorts gym prs 1	0	0	4½	0	0	0	
Spoons table 1	0	3	2	0	0	1	
Vest gym 2	0	2	10	0	0	1	
Towels hand 2	0	3	4	0	0	1	
Belts waist 1	0	0	6½	0	0	0	
Mugs drinking 1	0	3	8	0	0	1	
Water Bottle 1	0	0	4½	0	0	0	
Covers Mess Tin 1	0	0	6	0	0	0	
Blankets 2	1	7	6	1	1	3½	
TOTALS	£9	16	1½	£7	8	2	

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W.T. Fournier

(W.T. Fournier) CQMS
"A" Coy - 7 CIRU

EXHIBIT "B" JCP

Army Form O.1617
R.A.F. Form 1617

I CERTIFY that the man whose personal description is given below surrendered himself to* Detective Constable Pullman at Newcastle-under-Lyme at (hour) 12.10 p.m. on the 1st day of March, 1944 being No. W.35196 (Rank and Name) Corporal Douglas Seymour Embree a deserter (or absentee without leave) from the West Nova Scotia Regt. No. 7 Canadian Infantry Reinforcement Unit and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 26 Height 5 Feet 10½ Inches

Complexion Fresh Hair Light brown

Eyes Hazel

Marks Tattooed rt. forearm: heart with "Love Anne". Lion above left knee. Accident scar right knee cap.

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	1.4.39. Nova Scotia
Probable Date of Desertion or beginning of absence, and from what place	8.2.44. Farnborough

D. Thomas, Det/Insp

Signature of Officer of Police in charge of Newcastle Boro. Station.

4.3.44 Date of Signature.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds

incurred by the Police in the case

of No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617.

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Armed Forces who surrender to the civil police; e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops of the nearest military station. (A.C.I. 889/1940)

[illegible] 33,000 3-42 A.& F.W.Ltd. Gp.698 Forms C.1617/1[illegible]

EXHIBIT "C" JEP

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. F35116 Rank Pte. Name Embree, D. L. Unit 7 C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit From London from Manchester

Date	Particulars (½ Portion)	Amount		
5 Mar 44	Escorts return fare from LONDON To Manchester		14	1
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~lieut~~ Meals, Bus fares		2	9
	Total £	1	10	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H H Howe Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-5-43
40/7 & 8/482

146.

SUMMARY OF EVIDENCE

In the case of F 35196 Private Douglas Seymour EMBREE of the West Nova Scotia Regiment on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

This Summary of Evidence is not taken on oath.

FIRST WITNESS

For the Prosecution

Capt. R.J. McLaughlin, 2 Canadian Division Support Battalion (TSR), on strength of No. 4 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas states:-

I am Capt. R.J. McLaughlin and am administrative officer of No. 4 C.I.R.U. I present as Exhibit "A" a certified true copy of a Declaration of a Court of Inquiry held on 3 March 1944 which shows that the accused, Pte. Embree, D.S., whom I now recognize, absented himself from 0815 hours 5 February 1944. I also present as Exhibit "B" a certificate AFC 1617 purporting to be signed by the Police Officer in charge of the Police Station at Newcastle Boro., relating to the accused, Pte. Embree, D.S., whom I now recognize, which shows that the accused surrendered himself at 1010 hours 1 March 1944. I also produce a certificate purporting to be signed by the Officer who issued the transportation warrants for the return of the accused and his escorts showing the costs of apprehension to the value of $1/10/11 of the accused, whom I now recognize. (Certificate marked as Exhibit "C")

The accused declines to cross-examine this witness.

R J McLaughlin
(Capt. R.J. McLaughlin)

The accused was cautioned as follows:-

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

J P Pickering
(Lieut. J.P. Pickering)
Officer detailed to take Summary

IN THE FIELD
1 APRIL 1944

Ex. A

146

MFM 6
(AFB 1252)
40/P&S/136 (3458)

No. P35196 Name EMBREE, D.S. | Sqn. Battery or Company | Corps C.I.C. | Date of enlistment 1 Apr 42 | OC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
Field	15 May 43	Pte.		WOAS AWL 3 days AA 15(1)		6 dys FF	20 May 43		3 dys pay FR&I 149(1)a
Field	7 Jun 43	Pte.		WOAS AWL 3 days AA 15(1)		10 dys FF	16 Jun 43		3 dys pay FR&I 149(1)a
Field	14 Jun 43	Pte		WOAS AWL 24 dys 17 hrs AA Sec. 15(1)		28 dys pay 28 dys FF 90 dys det	12 Aug 43 8 Sep 43	Lt.Col. W.C. Lawson F.G.C.M.	25 dys pay FR&I 149(1)a 13 dys pay FR&I 149(1)a
Field	21 Aug 43	Pte		WOAS AWL 12 dys 17 hrs 40 mins A.A. Sec. 15(1)		(30 days remission)			

Certified true copy from regimental books and documents available.

R.J. McLaughlin Capt

E.C. H.C.

(PTO)

M.F.B. 358
12M—5-41 (572-2)
H.Q. 1772-39-620
A.F.B. 290

G 5

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 35196	Pte.	Embree, D.S.	A.C.I.R.U.

1. The following is a fair and true summary of the entries in the Regimental and Squadron Conduct RJM Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, RJM of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	A.A. Sec. 15(1) 4 times	A.A. Sec. 15(1) 4 times
For	RJM times	times RJM
For	RJM times	times RJM
For	RJM times	times RJM

RJM

RJM

RJM

RJM

Previous convictions of the accused by a court-martial or a civil court, of summary awards under RJM Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

RJM

RJM RJM RJM

4. The accused has been in confinement awaiting trial on the present charges, for days in RJM civil custody, and 35 days in military custody, making a total of 35 days in custody, of which NONE days were spent in hospital.

5. The present age of the accused according to his RJM attestation paper is 25

6. The date of his RJM specified in his RJM attestation paper 1 Apr 42

RJM

RJM RJM

RJM RJM RJM

RJM

RJM RJM

RJM

RJM

RJM

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number P 35196 Rank Pte. Unit

Name Embree, D.S. of 4 C.I.H.U.

NOTE.—A verbatim extract from the regimental books stating those convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
IN THE FIELD	8 Sep 43	A.A. Sec.15(1)	30 days Detention	30 days.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

R.J.M. Laughlin
Capt.

Signed this 4 day of April 1944 at [illegible]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

J.A.G.

PP. 77

PTE EMBREE D.S.

DO 185 6/13 & 7 43
17.

Correspondence to be PINNED here.

F.35196 Pte. EMBREE, Douglas Seymour
West Nova Scotia Regiment
No. 7 Cdn. Infantry Reinforcement Unit

PP.77

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this seventh day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army (Overseas), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer]~~

Court

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~I am unable to appoint—~~

~~*(1.) Three Officers to form the Court;~~

~~*(2.) A Field Officer as President;~~

Court

~~for the following reasons, namely:—~~

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lieut-Col.	D.L. Redman	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Captain	to be detailed by C.O.	3 C.I.R.U.
A Lieutenant	to be detailed by C.O.	4 C.I.R.U.

Court

*Signed Colin Archibald Brigadier

Commanding "D" Group, Cdn. Rft. Units
Convening Officer.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

1

Evidence and Charge Sheets (if necessary) to be PINNED here.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F.35196 Pte. EMBREE, Douglas Seymour West N.S.R. 7 C.I.R.U.	First Charge A.A. Sec. 15(1) Guilty except that he surrendered at 0730 hrs instead of at 0640 hrs 8th Sept 43. See Charge Sheet attached.	Guilty	Sentenced to undergo 4 terms of Imprisonment for a period of Ninety (90) days 8th Sept 1943	Confirmed 9 Sep. 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 86 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) ..... Brigadier (Signed) .....
Commanding "D" Group, C.R.U.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

3

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8th day of Sept 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. ~~The witnesses~~
3. ~~The Interpreter~~)
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 8th day of Sept 1943

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (3) on page 765 M.M.L. 1929

*I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 9 day of Sep 19 43

Confirming Officer

Promulgated and extracts taken in the case of F-35196 PTE. EMBREE, D.S. (W.N.S.R.) 7 C.I.R.U. per D.O. 185 dated 10 Sept 43

(a) (Dated) 10th Sept. 43 (Signed) Lieut and Adjt. 7 C.I.R.U.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. F 35196 Private Douglas Seymour EMBREE, West Nova Scotia Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, on Active Service, is charged with:

FIRST CHARGE
SEC 15(1)
ARMY ACT

When on Active Service, absenting himself without leave,

in that he,

at Haig Lines, Crookham, Hants while undergoing Field Punishment absented himself without leave from 1300 hrs 21 Aug 43 until surrendering himself to the Civilian Police in Staines at 0640 hrs 3 Sep 43.

Total absence - 12 days, 17 hrs., 40 mins.

J.R. Calkin Col.

(J.R. Calkin) Colonel
Commander
7 Cdn Inf Rft Unit

In the Field
4 Sep 43.

To be tried by Field General Court Martial.

E.W. Haldenby

(E.W. Haldenby) Brigadier
Commander
"D" Group, Cdn. Rft. Units

In the Field
7 Sep 43.

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No. F 35196 Private (Rank)
Embree D.S. (Name)
of Went NSR - 7 C.I.R.U. and in my opinion he is ~~unfit~~ fit to undergo
trial by Court Martial.

Station: In the Field

Date:--- 8 Sep 43

Sgd. J.P. Green Capt.
(Medical Officer) 7 Cdn.Inf.Rft.Unit.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Lugagicchio, Casalotti, Rome
ON THE 8th DAY OF September 1943

The accused.....Unit.....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Col. D.T. Redmon (VD) Unit H.Q. CRV...
Members Capt. J.P. Robinson, ...Unit... 3 CIRV..
Lieut. F.K. Jowsey, ..Unit... 4 CIRV...

The officers under instruction are duly sworn:-

Lt. D.B. MacLellan...Unit... 7 CIRV...
.....Unit.....

Prosecutor Lt. G.W. Rohm.....Unit... 7 CIRV...
Defending Officer Lt. D.R. Reid...Unit... 7 CIRV...

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) complied with. vide X below
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~MFB 297~~ and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment attended
~~(b) Calls witnesses as to character.~~
~~(c) Calls witnesses in mitigation of punishment.~~
~~(d) Addresses the Court by his Defending Officer.~~

Oversees R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

X The accused plead guilty with a variation. The Prosecutor signified the concurrence of the Convening Officer & the Court being satisfied of the Justice of the course accepted & recorded the plea with the variation as set forth in the schedule.

P 1a for Mitigation in the case of. P Sept. 43.
P 35196. Pte. Embree - D.S.

I Pte. Embree. D.S of WNS Regt Y. C.I.R.U C.A.O.C.
do hereby swear that this is a true statement
of my period of absence from the D/M C.I.R.U
I joined the Canadian Army at Halifax N.S.
three years ago, and after serving for 1 year, I
was discharged for having been unfit with
varicose vein trouble.
In 1942, I had my ailment treated, and finally
cured.
I then enlisted in the West Nova Scotia Regt at
Truro N.S. this on my own accord, and for
Overseas Service.
On my arrival in England on Nov 1942 I was
posted to D/M C.I.R.U at Witley, and ever since
then I have never been able to get posted to
the Field, although I tried hard enough to get
there.
After that I got put in the Kitchen as cook, I
finally got disgusted, and I just went off A.W.O.L.
After I had been gone almost 13 days I realized
just what a foolish thing that I had done
so I surrendered myself to the Civilian Police at
Truro
All I ask is a chance to get in the Field, and I
give my word that I will soldier.

Signed
Pte Embree D.S.

PUNISHMENTS CONTINUED

(f) Was on 12 Aug 43 awarded 7 Days F.P. & Forfeits 7 Days pay for WOAS A.A. Sec.15(1) A.W.L. from 2300 Hrs 11 Aug 43 until 0745 hrs 12 Aug 43 (Total absence 8 Hrs 45 Mins)
Forfeits 1 Days pay FR&I 149(1)(a)
Forfeits 7 Days pay FR&I 149(1)(b)
Total Forfeiture 8 Days Pay.
F.60171 Pte Ferguson, C.L. (Gen List)

(g) Was on 2 Aug 43 Awarded 14 Days C.B. for WOAS A.A. Sec.15 (1) A.W.L. Whilst a patient from 2200 Hrs 31 Jul 43 until 2130 Hrs 1 Aug 43 (Total Absence 23 hrs 30 mins)
Forfeits 1 Days pay under FR&I 149(1)(a)(Extract from D.C. 34 d/6 Aug 43 i-2. C.M.C.)
P.79507 Pte Nemeon,L.M. (C.B.High'rs)

(h) Was on 12 Aug 43 awarded 21 Days F.P. & Forf 21 Days pay for WOAS A.A. Sec. 15(1) A.W.L. while undergoing F.P. from 1800 Hrs 10 Aug 43 until 2230 Hrs 10 Aug 43 (4 hrs 30 mins)
Forfeits 21 Days pay FR&I 149 (1)(b).
This sentence in concurrent (8)days with sentence on 4 Aug 43 DO.153 d/6 Aug 43 thus:-
Total Forfeiture being 14 Days pay.
F.89434 Pte Marsh, C.J. (Gen List)

(i) Was on 12 Aug 43 awarded 28 Days F.P. & Forf 28 Days pay For (1) WOAS A.A. Sec 15(1) A.W.L. from 0800 Hrs 2 Aug 43 Until apprehended by CMP in London at 1530 Hrs 10 Aug 43 (Absent 8 Days 7 hrs 30 mins).
(2) WOAS A.A. Sec 40 .
Forfeits 9 Days pay FR&I 149 (1)(a)
Forfeits 28 Days Pay FR&I 149 (1)(b)
Total Forfeiture 37 Days pay.
F.44612 Pte McNeil,J. (Nth.N.S.High'rs.)

(j) Was on 12 Aug 43 Awarded 7 Days C.B.&Forfeits 1 Days pay for WOAS A.A. Sec 40.
Forfeits 1 Days Pay FR&I 149 (2)
Total Forfeiture 1 Days Pay.
K.37807 Pte Sheers,L.G. (Gen List)

(k) Was on 12 Aug 43 awarded 14 Days F.P. & Forfeits 14 Days pay for WOAS A.A. Sec. 15(1) A.W.L. from 0800 Hrs 9 Aug 43 until 2359 hrs 11 Aug 43 (2 Days 19 Hrs 59 Mins)
Forfeits 3 Days pay FR&I 149 (1)(a)
Forfeits 17 Days pay FR&I 149 (1)(b)
Total Forfeiture 17 Days Pay
F.58067 Pte Aparrow, E. (C.B.High'rs)

2. COURTS MARTIAL

Was on 13 Aug 43 Tried by FGCM

CHARGE:- WOAS A.A.Sec 51(1) A.W.L. From PL.Fus from 0600 Hrs 7 Jul 43 until he surrendered himself at 2100 Hrs 26 Jul 43 (19 Days 15 Hrs)

FINDINGS:- Guilty.

SENTENCE:- To undergo detention for a period of 90 Days.

CONFIRMATION:- The finding and sentence of the court were confirmed by A/Commander "D" Group C.R.U. on 14 Aug 43.

CLOSE CUSTODY:- The accused was in close custody from 2100 Hrs 26 Jul 43 until 1000D hrs 13 Aug 43.(17 days 13 Hrs)

FORFEITURES:- Forf 20 Days pay FR&I 149(1)(a)
Forf 90 Days pay FR&I 149(1)(b)
Forf 17 Days pay FR&I 149(1)(c)
Total Forfeiture 127 Days pay.
F.39635 Fus Jollimore, H.G. (PL.Fus)

Certified True Copy.
(M.C. Gidson) Records Officer.
7 Can. Inf. Reinf. Unit.
Capt.

21. CHANGE OF CATEGORY

(a) Having been medically reboarded is placed in Category "E" w.e.f. 5 Au 43 (Auth S.M.O. "D" Group Cdn Rft Units)
F.97122 Pte MacKenzie, W. (C.B.High'rs)

(b) Having been medically reboarded is placed in Category "E" w.e.f. 11 Aug 43 (Auth SMO "D" Group Cdn Rft Units)
F.60057 Pte Martin, J. (West.N.S.R.)

[illegible] w.e.f. 12 Aug 43 [illegible]

[illegible] A.

(M.J.P.Gleeson) A/ Capt
Records Officer
#7. Cdn Inf Rft Unit

Certified true copy.

(M.J.P. Gleeson) Capt.
Records Officer.
7 Cdn. Inf. Reinf.Unit.

EXHIBIT "A"

LAST ORDER NO.161 16 Aug 43.

7 CANADIAN INFANTRY REINFORCEMENT UNIT
PART II DAILY ORDERS
ISSUED BY
LT-COL. W.C. LAWSON, M.C., V.D. A/COMMANDER

THIS ORDER NO.162 17 Aug 43.

SECTION "A" OFFICERS

1. STRENGTH DECREASE

(a) SOS to N Shore R (Special Incr) w.e.f. 16 Aug 43 (Auth 99/29/ N Shore R/1 d/11 Aug 43.
Lt. J.L.A. Dube. (Gen List)
Lt. J.A. Porier, (Gen List)
Lt. J.V.C.Savoy. (N Shore R)

(b) SOS to Nth.N.S.High'rs w.e.f. 16 Aug 43 (Auth EA2/6730 d/9 Aug 43
Lt. J.A. Trainor. (Nth.N.S.High'rs)

2. ATTACHMENTS

(a) Ceases to be Att'd f.s.p. to CMHQ Records Acton w.e.f. 31 Jul 43 (Auth 434/Course/1)d/23 June 43.
Lt. A.J. Blakeney. (R.H.Q.)

(b) Attached f.s.p. to G.H.Q. Cdn Section 2nd Echelon w.e.f. 1 Aug 43 while attending Records Officers Course (Augh 434/Course/1)d/23 June 43.
Lt. A.J. Blakeney. (R.H.Q)

(c) Ceases to be Att'd f.s.p. to G.H.Q . Cdn Section 2nd Echelon w.e.f. 13 Aug 43 (Auth 434/Course/1)d/23 June 43.
Lt. A.J. Blakeney. (R.H.Q.)

(d) Ceases to be Att'd f.s.p. to R.C.A.F. (Leeming Yorks) w.e.f. 16 Aug 43 (Auth 403/Co-opp(G) d/29 Apr 43)
Lt. D.W. Smith (Gen List)

3. COURSES

(a) Proceed on C.R.U. Course 10 Ser 20 (Inf Officers Wireless) and Att'd f.s.p. to 1. CSRU w.e.f. 15 Aug 43
Lt. R.G. Albert (N Shore R)
Lt. F.J. LeBlanc. (Gen List)

4. RETURN FROM COURSE

(a) Ret'd from CMHQ Course 519 Ser 42 (Offrs Vehicle Mastership) and Ceases to be Att'd f.s.p. to 1.CASCRU w.e.f. 14 Aug 43.
Lt. J.C. Cyr. (N Shore R)

(b) Ret'd from CMHQ Course 519 Ser 42 (Offrs Vehicle Master ship) & Ceases to be Att'd to 1.CASCRU.w.e.f. 15 Aug 43
Lt. J.G. Kelly. (Gen List)

SECTION "B" OTHER RANKS

1. STRENGTH INCREASE

(a) TOS from Cdn "Q" List w.e.f. 15 Aug 43 (Auth 8/Attach Ops/1/2 (AG2a)d/1 May 43.
G.22842 Sgt Daley,J. (N Shore R)
F.45169 Sgt Davie, J. (Nth.N.S.High'rs)
F.41602 Sgt McLeod,W. (West.N.S.R.)

(b) TOS from 5 CIRU w.e.f. 16 Aug 43 (Auth CRU/406/Inf.R.U./1 (DAAG) d/25 Jan 43.)
F.54854 Cpl Denny,S.F. (C.B.High'rs)

(c) TOS from N Shore R w.e.f. 13 Aug 43 (Auth EA7/5536 d/12 Aug 43
G.22477 L/Cpl Hache,A.D. (N Shore R)

Certified True Copy.
[illegible] Capt.
A/Cdr. Records Officer.
7 Cdn. Inf. Reinf. Unit.

6. AMENDMENT STRENGTH INCREASE

(a) DO 153 d/16 Aug 43 para 6 insofar as it relates to the u/m is hereby cancelled(Auth DO 40/43/N Shore R)
G.22365 Pte Vienneau, A.J. (N Shore R)

7. STRENGTH DECREASE

(a) SOS to 1.NETD w.e.f. 16 Aug 43 (Auth Cat"E")
F.60057 Pte Martin,J. (West.N.S.R.)

(b) SOS to Nth.N.S.High'rs w.e.f. 16 Aug 43 (Auth EA2/7634 d/9 Aug 43)
F.54778 Sgt MacDonald,M.A. (Nth.N.S.High'rs)

(c) SOS to 4 Cdn Gen Pioneer Coy w.e.f. 15 Aug 43 (Auth CMHQ 8/Pers Adjust/1/12 d/6 Aug 43.)
F.35380 Fus Stevenson, J.W. (P.L.Fus)

(d) SOS to 6.CIRU w.e.f. 16 Aug 43 (Auth 408/Pers Adjust/1 d/5 Aug 43)
D.138100 Pte Therrien,J.R. (Gen List)

8. AMENDMENT STRENGTH DECREASE

(a) DO.109 d/14 June 43 Para 9(c) insofar as it relates to the u/m is ammended to read " w.e.f. 24 May 43".
A.116059 Pte Middleton,R. (Nth.N.S.High'rs)

9. ATTACHMENTS

(a) Ceases to be Att'd f.s.p. to 2 Cdn Inf Trp Workshop w.e.f. 9 Aug 43 on proceeding on course.
G.22851 Sgt Smith,E.J. (N Shore R)

10. AMENDMENTS ATTACHMENTS

(a) DO.138 d/20 July 43 Para 10(A) insofar as it relates to the u/m is amended to read.
F.88689 Pte Campbell,C.A. (C.B.High'rs.)
F.88681 Pte Campbell,C.A. (C.B.High'rs.)

11. COURSES

(a) Proceeded on Course 902 Ser 28 (Firefighting) & Att'd f.s.p. to 1.C.A.R.U. w.e.f. 15 Aug 43.
F.29615 Sgt Kelly,D. (C.B.High'rs)

(b) Proceeded on CMHQ Course 803 Ser 31 (Motorcyclists) Att'd f.s.p. to CTS No.2.(Tech) Wing w.e.f. 15 Aug 43
F.35424 Cpl Parks, E.L. (Gen List)

(c) Proceeded on Pre-OCTU course & Att'd Pre-OCTU School, Blackdown w.e.f. 10 Aug 43
G.22851 Sgt Smith,E.J. (N Shore R)

12. AMENDMENT RETURN FROM COURSE(S)

(a) DO 160 d/14 Aug 43 Para 9 (c) Insofar as it relates to the u/m is amended to read
F.59613 Sgt Henry W.A. (C.B.High'rs)

13. HOSPITAL ADMISSION

(a) Admitted to 8 C.G.H. w.e.f. 14 Aug 43
F.62362 Pte Gaudet,F.J. (Gen List)

(b) Admitted to 8 C.G.H. w.e.f. 12 Aug 43
K.38532 Pte Jack,A.B. Gen List)

Certified True copy.
(C.J. Gibson) Capt
Records Officer.
7 Can. Inf. Reinf. Unit.

14. HOSPITAL TRANSFER

(a) Transfered to British Isol Hospital w.e.f. 13 Aug 43
K.38532 Pte Jack,A.B. (Gen List)

15. HOSPITAL DISCHARGE

(a) Discharged from Fulwood Mil Hospital, Preston,w.e.f. 12 Jul 43.
F.50394 Pte Dunham,,B.K. (Nth.N.S. High'rs)

(b) Discharged from Bridge of Earn Hospital w.e.f. 9 Aug 43
F.40049 Pte LeBlanc, L. (West.N.S.R.)

(c) Discharged from 8 C.G.H. w.e.f. 10 July 43
G.60948 Pte MacDonald,C.F. (Gen List)

16. AMENDMENT HOSPITAL DISCHARGE

DO.138 d/30 July 43 Para 16(b) insofar as it relates to the u/m is amended to read
F.88669 Pte Campbell,C.A. (C.B.High'rs)
F.88681 Pte Campbell,C.A. (C.B.High'rs)

17. QUALIFICATIONS

(a) Having Attended CRU Course 2 Ser 20 (Regt'l San Duties) from 19 Jul to 30 Jul 43 have qualified as shown w.e.f. 30 Jul 43.
F.60171 Pte Ferguson, O.L. (C.B.High'rs) "Q"2.
F.58303 Pte Orrell,E.E. (Nth.N.S High'rs) "Q"2.
F.1162 Pte Romo, R.A. (Nth.N.S.High'rs) "Failed"

(b) Having attended CMHQ Course 802 Ser 15 (Carriers) from 20 June 43 to 31 July 43 have qualified as shown.
G.7236 Cpl Aubie, A.J. (N Shore R) "Q"1.
F.43639 A/L/Cpl Malone, S. M. (West.N.S.R.) "Failed"

(c) Having Attended a Driving Course, London Passenger Transport Ser.3. is shown as qualified "Passed" w.e.f.29 July 43.
L.13757 Pte Dow, S.N. (Carlt & York R)
F.87704 Pte Jewell, C.L. (Nth.N.S.High'rs)

(d) Having attended CRU Course No 6 Ser 20 (Regtl First Aid Instrs) has passed "Q" (Auth Brigade Major "D" Group C.R.U.) wef 26 Jun 43
F.97324 A/L/Cpl Cameron, P.A. (West.N.S.R.)

(e) Having been Trade Tested as "Motor Mech" by Trade Testing Bd is shown to have passed Group "C" w.e.f. 4 Aug 43
L.84636 Pte Cripps, E.W. (P.L.Pte.)

(f) Having been Trade Tested as Dr.Mech by Trade Testing Bd is shown to have passed Group "C" w.e.f. 29 Jul 43 (Auth Trade Testing Bd Report d/29 Jul 43)
G.22951 L/Cpl Dutcher,E.A. (N Shore R)

(g) Having attended CMHQ Course 1109 Ser 14 (Motor Mech's) from 10 June to 22 July 43 is shown as Qualified Group "C" Motor Mech w.e.f. 22 July 43
G.22389 Pte Jagoe, I.L. (N Shore R)

(h) Having Attended C.R.U. Course 6 Ser 22 (First Aid) from 2 Jul 43 to 24 July 43 is shown as "Failed"
G.63654 A/Cpl Lawrence, G.A. (Gen List)

(i) Having Attended CMHQ Course 1042 (Dr.Mech) is shown to have qualified Group "C" w.e.f. 15 Jul 43 (Auth Trade Testing Bd Report d/15 Jul 43.)
F.86589 Pte Rawding, E.V. (Nth.N.S.High'rs)

Certified True Copy
[illegible] Capt.
for O.C. (Gibson) Records Officer
7 Can.Inf. Reinf. Unit.

EXHIBIT "A"

QUALIFICATIONS CONTINUED

(j) Having attended CMFQ Course 1053 (Electricians) from 3 May to 31 May 43 is shown as qualified Group "B".
F.35377 A/Sgt Swindell, H.B. ("A" Wing)

18. ABSENTEES

(a) A.W.L. from 0800 Hrs 10 Aug 43
P.95053 Pte Bennett, J.L. (C.B.High'rs)

(b) A.W.L. From 0700 Hrs 13 Aug 43
F.88689 Pte Campbell, C.E. (C.B.High'rs)

(c) A.W.L. From 1800 Hrs 14 Aug 43
F.29978 Pte Cook, R.V. (Cdn Inf Corps)

(d) A.W.L. From 1800 Hrs 14 Aug 43
G.17668 Pte Dempsey, J.G. (Carlt & York R)

(e) A.W.L. From 2300 Hrs 13 Aug 43
F.60449 Pte MacDougall, A. (West.N.S.R.)

(f) A.W.L. From 1800 Hrs 12 Aug 43
F.44644 Pte McLeod, K.H. (West.N.S.R.)

(g) A.W.L. From 0800 Hrs 13 Aug 43
F.40084 Pte Myers, M.W. (West.N.S.R)

(h) A.W.L. From 2359 Hrs 12 Aug 43.
F.79322 Pte Shunsmon, G.A. (West.N.S.R.) ("A" Wing)

(i) Apprehended in London by CPC at 1425 Hrs 13 Aug 43
F.59703 Pte Dennis, C.E. (Cdn Inf Corps)

Certified True Copy. ...Capt. (W.O.) Records Officer. 7 Cdn. Inf. Reinf. Unit.

19. PUNISHMENTS

(a) Was on 12 Aug 43 awarded 7 Days CB & Forf 1 Days pay for WOAS. A.A.Sec 18(1) A.W.L. From 1545 Hrs 10 Aug 43 until 1630 Hrs 10 Aug 43 (45 Mins).
Forf 1 Days pay FR&I 149(2).
H193160 Pte Grabowski, N. (Gen List)
F.60440 Pte Mossey, J.F. (Gen List)
F.59840 Pte Creamer, J. (Gen List)

(b) Was on 12 Aug 43 awarded 7 Days F.P. Forf 7 Days pay for WOAS .A.A. Sec 15(1) A.W.L. From 2300 Hrs 10 Aug 43 Until 0030 Hrs 11 Aug 43 (1 Hr 30 Mins) Forf 7 Days Pay FR&I 149 (1) (a) Total forf 7 Days Pay.
F.59953 Pte Harding, A. (GenList)
F.30432Pte MacDonald, D.D. (Gen List)

(c) Was on 11 Aug 43 awarded 7 Days F.P. & Forf 7 Days pay for WOAS A.A. Sec 40.Forf 7 Days pay under FR&I 149(1)(b)
G.23563 Pte Albert, A. ("A" Wing.)

(d) Was on 11 Aug 43 awarded 7 Days C.B.and Fined $10.00 for WOAS A.A. Sec.19(Drunkeness)3rd Offence.
F.40408 Pte Drew, F.R. ("A" Wing)

(e) Was on 12 Aug 43 awarded 28 Days F.P .and Forf 28 Days Pay for WOAS A.A. Sec.15(1) A.W.L. from 0800 Hrs 14 June 43 until apprehended by civil police in Staines at 2115 Hrs 6 Jul 43.(Total Absence 24 days 13 hrs 15 mins).
Forf 28 Days pay Under FR&I 149(1)(a)
Forf 28 Days Pay Under FR&I 149(1)(b)
Total Forfeiture 53 Days Pay.
F.35196 Pte Embree, D.S. (West.N.S.R.)

EXHIBIT "B"

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(2nd/1). W.L.16673/4,500 10,000 6/41 A.A.S.W.Ltd. Gp.699 Forms/O.1617/17

I CERTIFY that the man whose personal description is given below surrendered himself to* G.R. 159 Rance.

at High St. Stone at (hour) 4 a.m. on the 3rd day of September 1943 as being No. F 55196

(Rank and Name) Private Douglas Seymour Emmett

~~a deserter~~ (or absentee without leave) from 2.9.43

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 25 Height 5 Feet 9 Inches

Complexion Fresh Hair Lt Auburn Eyes Blue

Marks

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	1.4.42. Truro. N.S.
Probable Date of Desertion or beginning of absence, and from what place	2.9.43. Leamington Spa.

Signature of Officer of Police in charge of Cpl. No. 156. Stone's Station.

3.9.43. Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

List of Exhibits in the case of F 35196 Pte. Embree, D.S.

Exhibit "A" - Certified True Copy of 7 Cdn Inf Rft Unit Part II Daily Order No. 162 dated 12 Aug 43.

Exhibit "B" - Certificate of Surrender to Civilian Police A.F.O.1617.

List of Witnesses in the case of F 35196 Pte. Embree, D.S.

FOR THE PROSECUTION

FIRST WITNESS — C 22424 Cpl. Landry, C. - N Shore R - 7 C.I.R.U.

SECOND WITNESS — Lt. L.E. Donkin - C.S. Highrs - 7 C.I.R.U.

FOR THE DEFENCE

NIL

SUMMARY OF EVIDENCE

In the case of No. F 35196 Private Douglas Seymour EMBREE, West Nova Scotia Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FIRST WITNESS FOR THE PROSECUTION

G 22424 Cpl. Landry,C., N Shore R, on the strength of 7 Cdn Inf Rft Unit, having been sworn states:

I am G22424 Cpl. Landry, C., N Shore R, on the strength of 7 Cdn Inf Rft Unit. On the 21 Aug 43 I was Company Orderly Corporal of "B" Coy, of which the accused was a member. While attending defaulters parade, the roll was called and Pte. Embree did not answer his name. I marked him absent from 1300 hrs 21 Aug 43. I have been Company Orderly Sgt ever since that date and Pte Embree has not attended any parades in "B" Coy Since.

C/L Landry C. ---------- Cpl.

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION

Lt. L.E. Donkin, C.B. Highrs, on the strength of 7 Cdn Inf Rft Unit having been sworn states:

I am Lt. L.E. Donkin, C.B. Highrs, on the strength of 7 Cdn Inf Rft Unit. I produce certified true copy of 7 Cdn Inf Rft Unit Part II Daily Order No. 162 dated 17 Aug 43 para 19(e) of which relates to the accused states: "Was on 12 Aug 43 awarded 28 days F.P. and Forfeits 28 Days Pay for WOAS A.A. Sec 15(1) A.W.L. from 0800 hrs 14 Jun 43 until apprehended by civil police in Staines at 2115 hrs 8 Jul 43. This document is marked exhibit "A". I also produce Army Form O1617 purporting to be signed by P.C. T Crookes No 115 Metropolitan Police force Staines which relates to the accused, this document is marked exhibit "B".

L.E. Donkin ---------- Lt.

(The accused declines to cross examine this witness)

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or to give evidence on oath.

I certify that the foregoing Summary of Evidence consisting of ONE page was taken down by me in the presence and hearing of the accused and Rules of Procedure 4 (B), (C), (D) (E) and (F) have been complied with.

L.E. Donkin ---------- Lt.
(Officer taking Summary)

In the Field
4 Sep 43

1. I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the chhrge under which I am being brought to Court-Martial.

Dated at
this 4 day of
September 194 3

D.S. Embree
(D.S. Embree)

2. I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic Barracks, preliminary to my Court-Martial.

Dated at
this _____day of
_____194

.....

3. I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of _____
if he is available.

Dated at
this 4 day of
September 194 3

D.S. Embree
(D.S. Embree)

M.F.M. 6
(A.F. B.122)
W. P. & S./B136 (2965)

No. F 35196 Name E McREE, D S. | Eqn., Battery, or Company | Corps: No. 6 Dist Depot | Date of enlistment: 1-4-42 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
YARMOUTH (N.S.)	18-5-42	Pte		AA Sect 15(1) Awl. - 11 Hrs. 30 Mins Close arrest. 2 Days, 11 Hrs, 30 Mins Total 42 Days. 4 Hours	Cpl Beattie " Kiddy Documentary	Forfs 37 days Pay	29-6-42	Lt. Dawson	Forfs 17 Days Pay
ALDERSHOT (N.S.)	14-9-42	"		AA Sect 15(1) Awl. - overlaying pass from 0600 hrs 14-9-42 until remaining until apprehd at 6 Depot on return at 1145 hrs 24-9-42 (Total Absence 12 days, 5 hrs 45 mins) Close arrest. Cost of appreh: 3/10 7d	Cpl Sears " Spence	28 Days Detention 13 " Pay	29-9-42	Lt. Colonel J Jobey	Total Forfs 43 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14.6.43	Pte		AA Sect 15(1) Amt from 0800 hrs 14.6.43 to 2115 hrs 6.7.43 (24 days, 13 hrs, 15 mins)	Documentary	28 Days Pay FP	12-Aug-43 ~~12 Aug 43~~	J.L. Lawson Lt Colonel	

Certified True Copy

8 Sept 43

Officer Having Custody of Army Docs
(C.M.G. Arthurs) Capt & Adjt.
7 Can Inf Rft Unit.
5 Sep 43

M.F.B. 385
27M—5-41 (272-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 35196	Private	EMBREE, D.S	West N.S.R. - 70IRU

1. The following is a fair and true summary of the entries in the ~~Conduct sheets of Company Conduct sheets of~~ Regimental ~~and Squadron, Battery~~ ~~Service and General~~ the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec 15(1)	2 times	3 times
For	times	times
For	times	times
For	times	times
For		

~~Number of instances of gallantry or distinguished conduct~~ ~~or~~ ~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted ~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act, A.F.A. 75 Section 47 of the Army Act, and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in ~~Air Force~~ civil custody, and 5 days in military custody, making a total of 5 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service and~~ attestation paper is 25 years 4 months

6. The date of his ~~enrolment~~ specified in his ~~record of service or~~ attestation paper 1 April 1942

7. The service which the accused is allowed to reckon towards discharge is 1 year 127 days 1 year 127 days.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~air force~~ military decoration, or ~~the Canada~~ military ~~award he is in possession of or entitled to. State any air force decoration or reward~~ ~~military~~

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer had held Air Force the regimental rank of~~

11. (In the case of an officer.) The accused holds in the ~~Royal Canadian Air Force~~ Permanent Force the rank of ..... unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number F 35196 Rank Private Unit Name Embree, D.S. of West N.S.R. - 7 C.I.R.U. ~~Regiment~~

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of Sept-43 D.C. Brake Lt. 2nd Reg 16382

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

LCMR-3

Lieut (A/Capt) J. H. J. Emberley.

"B2" 3

CHARGE SHEET

The accused, Lieutenant (Acting Captain) John Henry Joseph EMBERLEY, RCASC, attached 46 Canadian General Transport Company, R.C.A.S.C., an officer of the Canadian Army Overseas, is charged with:

First Charge
Sec 15(1) A.A. WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 20 September 1943 absented himself without leave from Headquarters, 2 Canadian Corps from 0900 hours on said 20 September 1943 until he surrendered himself at said Headquarters, 2 Canadian Corps at 1600 hours, 24 September, 1943

(K. E. Morris) Major
Officer Commanding
46 Cdn Gen Tpt Coy
R.C.A.S.C.

In the Field,
27 Sep 43

TO BE TRIED BY GENERAL COURT MARTIAL

(E. W. Sansom) Lieut-Gen
G O C 2 Cdn Corps.

In the Field
28 Sep 43

B

The President, members and judge-advocate are duly sworn.
Q. Do you object to B.26026 S/Sgt Nethercut, F.J., HQ 2 Cdn Corps as shorthand writer? A. No, sir

The following officers under instruction are duly sworn.
Major P.R.Laird, 2 Cdn Corps Sigs Capt. A. Green, 2 CCS RCAMC
Major J. R. Dunlop, 2 Corps Tps Wksp RCOC Major G.W.Young, 2 CCS RCAMC
Capt. W.M.Oxley, 2 Cdn Corps Sigs Capt E.B.Hutcherson, 2 Cdn Corps HQ
Capt.C.A.Wakeham, HQ 2 Cdn Corps REME Capt.J.Richards,2 Cdn Corps & Army Tps Sub Pk RCOC
Capt.G.L.Atyeo, 2 Cdn Corps Sigs
Capt. K. Kraft, 3 CCS RCAMC Capt J.A.Flandon,34 Corps Tps Coy
Lieut.A.M.S.Murray,5 C.A.D.Sub-Pk RCOC Lt.B.E.MacDonald,4G C.G.T.C.

Charge-Sheet

Instruction:
If the accused has elected to be tried under Army Act, sec. 56 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to the accused. Are you guilty or not guilty of the {first} charge against you, which you have heard read?

Answer. Guilty

~~Are you guilty or not guilty of the second charge against you, which Question you have heard read?~~ ~~Answer~~

~~Are you guilty or not guilty of the third charge against you, which Question you have heard read?~~ ~~Answer~~

~~Are you guilty or not guilty of the fourth charge against you, which Question you have heard read?~~ ~~Answer~~

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.
If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Com A3 (1)

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

30 Sept 43

Proceedings of a GENERAL Court-Martial held at 46 Cdn Gen Tpt Coy RCASC on the 30th day of SEPTEMBER 19 43 by order of LIEUT-GENERAL E.W.SANSOM, CB, DSO Commanding 2 CDN CORPS dated the 28th day of SEPTEMBER 19 43

President.

BRIGADIER A. E. D. TREMAIN, ED,
CCRA, 2 CDN CORPS

Members.

LIEUT-COL. R. B. DEAN
2 CDN CORPS SIGS

MAJOR J. A. STALKS,
HQ COMD, 2 CDN CORPS TPS RCASC

MAJOR J. F. PATERSON,
3 C.C.S., RCAMC

CAPT. L.A.H. WILSON,
42 CDN GEN TPT COY RCASC

MAJOR N. C. FRASER, DJA, 2 CDN CORPS , Judge Advocate.

Trial of*LIEUTENANT (A/CAPT) J.H.J.EMBERLEY,
46 CDN GEN TPT COY RCASC

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court. Medical certificate is marked Exhibit "A" signed by President and attached.

~~The Court satisfy themselves that~~ is not available to serve owing to

~~, waiting member takes this place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt. W.D.Hungerford, 46 Cdn Gen Tpt Coy RCASC

~~Counsel for~~ defending officer† Capt M.A.MacPherson, 33 Cdn Corps Tps Coy, RCASC

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked "X" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No, sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

---

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—8-43 (3319)
H.Q. 1772-21-224

JAG BRANCH - REVIEW RECORD

Accused
Lt. A/Capt. Kimberley, J. H. RCASC.
46 Cdn. Gen. Tpt. Coy

Remarks	Date
Trial in (Country) Eng.	30 Sept.
Charges 15(1)	
Sentence Severe Reprimand.	20 Oct.
Rec'd from CR at JAG Branch	12 Nov.
To D.W. for (~~pre~~)(post) rev	12 Nov.
Recommendations by 12 Nov JAG Rev 2	
(2) Pass and record.	
~~(c) Itp on irregularities~~	
~~(b) Quash charge(s).~~	
(4) Made ~~to~~ Report & Rec ~~to~~ Dismiss ~~charge~~ & sent ~~to~~ file	
Ret'd to JAG Rev 1 by JAG Rev	13 Nov 43
Passed to	
Passed to	
To AG 5 for with Cert Copy	13 Nov 43
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Instrs completed by	

5

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused Lieutenant (Acting Captain) John Henry Joseph Emberley, attached 46 Cdn Gen Tpt Coy, RCASC is found guilty of the charge

*The summary ~~or abstract~~ of evidence is read, marked "C" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. ~~The accused in mitigation of punishment says:~~

[~~He~~ hands in a written statement, which is read, marked "E", signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

NO, SIR

Answer.

~~Evidence as to character~~

Prosecutor, Capt. W. D. Hungerford, 46 Cdn Gen Tpt Coy RCASC, having been duly sworn is examined by the Court.

Q. 1 - Have you any evidence to produce as to character and particulars of service of the accused?
A. 1 - I have the MFM 1 and also the Record of Service of the accused sir

MFB 355 and MFM 1 are read, Marked "Y" and "Z" respectively, signed by the President and attached to the proceedings.

Prosecutor - Sir, I would point out that in this column he jumps from provisional lieutenant to Captain which rank appears in this column continuously later on
Defending Officer - There is actually an error in that "To be Capt", It may be an error but we do not intend to make an issue of it
Judge-Advocate - That only shows the Unit authority for it?
Defending Officer - Yes, sir, it does not show on the blue sheet
Judge-Advocate - Then it is common ground to both parties that he is in fact only an acting captain?
Defending Officer - So far as I am concerned, sir. I am not making a point of it

Q. 2 - Is the accused the person named in the statement which you have just read?
A. 2 - Yes, sir
Q. 3 - Have you compared the contents of the above statement with the regimental books?
A. 3 - Yes, sir
Q. 4 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A. 4 - Yes, sir

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

IN THE OPINION OF THE COURT AND THE JUDGE-ADVOCATE IT IS NOT NECESSARY TO COMPLY WITH R.P.83(B)

THE WITNESS STANDS DOWN

President to Defending Officer - Do you wish to address the court?
Defending Officer - Yes, sir. The court is faced now this morning with the very difficult problem of determining a sentence to pass upon a young officer who deliberately went absent without leave, according to his own statement, for the purpose of recording a grievance. Your problem, gentlemen, is manifold. You want to know why he did this foolish thing, why he took the law into his own hands and why he didn't use the proper method of laying a complaint and you want to know whether he is worth saving for the Service and, if he is worth saving for the Service what is to be done with him? Capt. Emberley is now 33. He has been in the Army for two years but I submit, gentlemen, he knows virtually nothing about the Army and it is easy to see why. Up to September 1941 he was Chief Steward and Purchasing Agent for the Lord Nelson Hotel in Halifax earning $150.00 a month. A friend of his who was District Inspector of Catering for M.D.6, Halifax and was about to give up his appointment suggested to Emberley that he might apply for it. Emberley did this and after a couple of short interviews was taken on strength as a Provisional Second Lieutenant or Lieutenant (there is a little confusion on that point) on 28 Sep 41. Four or five days later he was made Acting Captain. He was given two weeks specialist training which he describes as nothing but a Cook's Tour of the kitchens of large camps such as Petawawa and Camp Borden. He was then sent to take up his appointment as District Inspector of Catering at Halifax and he was there until May of this year. In February of this year, as he said in his statement at the Summary of Evidence, he had a three or four weeks course at the Officers' Training Centre at Three Rivers where he qualified as Lieutenant.

Now, the Court knows by experience that we learn military fundamentals in two ways - firstly those that are taught us in our formal training and secondly, those we learn from our fellows. Now, I submit, gentlemen, that this officer had the opportunity to learn military fundamentals in neither of these ways. During all the time he was in Halifax, for instance, he lived at home with his wife and child. He did not live in a Mess. He was denied Mess Life. He had no particular friends at HQ, M.D. 6. He received his directions from "Q" but his military coaching from no one. The absence of his formal training is apparent from his record. The only formal training on his record is the course he took at Three Rivers early this year.

I suggest, gentlemen, that all these things resulted in an inferiority complex - a feeling of futility, a feeling that things military were away beyond his understanding, away beyond his capacity but at any rate he came overseas. He was given an opportunity to come overseas and he took it hoping for improvement over here. But over here he discovered that the people he ran into were even more sophisticated in his opinion than they were at home and so he did this foolish thing, this foolish act for which he is now on charge and on trial. He did not even know the proper method of laying a complaint. Military law was never properly explained to him until three days ago. He has read the Army Act only once. When he went absent without leave Capt. Emberley felt that the Army was not the place for him, that he was a misfit, that he would never do a proper job in the Army and that he would never get a job in the Army that he liked because of the lack of training but I submit, gentlemen, that the Army does not know whether or not Capt. Emberley is a fit person to carry on in this life. He has not had the opportunities that officers usually get in this Army. All the Army information about him is that he has been tried as a catering officer and that he did not like it. He is very emphatic on that. We know he has not been trained in any job and he has only been tested in one job and there are lots of jobs in the Army.

Capt. Emberley now has three firm resolutions or desires, if you wish. He wishes to stay in the Army. He wishes to retain his commission. He wishes to become a regimental officer in his own Corps, the Army Service Corps and thirdly - a correlative of the second, he knows if he is to be a regimental officer in his Corps he knows it must mean reverting which he is prepared to do.

Now, gentlemen, I submit that this gentleman is worth saving because he has not had the proper opportunities. His actual capabilities other than as catering officer are not known but I suggest that the position that he held down in civil life indicates that he is a man worthy of commisioned rank and whoever appointed him to commisioned rank in the first place was not in error. Emberley is resolved to be useful provided he is not asked to do catering duties and I suggest that that is a fair proviso.

I therefore request you, sir, and gentlemen to record a sentence which will permit this officer to carry on - which will permit this officer to serve - which will permit this officer to have more training, to understand the Army and will permit this officer to carry out these three resolutions which he has made

COURT - The court is closed for consideration of the sentence. The sentence being subject to confirmation will be promulgated later and the proceedings in open court are accordingly terminated.

Certified to be a true transcript of
the shorthand notes taken by me at the
GCM described on p 1

(F.J.Netherwood S/Sgt

E

Finding

To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

The Court find that the accused

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must consider both the nature and amount of that additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.*

~~The Court is closed for the consideration of the sentence.~~

F

Sentence

The Court sentence the accused Lieutenant (Acting Captain) John Henry Joseph Emberley, attached 46 Cdn Gen Tpt Coy RCASC

Sentence. Dismissal from His Majesty's Service

TO BE DISMISSED FROM HIS MAJESTY'S SERVICE

Signed in the Field this 30th day of September, 1943

(N. C. Fraser) Major
Judge-Advocate

(A. E. D. Tremain) Brigadier
President

I reserve the finding and sentence for confirmation by superior authority.

Signed in the Field this 4th day of October, 1943.

(E W Sansom) Lt.-Gen.
GOC 2 Cdn Corps

I confirm the finding and sentence of the Court but commute the sentence to read as follows; To be severely reprimanded and to take rank and precedence in his Corps and in the Canadian Army as if his appointment as Lieutenant bore date the 30th day of September, 1943.

In the Field
20 Oct 43

(A.G.L.McNaughton) Lieut-Gen
GOC in C, First Cdn Army
Senior Combatant Officer of the Canadian Militia in the United Kingdom.

20 OCT 1943

G.O.C.-in-C.
FIRST CDN. ARMY

Promulgated by me at Blenheim Barracks, Farnborough, Hampshire, this 30th day of October 1943.

(W.C. Fletcher) Lt.-Col.,
A/Comd.,
1 Cdn. A.S.C. Rft. Unit.

"17"

MEDICAL OFFICERS CERTIFICATE.

I certify that I have this morning examined Capt John Henry Joseph Emberley, Catering Wing R.C.A.S.C. and in my opinion he is fit to undergo trial by Court Martial.

Field
30 Sep 43.

C. C. Evans Capt.
(Medical Officer)
RCAMC
#6 CCS

ORDERS BY LIEUT-GENERAL E. W. SANSOM, CB, DSO,
G O C 2 CDN CORPS

GENERAL COURT MARTIAL
Lieut (A/Capt) J.H.J.Emberley,
46 Cdn Gen Tpt Coy, R.C.A.S.C.

The detail of officers as mentioned below will assemble in the lines of 46 Cdn Gen Tpt Coy, RCASC, on Thursday, the 30th day of September, 1943, at 1000 hrs., for the purpose of trying by General Court Martial the accused person named in the margin (and such other person or persons as may be brought before them).

PRESIDENT

Brigadier A.E.D. Tremain, MD,
CCRA, 2 Cdn Corps

MEMBERS

Lieut-Col. H.B. Dean	2 Cdn Corps Sigs, RCCS
Major J. A. Stairs	HQ Comd, 2 Cdn Corps Tps RCASC
Major J. F. Paterson	3 CCS, RCAMC
Capt. L.A.H. Wilson	42 Cdn Gen Tpt Coy RCASC

WAITING MEMBERS

Major P. R. Laird	2 Cdn Corps Sigs, RCCS
Capt. A. Green	2 CCS, RCAMC

JUDGE-ADVOCATE

Major N. C. Fraser, DJA, 2 Cdn Corps is appointed Judge-Advocate

Capt. W. D. Hungerford, 46 Cdn Gen Tpt Coy, RCASC, will act as Prosecutor

Capt. M. A. MacPherson, 33 Cdn Corps Tps Coy, RCASC, will act as Defending Officer.

OFFICERS UNDER INSTRUCTION

DDST, DDMS, DDOS, DDME, and Officer Commanding 2 Cdn Corps Sigs, RCCS will each detail two officers to attend for instruction.

The accused will be warned and medically examined and all witnesses duly required to attend.

Officer Commanding 46 Cdn Gen Tpt Coy RCASC will detail an escort for the accused, an Orderly Officer and Court Orderly.

Officer Commanding 46 Cdn Gen Tpt Coy RCASC will provide suitable accomodation for the Court and for the witnesses.

The proceedings will be forwarded to G O C, 2 Cdn Corps.

Signed this 28th day of September, 1943.

(E. W. Sansom) Lieut-Gen
G O C 2 Cdn Corps

"G"

Summary of evidence in the case of Captain J.H.J. Emberley, attached to 46 Canadian General Transport Company, R.C.A.S.C., Canadian Army Overseas, charged with Absence without leave from 20 Sep 43 to 24 Sep 43.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

Captain H.L. Howe, 2 Cdn Corps Catering Advisor, R.C.A.S.C., sworn, states:-

I am Herbert Leonard Howe, R.C.A.S.C., 2 Cdn Corps Catering Advisor. In accordance with verbal instructions issued to me by the Chief Inspector of Catering (Lt.Col. A.W. Childs, R.C.A.S.C.) C.A.(O) and under authority of C.M.H.Q. MS 6/MS/7250, dated 9 Sep 43. Captain J.H.J. Emberley was attached wef 10 September 1943 to H.Q. 2 Cdn Corps for training as a catering advisor under my command. Captain Emberley accompanied me on Exercise "LINK" during the period Sep 10th to 18th and returned with me to 2 Cdn Corps H.Q. on Saturday 18 Sep 43. He was given permission by me to proceed on leave until 0900 hrs Monday 20 Sep 43. I had arranged with him that he would call my office on Monday the 20th Sep 43. at approximately 0900 hrs from the station of arrival, namely, Weybridge, Surrey, and I would have him picked up there from whence we would carry on with our normal work.

I did not hear from Captain Emberley again until I met him in my office at 2 Cdn Corps H.Q. at approximately 1600 hours Friday 24 Sep 43. In the meantime, I had endeavoured to ascertain Captain Emberley's whereabouts by phoning 1 Cdn ASC. Reinf Unit on Monday the 20th and Tuesday the 21st Sep 43. and also through the Chief Inspector of Catering. These efforts met without success. I was instructed on Wenesday morning 22nd Sep 43. by the Chief Inspector of Catering to bring the matter to the attention of "A" Branch, H.Q. 2 Cdn Corps by letter and this I did."

The accused declines to cross examine this witness.

H.L. Howe (Capt)

(Signature of Witness)

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The Accused: I desire to give evidence under oath.

The accused, Captain J.H.J. Emberley, attached to 46 Cdn Gen Tpt Coy, R.C.A.S.C., sworn, states:-

On the advice of the District Inspector of Catering (M.D.6 Halifax), I applied to the Chief Inspector of Catering NDHQ, for a position as District Inspector of Catering & Messing, in June 1941.

In Sep 41 I received word from the CIC to apply to the DSATO MD6 for interview, and was subsequently taken into the army as a Prov 2/Lt and a few days later made an A/Capt. The CIC up to this point had never seen me and had never interviewed me in person or by mail, and I had no idea what duties my job entailed.

The only trg I got was a tour of the kitchens of some of the larger trg centres, such as Camp Borden and Petawawa under the direction of the CIC.

After this tour of about 2 weeks, I was posted to HQ M.D.6 as District Inspector of Catering & Messing and was left largely to

(19)

myself to find my way about and to do a job I had little knowledge of. In three or four months time I decided that I was not suited to the job nor the job to me, and made that fact known to the CIC, pointing out that I could serve better as a Supply Officer. I received an answer from him, written in a jocular vein, but nothing was done. I therefore carried on, awaiting an opportune moment to do something myself.

In Feb 43 I was sent to O.T.C. at Three Rivers Que, for a Common to all Arms Course, which lasted 22 days, at which I qualified as 2/Lt.

By this time I was thoroughly disinterested in the Army as a whole and was beginning to seek ways of getting out of it, when word came from M"HQ that a Catering Adviser was wanted overseas, and I was "invited" to volunteer.

After some consideration I accepted, feeling that my outlook would change upon arrival overseas. To my chagrin, I found that such was not the case, and made the situation known to Lt-Col.Childs (the Chief Inspector of Catering Cdn Army Overseas), to whom I wrote in Jul 43. I do not know exactly what he did about it, but I took it upon myself to have a talk with the personnel Selection Officer at 1 CASCRU, whom I told that I wished to return to civil life, or return to Canada in any case.

The next word I received was that I was to see the psychiatrist at 8 Cdn Gen Hosp. We had a long conversation in which I told him what was on my mind. He told me that I could go back to Canada and that he could set the necessary machinery in motion then and there, but it would be in disgrace that I would return.

Since, like any one else, I do not relish disgrace, I decided to continue my efforts and was subsequently posted to HQ 2 Cdn Corps for trg by the Corps Catering Adviser. I attended Exercise "LINK" with him, at the end of which I felt that I had all of the Army that I could take, so therefore went A.W.L. with the idea that such action would bring my case forcibly into the limelight.

(J.H.J. EMBERLEY) Capt.

The accused declined to call witnesses in his own behalf.
I certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 25th day of September, 1943.

W.D. Hungerford Capt

(W.D. HUNGERFORD) Capt.
46 Cdn Gen Tpt Coy, R.C.A.S.C.

S.J.T.

"H"

To the President of the Court. [illegible]

Sir -

I have the honour to make the following statement on my own behalf.

That I went absent without leave on the 18th and on the 19th on the summary of evidence my attitude was a result of my dislike of my occupation in the army.

On thinking my position over since then, however, I have changed my attitude. I now most sincerely wish to hold my commission, to stay overseas and to seek regimental employment. Given the opportunity, I shall do my utmost to justify any faith your court may place in me.

I humbly regret the trouble I have caused. I feel it was a good bit due to my own ignorance.

I have the honour to be,
Sir,
Your obedient servant

[signature] [illegible]

29 Sep 43.

M.F.D. 355
225M—9-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
	Captain	John Henry Joseph Emberley,	Catering Wing, R.C.A.S.C.

1. The following is a fair and true summary of the entries in the Regimental ~~Service~~ Conduct sheets ~~Record Book~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force List~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Nil	times	Nil	times
For	Nil	times	Nil	times
For	Nil	times	Nil	times
For	Nil	times	Nil	times

~~Nature of offences and punishments~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~by Court-Martial~~

3. The accused is not under sentence at the present time.

~~Particulars of sentence~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 33

6. The date of his commission specified in his record of service is 29 September 1941

7. The service which the accused is allowed to reckon towards discharge is 2 years

8. The accused is entitled to reckon 2 years service for the purpose of determining his pension, etc.

9. ~~Particulars of previous service in the present war~~

10. ~~Other matters considered relevant or desired to be stated~~

(24)

11. (In the case of an officer.) The accused holds in the ~~R.C.A.S.C.~~ unit the rank of

A/Captain dated 4 October 1941, and in his regiment (or corps), the rank of

A/Captain dated 4 October 1941.

12. ~~The exercise of the powers of confirming officer in connection with the proceedings~~

~~has not~~ Date of promotion.

~~Rank~~ ~~Unit~~

~~Rank~~ ~~Unit~~

~~Rank~~ ~~Unit~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, ~~Name~~ Rank Captain Unit

Name John Henry Joseph Emberley of Catering Wing, RCASC ~~Regt~~

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL	NIL	NIL	NIL	NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of September 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(Christian Name) ..... Surname ..... Rank .....

STATION	Date of Arrival at the Station	Admission into Hospital: Day	Admission into Hospital: Month	Admission into Hospital: Year	Discharge from Hospital: Day	Discharge from Hospital: Month	Discharge from Hospital: Year	DISEASE	Number of days in Hospital	Remarks on nature of the disease how contracted, if mild or severe; if completely cured or permanent disability resulted; if primary disease was specific or constitutional; if treatment was adopted to venereal case, the nature of primary disease, and whether mercury has been given. If an accident or accident, state whether it occurred on duty and whether a Court of Inquiry was held. Date of issue and particulars of artificial teeth or surgical appliances supplied.	Signature of Medical Officer

For additional entries use M.F.M. 1 and 2 (b)

CERTIFIED TRUE COPY.
E Henderson Capt
(E. HENDERSON) Capt.,
for Officer i/c Records, C.M.H.Q.

Z 3 M.F.M. 1 40/F&S 403

ORIGINAL
DUPLICATE
TRIPLICATE

(To be completed in triplicate. Copy designation to be shown by striking out terms not applicable.)

Unit ..... No. 6 Det., R.C.A.S.C. Rank ..... Prov. Lieut.

Personal No. ..... Name John Henry Joseph EMBERLY.

ACTIVE FORMATIONS AND UNITS OF THE CANADIAN ARMY

ATTESTATION PAPER

OFFICER'S DECLARATION PAPER

Also applicable to Nursing Sisters

1. Surname ..... EMBERLY
2. Christian names ..... JOHN HENRY JOSEPH
3. Present address ..... 10 Pacific Street, Halifax, N.S.
4. Date of birth ..... 13th. July, 1910
5. Place of birth ..... Canada (Country) Quebec, (County or Province) Montreal (Town or Twp.)
6. Citizenship ..... (Of what country are you now a citizen)
7. Religion (state denomination) ..... CHURCH OF ENGLAND
8. Profession or occupation ..... Assistant Manager of Lord Nelson, Hotel, HALIFAX, N.S.
9. Married, widower or single ..... Married
10. Name of next of kin ..... Anna Susan Grace EMBERLY
11. Relationship ..... Wife
12. Address of next of kin ..... 10 Pacific Street, Halifax, N.S.
13. *(a)* State Unit of Reserve Formation or Unit of the Canadian Army in which you are serving or have served ..... 5 Div. RCASC (R)

    (b) Present rank P/Lieut/2
14. Have you served in *(a)* an Active Formation or Unit of the Canadian Army? (Yes or No) ..... Nil. *(b)* Any other Naval, Military, or Air Force? (Yes or No) (If Yes, specify Unit and period of service) .....

    (If Yes, give Regimental No. and Unit) .....
15. Did you serve during the Great War 1914-1918? .....

    (If Yes, specify Regimental particulars, Unit and dates of service) .....

I, John Henry Joseph Emberly do solemnly declare that the above particulars are true, that I hold or have been recommended for His Majesty's Commission in the Canadian Army and I am willing to serve in the Canadian Active Service Army if, when and so long as required.

Date 8 Oct. 41. signed(J.H.J. Emberly)
(Signature and rank)

CERTIFICATE OF OFFICER COMMANDING

The application of P/2/Lieut J.H.J. Emberly (Rank and name) for appointment to the R.C.A.S.C.(A) (Unit) with the rank of P/Lieut (Supy) and appointment as Inspector of Catering and Messing (or) recommended, appointment to date from 29 Sep. 41. ~~is not approved~~ is recommended for approval.

Authority Pers 5206 and H.Q. 357-22-138 Pers. 1 (c)(ii) d/29 Sep. 41.

signed(indecipherable) Lieut-Col.
(Signature of O.C.) (Rank)

Date 9 Oct. 41. 6 Det. R.C.A.S.C.
(Unit)

FINGERPRINTED

(21)

Record of Service of JOHN HENRY J SEPH EMERLY
(Name)

Active Militia Unit 5 Div. R.C.A.S.C. (H)

Date of Rank 29 Sep. 41.

Rank F/2/Lieut.

Staff College
Militia Staff Course
Advanced Course

Other military qualifications or special courses (specify) Nil.

Highest rank for which qualified by examination Nil.

Languages English

University or College Degree No2.

Civil Technical Training or qualifications (specify)
13 years hotel experience.

Report		Record of Promotions, Reductions, Transfers, Casualties, Returns etc. from date of appointment to Field Force	Rank Shown	Effective Date	Unit	Place	Authority	
Date	From whom received						Part II D.O. No. Or. Ltr. etc.	Dated
		Joined on appointment T.O.S. R.C.A.S.C. Det. R.C.A.S.C. on Arrt. as			HS. 6 Det R.C.A.S.C.	HALIFAX		14-10-41
		Granted T. D. #6.	Capt.	29-9-41	"	"	118	14-10-41
		Rvd. L. D. #6.	Capt.	29-9-41	"	"	127	14-1-42
		S.O.S. No. 6DetR.C.A.S.C on posting to	Capt.	30-4-42	"	"	28	8-5-42
		T.O.S. H.Q. M.D. 6 as District Cat. Offr and Messing Officer.	Capt.	1-5-42	H.QMB6	"	5	15-5-42
		To receive additional pay of 5/- per diem while extra regimentally employed	Capt.	1-7-42	"	"	31 &	20-8-42
		Is att'd to Ad. Hoc. O.T.C., Three Rivers for all purposes except pay	"	18Feb.43	"	"	15	15 Feb.43.
		Attd C.A.(A) to O.T.C. Three Rivers,	Capt.	19-2-43	#6Depot	"	44	19-2-43
		Having been posted for qualification to	Capt.	19-.-43	OTC A.17	3 Rivers	51	25-2-43
		O.i OTC 3 Rivers is att'd fm. ex pay	Capt.	28Feb.43	17	3Rivers	56	28Feb.43
		CTFA on Att'd fm inls pay to OTC O.A. Rivers	Capt.	1 Mar.43	O.3OTC	"	12	15 Mar. 43.
		Att'd for ex pay on CTFA to A.17 OTC						
		Having successfully completed 4 weeks C.T.C.A.						
		Osc. CTFA fm ex pay on rel. to unit	Capt.	19-3-43	O.3.OTC	"	16	19-3-43

For additional entries use M.F.M. 1 and 2 (a)

CERTIFICATE OF MEDICAL EXAMINATION

Name in full JOHN HENRY JOSEPH EMERLY Date 23 July 41.

Part 1. Information obtained from the applicant.

1. Age 31. 2. Have you ever suffered from any of the following diseases?

a. Rheumatism	No.	k. Ear disease	No.
b. Tuberculosis	No.	l. Eye disease	No.
c. Bronchitis or asthma	No.	m. Epilepsy	No.
d. Heart disease	No.	n. Nervous or mental disease	No.
e. Kidney or bladder disease	No.	o. Syphilis	No.
f. Gastro-intestinal	No.	p. Gonorrhoea	No.
g. Rupture	No.	q. Have you ever worn glasses?	No.
h. Varicose veins	No.	r. Are you now or have you in the past received disability pension or compensation? If so, give details	No.
i. Flat or deformed feet	No.		
j. Nasal trouble	No.		
Pleurisy or Pneumonia	No.		

Signed J.H.J. Emberly
Signature of Applicant

Examiner's remarks re above

PART 2. Information obtained by medical examination. The applicant must be stripped.

1. Identification marks or scars. (If operative obtain history.)
Small mole below and to right of umbilicus

2. Height 5 feet 4½ inches. 3. Weight 140 pounds.
4. Complexion Red. Eyes Brown 5. Development Good (Good / Fair / Poor)
Hair Black
6. Chest measurement—Girth on full expansion 38 inches.
Range of expansion 2 inches.
7. Vision, right 20/20 left 20/20 8. Hearing, right C.V.20 left C.V.20
9. Condition of mouth and teeth Pass
10. The abnormalities (congenital and pathological) found on examination are as follows

	ARTIFIC PIC. Neg.
	REFLEXES Norm
	URINALYsis Neg.
	Field of vision Norm
	CHEST X-RAY Film No. #5553

Slight pesplanus no disability
Right ear drum opacue but no apparent disability

PART 3. We, the examiners find no evidence of the diseases mentioned in Question 2. Part 1, except as reported in the remarks. We have examined the Applicant in accordance with the pamphlet "Physical standards and Instructions for the medical examination of recruits" and he is found fit for Category A
pending X Ray
Special remarks when category lower than A

(INDECIPHERABLE) S.J.T. RIAN, Lieut (INDECIPHERABLE)
President Member Member

VACCINATIONS, INOCULATIONS, BOARDS, RECLASSIFICATION OF MEDICAL CATEGORY

Date	Brief details and signature	Date	Brief details and signature
24/4/42	T.A.B.T. 1		
1/5/42	T.A.B.T. 2.		
3/5/42	T.A.B.T. 3.		
20/2/43	Re-examined Cat. "A"		
20/2/43	Vacc.		

M.F.M. 1 & 2a
6LT & S(13)-(2)(45)

Statement of the Service of No. 111111 Rank Capt. Sheet No.

Name JOHN HENRY JOSEPH EMBERLY.

REPORT Date	REPORT From whom received	Record of Promotions, Reductions, Transfers, Casualties, Reports, etc. (Confirmation of Folio 1, M.F.M. 1 or M.F.M. 2)	Rank Shown	Effective Date	Unit	Place	Authority Part II D.O. No. Can. Ltd, etc.	Dated
		CTBA to Ad.Hoc.OTC fap ex pay	Capt.	20Mar 43	HQ MD 6 Halifax	Halifax	33	31 Mar. 43
		Relinquishes the appointment of Messing and Catering Officer, M.D.6.	Capt.	6May43	"	"	44	6 May 43.
		Isatt to No. 1 Transit Camp f.a.p.	Capt.	6May 43	"	"	44	6 May 43.
		T.O.S. No1 Transit Camp f.a.p.	Capt.	7May43	I.T.C.	Windsor	116	7 May 43.
		S.O.S. No. 1 Transit Camp	Capt.	13May43	I.T.C.	"	122	13May 43.
		S.O.S. (C.A.) Canada on embarkation	Capt.	14 May43	G.R.U.	U.K.	124	26 May 43
		T.O.S.(C.A.) Overseas	Capt.	15 May43	G.R.U.	U.K.	124	26 May 43
		Disembarked	Capt.	22May43	G.R.U.	U.K.	124	26 May 43
		T.O.S. on arrival from Canada	Capt.	22 May43	G.R.U.	U.K.	124	26 May43
		S.O.S. to A.S.C.R.U.	Capt.	24May43	G.RU.	U.K.	126	28 May 43.
		T.O.S. from G.R.U.	Capt.	25May43	ASCRU	U.K.	126	25 May 43.
		Att'd from ASCRU for duty only	Capt.	25May43	ASCRU C.M.H.Q.	U.K.	128 72	27May43 9 June 43.
		C.T.B.A. for duty only to C.M.H.Q.	Capt.	4July43	A.S.C.RU.	U.K.	185	2 Aug. 43.
		Att'd for Rts, Qtrs, & duty to 2 C.A.T.B.	Capt.	5JULY43	A.S.C.R.U.	U.K.	162	6 July 43.
		C.T.B.A. for Rts, Qtrs, & duty to 2 CATB (Messing officers)	Capt.	29July43	A.S.C.R.U.	U.K.	185	2 Aug. 43.
		Qualified at C.M.H.Q. Cse 714, Ser. 647	Capt.	11June43	A.S.C.R.U.	U.K.	172	17 July. 43
		Att'd for duty only to C.M.H.Q.	Capt.	30July.43	A.S.C.RU.	U.K.	185	2 Aug. 43.

VVI-110

PTE EMBERLEY HB

RECEIVED 11 SEP 1944 CMHQ BRANCH

RECORDED AT CMHQ IN AB 160 VVV-110

FIELD GENERAL COURT-MARTIAL

CF A96 (2nd Rev. of AFA3) (C. P. & S. 1606 (2864))

Convened by Order of Brig R.T. Henderson A/Comd "2" Cdn. Corps, CRU dated 28 Aug 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D1376	Pte	Henry, Bruce	EMBERLEY	1 Cdn C.C.D. RCOC

FINDINGS REVIEWED 16 Sep 44

[signature]
REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ENGLAND on (*date*) 28 AUG 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for appts and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 92, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to WO II Cpl Sutherland HI as shorthand writer? Ans No. S.I.R.
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No. S.I.R.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 26, 48, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D.L. REDMAN V.D.	HQ. CRU
Member	CAPT	C.E. LAFOND	1 CGRU
Member	LT	J.R. SHAW	1 CDN PARA TRG C°Y
~~Judge-Advocate~~			
Prosecutor	LT	A.L. SMITH	1 CCG.D.
Defending Offr	LT	J.S.A. DUKE	1 CCG.D.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment makes(s) (no) (~~a~~) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 36, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D1376 Pte H.B. Emberley/1 C.C.O.D. R.C.O.C.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 9(2)	NOT GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of K.I. see RP 44 fn b.)

R

~~At present under sentence~~ for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all Ordinary Pays for a period of Twenty-Eight (28) Days.

(Sgd) [signature] 29 Aug/44 [signature] President (RP 45, 52.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised; AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 31 August 1944 (Sgd) [signature] A/Commanding "2" Cdn. Corps, CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D-1376 Pte. Emberley, H.B.	2 Sep 44	[signature] Major O. i/c Convoy Section, 1 C.C.O.D. R.C.O.C.

1 C.C.O.D. Part II O.O. 126 d/6 Sep 44.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accuse to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 17(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO - SIR (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans NEITHER Do you intend to call witnesses on your behalf? Ans Yes Sir Are they witnesses as to character only? Ans NO SIR.
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1) He then announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 352 or MFB 294. 2. MFB 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Pay and Officers NOTE ATT (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or rebut anything been or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court consideres the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71(D). Give sentence only, comprised of the punishment or punishments laid down in AA 43, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 136, 182, RP 46-50, 69, 138, 119(A), KR Can 308, 330, 343-346. Overseas AO 309, 2323, MML p 62, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3)(b), 140(1), KR Can 304. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THE ACCUSED ELECTS TRIAL BY FIELD GENERAL COURT MARTIAL

CHARGE SHEET

The accused, No. D-1376 Private Henry Bruce EMBERLEY No.1 Canadian Central Ordnance Depot, Royal Canadian Ordnance Corps, a soldier of the Canadian Army Overseas, is charged with:

When on Active Service

FIRST CHARGE
Army Act
Section 9(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the Field, on 18 Jul 44, did not stop his talking on parade when ordered to do so by C.94254 Sgt. Goyette, R.W. of Convoy Section, 1 Cdn COD, RCOC.

R C Kelly

(R. C. Kelly) Major
O.C. Depot Battalion
H.Q. 1 Cdn COD, RCOC

Peper Harow
26 Aug 44

To be tried by Field General Court Martial

(R.J. HENDERSON) Brigadier,
A/Comd Lines of Com. CRU

Bordon, Hants.
28 Aug 44.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-1376	Pte	Henry, Bruce	WORMLEY	1 Cdn C.O.D. RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Aug 44 endorsed by me, (or by an offr of my class for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereof the offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	D.J. Redman, V.C.		HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	From and to be detailed by CC	1 C.A.O.R.U.
A Lieut	From and to be detailed by CC	1 Cdn Para Trg Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Lieut	from and to be detailed by CC	1 C.A.O.R.U.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 28 Aug 44

(D.J. HENDERSON) Brigadier,
Commanding A. Comd "W" Sp. Crv
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (For use (to 1945) of AFWAS, RCAF & RCMP (WD))

(See overleaf for points and notes for use on trial.)

MEDICAL CERTIFICATE (K.R.(Can) 557)

I certify that I have this morning examined No J.13716 Pte EMBERLY H.B.

of CONVOY SEC. HICCOD and in my opinion he is fit to undergo trial by

Court-Martial

Station JASPER CAMP... Medical Officer ...K.A. Drummond Capt.

Date ..29 AUG. 1944....

F.G.C.M. IN THE CASE OF

D 1376 Pte EMBERLEY, H.B., Con Sec 1 CCOD

29 AUG 44

EVIDENCE FOR THE PROSECUTION NOTE D-3

1st WITNESS FOR THE PROSECUTION
C 94254 Sgt Goyette, R.W. of Convoy Sec 1 CCOD RCOC having been duly sworn states:

At approx 0830 hrs 18 Jul 44 a parade was called of the Convoy Sec of the Unit. The accused whom I now recognize, was on this parade. The accused produced a round of sten gun amn. I asked Pte Emberley to give me this rd of sten gun amn which he did, at the same time asking what I intended to do with the said rd. I informed the accused that it was no concern of his, but I would see to it that it got to the right authorities; by that I meant the QM stores. Pte Emberley told me that it was a concern of his as to what I was to do with it. I ordered the accused to be quiet and that there would be no talking on parade. After having ordered him to be quiet he repeated for the second time that it was a concern of his what I was to do with the rd of amn aforementioned. For the third time I ordered the accused to be quiet and that there would be no talking or I would march him to the guard house. He replied that he cared nothing for the guard house. It was at that time that I ordered two escorts to fall out and march the accused to the guard house.

EXAMINATION BY THE PROSECUTING OFFICER

Q.1 The Sgt Major of your unit called out on parade that morning that all amn whether it be sten gun or .303 was to be turned in to the pl sgt and that he, the pl sgt, would take it to the QM stores?
A.1 The Sgt Major brought the parade to attention and I think that what he said was "all amn will be turned in to your pl sgts".

Q.2 Has the Sgt Major a strong voice?
A.2 The Sgt Major has a very good voice.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q.3 I understand you gave an order for the accused to be quiet, will you give us your exact words?
A.3 I told him there would be no talking on parade.

Q.4 If these are the exact words why did you state on a previous occasion under oath that you told him to stop his grousing?
A.4 What I termed as grousing sir, was mumbling, making noises that sounded like a voice, not loud enough to make it out, but loud enough to know he was saying something.

Q.5 What was the exact order?
A.5 No talking on parade.

Q.6 I quote to you a statement which you made to us at the taking of the previous summary in this case. "I told him to stop his grousing, he continued to grouse, I repeated to him to stop his grousing or I would parade him to the court house". Did you say those words?
A.6 Yes sir, I did.

Q.7 Are those words true?
A.7 They are true.

Q.8 Why have you told this court a different story to-day?
A.8 The purpose for this sir, is that on the original summary of evidence, the word grousing was used and I was informed that I should change the word from grousing to talking.

Q.9 After you had told the accused to stop his grousing what was his reaction to that?
A.9 His reaction was that it was a soldier's privelege to grouse.

RE-EXAMINATION BY THE PROSECUTING OFFICER

Q.10 On the first summary of evidence where you used the word grousing and your second summary of evidence where you used the word talking, did that cover the one incident?
A.10 Yes sir, it covers the one incident.

In the opinion of the Court it is unnecessary to comply with RP 83(B).

2nd WITNESS FOR THE PROSECUTION
Lieut. R.W. Storey, of Convoy Sec, 1 CCOD having been duly sworn states:

On 18 Jul 44 approx 0930 hrs there was a parade on the parade square at JASPER CAMP of the dvrs who were to go with me on convoy at 1000 hrs. On this parade, the accused, whom I now recognize produced a rd of sten gun amn. Sgt Goyette asked him for it. Pte Emberley handed it to Sgt Goyette and asked Sgt Goyette what he intended to do with it. Sgt Goyette told Pte Emberley that it did not matter to him what he did with it. Pte Emberley replied that it did matter to him in an insolent tone. Sgt Goyette then ordered Pte Emberley to stop his talking or he would put him in the guard house. Pte Emberley replied that it was his privilege to grouse. Sgt Goyette then had Pte Emberley marched to the guard house.

EXAMINATION BY PROSECUTING OFFICER

Q.11 Did you hear Sgt Goyette order the accused to stop talking.
A.11 I definitely heard Sgt Goyette order the accused to stop talking.

Q.12 In the summary of evidence you stated "Sgt Goyette ordred Pte Emberley to stop his grousing", what you described as grousing in the summary of evidence and have now described as talking is that one and the same incident?
A.12 I think the word Sgt Goyette used was stop your grousing.

Q.13 You have stated that the accused' reply was insolent, how?
A.13 The manner used by him.

Q.14 Sgt Goyette after giving a clear order to the accused to stop grousing had to give the command the second time because the accused continued to grouse.
A.14 Yes sir.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q.15 When the accused replied to Sgt Goyette saying it was his privilege to grouse, how would you judge that to be an insolent manner?
A.15 It was the tone he used to answer, I cannot describe that tone.

Q.16 After that he was asked again by the Sgt to stop grousing, was there any further conversation or reaction after that?
A.16 No sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B).

CASE FOR THE PROSECUTION IS CLOSED

EVIDENCE FOR THE DEFENCE NOTE D-6

1st WITNESS FOR THE DEFENCE

B 74270 Pte Ferguson, J.T., of Convoy Sec, 1 CCOD having been duly sworn states:

On 18 Jul 44 I was on parade with the accused. I was standing immediately on the right of the accused. Sgt Goyette told the accused to stop his grousing. The accused then asked Sgt Goyette "is it not a soldier's privilege to grouse". His tone definitely was not insolent, that is all that the accused said.

CROSS EXAMINATION BY THE PROSECUTING OFFICER

Q.17 In your statement at the summary of evidence, you stated that there had been some conversation between Sgt Goyette and the accused about this rd of sten gun amn?
A.17 No, I never said anything about a statement.

Q.18 I quote to you the following from your statement on the summary of evidence, "Pte Emberley turned the round over to Sgt Goyette and asked him what would be done with it. To this he got no reply from Sgt Goyette. The only thing Sgt Goyette said, "It's none of your business and stop your grousing". In view of that there was no chance of the accused misunderstanding what Sgt Goyette meant when he said, stop your grousing?
A.18 There could have been a misunderstanding.

Q.19 You heard Sgt Goyette tell the accused to stop his grousing?
A.19 Yes, but he said something else before he said that. He said, "it is none of your business and stop your grousing".

Q.20 You also heard the accused keep on talking after Sgt Goyette's order?
A.20 The accused did not keep on talking, he just asked Sgt Goyette a question.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE DEFENCE

F 97362 Pte Ouellette, A., Convoy Sec, 1 CCOD having been duly sworn states:-

On 18 Jul 44 I was on a parade with the accused. The accused was in the front rank; I was in the second rank once to the right of the accused. I heard Sgt Goyette tell the accused to stop his grousing and the accused asked him if it were not a soldier's privilege to grouse. The accused said nothing else after that.

CROSS EXAMINATION BY THE PROSECUTING OFFICER

Q.21 Did you hear the accused talking after Sgt Goyette ordered him to stop grousing?
A.21 No sir, all he then said was "is it not a soldier's privilege to grouse".

In the opinion of the Court it is unnecessary to comply with RP 83(B).

THE DEFENCE IS CLOSED

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING

Sir,

The prosecution has not proved that any order to stop talking was ever given, only the stop grousing, to which the accused asked, if grousing was not his privilege. The charge reads, did not stop his talking on parade when ordered to do so. As the accused was at no time ordered to be quiet or stop talking on parade, I fail to see where he can be guilty of disobeying an order that was never given. It appears to be more of an argument between Sgt Goyette and the accused on grousing which is certainly not an order from a Sgt to a Pte soldier. I recommend this charge be dismissed on the grounds of no evidence being produced that any order as stated in the charge, was ever given.

PROSECUTOR ADDRESSES THE COURT ON THE FINDING

Sir,

I submit that the accused has been shown by the evidence of the two witnesses of the prosecution to have deliberately tried to argue with Sgt Goyette. On the evidence of Sgt Goyette and Lieut Storey, it is shown that Pte Emberley continued to talk after being told to stop. The witnesses for the defence have to all intents and purposes omitted that the accused continued to talk after receiving this order. The accused is charged with disobeying a lawful command given by his supperior officer. I submit that it was a lawful command for Sgt Goyette to tell a man on parade to stop talking. I would, therefore, say that the accused had definitely committed an offence under the sec as charged.

COURT IS CLOSED TO CONSIDER THE FINDING

COURT IS RE-OPENED

PLEA IN MITIGATION NOTE E-3

Sir,

I would like the court to take into consideration that the accused is a volunteer and has been overseas nearly three years. He was placed on a charge which seems very trivial, he was not even ordered to stop his talking and he only asked one question that appears to me to be rather flimsy and I ask the court to take that into consideration. I recommend to the court that the accused elected to be tried by F.G.C.M. and, therefore, that the court not make the punishment any greater than the CO would make.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

Number	Rank	Name	Regiment (or as the case may be).
B-1976	Pte.	Rabarley, H.B.	Convoy Section, 1 COMD. ROOD.

1. The following is a fair and true summary of the entries in the [redacted] company conduct sheets* of the accused, exclusive of convictions by a court martial or a civil court, or minor records under section 47 of the Army Act, and of cases in which trial has been dispensed with :-

Note.- At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

—Sec para.677, KR., 1940.

* The numbers herein entered should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

	* Within last 12 months.	* Since enlistment.
For	A.A. Sec. 40	Five times. A.A. Sec. 40 — 8 times.
For	A.A.sec.15(1)	Four times. A.A. Sec. 15(1) 5 times.
For	A.A.Sec.10(4)	One times. A.A.Sec. 10(4) 1 time.
For		times. A.A.Sec.15(2) 1 time.
For		times. times.

[redacted]

[redacted]

2. The accused has not been previously convicted, or [redacted]

Instruction.- If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

3. The accused is not under sentence at the present time, [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service [redacted] is 22 yrs. 1 mo. 6 dys.

6. The date of his attestation specified in his record of service [redacted] is 16 Jul 41.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 yrs. 26 dys. (As of 11 Aug 44)

8. [redacted]

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. [redacted] (state any military decoration or award)). C.V.S.M. & Clasp 14 Feb.44.

11. [redacted]

12. [redacted]

E x B

(m16548) wt.30846/862 75,000 12/40 A.&E.W.Ltd. Gp.698

Army Form B.296

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF OFFENCE UNDER SECTION 47 OF THE ARMY ACT AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED.

No. D-1376 Rank Pte. Name Emberley, H.B. Corps RCOC

(INSTRUCTION - A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial or summary award under Sec 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the Court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted.
		NO PREVIOUS CONVICTIONS BY COURT MARTIAL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed, this 29th day of Aug. 44

R. Wilson Lt.

(INSTRUCTIONS - If no entry is to be made in any of the above columns, a blank must be entered; the word "nil" must not be used. Where a sentence has been commuted, the entry must be the sentence as commuted by the competent authority. Where a sentence has been remitted in part only, the entry must be the sentence as remitted. Where a sentence has been remitted in full, the entry must be "remitted". Where a sentence has been suspended, the entry must be "suspended". Where a sentence has been remitted and subsequently enforced, the entry must be "remitted and subsequently enforced".)

SUMMARY OF EVIDENCE

in the case of

D-1376 Pte. Emberley, H.B. Convoy Section, 1 Canadian Central Ordnance Depot, Royal Canadian Ordnance Corps, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution. C-94254 Sgt. Goyette, R.W. Convoy Section, 1 Canadian Central Ordnance Depot, Royal Canadian Ordnance Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At Jasper Camp on 18th July 1944, at approximately 0930 hours on parade, I ordered Pte. Emberley (D-1376) to give me the one round of Sten Ammunition which he had in his possession. Pte. Emberley (D-1376) gave me the round of ammunition and asked me what I intended to do with it. I answered that it was no concern of his but that I would see to it that it reached the right authorities. Pte. Emberley (D-1376) at this time told me that it was a concern of his and I told him there would be no talking on parade. He repeated that it was still a concern of his what became of the round of ammunition. I then ordered him to be quiet and told him there would be no talking or else I would march him to the guard-room. He replied with insolence that he didn't care about the guard-room. I then ordered two men to fall out and escort Pte. Emberley (D-1376) to the guard-house.

R W Goyette Sgt
C-94254 Sgt. Goyette, R.W.

The accused declines to cross-examine the witness.

H B Emberley
D-1376 Pte. Emberley H.B.

SECOND WITNESS for the prosecution. Lieut. R.W. Storey, No. 1 Canadian Artillery Reinforcement Unit, attached to Convoy Section, 1 Canadian Central Ordnance Depot, Royal Canadian Ordnance Corps, an Officer of the Canadian Army Overseas, having been sworn states as follows:

At Jasper Camp on Tuesday morning, 18 July 1944, at approximately 0930 hours I had a parade on the Parade Square of the drivers who were to go with me on convoy at 1000 hours. While in the ranks Pte. Emberley (D-1376) produced a round of sten gun ammunition. Sgt. Goyette (C-94254) ordered Pte. Emberley (D-1376) to give it to him. Pte. Emberley (D-1376) did so. Pte. Emberley (D-1376) then asked Sgt. Goyette (C-94254) what he intended to do with the round . Sgt. Goyette(C-94254) replied, "I don't think that matters to you". Pte. Emberley (D-1376) replied in an insolent tone that it did matter to him. Sgt. Goyette (C-94254) ordered Pte. Emberley (D-1376) to stop his grousing or he would put him in the guard-house. Pte. Emberley (D-1376) then insolently replied, "that it is my privilege to grouse". Sgt. Goyette (C-94254) then ordered two men to fall in and escort Pte. Emberley (D-1376) to the guard-house.

R W Storey Lt
Lieut. R.W. Storey

Cross examined by accused:

Question 1. "Did I say anything after I said" It is my privilege to grouse?
Answer 1. Not within my hearing.

H B Emberley
D-1376 Pte. Emberley, H.B.

The accused was cautioned as follows: "Do you wish to make any statement or to give any evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

After the above caution the accused declines to make a statement and reserves his defence.

H B Emberley
D-1376 Pte. Emberley, H.B.

FIRST WITNESS for the Defence. B-74270 Pte. Ferguson, J.T. Convoy Section, 1 Canadian Central Ordnance Depot, Royal Canadian Ordnance Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At Jasper Camp on 18th July 1944 on parade at approximately 0930 hours Sgt. Goyette (C-94254) asked Pte. Emberley (D-1376) for a round of sten gun ammunition which he possessed. Pte. Emberley (D-1376) turned the round over to Sgt. Goyette (C-94254) and asked him what would be done with it. To this he got no reply from Sgt. Goyette (C-94254). The only thing Sgt. Goyette (C-94254) said, "Its none of your business andstop your grousing". Pte. Emberley (D-1376) then asked, "Is it not a soldiers privilege to grouse". Sgt. Goyette (C-94254) immediately appointed two men to escort Pte. Emberley (D-1376) to the guard-house.

J. T. Ferguson
B-74270 Pte. Ferguson, J.T.

Questions by accused:

Question 1. Did I say, "I don't care about the Guard-house?
Answer 1. Definitely no.

Question 2. Did I sound insolent in my reply to Sgt. Goyette?
Answer 2. No.

H B Emberley
D-1376 Pte. Emberley, H.B.

SECOND WITNESS
for the Defence.

F-97362 Pte. Ouellette, A. Convoy Section, 1 Canadian Central Ordnance Depot, Royal Canadian Ordnance Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At Jasper Camp on 18th Jul 1944 while on parade Pte. Emberley (D-1376) produced a sten round of ammunition and showed the round to Pte. Ferguson (B-74270). Sgt. Goyette (C-94254) saw this and asked Pte. Emberley (D-1376) for the round. Pte. Emberley (D-1376) handed the round to Sgt. Goyette (C-94254) and asked him what he intended to do with it. The Sgt. instantly said, "Stop your grousing or I will put you in the Guard-house". Pte. Emberley (D-1376) said, "Is it not a soldiers privilege to grouse". The Sgt. immediately had two men fall in and lead him the the Guard-house.

A. Ouellette.
F-97362 Pte. Ouellette, A.

Questions by the accused.

Question 1. Did I say, "I don't care about the Guard-house, and I'll grouse if I want to"?

Answer 1. No.

Question 2. Did I speak in an insolent manner to Sgt. Goyette?

Answer 2. No.

X D Emberley
D-1376 Pte. Emberley, H.E.

I Certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

E. E. Fraser Lieut.
Lieut. E.E. Fraser
Officer detailed to take the Summary of Evidence.

LIST OF WITNESSES FOR THE PROSECUTION

C-94254 Sgt. Goyette, R.W. Convoy Section, 1 Cdn. C.O.D. RCOC.

Lieut. R.W. Storey Convoy Section, 1 Cdn. C.O.D. RCOC.

LIST OF WITNESSES FOR THE DEFENCE

B-74270 Pte. Ferguson, J.T. Convoy Section, 1 Cdn. C.O.D. RCOC.

F-97362 Pte. Ouellette, A. Convoy Section, 1 Cdn. C.O.D. RCOC.

E X H I B I T S

Nil

I wish to have Lieut. J.H. Dube M.T. Tech. Stores, 1 CCOD to represent me at my trial.

H B Emberley

D-1376 Pte. Emberley, H.B.

Certified that I have received the following Documents:

(i) Summary of Evidence.
(ii) Charge Sheet.
(III) List of Witnesses for the Prosecution and the Defence.

H B Emberley

D-1376 Pte. Emberley, H.B.

48-82

Pte Embree R.H.

(2)

36 Pd.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-45094 Pte Robert Gerald EMBREE, W.N.S.R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
AA 1st Sec 12(1)(a)	GUILTY	GUILTY	At close of case for Prosecution, on First Charge, accused changed his plea from Not Guilty to Guilty. "WCO"
AA 2nd Sec 15 (1)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence/in ~~custody~~ beginning on (date) "WCO"
(I. Insert sentence being served, or d/dets, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To suffer Penal Servitude for the term of four (4) years. "WCO"

(Sgd) ~~xxxxxxxxxxxxxxxx~~ 18th Jan 45 (Sgd) "William P. Ott, Major"
Judge Advocate, if any. "WCO" Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentence for confirmation.

Date 23 Jan 45 (Sgd) Lt-Col T/Commanding "H.P. Bell-Irving, Lt-Col"
3 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 120(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"I confirm the findings and sentence and I direct that a part of the sentence not exceeding two years shall be served in a military prison"

~~I remit the whole [illegible] and direct that the accused be released from custody~~
(I. AA 57A. Delete if not used.)

Date 13 Feb 45 (Sgd) "E.G. Weeks" Major-General
IC Administration
Commanding CANADIAN MILITARY HEADQUARTERS
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F-45049 Pte Embree, R.G. West N.S.R.	21 Feb 45	S.L. Cranwell Lt. a/g Edm Reallocation Centre.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY
(D.M. [illegible]) CAPT.
Cdn Sec. 2 Ech. AFHQ

45-82.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 45-P.A.S.1608 [2804]

Convened by Order of Lt-Col. H.P. Bell-Irving A/Comd 3 C.I.B. dated 16 Jan 45
HQ
27-1-45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Present R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
~~F-45094~~ F-45049	Pte.	Robert Gerald	EMBREE	W.N.S.R.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) "WCO" 18 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE OMITTED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A1. The President, Members, waiting Member ~~[illegible]~~ assemble, and the Court is closed. Capt Belzile not being available owing to the exigencies of the service, Lt. L.B. Hartt was waiting member to sit as a member of the court. "WCO"

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~[illegible]~~ amenable to military law, and each charge discloses an offence.(3) "WCO"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~[illegible]~~ brought before the Court. At 1345 hours trial commences. "WCO"

A4. The Prosecutor produces a Medical Certificate that accused is ~~[illegible]~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ "WCO"

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~[illegible]~~ accused, do you object to ~~[illegible]~~ or interpreter? Ans ~~[illegible]~~
~~The Interpreter sworn.~~ Is the shorthand writer sworn? ~~[illegible]~~ "WCO"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of t/ae Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~[illegible]~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: "WCO"

President	Major	W.C. Ott	C.Y.R.
Member	Lieut	C.W. Kerr	W.N.S.R.
Member	Lieut	L.B. Hartt	C.Y.R.

~~Reporters~~ "WCO"

Prosecutor	Lieut	W.A. ~~[illegible]~~ Arnett	W.N.S.R.
Defending Offr	Lieut	H.D. MacHattie	W.N.S.R.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F-45094 Pte R.G. Embree before arraignment make(s) (no) (a) plea. "WCO" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~[illegible]~~ arraigned ~~[illegible]~~ on all charges in the charge sheet.(1) The accused does (~~not~~) "WCO" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 102. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~[illegible]~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D "WCO"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~XXXXXX~~, complies with RP 35(B) by explaining to the accused the nature and meaning "WCO" of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 2. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans No Sir [5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court receives the accused's statement (1). The Court decides that (a) no alteration is necessary in the (the) plea(s) of Guilty to Not Guilty, (b) the charge(s) to which the plea(s) of Guilty to Not Guilty are recorded and (c) the charge(s) to which plea(s) of Not Guilty are recorded in Part I of the Schedule is (are) amended to that (those) of Guilty.~~ "WCO"
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of "WCO" Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

First Charge "WCO"

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No Sir (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~NIL~~ (no) opening address.[1] "WCO"
(*1. RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge(s).[2] The Court "WCO" is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the First charge(s). ~~I am satisfied that the XXXXX

"WCO"

CHARGE SHEET

The Accused,
F45094 Pte Robert Gerald EMBREE, West Nova Scotia Regiment, a soldier of the Canadian Army Overseas, CMF, When on Active Service, is charged with.

1st Charge
Sec 12(1)(a)
Army Act

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE;

in that he,

in the Field, in Italy, when a member of the Pioneer Platoon, West NSR, had been warned that his platoon would proceed to a forward position in the line against the enemy on the evening of 11 Dec 44, with intent to avoid such service, absented himself without leave from his said platoon from approximately 2130 hrs 11 Dec 44 and remained absent until surrendering himself to F41613 CQMS Potter, V R at approximately 2200 hrs 11 Dec 44. (Total time absent 30 min.)

2nd Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, in Italy, at approximately 2245 hrs 13 Dec 44 absented himself without leave from his company and remained absent until apprehended by the Military Police at approximately 1330 hrs 19 Dec 44 (Total time absent 5 days 14 hrs 50 min)

In the Field
5 Jan 45

"F.E. Hiltz"
(F. E. Hiltz) Major
A/Comd, West NSR

" TO BE TRIED BY FIELD GENERAL COURT MARTIAL "

In the Field
16 Jan 45

"H.P. Bell-Irving, Lt-Col"
Commanding 3 Can Inf Bde

"WCO"

FIELD GENERAL COURT-MARTIAL

CFA95 (To lieu of AFA3) 40/PAM/1697 (2006E)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-45094	Pte		Robert Gerald	EMBREE	WNSR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 16 JAN 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". "HPBI"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.) "HPBI"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court (b) a FD Offrs Presidet, Dist Judge A/F.E. or another Judge to. "HPBI"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint a Judge Advocate thereof the Offr next mentioned hereunder. "HPBI"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W C Ott *(Must be named. RP 106.)*	CYR (Unit.)

MEMBERS.

Capt	F X Belzile	R22R
Lieut (Rank.)	C W Kerr *(Named or detailed. RP 106.)*	WNSR (Unit.)

WAITING MEMBER.

Lieut (Rank.)	L B Hartt *(Named or detailed, if any. RP 106.)*	CYR (Unit.)

JUDGE-ADVOCATE.

(Rank.)	*(Must be named, if any. RP 106.)*	(Unit.)

On Active Service in the Fd

in Italy (Country.)	"H.P. Bell-Irving" *(Signed personally. RP 105 fn 2.)*	Lt-Col (Rank.)

Date 16 Jan 45 Commanding 3 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"WCO"

MEDICAL OFFICERS CERTIFICATE

KR (CAN) PARA ~~xxx~~ 557

I certify that I have this date examined,

No. F- 45094 Pte Embree, R.G. of the West NSR

and in my opinion is fit to undergo trial by Court Martial

Stationed: In the Field

Date 18 Jan 45 (Medical Officer)

Page 1. "WCO"

18 Jan 45

Evidence in the case of F-45094 Pte Embree, R.G., WNSR.

Time of Court 1400 hrs, 18 Jan 45

1st Witness for Pros. F-49875 A/CSM Blakeney, F.E. having been duly sworn states.

On the evening of 11 Dec 44 the WNSR ~~Lost~~ in an attack. At appox. 2100 hrs that date "C" Coy was at the forming up place. Pte. Embree who is a member of the Pioneer Pl. was attached to C Coy on that date and he was present at the forming up place. At approx. 2130 hrs "C" Coy moved off to attack. Pte Embree who had been traveling with Coy HQ was not present and could not be found in the area which Coy HQ occupied. On the following day CQMS Potter brought up rations and told me that Pte Embree had arrived back at the cookhouse at approx. 2200 hrs the 11th of Dec 44. CQMS Potter ordered the accused to report back to C Coy. He refused to do so and CQMS Potter placed him under open arrest and on the morning of the 12th on instructions of the RSM he sent Pte Embree back to Sgt. Coy. Pte Embree had been warned but WNSR was moving forward against the enemy and he was also told the plan of attack of C Coy by myself as I was A/CSM of C Coy on that date. Pte Embree was to travel with Coy HQ during this attack.

No X-exam. "WCO" R.F. 83(b) complied with "WCO"

2nd Witness for Pros. F-41613 CQMS Potter, V.R. after being duly sworne states. At approx 2200 hrs 11 Dec 44 Pte Embree the accused reported to me at my kitchen, he said he had returned from the Coy's forward position. I told him that he'd better return to the Coy, he stated he didn't know where it was at that time. I then warned him to stay in my billet until the following morning I also warned him that he was under open arrest. At approx 0900 hrs 12 Dec 44 I ordered him to report back to Sgt. Coy from where he was attached on the advice of the RSM.

DEFENCE I am sure that Pte Embree reported back at 2200 hrs because I checked the time at the time. Pte Embree the accused gave no reason for why he returned. I now recognize the accused. I did not order Pte Embree to return to his Coy.

R.F. 83 (b) complied with "WCO"

Evidence in the case of F-45094 Pte Embree,R.G.

The Defending Offider submit that a prima-facie case has not been established against the accused on the first charge because CQMS Potter, V.R. did not order Pte Embree to return to the Coy but simply placed him under open arrest when Pte Embree stated he had returned to the Coy.
The Court disallows this submission and defence asks permission to change plea to Guilty from Not Guilty. The Court grants permission under R.P. 38 and Part I of the schedule is amended accordingly. "WCO"

Char. Witness
E 1 F-42643 Sgt Stilwell, J.F. having been duly sworn states.

I've known Pte Embree since June 44. My experience with him is that he does his work satisfactory, obeyed all orders and is a good worker. As long as he's been with me I've never had any trouble with him. He's been in my platoon from June to October prior to being transfered to "C" Coy.
R.P. 83(b) complied with "WCO"

XXXXXXXXXXXXXX "WCO" XXXXXXXXX XXXXXXXXX

PLEA IN MITIGATION E-5

In mitigation of sentence I would like to point out that Pte Embree has been in the army 4½ years. Thathe has been a good soldier is shown by his clean conduct sheet and by the fact that he has been an N.C.O. for a total of 2½ years during his service. He was a sergeant in the artillary in Canada for over a year and again in the infantry in England. He automatically lost this acting rank when he embarked for Italy. He has been in action with this regiment since May 44 and as you have heard from his platoon sergeant he has done well and has caused no trouble.

"H.D. MacHattie, Lieut"

XXXXXXXXXXXXX XXX"WCO"XXXXXXXXXXX XXXXXXXXXXXXXX

Ex. "A" "WCO"

SUMMARY OF EVIDENCE in the case of F-45094 Pte Robert Gerald AMBREE, a soldier of the Canadian Army Overseas, CMF, when on Active Service

Evidence taken upon oath.

By the order of Major F E Hiltz, A/Comd, West N S R.

continued on next page

continued from previous page

First Witness for Prosecution

F49875 Sgt Blakeney, F.E., West Nov Scotia Regiment, having been duly sworn states:-

F-45049 Pte Embree, R G, was attached to "C" Coy "est NSR from the Pioneer Platoon and on the night of 11 Dec 44 when the West NSR put on an attack against the enemy he was with "C" coy and at the forming up place, the time being approximately 2115 hrs. When the time came to move forward at 2130 hrs Pte Embree was absent and could not be found. CQMS Potter, V R reported to me on the following morning that Pte Embree was at "C" Coy Cookhouse on the night of the 11th when the attack was on. CQMS Potter placed him under arrest and later sent him back to Sp Coy. Pte Embree had been duly warned that "C" Coy was moving forward against the enemy and was also told the plan of attack by myself as I was A/CSM of "C" Coy at that date.

Signed "F.E. Blakeney"

The accused declines to cross examine this witness.

Second Witness for Prosecution

F-41613 CQMS Potter, V R, West Nova Scotia Regiment, having been duly sworn states:-

On the night of 11 Dec 44 at approximately 2200 hrs Pte Embree R G reported to me at my cookhouse. I warned him to return to his company in the forward position and he stated that he could not find them. I then informed him that he was underopen arrest and that he was to remain there at my cookhouse until the following morning. On advice from the RSM I sent him back to Sp Coy from which he was attached on the following morning at approximately 0900 hrs 12 Dec 44.

Signed "V.R. Potter, CQMS"

The accused declines to cross examine this witness.

Third Witness for Prosecution

F-44720 CSM Dalton FJ, Sp Coy West NSR, having been duly sworn states:-

On the morning of 12 Dec 44 Pte Embree R G, reported back to Sp Coy from "C" Coy where he had been attached. On the following morning we were notified to move and I warned all personnel of my Coy that were at Main Bn x to the effect that we would be moving. At approximately 1245 hrs when we moved forward, Pte Embree could not be found, the area was checked and Pte Embree was reported as absent from x this company

"A" (2) "WCO"

Third Witness. Cont'd

Signed "FRED J. Dalton, CSM"

The accused declines to cross examine this witness.

Fourth Witness for Prosecution

Capt A J W Dyer, West Nova Scotia Regiment, having been duly sworn states:-

I am Capt A J W Dyer, Adjt and Officer in charge of Regimental Records for the West NSR. I produce as evidence in the case of F45094 Pte Embree, R G a certified true copy of West Nova Scotia Regiment Part II Orders No 1 showing the accused as being apprehended at 1335 hrs ~~19xD~~ 19 Dec 44 by the 111 Pro Coy CMP and attached to the summary marked Exh "A"

Signed "A J W Dyer, Capt"

The accused declines to cross examine this witness

The accused having been duly cautioned as follows, "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but, whatever you say or any evidence that you give will be taken down in writing and may be given in evidence", declines to make a statement or to give evidence upon oath.

Certified that Rule of Procedure 4 (c) (d) (e) & (f) have been complied with.

Taken down by me, in the Field, in the presence and hearing of the accused this 5th day of Jan 45.

In the Field

"R. E. Campbell, Capt"
Officer taking Summary
W.N.S.R.

Exh "A" Exhibit "A" To Summary. "G.E.C." "W.C.C."

Last Order No. 109 29 Dec 44 | THE WEST NOVA SCOTIA REGIMENT PART II Orders issued by Cdn Sec GHQ 2 Echn AFHQ. | This Order No. .....1 3 Jan 45

"B" OTHER RANKS

4. ABSENT WITHOUT LEAVE

(a) AWL from 2245 hrs 13 Dec 44 - App at 1535 hrs 19 Dec 44 by 111 Pro Coy CMP.

F.45049 Pte Embree, R.C.

Signed F.F. Knight, Lt.
for Officer i/c
Cdn Sec GHQ 2 Echn AFHQ.

Certified true copy from the Regimental Books in my custody 8 Jan 45.

"AWJ Dyer" Capt.
Officer i/c Regimental Records,
West Nova Scotia Regiment.

Exhibit "B" "WPO"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.45094	Pte	Robert Gerald EMBREE,	WEST NOVA SCOTIA REGIMENT.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the more serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

Temporary WOM 6 Only (Original lost by enemy action)

For ..... NIL ..... times.

For ..... NIL ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or civilian are recorded in the schedule or sheet.

"AWPO"

*Strike out if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... "AWPO" ..... day of .....

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 20 days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 20.

6. The date of his attestation or joining the military service is 22-5-40

"AWPO"

7. The service which the accused is allowed to reckon is N/A.

8. The accused is in possession of CSM & Clasp.

*State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

N/A

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of N/A.

In the acting rank of .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W's 55008/1695 30,000 3/44 SL 4751. Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6 day of Jan 1945

"A/Tp Dyer"Capt
Adjt, West NSR.

Exhibit "C". "WFPO".

No F.45094 Name EMERET R.G. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original Lost By Enemy Action.					
				Certified true copy from the Regimental Books in my custody 5 Jan 45 "AWJ Dyer Capt". Officer i/c Regt'l Records, West Nova Scotia Regiment.					

(PTO)

FROM CANMILITRY 131250

TO CIC ORE CMF

A 1821 RESTRICTED PARA 1 FGCM PROCEEDINGS F45049 PTE FENSEE RG

R139650 PTE PASQUACK RK SERIAL 42/1 ENDORSED BY MGA 13 FEB 45 QUOTE

I CONFIRM THE FINDINGS AND SENTENCE AND I DIRECT THAT A PART

OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY

PRISON UNQUOTE PARA 2 NOTE CORRECT NUMBER ENTERED F45049 NOT REPEAT

NOT F 45094 AS DESCRIBED IN FGCM DJAG ADVISED FINDINGS AND SENTENCE

NOT VITIATED .

BT 141724 BA B3 K

GC - MILITARY
RD LMPO 141725A VH KKK

41 R.

A/Cpl EMERY, F.V.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here

41 P.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this EIGHTEENTH day of OCTOBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Army Tank Bde.

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for the purpose of assembling a detailed Court.]*

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[Not more numerous than :—

*1. Three Officers, to form the Court.

2. A Field Officer as President.]

for the following reasons, namely :—

JUDGE ADVOCATE

CAPT. W. B. BATE A.D.J.A. 1 CDN CORPS.

President.

Rank.	Name.	Regiment.
MAJOR	R.J.R. DONABIE	H.Q. SQN, 1 CDN ARMY TANK BDE

Members.

Rank.	Name.	Regiment.
CAPT	W. H. PAYNE	14 CDN ARMY TANK REGT.
CAPT	W.M. DALRYMPLE	1 CDN ARMY TANK BDE HED COY.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed [illegible]
(R. A. Wyman) Brigadier,
Commanding 1 Cdn Army Tank Bde.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

R.J.R. Donabie Maj
R. B. Bate capt
Judge Advocate

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B60798 A/Cpl Francis Victor Emery. 11 Cdn Army Tank Regt.	FIRST CHARGE A.A. Sec 40. See attached Charge Sheet for particulars.	NOT GUILTY	GUILTY TO UNDERGO DETENTION FOR THIRTY (30) DAYS & TO FORFEIT ALL ORDINARY PAY FOR A PERIOD OF FIFTY-SIX (56) DAYS. 22 Oct 42	I Finding and Sentence confirmed. To be promulgated before as strong a parade of his unit as possible.

R Donahue Major
R. L. Kelly Capt
Judge Advocate

W. A. Wyman
BRIGADIER
COMDG 1st CDN. ARMY TANK BDE.

27 OCT 1942

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No Sir.
Answer to be recorded on separate sheet if necessary.

(Signed) W. A. Wyman (Signed) R. J. R. Donahue Maj
(R. A. Wyman) Brigadier, (R. J. R. Donahue) Major,
Commanding 1 Cdn Army Tank Bde (H.Q. Sqn, 1 Cdn Army Tank Bde
Convening Officer (c) President.
R. L. Kelly Capt
Judge Advocate

(a) Appointment acting rank or acting appointment, if any. To be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

I certify that the above Court assembled on the 20th and 22nd day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Judge Advocate R.J.R.
*(4. The officer) under instruction) W.A.W.

were duly sworn.

* Omit if not applicable.

Signed this 22nd day of October 1942.

R. L. Kelly Capt
Judge Advocate.

R J R Donahue Maj
President of the Court Martial.
(R. J. R. Donahue) Major,
H.Q. Sqn, 1 Cdn Army Tank Bde.

C.

* See footnote (b) on page 702 K.M.L. 1939.

I certify that the terms of *A.C.I. 579 of 1918 have been complied with. Certificate in case of death sentences.

Signed this day of 19

President of the Court Martial.
(R. J. R. Donahue) Major,
H.Q. Sqn, 1 Cdn Army Tank Bde

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. Confirmation

*I direct that the soldier named in the margin be not committed to prison (or detention barrack) until further orders.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 27th day of October 1942

W. A. Wyman
Confirming Officer.
(R. A. Wyman) Brigadier,
Comd., 1 Cdn Army Tank Bde.

Promulgated and extracts taken in the case of B60798 A/Cpl Francis, Victor, Emery.

(a) (Dated) 27 Oct 42 (Signed) H.K. Bell Major a/o.c. 11 Cdn Army Tank Regt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2.

CHARGE SHEET

The accused, No. B-60798 A/Cpl. Emery F.V., 11th Cdn Army Tank Regt., a soldier of the Canadian Army (Overseas) is charged with:

Army Act Sec.40: When on active service,

Neglect to the prejudice of good order and military discipline, in that he,

At 1600 hrs 11 Oct 42 did handle his pistol in a careless and negligent manner, causing the pistol to be discharged andthereby wounding D-82255 Tpr Jones C.P.L., a comrade, rendering him temporarily unfit for service.

(G.Y. Masson) Lt.Col.,
Cmdg. 11th Cdn Army Tank Regiment

Field,
17 Oct 42

To be tried by F.G.C.M.

BRIGADIER
COMD'G 1ST CAN. ARMY TANK BDE.

19 OCT 1942

Y.

A Bonasy Trial

D. A. Cate Capt
Judge Advocate

MEDICAL OFFICER'S REPORT

I certify that No. B.60798 Cpl. Emery F.V. ..... of

11th Cdn. Army Tank Regt. is a fit state of health,

and able to undergo trial by Court-martial.

A. V. MacKay Capt.
Medical Officer

Station Field

Date 22-10-42

X

MEDICAL OFFICER'S REPORT

R. Donahue Maj
E. R. Kellock Capt
Judge Advocate

I certify that No. B60798 - Cpl. Emery F.V.

of 11 C.A.T.R.(O.R.)s is in a fit state of health,

and able to undergo Trial by Court martial.

A.A. MacKay Capt.
Medical Officer

Station Field, England

Date 20 Oct 42.

M. F. B. 246

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**~~Form of Proceedings for General and District~~ Courts-Martial.

Proceedings of a ~~Field General~~ Court-Martial held ~~at~~ in the Field on the 20th day of October 1942 by order of Brigadier R. A. Wequan E.D. Commanding 1 Edn. Army Tank Bde. dated the 18th day of October 1942.

President.

Major R. J. R. Dennabie HQ Sqn 1 Edn Army Tank Bde.

Members.

Capt. W. H. Parque 11th Edn. Army Tank Bde
Capt. W. M. Dalrymple 1 Edn. Army Tank Ord Coy.

Capt. W. R. Bate ADJA 1 Edn Corps, Judge Advocate.

Trial of* B. 60798 A/Cpl. Emery F.V. 11 Edn Army Tank Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not amenable~~ ~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Major H. R. Schell 11 Edn Army Tank Regt.

~~Counsel for~~ defending officer† Major D. C. O'Brien 11 Edn Army Tank Regt.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked 'A', signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn:

Major R. H. Crabbe 1 Elec. Army Tech Edu Ord Elec.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Answer.

Not guilty

WB ~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which~~ you have heard read?

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which~~ you have heard read?

Question.

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (b) are here complied with.~~

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (*See* R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? - No Sir. -

Answer. The defending Officer requested one adjournment until 22 Oct 42 in order to obtain the attendance of Lt J.H.B. McDonald a defence witness who is on a course. See p. Ca.

*The prosecutor makes an opening address [~~hands in a written address which is read, marked~~ , ~~signed by the President, and attached to the proceedings~~].

The prosecutor proceeds to call witnesses.

First witness for prosecution. D.82255 Pte. Jones C.P.L., 11 Cdn. Army Tank Regt.

being duly sworn, is examined by the prosecutor.

When I was on guard at the tank park on 11 Oct 42, at about 12.00 hrs, Cpl. Emery the accused, whom I recognise came on. We discussed how to draw pistols. Cpl Emery unloaded his pistol and we practised four or five draws. Then I said my pistol was too high up for a fast draw so I lowered it to my ~~waist~~ thigh. We drew again Cpl. Emerys pistol discharged and I felt a blow in the left arm. I said I'd been hit. Cpl. Emery rushed me to the guard house and administered first aid. He left me in charge of the M.O.

Cross examined: We practised 4 or 5 draws before I changed my holster. We were 10 or 15 paces apart at the time. I am not sure if Cpl Emery heard me say I was going to adjust my holster. It took me a couple of minutes to change my holster. I did not see what Cpl. Emery was doing when I was changing my holster. After changing my holster, it was I who challenged for another draw.

No re-examination:

By the Judge Advocate: We were trying to see who could draw the quicker. I was trying to prove that I could not make a fast draw if I had to with my holster in its original position. From the time we started practising until I was hit I did not see the accused load his pistol. The accused, when unloading his pistol, first took it out of his holster released the safety catch, let the cylinder drop out. Six bullets fell into his hand, which he placed in his pocket. Then he replaced the pistol in his holster. We carry pistols and Thompson carbines when on guard duty.

By the Court: I was looking down when adjusting my holster. When that was done I turned quickly towards the accused and yelled at him.

R. P. 83 (2) complied with.

Second Witness for Prosecution } B.68015 Gnr. Lowndale R.H. 11 Can Army Tank Regt. being duly sworn is examined by the prosecutor.

I was in the guard room in the tank park on 11 Oct 44 between 1530 hrs and 1600 hrs. I glanced out the door and saw Cpl. Emery coming down the road. I heard a conversation went to the door and saw the accused helping Gnr. Jones into the guard room. I helped the accused give Gnr. Jones first aid. After administering first aid a truck came & Gnr. Jones was taken to the M.O.'s hut. I then took over the guard. I did not hear a shot. Just the accused was with the wounded man when he was helped in. Gnr. Jones did not say how he was wounded. There was no conversation when I was helping giving first aid to Gnr. Jones.

Cross examined: I was reading at the time when I first saw the accused and heard no conversation between him and Gnr. Jones.

No re-examination.

By the Court: I could recall hearing any noise in the tank park. The guard room is right on the road and trucks and cars pass by all the

Lewis. I was the waiting sentry. Gnr. Jones was on duty. The beat is on the gate and a covering beat. As far as I can make out the accident occurred at the gate, right at the guard house I saw some blood about.

By the Judge Advocate: Gnr. Jones appeared to have a bullet wound in the left arm when he was brought into the guard-room. I did not hear a shot. It might have sounded like a backfire from a lorry and as I was reading I did not notice it particularly.

R.P. 83(6) complied with.

Third Witness for the Prosecution } Capt. A.F. Mackay, R.A.A.M.C. att'd 11 Cdn Army Tank Regt. Lewis

duly sworn is examined by the prosecutor:

I am the M.O. of the 11 Cdn Army Tank Regt. On 11 Oct 42 I was called to the R.A.P. about 4.20 PM to see an injured man, Gnr. Jones. His injury consisted of two wounds in the left arm about six inches above the elbow. They were of such a nature as to be caused by a bullet from a service pistol. Haemorrage had been moderate and shock slight. First aid dressing was renewed and an ambulance summoned to transfer the injured man to the hospital. Cpl. Emery whom I recognize accompanied the injured man to the R.A.P. I talked to Gnr. Jones. He indicated the bullet went from front to back. He said the flash to his immediate front, so he said. The accused was in the same room & nearby during this conversation. I can't remember if Gnr. Jones said how he got shot No names were mentioned, but it was assumed that Gnr. Jones was shot.

Cross examined: The two wounds were caused by one bullet - in and out. Part of Gnr. Jones clothing had been removed. There was no burning at the wound. I would describe the wound as trivial Wounds are either trivial or serious. There should be no lasting disability to Gnr. Jones from the wound. I see no reason why Gnr. Jones shouldn't be an efficient soldier in time.

No re-examination.

By the Court: The wounds were about six inches above the elbow (indicates). In my opinion, judging from the size of the wounds leads me to believe the wounds were caused by a bullet .38 from a .38.

Per the Judge Advocate: Gr. Jones has already been unfit for service 11 days and his total disability should not exceed three weeks.

R.P. 83 (B) complied with.

The prosecution is closed.

*. Court

The court is closed at 1015 hrs to consider the application. The Court re-opens at 1020 hrs. The accused is advised that his application for adjournment had been granted.

The Court adjourns until 1000 hrs 22 Oct 42.

The Court re-opens at 1000 hrs. 22 Oct 42.

Major R. H. Noble, the officer under instruction, was not present, having obtained the Convening Officers permission to be absent because of urgent duties.

The accused did not wish a further adjournment.

D

~~The prosecution is closed.~~ N.A.A.

Defence.

R.P. 40(A) counselled with.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes.

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says:*

[hands in a written address which is read, marked
signed by the President and attached to the proceedings.]

Instruction. * In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here, in the order in which they give evidence.

Great Witness } B. 60798 A/Cpl. Emery V.E.,
for the Defence } the accused, being duly sworn is examined by the Defending Officer :-

On 11 Oct 42 as commander of "C" Sqn guard I went to the tank park to check on the guard around 3.30 P.M. or there about. Flgn. Jones was on duty and Flgn. Lansdale was in the guard house. We started a discussion on drawing of pistols - Flgn. Jones and myself. In order to prove our statements, I unloaded my pistol. We started drawing against each other trying to see who had the fastest draw. We drew several times. I understood we were finished so I unloaded my pistol and re placed it in my holster. Several minutes later Flgn. Jones challenged me to another draw. So we both drew and my pistol discharged. Flgn. Jones grasped his left upper arm and exclaimed something to the effect that he was hit & shot. I immediately went to his aid: helping him into the guard room where I was assisted by Flgn. Lansdale in administering first aid. I sent for a truck and when it arrived I drove to the M.O & the R.A.F. with Flgn. Jones. The M.O. was not there & was called by the man on duty at the R.A.F. The M.O. appeared in about five minutes and took over. I left the R.A.F and returned to the Sqn. area where I reported the accident to my Troop leader a Sqn. Commander. I am 21 yrs. old. I proved my pistol before the competition with Flgn. Jones. I found it loaded and unloaded it. The bullet I put in my pouch. Flgn. Jones & I were between 10 and 15 feet apart when practising drawing pistols. We practised about 10 draws before the interval. I assumed the competition was over when I saw Flgn. Jones holster his belt. It was then I reloaded my pistol. It was a minute or two after this that Flgn. Jones again challenged me. We both assumed a stance and drew. I don't think Flgn. Jones had completed his draw when my pistol discharged. I made a

Lieut J. M. B. Macdonald and have seen him give demonstrations of quick pistol drawing. His speed impressed me. When Lt. Macdonald was on the strength of "C" Sqn I was had pistol instruction from him. He has always trained safety precautions. Lt. Macdonald stressed that a quick draw might someday save our life and he encouraged us to practise it. Around 15 Aug 42 pistols were withdrawn from all ranks. Since then the only opportunity I've had to practise quick draws is when on guard duty - about 4 or 5 times - when we are issued with pistols. Cross examined. It was not part of my duty as Guard Commander to practise quick draws with members of the guard. I did not prove my pistol when drawing the second time. I forget to do it. I don't remember. No re-examination.

By the Court: I had 6 rounds of .38 ammunition when I went on guard. No orders were given as to where this ammunition was to be carried. When I was on guard duty. I was made a Cpl. on 27 Sep. 42. I do not think Gfn. Jones had any ammunition. When the pistols were withdrawn the ammunition was not withdrawn from personnel of this unit. Gfn. Jones came to this unit after this. The last time, I drew my pistol as soon as Gfn. Jones said the word "draw". I'm not sure the word "draw" was used but there was a challenge anyway.

R.P. 33(B) complied with.

The Court adjourns at 1200 hrs.

The Court re-opens at 1300 hrs.

Second Witness for Prosecution | Lieut. H.F. Hilton, 11 Can Army Tank Regt, being duly sworn is examined by the Defending Officer.

I recognize the accused, Cpl. Evans, who has been in my troop just about 2 yrs. During that time he has proven himself to be a very trustworthy and efficient soldier. A few months ago he was made a L/Cpl. and a short time later a full Cpl. During his first 2½ yrs of service he was never under charge. The first charge he had was a few months ago, for being absent from his quarters. An announcement was made on parade the day he was absent saying men could not leave their quarters during parade hours. As he was on leave when the announcement was made he did not know about it. A little later, while on leave, he missed the last train leaving Leeds to camp but came on the first train the next

surprise. This was the first time in about three years that he was charged with A.N.D. Since then he has not been on charge at all. I saw the accused shortly after the accident to Mr. Jones. The accused was quite nervous and very upset. I have seen him almost daily since then. He is manifestly distressed over the accident. The day of the accident the accused was very upset: he was shaking so badly at the time that he had difficulty in lighting a cigarette. In the orderly room that day the accused broke down when questioned about the accident.

No cross-examination.

R.P. 83 (B) complied with.

The court adjourns at 1320 hrs.
The court re-opens at 1325 hrs.

Third Witness for Defence } Lieut. J.H.B. Macdonald, R.C.A.M.C. Army No. [illegible], being duly sworn is examined by Defending Officer.

I have had considerable experience with pistols. Twice I was D.C.R.A. champion pistol shot - in 1932 and 1934. For two years prior to the war I have specialized in developing combat type of shooting and instructing in it. I have engaged in annual competitions of pistol shooting in Canada. I have seen accidents happen to these pistol experts. For example in the summer of 1940 at the Forest Hill Military and Police Matches the R.C.M.P. champion was struck in the neck by a ball from an automatic and turned from the firing line with a cocked pistol in his hand accidently discharging his pistol and shooting four men with one bullet. The R.C.M.P. champion knew all the safety precautions and got stepped out of line on that occasion. I speak of safety precautions stressing them every time I speak on pistol instruction. On at least two occasions I have fired a pistol where speed was desired. Once action gets to the point where it is automatic and on a word of challenge one instinctively draws one's pistol. The better a person is at quick drawing the more likely would it be for an accident to occur: the person using the pistol would most likely draw without due regard to the ordinary safety precautions.

Cross examination: On the two occasions I referred to when I fired four rounds shooting reflexes the target was not a fine target but may not need as well. In any instructions I

never placed two men opposite each other and had them practise quick drawing against one another.

No re-examination.

By the Court: The things I taught are outlined in the latest manuals. For an accident to occur the following things must happen, viz. (1) you must take a gun in your hand, (2) it must be loaded, (3) you must point that gun at some one and (4) you must pull the trigger. The safety precaution is that you must never point a pistol at anyone, otherwise eventually some one will get killed. There are 6 safety precaution rules in the manual, which I always read out when instructing. It is mandatory laid down that the pistol shall be drawn from the holster. The pistol pamphlet is very abbreviated. There is little pistol training in the army at the present time.

R.P. 88 (B) complied with.

The defence is closed.

The Defending Offr addresses the Court, stating that the words "careless and negligent" amount to culpable negligence and not mere forgetfulness: draws a comparison to forgetting to wash a letter - a mere lapse of mind. To be careless and negligent you must be aware - have knowledge of the act required to be done and then failed to do it. It is contended that the prosecution has failed to prove the accused knew he should have proved the pistol before he fired it. Submits the accused did exercise safety precautions in pressing his pistol when it was withdrawn from the holster before the competition began. Suggests that at the time of the accident in the accused's mind, the accused was simply continuing the original practice. He did not know of the presence of the live rounds when he pulled the trigger. Refers to Lect. Macdonald's evidence regarding rapid drawing. Suggests accused was checking aim with Lt. Jones in absence of any warners. Stresses the misunderstanding between Lt. Jones and accused when the latter was adjusting his holster and claims accused referred this to Lt.

The Prosecutor addresses the Court, points out that the accused was careless in that when he was "on guard" commander he indulged in dry practice drawing and in using a live body as a target contrary to his instruction received from his Macdonald. The accused is an N.C.O. and ought to have known better. The accused put the rounds in the pistol himself and must have known it.

The Judge Advocate, in summing up, refers the Court to the definition of neglect in the footnote to A.A. 40. MML. p 459 (Amendt. 30 of June 42) : reviews the evidence briefly and points out that the burden of proof is on the prosecution : that the accused is entitled to the benefit of every reasonable doubt in the minds of the Court.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused guilty of the charge.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Major H.R. Schell is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* I produce A.F.B. 296 and a certified true copy of the accused's N.P.M.O.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked C.H.H. signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer* No I have not.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* To the best of my knowledge and belief they are.

Cross-examined by the accused. ~ Nous.

[Illegible]

Question to the accused.

Do you wish to address the Court? *Answer.* I wish my Defending Officer to address the Court for me (See p. F.)

The Court is closed for the consideration of the sentence.

F

Sentence. 2183

~~The Court sentence the accused~~ Sentence. 2183

The Defending Officer addresses the Court in mitigation of sentence: "The accused is only 21 yrs of age. He enlisted on 20 Sep 39. He was perfecting his military efficiency at the time of the accident in order to discharge the better his obligation to his country. Most of us at his age were at university and not engaged in using lethal weapons in defence of our country. The accused has only been charged twice in 3 years of service. Lieut. Tibbles has explained the nature of these offences. The punishment of 168 hours detention was one imposed automatically in the unit for A.W.L. Accused has been selected for promotion despite his youth. He was a qualified motor operator when selected for promotion. He gave his evidence in a straight forward and manly way. The accused has suffered great mental anguish since the accident. The Court's attention is directed to the stigma of conviction by F.G.C.M. and incarceration. I ask for leniency, so that the accused may be put back in service as soon as possible, and not prevent the securing of a good N.C.O. thereby in the interests of discipline.

Wtab

SUMMARY OF EVIDENCE in the case of:

D-60798, A/Cpl. Emery F.V.,
11th Cdn Army Tank Regiment

At the direction of the Commanding Officer, the evidence is taken on oath.

1st WITNESS FOR THE PROSECUTION

D-82255 Tpr Jones C.P.L., 11th Cdn Army Tank Regt, having been duly sworn, states:

"I, D82255 Tpr Jones C.P.L. was on guard duty at "C" Sqn. tank park on 11 Oct 42. At about 1545 hrs Cpl Emery, who was guard commander, came into the tank park. We were discussing how to draw our pistols quickly. Cpl Emery unloaded his pistol and we practised drawing. I said my holster was too high up to draw quickly so I changed position of the holster to bring it lower. We then tried again, and Cpl Emery's pistol went off and I felt a blow in the arm. Cpl Emery then took me in the guard house and gave first aid treatment. We then went to the R.A.P. where the M.O. examined the wound and sent me to the Field Ambulance."

The accused declines to cross-examine the witness.

C.P.L. Jones Tpr.

C.P.L. Jones, Tpr. D82255
11th Cdn Army Tank Regt.

2nd WITNESS FOR
THE PROSECUTION

Capt. A.F. MacKay, RCAMC attached 11th Cdn Army Tank Regt. having been duly sworn, states:

"I am the Medical Officer of the 11th Cdn Army Tank Regt. At about 1620 hrs 11 Oct 42 I was called to the R.A.P. to see D82255 Tpr Jones C.P.L. On examination, I saw two wounds such as would result from a .38 Army pistol bullet, on his left arm. One about six inches above the elbow on the back of the arm, the other slightly higher on thefront of the arm. There was moderate haemorrhage, and shock was slight. Suitable dressing was applied and the man was transferred to the 2nd Light Field Ambulance."

The accused declines to cross-examine the witness.

A.F. MacKay Capt.

(A.F. MacKay) Capt., RCAMC
11th Cdn Army Tank Regiment

3rd WITNESS FOR THE PROSECUTION

B-68015 Tpr Cansdale G., 11th Cdn Army Tank Regt. having been duly sworn, states:

"I, B68015 Tpr Cansdale G. was on guard duty at "C" Sqn. tank park 11 Oct 42. At about 1530 hrs I saw Cpl Emery come into the tank park. I was sitting in the guard-house reading. Some time later I heard someone say something about being shot. I went to the door of the guard house and saw Cpl Emery helping Tpr Jones in. There was blood running down Tpr Jones' hand. I helped Cpl Emery apply first aid treatment to Tpr Jones. I then took over the post and Cpl Emery took Tpr Jones away."

The accused declines to cross-examine the witness.

G. L. Cansdale

H.G. Cansdale, Tpr. B68015,
11th Cdn Army Tank Regiment

4th WITNESS FOR
THE PROSECUTION

Major D.C. O'Brien, 11th Cdn Army Tank Regt., having been duly sworn, states:

"Pursuant to 1st Cdn Army Tank Bde Order No.294 dated 8 Aug 42 and in accordance with verbal instructions received from my Commanding Officer, pistols were withdrawn from personnel of this Squadron except the S.S.M. Later, on instructions from R.H.Q., pistols were issued on charge to N.C.O.s down to Sgts. No rank and file have been issued with pistols as personal weapons.

However, six pistols and three T.M.G.s were drawn from Quarter Stores and issued to the guard commander. These weapons form the armament of the guard and, with the ammunition, are taken over daily by the succeeding guard commander. I do not consider that this is contrary to the letter, spirit or intention of Bde Order No.294"

The accused declines to cross-examine the witness.

D.C. O'Brien

(D.C. O'Brien) Major,
11 Cdn Army Tank Regt

The accused, B60798 A/Cpl. Emery F.V., having been cautioned in accordance with Rules of Procedure, declines to make a statement.

The accused does not call any witnesses for the defence.

F V Emery
F.V. Emery, A/Cpl. B60798
11th Cdn Army Tank Regt.

I certify that the foregoing Summary of Evidence consisting of five pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c)(d)(e) & (f) have been complied with:

H R Schell
(H.R. Schell) Major,
11 Cdn Army Tank Regt

Field, England
17 October 1942

EXHIBIT 4 Pte Emery F.V. B60798

M.F.M. 6 (A.F.W. 7777) 125M—7-41 (1219-25) H.Q. 1772 10-1653

No. B60798 Name Emery F.V. | Sqn., Battery, or Company "C" | Corps Ont.Regt.(T) | Date of enlistment 20 Sep 39 | C.B. Badges | Service or Proficiency Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. L.A. Stafford Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				No Previous Entries on Sheet 1.					
Field,	31-12-41	Tpr	Nil	Sec.15(3) A.A. Found beyond the limits fixed by standing orders at 1440 hrs 31 Dec 41, and was seen beyond the limits without permission of his Sqn Cmdr.	Capt G.T.R. Fitzsimon	7 days C.B. 7 ext drills	2 Jan 42	Maj D.C. O'Brien	
				Sec.40 A.A. Was improperly dressed when away from quarters	Capt G.T.R. Fitzsimon	7 days C.B. 14 ex drills	2-1-42	Major D.C. O'Brien	
Field,	22-2-42	Tpr	"	Sec.15(1)A.A. A.W.L. from 2359 hrs 22-2-42 until 0845 hrs 23-2-42 (Absent 8 hrs 46 mins)	Tpr. C. Gladman	168 hrs Detn	25-2-42	Lt.Col. G.Y.Masson	Forfeits 1 days pay F.R.& I.

CERTIFIED TRUE COPY: W.K. Bell Major

11th Can Army Tank Regt.

(P.T.O.)

EXHIBIT "G".

ARMY Form B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B60798	A/Cpl	Emery F.V.	11th Cdn Army Tank Regiment

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not rendered to the proceedings.

† See para. 857, K.R., 1940.

* The numbers here stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the details for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For Army Act Sec.15(1)	1	times	1	times.
For Sec.15(3)	1	times	1	times.
For " Sec.40	1	times	1	times.
For "		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, None

or

There are no entries in the conduct sheets of the accused N.A.

N.A.

2. The accused has not been previously convicted, or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence to

N.A. beginning on the day of

4. The accused has been in confinement awaiting trial on the present charge for No. days in civil custody, and open arrest Total of nine days of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs

6. The date of his attestation specified in his record of service is 20 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated and in his regiment (or corps or department) the rank of dated

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 460795 Rank A/Cpl Name Emery F.V. of 11 Cdn Corps Tk Regiment (or as the case may be).

(INSTRUCTION.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the dispensing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of October

A K Schell major
Second in Command

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of Lance Corporal	2 months XXXX 19 Aug 42
In the rank of A/Corporal	23 days XXXX 27 Sep 42
In the rank of	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph renumbered amended accordingly.*)

I hereby request that ...Capt. S.A. Nicol...
be assigned to act as Defending Officer for my
pending trial by Court Martial.

F.V. Emery

B60798 F.V. Emery, A/Cpl.
11th Cdn Army Tank Regt.

Field,
17 Oct 42

COUNTER NUMBER 565340

HOUR 20.45

OPERATOR'S INITIALS _____

RELIEVING OPERATOR _____

END

FIRST

SIDE


44.19.1

COUNTER NUMBER 565340

HOUR 20.45

OPERATOR'S INITIALS E.M.

RELIEVING OPERATOR _____

START OF RETAKE

THE IMAGES APPEARING BETWEEN THIS POINT AND THE "END OF RETAKE" ARE TRUE COPIES OF RECORDS, MICROPHOTOGRAPHS OF WHICH WERE MISSING OR PROVED UNSATISFACTORY ON INSPECTION OF THE ORIGINAL MICROFILM REEL.

THE ABOVE MENTIONED RECORDS WERE REPHOTOGRAPHED AS AN ADDENDUM TO THE ORIGINAL REEL.

FOR DESCRIPTION OF REPHOTOGRAPHED MATERIAL SEE THE OPERATOR'S "RETAKE CERTIFICATE" AT END OF THIS RETAKE SECTION.

KK-130
PTE DUVAL P.

A side

KK-130

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighteenth day of July, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Div Rear Party, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer,]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~[I am unable to appoint~~ :—

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

~~None Available~~

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.W. Embury	1 Cdn Div Sp Bn(SLI)

Members.

Rank.	Name.	Regiment.
MAJOR	J.A. LEFEBVRE	R 22e R.
~~Capt~~	~~E.T. Eggnor~~	~~1 CID Sp Co (SLI)~~
MAJOR.	C.J. FRASER.	1 C SCOT R.
~~Lieut~~	~~E.S. Thorne~~	~~4 Cdn Recce Regt.~~

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.B. Adams Lt-Col

Commanding C.O. 1 Cdn Div Details

Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
R.4148 Pte DUVAL, Paul R 22e R	First Charge A.A. Sec 15(1)	Guilty	Guilty	Confirmed J.B. Adams Lt Col A.J.A.G. 22 July 43
To suffer field punishment for 1 day To forfeit ordinary pay for 1 day 19 July 43 A.W. Lunberg major. President.				
(See Charge Sheet attached)				

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :— Not applicable

(Signed) J.B. Adams Lt Col (Signed) A.W. Lunberg major.
Commanding Edmn Sub Distrct
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of July 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(1a. The Interpreter.~~ ~~The interpreter~~
*~~(1. The officers under instruction).~~

*Omit if not applicable.

were duly sworn.

Signed this 19th day of July 19 43.

A.W. Lunberg major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19 ,

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 22nd day of July 19 43.

J.B. Adams Lt Col A.J.A.G.
Confirming Officer.
C.C. 1 Edmn Sub Distrct

Promulgated and extracts taken in the case of E4148 Pte Duval P. R22eR.

(*a*) (Dated) 22 July 43 (Signed) Appointment Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23579) Wt.46178/850 50,000 2/43 A.& E.W.Ltd. Gp.693

CHARGE SHEET.

The accused, H.4148 Pte. Duval Paul, Royal 22e. Regiment, a soldier of the Canadian Army Overseas, is charged with while on Active Service:

FIRST CHARGE
A.A.
Sec. 15(1)

ABSENTING HIMSELF WITHOUT LEAVE
In that he

In the field, absented himself without leave from 0300 hrs 27 June 1943 until 1850 hrs 27 June 1943. (Total absence; 15 hrs and 50 minutes.)

In the field,
2 July 1943.

(Raymond Geron) Capt.,
Commanding
R.22e.R. (Rear Party).

To be tried by Field General Court Martial.

In the Field

Dated 18 Jul 43

(W.P. ADAMS) Lt-Col.,
O.C. 1st.Cdn.Div. Details.

M.F.B. 355
25M.—9-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
S.4148	Pte.	Duval F.	Royal Scs. Regt.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L.	two times	A.W.L.	Three times
For		times	Neglect to obey an order	one times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted nil

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for nil beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 5 days in military / Air Force custody, making a total of 5 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 30 years old. (7 Oct. 1913)

6. The date of his commission specified in his record of service is / attestation / attestation paper

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force / military reward (or is in military possession of or entitled to). State any air force / military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ....., Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number S.4148 Rank Pte. Unit Name Duval F. of Royal 22e. R. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL	NIL	NIL	NIL	NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2 nd day of July 194 , day of

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

MEDICAL CERTIFICATE OF FITNESS

This is to certify that I have to-day examined F.4148 ..... Pte. Duval P. ..... and that he is fit to undergo trial by Field General Court Martial.

Date 19 Jul 43 .....

C B Caswell Capt. .....
Medical Officer

Trial of E 4148 Pte Duval Canl Royal 22e Regiment Canadian army.-

Prosecutor Capt J E. Robinson (Can Dir of Pr (S&D)
Defending officer: Lt. L.P.J. Morgeon (Can Dir of Pr (S&D)

The members of the Court as named in the convening order were present & the Court satisfy themselves as to R.P. 22 & 23 in so far as these apply to a F.G.C.M.

The accused is paraded before the Court & the convening order is read to him by the president and translated to the accused by the interpreter. Lt. L.P.J. Morgeon (Can Dir of Pr (S&D) who has been previously sworn.-

The accused does not object to being tried by the President or any of the members.- President & members are sworn.-

The accused is arraigned on the charge sheet which is produced and marked B2 signed by the president & attached to the proceedings.-

The accused pleads guilty to the charge as read to him by the president and as translated by the interpreter.-

R.P. 35[B] is fully complied with and the accused voluntarily admitted the allegation against him & fully understand his position in pleading guilty and that he was in no way compelled to say or admit anything.

The summary of evidence is then translated to the accused & marked E, signed by the president & annexed to the proceedings.-

The accused does not wish to call any witness or make any statement as to character or any other statement on his own behalf.

Prosecutor is sworn & produces evidence as to character marked F & G.- These are read and translated to the accused.

The accused declines to cross examine

[signature]
maj.-.

The accused through his defending officer addresses the Court as follows:

"I ask the Court to consider, first, the date of enlistment of the accused, Sept 39, the contents of MFH 6 and the fact that he is without any ~~asset~~ an asset to the unit. - The accused had all his kit ready for any move and the fact that he did surrender should be taken into consideration. - The whole charge should be looked at as a bit of hard luck over women & liquor. - I ask the Court for very special mercy in their sentence. -"

CHARGE SHEET.

No. 4143 Pte. Duval Paul, Royal Regt. Regiment, a member of the Canadian Army Overseas, is charged with being on Active Service:

ABSENTING HIMSELF WITHOUT LEAVE
In that he

On the field, absented himself without leave from 0300 hrs 27 June 1943 until 1800 hrs 29 June 1943. (Total absence; 15 hrs and 30 minutes.)

In the field
2 July 1943.

(Reynaud Samuel Capt.,
Commanding
R.22e.R. (Beauce Regt).

To be tried by Field General Court Martial.

(Reynaud Samuel) Lt-Col.,
C.O. 12e.Can.Inf. Brigade.

SUMMARY OF EVIDENCE

in the case of

M.4148 Pte. Duval P. Royal 22e. Regt., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of evidence is taken on oath.

FIRST WITNESS FOR PROSECUTION

P. 48774 Sgt. P. Martin, Royal 22e. Regiment having been duly sworn states:

When I fall in the parade on the 27 th of June 43 Lt. G. Robitaille reported to me that his batman Pte Duval was absent. I made a report to Capt Jaron in order that this man be replace on the draft. I reported him absent to the C.O.S. Sgt. Dery J.L. When I saw him in the evening I asked him what happened? The accused said:" I met a woman, start to drink and have stayed with her all night."

P. Martin Sgt. A/CS.M.

The accused declines to cross examine this witness.

[illegible] Dery J.L. Royal 22e. Regt., having been duly sworn states:

I was C.O.S. on the 27th June 43 and I was there to answer the roll at 0800 hrs on the 27th of June 43 and after the morning roll the A/CSM P. Martin told me to see to put this as usual. After the parade and of the roll call. Later on the A/CSM P. Martin reported me that Pte. Duval was absent. I wrote down in the duty roster that Pte Duval absent without leave since 0800 hrs. 27 Jun. On the same day at 1850 hrs I was in MAIN dining room (Drill) and Pte Duval came there and told me:" I came to report to you, I am just coming in." later same said:"I am afraid that I will be charged because I am absent without leave but it is not my fault, I have done my best to come back to camp."

I noticed that Pte Duval was absolutely sober and properly dress. I put him under close arrest.

Jacques Dery Sgt.

The accused declines to cross examine this witness.

THIRD WITNESS FOR PROSECUTION.

Capt. [illegible] Royal 22e.Regt. having been duly sworn states:

Having been advised by A/CSM. P. Martin that the accused was absent I have been obliged to replace him on the draft. I am sure that the accused knew that he was detailed for a special duty leaving very shortly at the time he went A.W.L.

[illegible] Capt.

The accused declines to cross examine this witness.

SUMMARY OF EVIDENCE

in the case of

M.4146 Pte. Duval P. Royal 22e, Regt., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of evidence is taken on oath.

FIRST WITNESS FOR PROSECUTION

P. 48774 Sgt. P. Fortin, Royal 22e. Regiment having been duly sworn states:

When I fall in the parade on the 27 th of June 47 Lt. G. Robitaille reported to me that his batman Pte Duval was absent. I made a report to Capt Caron in order that this man be replace on the draft. I reported him absent to the C.O.S. Cpl. Dery J.L. When I saw him in the evening I asked him what happened? The accused said:" I met a woman, start to drink and have stayed with her all night."

P. Fortin Sgt. A/CS.M.

The accused declines to cross examine this witness.

SECOND WITNESS FOR PROSECUTION

M.4069 Cpl. Dery J.L. Royal 22e. Regt., having been duly sworn states:

I was C.O.S. on the 27th June 47 and I had orders to awake the men at 0700 hrs on the 27th of June 47 and after the morning meal the A/CSM P. Fortin told me to go to bed that he will take charge of the parade and of the roll call. Later on the A/CSM P. Fortin reported me that Pte. Duval was absent. I wrote down in the duty roster that Pte Duval absent without leave since 0700 hrs. 27 Jun. 47. On the same day at 1850 hrs In was in NAAFI dining room (Orieff) and Pte Duval came along and told me:" I come to report to you, I am just coming in." Later onhe said:"I am afraid that I will be severely punished for missing that draft. But it is not my fault, I have done my best to come back in time."

I noticed that Pte Duval was absolutely sober and properly dress. I put him under close arrest.

Jacques Dery Cpl.

The accused declines to cross examine this witness.

THIRD WITNESS FOR PROSECUTION.

Capt. Raymond Caron Royal 22e. Regt. having been duly sworn states:

Having been advised by A/CSM. P. Fortin that the accused was absent I have been obliged to replace him on the draft. I am sure that the accused knew that he was detailed for a special duty leaving very shortly at the time he went A.W.L.

Raymond Caron Capt.

The accused declines to cross examine this witness.

The accused having been duly cautioned in accordance with rules of Procedure 4 (a) (c) elects to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence was taken down by me in presence of the accused and the rules of Procedure 4 (a) (d) (f) (g) (h) have been complied with.

G.A. Fortin, Lieut.,
Officer detailed to take the Summary.

In the field
2 July 43.

LIST OF WITNESSES.
In the case of
R. 4148 Pte Duval P. Royal 22e. Regt., a soldier of the Canadian Army Overseas.

PROSECUTION

F.48774 Sgt. a/CSM. P. Fortin, R.22e.R.
R.4069 Cpl. J.L. Dery "
Capt. Raymond Caron "

DEFENCE

LIST OF EXHIBITS.
NIL

STATEMENT BY THE ACCUSED.

I, R.4148 Pte Duval P. Royal 22e. Regt., desires to have an Officer assigned to represent me at my trial by Field General Court Martial.

I Desire the services of.....
if he is available.

I wish to certify that I have been given free of charge copy of the proceedings, documents etc. relating to my trial by Field General Court Martial.

Paul Duval Pte.

In the field
this 2nd day of July 1943.

The accused having been duly cautioned in accordance with rules of Procedure 4 (e) declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence was taken down by me in presence of the accused and the rules of Prodedure 4 (c) (d) (f) (g) (h) have been complied with.

G.A. Fortin, Lieut.,
Officer detailed to take the Summary.

In the field
2 July 47.

LIST OF WITNESSES.
In the case of
E. 4148 Pte Duval P. Royal 22e. Regt., a soldier of the Canadian Army Overseas.

PROSECUTION

P.48774 Sgt. a/CSM. P. Fortin, R.22e.R.
E.4069 Cpl. J.L. Dery "
Capt. Raymond Caron "

DEFENCE
NIL

LIST OF EXHIBITS.
NIL

STATEMENT BY THE ACCUSED.

I, E.4148 Pte Duval P. Royal 22e. Regt., desires to have an Officer assigned to represent me at my trial by Field General Court Martial.

I Desire the services of.....
if he is available.

This is to certify that I have been given free of charge copy of the proceedings, documents etc., relating to my trial by Field General Court Martial.

Paul Duval, Pte.

In the field
this 2nd day of July 1947.

No. EH141 Name Duval P. Sqn., Battery, or Company 4 Coy Corps R.A.S.C. Date of Attestation 20.9.39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 4-8-41 No. and date of last drunk 8-1 Period not reckoning towards freedom from extra duty [redacted] Signature O.C. Company, etc. Gaston Valles Capt. Character

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bde Camp	4-8-41	Pte.		C.A. sec 15(1) W.O.A.S. A.W.L. from 0600 hrs 4-8-41 to 0830 hrs 5-8-41 - 1 day 2 hrs 30 mins	Lt. Turay Cpl Connelley	14 days C.B.	6-8-41	O.C. Paterna Bde	Fwd. 2 days' pay
On the 20-9-41 this soldier completed two years service and in accordance with A.C.I. 710/01 the above Regt'l Entry was transferred from the personal Conduct sheet which was discharged on the 25 inst								Gaston Valles Capt. O.C. H Coy. 1 S.I.R.	
Bo the field	26-3-42	Pte		Sec 40. Neglect to obey an order A.W.L. forfeiture 6-6-42 till 08.30 hrs 7-6-42 total 1 day 2 hrs	Evidence Cpl Bacon	7 days C.B.	26-3-42	Capt. Gaston Valles	Fwd
[illegible]	6-6-42	[illegible]				2 days C.B.	8-6-42	Capt. L Pardon	Forfeits 1 day's pay
Bo the field	14-10-42	Pte		C.A. sec 15. W.O.A.S. AWL from 2230 hrs 12 Nov 42 till 1800 hrs 13 Nov 42. Total: 19 hrs 30 mins.	Pte Bowman	5 days C.B.	17-10-42	Major L Valles	Forfeits 1 days pay

P.T.O.

YYY-135

Rte Duvane J.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-71212 Pte James Rodgers DWANE C Pro C 1 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 40	NOT Guilty	NOT Guilty	
2nd A.A. 40	NOT Guilty	NOT Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence~~ for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial a total of~~ ..... days, ~~of which ..... days were spent in hospital.~~ (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Accused was Released

(Sgd) ..... Judge-Advocate, if any. 5 Oct/44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 9 OCT 1944 MG BRANCH

RECORDED AT CMHQ IN AB 160 YYY-33

FIELD GENERAL COURT-MARTIAL

CF A36 (In lieu of AFAB) 42 P & S 1698 (3864)

Convening Order of Brig A.B. Connelly Comd "B" Gp CRU dated 27 Sep44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 309, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-71212	Pte		James Rodgers	DWANE	C Pro C 1 CGRU

PROCEEDINGS REVIEWED
Lt-Col R. Lucas-Lucas
10 Oct 44

PROCEEDINGS OF TRIAL.

Held in the CFA in (country) England at REVIEWING OFFICER HAG BRANCH C.M.H.Q. on (date) 2 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.~~(1) Do you object to S6T SHULTZ P.35776 as shorthand writer? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO-SIR(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, (~~sworn~~), are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. Redman, V.D.	HQ CRU
Member	CAPT	A.M. MATHESON	1 CIRU
Member	LT	G.S. GLEW	1 CIRU
~~Judge Advocate~~	~~KF~~		
Prosecutor	LT	A. ZIMMERMAN	2 CARU
Defending Offr	CAPT	H.R.S. RYAN	2 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 6; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE-ATT
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st and 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2nd charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge~~(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. To give evidence. Do you intend to call witnesses on your behalf ?
Ans. NO-SIR. Are they witnesses as to character only ? Ans.....
(*1. RP 35 fn 3. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42. 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.~~(1)
~~Or~~. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. ~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(2)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7 C.D.
(*1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 1223, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2863)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-71212	Pte		James Rodgers	DWANE	C Pro C 1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) ~~27~~ 30 Sep 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-col	D.L. Redman V.D.		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	A.M. Matheson		S.S.R. 1 CIRU
Lieutenant	C.S. Glew		R.R 1 CIRU

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date ~~27~~ 30 Sep 44

Commanding
(A.B. Connelly) Brig Convening Officer.
Comd "B" Gp CRU

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET.

The accused, D.71212 Pte James Rodgers DWANE, Canadian Provost Corps, on the strength of 1 Canadian General Reinforcement Unit, a soldier on active service with the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC. 40 A. A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 25 Nov 43 and 18 Feb 44, then S/Sgt and Treasurer of the Sgts' Mess, Canadian Detention Barracks, did improperly purchase spirits for the said Mess after having been warned by Major W. Fern, Asst Comd Canadian Detention Barracks, not to do so.

SECOND CHARGE
SEC. 40 A. A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 25 Nov 43 and 18 Feb 44, then S/Sgt and Treasurer of the Sgts' Mess, Canadian Detention Barracks, did improperly sell spirits for the said Mess after having been warned by Major W. Fern, Asst Comd Canadian Detention Barracks, not to do so.

In the Field
18 Sep 44

(B.R. Ker) Colonel
Commanding Officer
1 Cdn Gen Rft Unit

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

30
27 Sep 44

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

Medical Officer's Certificate
K.R.(Can) para 557.

I certify that I have this day examined,

No. D.71212 Rank Pte Name Dwane J.R.

and in my opinion is Fit to undergo trial by Court Martial.

Field
Date: 2 Oct. 44

M.O. Capt
Medical Officer M.O. 1 C.G.R.U.

F.G.C.M. IN THE CASE OF

D 71212 Pte DWANE, J.R., C Pro C, 1 CGRU

2 OCT 1944

EVIDENCE FOR THE PROSECUTION NOTE D-3

1st WITNESS FOR THE PROSECUTION

Capt W FERN, on strength C Pro C, 1 CGRU, having been duly sworn states:

Q 1 During the period 25 Nov 43 to 18 Feb 44 where were you stationed?
A 1 I was Assistant Comd, Cdn Det Bks.

Q 2 Did you have any duties with regard to the Sgts Mess?
A 2 Yes I was PRI of the unit.

Q 3 Do you know Pte Dwane?
A 3 Yes I know him, I see him here as the accused, he was on the staff during that period.

Q 4 What was his position with regard to the sgts mess during the above period?
A 4 He was Secretary Treasurer with the rank of S/Sgt.

Q 5 Did you at any time give any instructions to him with regard to the sgts mess?
A 5 I gave S/Sgt Dwane some instructions immediately after I received them from the C.O. to the effect that there would be no alcohol bought or sold in the sgts mess, that would be about the 25 Nov 43 when I received the order from Col Shankland.

Q 6 What do you mean by alcohol?
A 6 Alcohol or spirits, whiskey, gin, rum etc. The order was that there would be no more spirits bought or sold in the sgts mess. I gave thos orders to the RSM, President of the mess and Staff Dwane and to CSM Raistrich and several members of the mess at various times. However I gave the order to these three immediately I received it from the CO.

Q 7 I show you a document, will you identify it?
A 7 This document is one that was presented to me on the 1 Nov 43 by Staff Dwane which was an application or notification to the Wine and Spirits Department, NAAFI, Esher, Surrey, signed by myself stating the number of members in the Sgts Mess in this unit. This letter is dated 1 Nov 43.

(Document marked Exhibit "1" by the Court. The Prosecutor stated that this exhibit as well as other documents which he will tender in evidence are required for other urgent purposes as they form part of the record of a GCM which has already been held. Prosecutor then tendered a copy of the said Exhibit "1". The President compared the said copy with the original and certified the said copy and marked it exhibit "1". The Prosecutor stated that he would return the original exhibit to the Officer In Charge of the record of the said GCM).

Q 8 In dealing with the NAAFI is it necessary to forward such letters from time to time?
A 8 Yes I believe it is the custom when you are dealing with the NAAFI to keep them informed on the number of members, the supply or allotment you are allowed is based on that number.

Q 9 How often or at what times is such a letter sent to the NAAFI?
A 9 I understood from the accused that it had been customary to forward letters similar to that one at the beginning of each month.

Q 10 Was such a letter forwarded to the NAAFI at the beginning of Dec 43?
A 10 No.

Q11 Was any such letter forwarded to NAAFI subsequently during that period which I have referred to?
A11 No, no letters were ever sent subsequent to that one that was cancelled.

Q12 On or about 25 Nov did you give any instructions to then Staff Sgt Dwane with regard to forwarding such letters to the NAAFI?
A12 Subsequent to receiving the order from the Comd that there would be no spirits bought or sold in the sgts mess I told S/Sgt Dwane that the letter which I had signed on the 1 Nov 43 to the Naafi would be cancelled, and that no spirits would be bought or sold in the sgts mess and he said that he would tend to it.

Q13 I show you another document, will you describe that?
A13 This is a letter to Lloyds Bank. dated 22 Nov 43 signed by myself telling the bank that S/Sgt Dwane and myself are the signing authorities, it has samples of our signatures on it.

(Letter marked Ex "2" by the court. A copy was also dealt with in the same manner as Ex "1").

Q14 I show you a NAAFI invoice dated 1 Dec 43, do you recognize this invoice?
A14 Yes, it was shown to me at the Court of Inquiry at Cdn Det Bks sometime in May 44. I had never seen it before that time, it is dated 1 Dec 43.

(Invoice is marked Ex "3" and a copy dealt with by the Court in the same manner as Ex "1")

Q15 I show you a cheque dated 6 Dec 43, is that your signature?
A15 Yes.

(Cheque marked Ex "4" and a copy dealt with in the same manner as Ex "1" by the Court)

Q16 I show you NAAFI receipt dated 10 Dec 43, do you recognize it?
A16 I recognize this as one I first saw on the Court of Inquiry at Cdn Det Bks in May 44.

(Receipt marked Ex "5" and dealt with in the same manner as Ex "1" by the Court)

Q17 I show you another NAAFI invoice dated 1 Jan 44, do you identify that?
A17 Yes, it was first shown to me at the Court of Inquiry in May 44, that was the first time that I saw it.

(NAAFI invoice marked Ex "6" and a copy dealt with in the same manner as Ex "1" by the Court)

Q18 I show you cheque dated 6 Jan 44, is that your signature on it?
A18 Yes.

(Cheque marked Ex "7" and a copy dealt with in the same manner as Ex "1" by the Court)

Q19 To the best of your knowledge what was the payment for in the case of these two cheques?
A19 To the best of my knowledge they were for supplies from the NAAFI assumed by me to be dry canteen stuff and such items as were purchased from the NAAFI.

Q20 As far as you know at present were the payments for these particular ~~xxxxxxxx~~ xx invoices produced as Exs "3" and "6".
A20 Yes

Q21 Did you at any time buy spirits from the accused, then S/Sgt Dwane?
A21 Yes, I bought spirits from him on three occasions to the best of my knowledge.

Q22 To the best of your knowledge what was the nature of these transactions?
A22 It was a personal transactions between S/Sgt Dwane and myself and I had no reason to believe it was otherwise.

Q23 What made you think it was a private transaction?
A23 I had know the accused for a number of years and often during our conversations he told me that his connections were very good and it was not difficult for him to get spirits. He had people in Durham for instance from whom he had often been able to get supplies of spirits and when I was at the Det Bks we had no officers mess and it was most difficult to get spirits and when I approached the accused he said it would be quite simple to get me whatever requirements I desired.

Q24 I show you cheque dated 12 Jan 44 is that your signature?
A24 Yes, it is for the sum of £19

(Cheque marked Ex "8" and a copy dealt with in the same manner as Ex "1" by the Court)

Q25 I show you cheque dated 13 Jan 44, is that yoursignature?
A25 Yes, it is for the sum of £1-10/-

(Cheque marked Ex "9" and a copy dealt with in the same manner as Ex "1" by the Court)

Q26 I show you cheque dated 15 Feb 44, is that your signature?
A26 Yes, made out to cash for the sum of £6-5/.

(Cheque marked "Ex "10" and copy dealt with in the same manner as Ex "1" by the Court)

Q27 I show you Ex "8", do you recognize the signature of the endorser?
A27 Yes, it is that of S/Sgt Dwane, Cdn Det Bks, Sgts Mess.

Q28 I show you Ex "9" do you recognize the signature of the endorser?
A28 Yes, it is"J.R.Dwane, Cdn Det Bks".

Q29 Do you recognize the signature of Ex "10"?
A29 The signature of the endorser is that of J.R Dwane, Cdn Det Bks.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q30 Who was RSM of the Cdn Det Bks and what were his duties on the 25 Nov 43?
A30 RSM Illingsworth, he was the senior member or officer in the mess and I suppose his duties were those of a senior officer. He was the channel of communications between myself and the sgts mess.

Q31 Therefore instructions which you had to issue to the mess you would issue to him and not every one else?
A31 Not in every case, when this particular order regarding sale of spirits and re-opening of the mess on the 25 Nov came out I personally gave orders to sever members of the mess and I also gave orders to RSM Illingsworth, CSM Steele and Staff DWane, I discussed it with them immediately.

Q32 In your evidence you gave at the summary of evidence you made a statement on page 1, which I will read to you "I believe that sometime in Nov I told the accused not to send that letter and to cancel it," you say "I believe" I issued these instructions and now you say "I did issue these instructions" what is it that you mean, is your recollection more clear now at this Court Martial that it was at the summary which was taken over a month ago?

A32 When the summary of evidence was taken I had just arrived back from France, I was called here to give evidence without the slightest warning I had not thought of it and at that time could not be sure, later I got away by myself and reconstructed the thing and thought it out and began to recall the facts and the I got the picture and the events quite clearly in my mind, I remember quite well issuing the instructions.

Q33 You discussed this matter with other people?
A33 No, I have only discussed it with one person, that officer who defended me at my GCM. This matter was again brought up at the GCM.

Q34 In the summary on page one you say "to the best of my recollection sometime in Nove on or about the 25 I gave an order to the accused to the effect that there would be no purchases or sale of spirits for the sgts mess, and now of course you are very certain that you issued these orders?
A34 The same explanation is applicable.

Q35 You say on page two of the summary, "I gave an order to RSM Illingsworth and CSM Steele, President Sgts mess" and again " to the best of my recollection it included the accused" and now again you are positive? At that time you were clear that you gave the order to the RSM and still you were not certain about the accused, why?
A36 The same explanation applies here, it was not until I got away by myself and was going over the case that I recalled what actually happened and I then knew that I included the accused and that I told him to cancel the letter and I also remembered very well telling him that there would be no spirits bought or sold in the sgts mess.

Q37 In your evidence in chief you stated that the accused was Secretary Treasurer for the period in question is it not correct that he was the Treasurer only and that someone else was Secretary?
A37 Yes that is correct, the Secretary was Sgt Steed.

Q38 When dealing with the NAAFI is it not correct that you first find out what the NAAFI can supply you and then you place your order accompanied by a cheque? that is the invoice and cheque are returned to get the goods?
A38 Yes.

Q39 In the case of Ex "3" it is dated 1 Dec, whereas Exhibit "4" is the cheque for payment is dated 6 Dec, in both cases 1943? Is it a fair assumption from those two dates that the invoice was received first and then the cheque was made out?
A39 Yes.

Q40 And the goods were afterwards delivered?
A40 Yes.

Q41 Was it your practice to insist on knowing for what cheques were made out for the sgts mess before signing them?
A41 No as far as the sgts was concerned I did not think that I had time to check them, I was a very busy man and I depended on the mess committee to carry out any regulations.

Q42 Then the answer is "no" you did not check or ask for invoices to be shown to you before signing cheques to pay for them?
A42 No.

Q43 Ex "2" was a letter requiring your signature to be one of the signatures on all cheques on behalf of the sgts mess along with S/Sgt Dwane or CSM Steele? What did you understand was the purpose of having your signature on the cheques?
A43 Well it was according to instructions contained in the regulations it lays down that an officer will be appointed by the CO as signing officer for all cheques in the unit Institutes.

Q44 Then you felt your being appointed as signing officer merely meant you to sign checks you did not have to know what they were for or anything like that?
A44 Yes for the goods of the sgts mess and regimental institutes.

Q45 What regimental institutes are there?
A45 The sgts mess.

Q46 Did you not feel that you should see the cheques and the invoices?
A46 Well ordinarly I would but I was burdened down with duties and I had no time and I depended on the sgts to take care of their own mess.

Q47 Did the accused not voluntarily produce these invoices?
A47 No he never presented any invoices or receipts with the cheques. He siad it was for supplies required for the sgts mess and I of course ~~ex~~ accepted his word for it.

Q48 Did it seem unnatural to you that bills of £52-16/-11d should be given to the sgts mess by the NAAFI, was that not a bit high?
A48 At that time there was a large membership at the sgts mess, I knew they were pruchasing dry canteen supplies from the NAAFI, it never occured to me that the cost was excessive.

Q49 You knew that were not purchasing beer from the NAAFI?
A49 Yes, I knew that they got their beer from the brewery.

Q50 You knew that they were pruchasing dry canteen goods and not beer and £52 was not excessive?
A50 Idid not think so.

Q51 You say that you know now these cheques were for large quantities of spirits?
A51 Yes, the first I knew of it was at the Court of Inquiry.

Q52 Very convenient that you did not know this in view of the fact th t you were relying on Staff Dwane to get you a supply of spirits?
A52 I did not rely on him, I asked him if he could get it, had he not been able to get it I would have endeavoured to get it from other friends.

Q53 He said he could get it and you relied on him to get it?
A53 Yes.

Q54 And at one time he got you £19 worth?
A54 Yes, 12 bottles.

Q55 A lot of spirits to get in this country at one time is it not?
A 5 Yes

Q56 You could not have gotten that amount yourself at one time?
A56 Yes I could have, I know a chap in London that could have gotten it for me, it is not normal but I had been getting it from him for the last three or four years, but instead of going to him I went to the accused was closer at hand.

Q57 Did it never occur to you that he was getting these spirits from the NAAFI?
A57 No.

Q58 I show you the original Ex "3" dated 1 Dec 43, it is related to Ex "4" which is cheque dated 6 Dec 43, as you said you signed it, what do you suppose happened to that invoice after you had signed the cheque and spirits bought?
A58 I don't know, I saw it at the Court of Inquiry.

Q59 The echque was paid out of the sgts mess and the accounts closed on the 31 Dec and an audit was taken I suppose?
A59 Yes.

Q60 You had to sign the proceedings of the audit board?
A60 Yes.

Q61 Did you not see an entry for the cheque or invoice at that time?
A61 I did not I depended on the audit board and I accepted their signatures for their responsibility. I was very busy and had I attempted to carry out all this work myself it would have been a little too much. I do not remember the names of the members of the board but they would be officers of the unit.

Q62 Would they be Lt Cawley and Lucar?
A62 They might have been, I should not be surprised.

Q63 Did neither of them mention to you that the spirits had been sold in the sgts mess?
A63 No.

Q64 Supposing they had, what action would you have taken?
A64 I should have investigated it.

Q65 What would you have done if Staff Dwane had brought you this invoice and cheque and asked you to have signed it?
A65 I should have refused to sign it and taken action immediately.

Q66 And in the case of the second invoice and cheque, Exs "6" and "7"?
A66 I would have taken the same action.

Q67 But then you would not have gotten the 12 bottles of liquor that you got?
A67 It would not have affected me to any length as it is revealed to me no I should not have received any liquor from Staff Dwane but I had not knowledge that it was being sold in the sgts mess.

Q68 In addition to these purchases you made for which you paid for by cheque did you make any other pruchases of spirits through Staff Dwane or the sgts mess?
A68 I never purchased any liquor from the sgts mess, I may have bought a bottle or two from the accused for which I paid cash, but I do remember definitely of never buying any through the mess.

Q69 How did you get or where did you get the three bottles of spirits in Jan?
A69 They were delivered to my billets to my land lady.

Q70 Was that the occasion that Jean-Louis delivered them?
A70 I did not know who brought them, I was simply told that a soldier had left them, I have found out since that Jean-Louis did bring them. The quantity was three bottles of whiskey and two bottles of Cordial. I gave a cheque to the accused for £4-5/ sometime in Feb.

Q71 How did you order this wiskey?
A71 My birthday was coming up and I wanted some liquor and I asked Staff Dwane if he could get me some, it was delivered to my residence, at the time it was delivered I was not at home and thought that the accused had dropped them there himself.

Q72 How about the 12 bottles, when did you order that?
A72 In Dec.

Q73 What do you think was the cause of the delay in delivering them as you received them sometime later?
A73 I assumed it was because he was having difficulty in getting it. However there was actually no long delay, I paid for them early in Jan 44. That was some time after I had received them.

Q73 Had it struck you that he could finance a transaction for £19.
A73 I understood that he had his own bank account.

Q 74 You notice the endorsement on the 1st and 3rd cheque you made to him, " Cdn Det Bks, Sgts Mess", did you get these cheques back at the end of the month?
A74 I never saw them again until the Court of Inquiry in May.

Q75 When you told the accused that his letter of authority which you signed on the 1 Nov 43 was cancelled did you write to the NAAFI and tell them it was cancelled?
A75 I did not, I left the accused to tend to it, I was extremely busy and the Det Bks was in the process of re-organization, and I had to depend on my staff.

Q77 When you told the Prosecutor that no similar letter was written to the 1 Dec 43 you really mean that to your knowledge no similar letter was written?
A77 That is what I mean, I did not mean to be so absolutely sure that no letter was written by anybody.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

2nd WITNESS FOR THE PROSECUTION
H 6234 RSM Illingsworth, D., on strength Cdn Det Bks, having been duly sworn states:

Q78 Where were you stationed during the period 25 Nov 43 and 8 Jan 44?
A78 I was station at the Cdn Det Bks, I was the RSM there, with regard to the sgts mess I was the senior in the mess but we had a mess committee of which I was not actually a member.

Q79 During that period do you recall receiving any instructions regarding the purchase and sale of liquor in the sgts Mess?
A79 I do not remember seeing any written instructions, there were verbal instructions, I believe the OC issued them.

Q80 Were any given or issued by Capt Fern?
A80 No Sir.

Q81 Do you know Pte Dwane?
A81 Yes Sir, he used to be S/Sgt Dwane, he is the accused sitting in the Court.

Q82 What was his position in the sgts mess during the period mentioned?
A82 He was the Treasurer some of that time.

Q82 Did you buy any liquor from him?
A82 No Sir. I did ask the accused to get me a bottle of whiskey I am not sure when it was but I had asked the purchasing secretary before the accused to get me on, I paid him for it.

Q83 What did you understand to be the nature of the transaction?
A83 That Staff Dwane was merely purchasing a bottle of wiskey for me as an agent, it was purely a personal transaction.

Q84 Where did you think he was getting it?
A84 I thought he was getting through his contacts that he established when he was buying for the mess.

Q85 Did you during this period inspect the sgts mess?
A85 Not the bar.

Q86 Did you ever see any alcohol visible in the mess in bottles on the shelf?
A86 No Sir.

Q87 During this period was any liquor sold in the sgts mess?
A87 Not to my knowledge.

Q88 Were you in the sgts mess quite often?
A88 I had my meals in the dinning room, I often went in at noon. I seldom went in at night. We were very busy and I worked a lot of nights.

Q89 Did you ever see any liquor in the mess?
A89 No Sir.

Q90 Why was there no liquor in the sgts mess?
A90 Because an order was given that no spirits would be sold in the mess. I had been told and passed it on to the mess committee

Q91 Did you discuss it with anyone else?
A91 No Sir.

Q92 Did any members of the sgts mess discuss with you or refer in their discussion to this particular order?
A92 No Sir I do not remember any discussion.

CROSS EXAMINATION BY THE DEFENDING OFFICER.

Q93 You purchased only one bottle of whiskey through Staff Dwane?
A93 Yes Sir. It was around Christmas sometime just before Christmas.

Q94 Where was this delivered to you?
A94 I cannot remember just where it was delivered to me now.

Q95 Did I understand you to say that you received an order from the Col regarding sale of liquor?
A95 Yes Sir.

Q96 Any order from Capt Fern?
A96 No Sir, he was present when the order was given by the Col.

Q97 You relayed it to the president of the mess committee and Staff Dwane?
A97 To the President but not Staff Dwane.

Q98 What are your responsibilities as RSM with relation to the mess?
A98 I am the senior officer of the mess, I am responsible for the discipline and conduct of the members in the mess, I do not take any actual duties as far as the mess is concerned, I do not have time and did not at the time of this matter. I never reviewed the finances of the mess. There was also a bar committee who was responsible for the running of the bar, they did the pruchasing with the approval of the CO, I believe CSM Hurrel was in charge of the bar committee at that time, S/Sgt Dwane was Treasurer he was not a member of the bar committee. I knew nothing about the purchases of the whiskey for the mess, nor of the sale of spirits by the mess.

Q99 Where did you think Dwane got this whiskey he gave to you?
A99 I think it would be possible for him to get a bottle of whiskey when buying beer for the mess. I would have gone and gotten it except I was pretty busy and could not get away.

Q100 Were you present outside the mess when CSM Raistrick got a bottle of whiskey through the back door of the mess?
A100 No Sir.

Q101 Was he present when you got yours?
A101 No Sir.

Q102 Where you in the mess at Christmass time and do you remember the raffle of a bottle of whiskey?
A102 I was in and out of the mess before Christmass at noon time but I do not recall the raffle of a bottle of whiskey.

Q103 Did you see the list on the outside of the bar of the names of people who had bought tickets?
A103 No Sir.

Q104 And you knew nothing about any spirits in the mess or anything like that?
A104 No Sir.

Q105 If you had known that spirits were being bought and sold in the mess what would you have done?

A105 I would have reported it.

Q106 Do you think there was any bought for the mess?
A106 I do not know about that.

Q107 Had you known that spirits were kept in the bar what would you have done?
A107 I should certainly have reported it.

Q108 And if you found that it had been bought by the mess committee and found it was kept there as stock what would you have done?
A108 I would have gone after the mess committee.

Q109 Do you take part in the deliberations of the mess committee?
A10 Some of them I attended, some I was not able to attend.

Q110 What do you know of the Christmas arrangements that were being made in your mess?
A110 Very little.

BY THE COURT

Q111 Did Capt Fern ever tell you that spirits were not to be bought or consumed by the sgts mess?
A111 No Sir.

Q112 The CO told you, did he, in the presence of Major Fern?
A112 Yes Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION
M 37281 CSM RAISTRICK W, on strength 2@ Cdn Spec Employment Coy, having been duly sworn states:

Q113 Where were you stationed during the period 25 Nov 43 and 18 Feb 44?
A113 I was at Cdn Det Bks.

Q114 What was your position in regard to the Sgts Mess?
A114 From the 17 Jan onwards I was President of the Sgts Mess.

Q115 Do you know Pte, then STaff Sgt Dwane?
A115 Yes Sir, he is the accused there.

Q116 Did you, during the time referred to above, buy spirits from the accused?
A116 Yes Sir, I bought one bottle of gin which I paid him for. He gave me this bottle on the public road way outside the barracks.

A

Q117 Did you every approach Sgt Bennison, mess steward or caterer in the mess for any liquor.
A117 About the middle of Oct I asked Dwane if he could get me a bottle for Christmas, at one time I asked Bennison if he knew if Dwane had a bottle for me, he said he did not know. Bennison never handed me a bottle.

Q118 Do you remember a raffle of spirits about Christmas time?
A118 There was raffles on two occasions in the mess, I cannot say what they were for, I was approached and asked if I would buy one but I was uninterested in raffles.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q119 Before 25 Nov you had at one time been Treasurer of the sgts mess?
A119 Yes Sir.

Q120 At that time was the mess buying and selling spirits?
A120 Yes Sir.

Q121 You ceased to be treasure when?
A121 About 21 Aug 43 and held no office until 17 Jan 44.

Q122 When you bought these spirits from Dwane I understand you went to him and asked if he could get a bottle for you?
A122 Yes Sir.

Q123 Where was he when you asked him, was he in the accounts office?
A123 I donot remember exactly.

Q124 Do you remember speaking to him about spirits in his accounts office?
A124 No Sir.

Q125 Where did you pay him?
A125 In the public highway.

Q126 When was that?
A127 When he gave me the bottle. It was around Christmas, I believe the day before.

Q128 I understand you you received a bottle of spirits by the hand of Bennison, is that correct?
A128 That is correct.

Q129 Do you rememberan occasion shortly before Christmas speaking to the accused outside the door of the mess and asking him for a bottle of spirits?
A129 I do not remember the occasion, it is quite possible that I asked him if he had it.

Q130 Do you remember what going with RSM Illingswoth when a bottle of spirits was delivered to you ~~xxxxxx~~ or him by Bennison outside the mess?
A130 No Sir, it was not delivered to me personally and the RSM met me a little later just as we were going out. And that was the only bottle I got. I cannot say just what time of the day it was.

Q131 But you are clear as to whatday and where it was handed to you?
A131 Yes.

Q132 You do not remember the time, you do remember the place, the day, you, I suppose remember the price, but you do not remember where you ordered it?
A132 No Sir, I saw him on so many occasions, I asked him on one of them It might have been in his accounts office. I do not know what he kept in his accounts office.

Q133 Do you know whether he kept a list there and do you remember going in and asking him to put your name on it?
A133 No Sir.

Q134 Do you remember going into his office and paying him there?
A134 No Sir.

Q135 Where did you understand he got the liquor?
A135 I understood he got it from a private dealer.

Q136 He did not tell you then?
A136 No, the bottle he got me was a private dealer, it was not NAAFI, it was Saegers, and I do not believe the NAAFI handle Saegers Gin.

Q137 Do you know anything about liquor being sold in the mess, or through the Mess?
A137 No Sir.

Q 138 Why did you ask the accused to get you some liquor?
A138 He had been the buyer for the mess and was still buying beer and I thought he may have made contacts where he could get it.

Q139 Why did you ask Bennison if Dwane had gotten it for you?
A139 Bennison usually accompanied Dwane on his trips and I thought he would know if the accused had got it.

Q140 You did not think Sgt Bennison would have it for you in the bar?
A140 No Sir.

Q141 Did you ever go into the bar during that period?
A141 Yes Sir.

Q142 Did you ever see any spirits there?
A142 No Sir.

Q143 You were asked to buy a ticket on araffle?
A143 Yes Sir, someone came to me and asked me if I wanted to buy a ticket, we usually had raffles for chickens and other things around Christmas, I was not much interested and I bought two tickets more to get rid of the person that was selling them than anything, I do not know what the raffles were for. I did not know that they were for two bottles of whiskey.

Q144 Did you see a list of persons who bought tickets hanging up outside the bar?
A144 No Sir.

Q145 Were you in the mess very often, at meals etc?
A145 Yes Sir, but it was very rare that I drank in the mess.

Q146 While you were president did you know what was going on in the mess?
A146 I thought I did.

Q147 Had you known that spirits were being sold what would you have done
A147 I would have called a special meeting and had it stopped.

Q148 Did you know that officers and sgts were getting spirits from Staff Dwane?
A148 I considered it was quite possible that they were getting it the same way as I had gotten mine, as a private deal. And as long as it was a private deal it had nothing to do with the mess.

BY THE COURT

Q149 What was the price of a bottle of spirits?
A149 35 Shillings.

Q150 How many members were there in the mess?
A150 About 100 to 110.

Q151 Outside of whiskey and beer what would the usual NAAFI bill come to each month?
A151 A very difficult question, there was only about one month after Nov that we bought anything from the NAAFI, a few things such as cigarettes, choclates etc.

Q152 Would it run to £50 a month?
A152 No Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

4th WITNESS FOR THE PROSECUTION
Capt W.A. CLARK, RCAPC, on strength No 1 CGRU, having been duly sworn states:

Q153 Where were you stationed during the period 25 Nov 43 to 18 Feb 44?
A153 I was at Cdn Det Bks.

Q154 Do you know Pte, then S/Sgt Dwane?
A154 Yes he is there (pointing at the accused)

Q155 Would you tell the court your relations or dealings with him during that period?
A155 I bought two bottles of gin during the first week in Dec, which I had the accused get for me, I paid him in cash for it.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q156 What led you to go to the accused?
A156 I had heard that he had contacts and could quite easily get liquor so I asked him if he could get me so, I do not know where he got it, I have no reason for believing that he would be more likely to be able to get me some than I would have been except that I had heard that he had contacts. I went to him and asked him if he could get me some and he said he thought so he delivered it to me in my house. I never received any liquor from him or anyone else in the sgts mess.

Q157 Did you know that these spirits were bought through the Sgts mess?
A157 No.

Q158 You did not know where he was going to get this spirits, you don't know why he would be more likely to get them than yourself, you don't quite think they came from the sgts mess, but you thought that he had some mysterious sourse where he could procure them so you asked him to buy you some?
A158 I do not think it a mysterious source. I do not know whether he got liquor for other people or not, he got me a bottle and I did not interest myself in him further.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

5th WITNESS FOR THE PROSECUTION
D 105754 Pte JEAN-LOUIS, on strength Cdn Det Bks having been duly sworn states:

Q159 During the period 25 Nov/and 18 Feb 44 where were you stationed?
A159 At Cdn Det Bks. I was a driver there.

Q160 Do you know Pte Dwane?
A160 Yes Sir, he is sitting there, he was then S/Sgt Dwane. (points to the accused)

Q161 Tell the Court about any driving you did for the accused in the period we have referred to above.
A161 He told me to go to McEwen and Youngers, Aldershot and pick up a parcel, I did this and delivered it to Capt who was then Major Fern, I do not remember the date but it was after Christmas some time. I saw what the parcel contained it was bottles of spirits. I gave it to Major Fern's land lady I was given the bill for it which I gave to S/Sgt Dwane.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q162 Did I understand you to say you got a bill?
A162 Yes Sir.

Q163 What was it for?
A163 I do not know, I did not look at it, I do not know to whom it was addressed or what it was for, but I thought it was for the

whiskey and I gave it to S/Sgt Dwane.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

6th WITNESS FOR THE PROSECUTION

A 34002 CSM HURREL, P, Cdn Prov Corps, on strength 1 CGRU, having been duly sworn states:

Q164 During the period between 25 Nov 43 and 18 Feb 44 where were you stationed?
A164 I was at Cdn Det Bks.

Q165 What was your position with regard to the sgts mess? And what do you know about the case that we are trying today?
A165 I was chairman of the Bar Committee. Occasionally I inspected the bar, as a matter of fact I did about every day go into it and have a look around. Around Christmas there was some liquor there, two bottles that were raffled off. Pte, then S/Sgt Dwane, the accused, who is there, was running the raffle. I did not buy any liquor from him during that period. While I was chairman it was given out at the mess meeting that the purchases of liquor would be made only with the consent of the CO, it was not to be sold by the glass, there was no prohibition of buying it and selling it by the bottle that I knew of. The only orders we had were that there would be no whiskey sold by the glass. The purchases were for the Christmas season.
Q166 Who gave you those orders?
A166 RSM Illingsworth.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q167 In addition to the two bottles of spirits which you mention as having seen before Christmas did you see any cartons of spirits in the bar?
A167 No Sir.

Q168 I understand you to say that it was given out at a general mess meeting that spirits were to be purchased for Christmas?
A168 Yes Sir.

Q169 When was that mess meeting held?
A169 It was the Nov meeting, that would be the second Tues in Nov.

Q170 What was done about it in Dec? Were the spirits in fact bought?
A170 Yes Sir. I knew about them being bought and I was chairman of the barcommittee.

Q171 Did the mess committee know about it?
A171 No Sir.

Q172 How did that happen?
A172 It was kept somewhere else.

Q173 Who was in the chair at the time of the meeting?
A173 CSM Steele I believe, and the RSM was there.

Q174 Tell us about the raffle?
A174 I think it was arranged between the bar tender and Dwane. There was a sheet put up in the bar room where everybody could see it, it had all the names of the people with tickets on it. The bottles were raffled separately, the first one for 45 shillings, and just as it went CSM Steele came in and said that was too much and took off ten shillings from the price of the next one.

Q175 Did the President or anyone tell you that spirits were not to be sold in the mess?
A175 No Sir. At the meeting of the mess xxxxxxxxx it was decided that the spirits would be bought and the permission of the CO asked for to sell them by the glass otherwise they would be sold by the bottl to the people who had bought the most beer.

Q176 Had the mess been closed up before this?
A176 It had been closed on a couple of occasions, then it was re-opened and we were told that we could not sell spirits by the glass, it was after this that we made the decision to buy the spirits and sell them at Christmas if we could not obtain the OC's permission to sell it by the glass in the mess. I do not know what happened to all the whiskey that was bought but none was sold by the glass.

Q177 How about the other sales of spirits to officers and members, do you know anything about that?
A 177 No Sir.

Q178 Did you consider the sale of these spirits or raffle of them contravention of the orders you received regarding the mess?
A178 No Sir.

Q179 Did you hear of other sales by the bottle?
A179 Yes Sir, but I did not pay any attention to who bought them.

Q180 How many bottles did you plan to buy at the meeting?
A180 The ration which would mean as much as they could get through the NAAFI and wherever else we could get it.

Q181 Was this to be done again at New Years?
A181 No Sir.

Q182 Do you know where the RSM was while the raffle was going on?
A182 No Sir.

Q183 But CSM Steele was there, did he forbid the raffle or handling of spirits in the mess in any way?
A183 No Sir, except to say that we could not sell or raffle the second bottle for as much as the first one.

Q184 Where was the beer stock kept?
A184 I cannot say, I enquired onee and was told that it had not come in.

BY THE COURT

Q185 What happened to all of this spirits which were bought from the NAAFI as a result of your meeting in Nov?
A185 We sold them and closed up.

Q186 Did you hear of any instructions from the CO on the 25 Nov, that would be after your mess meeting?
A186 No Sir. The only instructions I got were from the RSM that spirits would not be sold by the glass in the mess, we had asked the RSM to see the Col for us and he gave me this final word after the meeting.

Q187 Did the members of the mess ever object to not having any spirits for sale?
A187 Yes Sir and the RSM said he would see the OC, the RSM then told us that the OC would not allow the sale of spirits by the glass.

Q188 Where did you understand these two bottles that were raffled to come from?
A188 From the NAAFI.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

3rd WITNESS FOR THE PROSECUTION - CSM Raistrick, recalled by the Court and questioned: (by the Court)

Q189 Will you examine Exs "3" and "4" and tell us how many bottles of whiskey and gin were bought by the mess?
A189 30 bottles of whiskey and 12 bottles of gin in Dec, and 25 bottles of whiskey and 12 bottles of gin in Jan 44.

Q190 Were you the president of the mess from 17 Jan until the mess was closed in Mar 44 and did you ascertain whether the mess received the proceeds of the sale of liquor bought by it?
A190 I was the president, I did not know that this liquor had been bought. I think the first query on the balance sheet was the first one after I had taken over.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

7th WITNESS FOR THE PROSECUTION

G 30146 Sgt BENISON, J., on strength Cdn Det Bks, having been duly sworn states:

Q191 During the period 25 Nov 43 and 18 Feb 44 where were you stationed?
A191 At Cdn Det Bks.

Q192 What was your position regarding the sgts mess?
A192 I was bar tender.

Q193 Did you make purchases for the sgts mess?
A193 Yes sir.

Q194 What did you purchase during that period?
A194 Mostly beer.

Q195 Did you purchase any liquor for the sgts mess?
A195 Yes Sir. On the instructions of S/Sgt Dwane.

Q196 Do you personally know Pte, then S/Sgt Dwane?
A196 Yes Sir, I see him here, he is the accused?

Q197 How much liquor did you personally buy for the mess?
A197 I got three bottles from the Bordon NAAFI, and seven from Aldershot, McEwen and Younger.
Q198 With regard to the seven bottles whose authority did you buy them on?
A198 The accused's authority. I got the invoices and handed them to the accused.

Q199 I show you a NAAFI invoice, is that one of them?
A199 Yes Sir, it is dated 3 Jan 44, and for two bottles of whiskey and one gin.

(invoice marked Ex 11 and dealt with in the same manner as Ex 1 by the Court)

Q200 I show you a cheque dated 3 Feb 44, do you recognize this cheque?
A200 Yes Sir, I got it from Staff Dwane, but it was left blank, I was told to see if I could purchase some liquor and to fill in the amount to pay for all I could get. I did not fill it in, S/Sgt McLean was with me and I had forgotten my glasses, so he filled it in for the amount we required.

(Cheque marked Ex 12 and dealt with in the same manner as Ex 1 by the Court)

Q201 And upon payment did you get a receipt and is this it?
A201 Yes Sir, that is the receipt.

(Receipt marked Ex 13 and dealt with in the same manner as Ex 1 by the Court)

Q202 While you were sgts mess caterer did you see any shipments of spirits arrive at the door of the sgts mess?
A202 Yes Sir, five cartons, 12 bottles in each carton. Some of them were put into the bar, some on the floor, three bottles were put and kept in the little cupboard, some put down in the store room, Staff Dwane handled these shipments, I helped, I handled five bottles myself.

Q203 What do you know of a raffle at Christmas time?
A203 The accused said he had paid 32 shillings for taxi fares, I suggested we raffle a couple of bottles off and pay for the taxi with the proceeds. We got £2-6/ for the first bottle but CSM Steele came in and stopped us the next bottle at 35/. We also raffled a third bottle for 35/. I handed the money from the raffle to S/Sgt Dwane.

Q204 Did you keep any stock acounts of this liquor?
A204 No Sir.

Q205 Did you go purchasing liquor in Jan?
A205 I went on Staff Dwane's instructions to McEwen and Younger in Aldershot to enquire for our assignment for the month, I was told that we had already drawn our ration, that it had been picked up Jean-Louis, the account showed that it had been sold to the Sgts Mess, Cdn Det Bks.

Q206 Did CSM Raistrick every approach you regarding liquor?
A206 Yes Sir, he came to the bar and said it would be alright if I gave him a bottle in the mess, I cannot remember the date, but it was about Christmas time, I said to him I was not handling it but if he got a note I would give it to him. He got a note from S/Sgt Dwane, actually it was Dwane's signature on an envelope and I gave him a bottle of whiskey.

Q207 What were the instructions regarding the sale of spirits?
A207 I understood that spirits would not be sold by the glass. I saw no written instructions, but I had verbal orders from the RSM that no liquor would be sold by the glass, he told me they were the Comd's orders. The chairman of the bar committe also told me that we could only sell spirits by the bottle. I bought a bottle myself a few days before Christmas for which I paid 30/. The only time I ever discussed spirits with the accused was when I told him I did not want to bother with it, we planned that he would take care of the spirits and I would look after the beer. I do not know who ordered the spirits for the mess unless it was Staff Dwane, it is possible that it was someone else.

CROSS EXAMINATION

Q208 Did the chairman of the bar committee know of this liquor?
A208 Yes Sir.

Q209 Did the mess president?
A209 Yes Sir he knew.

Q210 Did the RSM?
A210 Yes Sir.

Q211 What instructions did you receive from the RSM, CSM Steele or CSM Hurrel regarding the sale of liquor in the bar?
A211 None whatever Sir.

Q212 You said you did not keep track of the stock, was there a stock book kept and who by?
A212 There was one kept but I never knew it to be filled in, I never put an entry in it, I do not know whether the spirits were entered in it or not.

Q214 Who did you turn the money for the spirits over to?
A214 I turned all the money I received over to S/Sgt Dwane including the beer receipts.

BY THE COURT

Q215 What happened to the 60 bottles of spirits which you said come into the bar.
A215 The accused used to come in throughthe back door and take them away.

Q216 Did they all finally go away?
A216 Yes Sir.

Q217 Was any of this spirits left in the bar on the shelf?
A217 The three bottles that we raffled.

Q218 Was the rest exposed?
A218 No Sir.

Prosecutor said he proposed to call S/Sgt McArthur and that he had given notice to the Defending Officer on Sat. The Defending Officer stated he had no objection and did not require an adjournment.

8th WITNESS FOR THE PROSECUTION
M 49760 S/Sgt McArthur, J, on strength Cdn Det Bks, having been duly sworn states:

Q219 During the period 25 Nov 43 and 18 Feb 44 where you stationed?
A219 I was at Cdn Det Bks.

Q220 Do you know Pte, then S/Sgt Dwane?
A220 Yes Sir, he is sitting right there.

Q221 During the period we have mentioned did you buy any spirits from the accused Pte Dwane?
A221 Yes Sir, just before Christmas I bought some for which I paid him 30/.

Q222 What do you know about the sale of spirits in your mess at that time
A222 I understood at a meeting that there would be no spirits sold to us by the glass but that we might be able to buy a bottle or so, however there did not seem to be anything definitely decided on, it was merely discussion.

Q223 Did you ever see any liquor in the sgts mess?
A223 No Sir.

CROSS EXAMINATION BY THE DEFENDING OFFICER

Q224 When you bought this bottle of spirits just before Christmas from the accused did you understand it was a personal deal?
A224 Yes Sir.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

CASE FOR THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEFENDING OFFICER: D-4

Sir

I submit that the charges against Pte Dwane be dismissed I cannot go into a number of points that I would raise at the conclusion of the trial but the substance of my motion is: In the first place it is apparent from the evidence of the CSM Hurrel who was chairman of the bar committee that what was done was done with the knowledge of himself in so far as the purchase of liquor is concerned and the sale of those spirits. It was his understanding that it was being done by the authority of the mess and therefore the responsibility for what was done was that of the RSM and the president of the mess. That is borne out by the evidence of Sgt Bennison who was the caterer or the bar tender. The accused was the treasurer of the mess and any responsibility of transactions would not be on his shoulders but on those of the various committees who sanctioned any purchases. There is no evidence that the spirits have been sold for the sgts mess so if the Court cannot dismiss the first charge then I ask that it at least dismiss the second charge, that of the sale of spirits. The evidence of Capt Fern is that he issued an order that no spirits would be sold in the mess, I ask the Court to treat that

with little credibility. I point out that Cap Fern's evidence shows that he signed cheques, the very cheques which are recorded by this Court to substantiate the first charge, that is for the purchasing of spirits for the mess. And also that he bought spirits which the Prosecution alleges were the spirits in question which were bought for the mess and sold for the mess. It is submitted on the evidence before the Court that that could not have been done corners and therefore if these acts which are complained of were in contravention of an order issued by him that contravention was allowed or excused by his conduct.

REPLY BY THE PROSECUTOR

Sir,

In answer to the submission I need only say in order to succeed in his attempt to have the case dismissed it is necessary for the Court to feel that no prima facie case has been made out against the accused in regard to the charges against him. I maintain there is more than sufficient evidence before the Court to establish a prima facie case and to cause the accused to give evidence to answer to the charges thus far proved against him. It is proved that he was told not to buy or sell spirits for the mess, in the mess, and it has been said by eight witnesses that he did buy and sell spirits. He obviously sold them in contravention to the order that was issued and therefore is guilty. As for the second charge the order is the same that no spirits would be sold, from Capt Fern who says he told the accused of this order. I have proved that S/Sgt Dwane, the accused did sell bottles of whiskey after that order was issued. I think there is sufficient evidence before the Court to make a case and I ask the Court not to entertain the application made by the Defending Officer.

COURT IS CLOSED TO CONSIDER THE SUBMISSION

COURT IS RE-OPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION HAS BEEN DIS-ALLOWED

EVIDENCE FOR THE DEFENCE Note D-6

1st WITNESS FOR THE DEFENCE

The Accused (D 71212 Pte DWANE, J.R.) C Pro C, on strength No 1 CGRU, having been duly sworn states:

Q225 Where were you stationed between 25 Nov 43 and 18 Feb 44?
A225 I was on strength Cdn Det Bks, I was accounts NCO and chief clerk. I was Treasurer of the Sgts mess from 14 Oct 43 until 17 Feb 44.

Q226 What orders did you receive from Capt, then Major Fern relating to the sale of spirits in the sgts mess?
A226 I was not given any orders by Capt Fern ~~xxx~~ either verbal or written regarding the sale of spirits in the mess.

Q227 Did you receive any other orders from anyone regarding spirits?
A227 No Specific orders or instructions regarding the purchase of sale.

Q228 I show you Ex 1, will you tell the Court how that came to be signed?
A228 This is a letter dated Nov 1st, 1943. Sometime previous to the making up of this order it had been decided that spirits would be purchased for the sgts mess to be sold by the glass with the Comd's permission or by the bottle if permission was not granted. But owing to our entitlements being changed our names were not on the list of the NAAFI at Esther, Surrey, and we wished them to send us our requisition and we were giving them our strength, ie. of our mess. Major Fern signed the letter and I forwarded it to the NAAFI. I received no instructions from Capt Fern after the letter was forwarded. It was mailed the same day

that he signed it. I had heard just previous to this that the sale of spirits by the glass in the mess had been forbidden by the Comd, it was as far as I know a verbal order, and we had asked the RSM to try and regain the lost privilege and it was still in the balance. I was never given any definite instructions from Col Shanklin relating to the management of the mess.

Q229 Did the RSM give you any instructions that he had received from the Comd?
A229 No. I only saw the RSM at the committee meeting where we decided to purchase spirits for Christmas that were to be sold by the bottle, and we had asked him to try and get us permission to sell it by the glass.

Q230 How did the mess know it would not be sold by the glass?
A230 The mess at that time was still working on the principle that spirits would not be sold by the glass.

Q231 What was the decision of the mess regarding the purchase and the sale of spirits in Nov or Dec of 43?
A231 There was a full vote taken and it was fully decided that the order management had the authority to purchase spirits for the mess and funds were made available for these purchases.

Q232 Tell us about this entitlement?
A232 Under the ration scheme it is based on so many members of the mess so much whiskey and gin each month, the NAAFI are informed of the number of members of the mess and they make up invoices showing you how much you are entitled to and forward this to you and you attach your checque to it and send it back to NAAFI for shipment.

Q233 I show you Ex 3 and Ex 4, will you tell the Court how you come receive that invoice?
A233 That invoice was addressed to the president of the Mess and was handed to me from the RSM's office. I brought the matter to the attention of the president of the mess, CSM Steele and I believe I handed it to him and he returned it to me to bring up with more accounts to be signed. I made out the cheque and presented it to Major Fern, there was some other accounts, one to McEwen and Younger and someone else. The invoice for the NAAFI for the previous month and also for this entitlement. The cheques were signed without question and sent off, they included this one for the invoice from the NAAFI which was attached and handed to him, the invoice was with the accounts and right before him.

Q234 What was intended to be done with the spirits?
A234 They were intended to be sold by the bottle to the members of the mess.

Q235 What relation had that transaction with the meeting of the mess that has been described?
A235 This was the completion of the will of the mess.

Q236 What was the date of this meeting you have referred to?
A236 Sometime between the 11 Nov and the 25 Nov 43.

Q237 Then I take it the spirits were delivered, where were they put?
A237 The stock was to be in the sgts mess and with the aid of the mess steward a large part of it was put below surface and the gin was left on the surface to be sold. The stock was clearly marked in cartons.

Q238 How was it disposed of?
A238 It was sold to members of the mess and those who wanted it immediately, in order to see that everyone had a fair share of it I took control of it and took anyone's name that wanted a bottle and put his name on a pad that was kept in the accounts office. I kept two lists, one with those who had taken theirs and had paid me and those that wanted some but had not taken it.

I kept the money for it in the safe in the accounts office and finally credited it with the account of the sgts mess. There was a profit on the whole transaction. It was understood that the officers on strength, not having a mess would be allowed to have a supply and some of them took what was available.

Q239 How were these purchases arranged?
A239 The members usually bought by cash and they would be given a bottle over the bar and the entry made in the cash book. When purchased by check that was deposited in the sgts mess account some of the stock was delivered at the bar, some handed to people other places. In the case of CSM Raistrick, he came into the accounts office and asked me to keep him a bottle of gin it was handed to him by the bar steward.

Q240 How about the transaction in Jan?
A240 That was still another purchase.

Q241 I show you exhibits 7 & 6, how was the amount there determined?
A241 To clarify the whole case. We are always 30 days in arrears and at the NAAFI we trade with regularly, however we were able to get this added stock and I put it up to the mess and was authorized to get it, so I made out a check and thus we were able to get the spirits before the holiday season was over. It was a special meeting of the bar committee and mess committe.

Q242 What was Major Fern told about that cheque?
A242 I don't recall him asking but if he did question it he was told that it was for our entitlement of spirits for the holiday season.

Q243 Was there anything done about the other transactions which came out in the evidence regarding the Bordon NAAFI?
A243 No Sir. We have spent several hundred pounds there and if the manager has any supply of liquor left over he lets us know and we pick it up, that is the reason for the cheque being left blank, we were often able to get a few extra bottles.

Q244 What exaplanation did you give Capt Fer when you asked him to asked him to sign a cheque leaving the amount blank?
A244 I explained that we did not know the amount we could purchase at the NAAFI, and told him that whoever went in to purchase it would fill in the amount required. I told him it was for any entitlement that we could get at the NAAFI.

Q245 What else did you buy at the NAAFI except spirits?
A245 Ocasionally a few cigarettes, but not very often we don't like them and have a very little demand for them.

Q246 What would be your bill excluding spirits for a month from the NAAFI?
A246 About £13 for cigarettes, choclates and other odds and ends, such as dry canteen items.

Q247 Can you tell the Court what knowledge the RSM had of these spirits transactions in the sgts mess?
A247 He was present in the mess as chairman or senior member when these items were discussed by the mess as a whole, he was later present when the board of management of the mess met to discuss it and he in turn was to act between the board of management and the Col for the permission to have spirits sold in the glass again instead of by the bottle.

Q248 How about CSM Steele?
A248 He was called away when the stock was being purchased, however he was one of the members that bought some for Christmas and he knew it was bought through the mess.

Q248 Regarding the issue of the order by Capt Fern can you tell the Court whether you were present with RSM Illingsworth, CSM Steele when Capt Fer issued any instructions regarding the sale of spirits in the mess?

A 248 No Sir. I heard no such order.

Q249 Were any orders issued to you at any other time by Capt Fern regarding the purchase or sale of spirits in the mess?
A249 No Sir.

Q250 Was there an audit that month?
A250 Yes Sir, there was two auditms in Nov. All accounts and account books were available and were examined by the unit audit board and signed by them before being passed to the PRI.

Q251 What were they shown along with the statements?
A251 The stock was available in the accounts office and the cash book from the bar and the order book which was endorsed.

Q252 What was done about invoices at the audit?
A252 They were passed as called for and checked off against the statement and passed on as having been examined, all invoices whether paid or not.

Q253 How about Ex 3?
A253 It was available and examined by the unit audit board, and also exhibit 6.

Q254 I show you a document, what is it?
A254 It is the stock book for the sgts mess, Cdn Det Bks. Here are the accounts for the months of Dec 43 and Jan 44 (Witness shows the Court the purchases from the NAAFI for the spirits represented by the invoices Exhibits 3 and 6, stock book of sgts mess Cdn Det Bks marked Exh 14 by the Court)

Q255 Who made the entries in this book?
A255 I did.

Q256 What if any remarks were made to you by the president or members of the audit board regarding these transactions of spirits?
A256 There was no observations made by the audit board to me. They knew that spirts were sold in the mess they had bought whiskey there.

Defending Officer stated that the members of the audit board for the months of Dec and Jan were not now available, as he had been given to understand.

Q257 With reference to you r subsequent history after you ceased to be treasurer of the sgts mess?
A257 I ceased to be treasurer about the 17 Feb 44 and was posted to No 6 Coy in London and then re-posted to Manchester Det and remainded there until 24 Jun 44 when I returned to 1 CGRU as a pte as I was up until that time acting sgt and Staff.

CROSS EXAMINATION BY THE PROSECUTOR

Q258 Did you between the 15 Nov 43 and 18 Feb purchase spirits for the sgts mess?
A258 Yes Sir.

Q259 Did you during the same period sell spirits for the sgts mess?
A259 Yes Sir.

Q260 I show you three cheques exhibits 8,9,10, were they payments for liquor belonging to the sgts mess?
A260 Yes Sir.

Q261 Did you deposit them personally?
A261 No Sir. They were signed and handed to the Mess Committee and deposited with the remainder of the funds.

Q262 When you took ex 4 into Capt Fer to be signed you say you brought in at the same time the invoice ex 3?
A262 Yes Sir.

Q263 And were there other cheques and invoices brought in at the same time?
A263 Yes Sir.

Q264 And Cheques in one bundle and invoices and bills in another?
A264 I brought them all together, the cheques separate and the invoices separate, they were not pinned together, I presented them all to Capt Fern for signature.

Q265 Do you know for a fact that he checked the invoices against the cheques as he signed them?
A265 He should have, and had the opportunity, they were all there. I was responsible to get the cheques and bills prepared which I did and placed them on his desk, I know that they were all there as there would be a corresponding cheque for each bill or invoice.

Q266 Was Ex 6 brought in with the cheque ex 7 to Capt Fern together?
A266 Yes Sir.

Q267 Were other invoices and cheques brought in at the same time?
A267 Yes, the cheques were on top of the pile of invoices. I do not know whether the saw the invoices but they were there for his check.

Q268 Was there any resolution during this period in the minutes of the sgts mess or decision that spirits should be sold by the bottle?
A268 Yes there there was a decision come to and voted on by the mess. This was carried out at a meeting subsequant to the 11 Nov and one before the 25 Nov 43. However the minutes of the meetings were not properly kept a fact that had become apparent at the Court of Inquiry.

Q269 In that case why did you not still sell over the bar?
A269 I sold several bottles over the bar. I had the spirits in plain sight of anyone that took the trouble to look.

Q270 Did anybody else order spirits during the period under review?
A270 The NAAFI entitlement was signed for by the President of the mess, I made out the cheques.

Q271 Did you handle the money obtained from the sale of the liquor in the sgts mess?
A271 I handled all the moneys for everything sold by the sgts mess.

Q272 Did you, during this period, lead people to believe that you had personal contacts where you could procure liquor for them?
A272 I told anyone wanting liquor that they were buying from the sgts mess. And some of the members that purchased bottles of liquor knew where it had come from.

BY THE COURT

Q273 Did Capt Fern every tell you to cancel Ex 1?
A273 No Sir, I was never told by Capt Fern to cancel it or by anyone else to cancel it. After it was signed it was put into the mail and nothing more was brought up about it.

Q274 Did he ever say in words to you that there would be no more buying or selling of spirits in the sgts mess?
A274 No Sir.

Q275 How did he ask you for the 12 bottles of whiskey?
A275 He asked me if any stock was availa le, I told him there was and he asked if it could be left at his billet. I did not discuss with him where it was coming from, as the officers had no mess it was customary for them to buy spirits from the sgts mess.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

CASE FOR THE DEFENCE IS CLOSED

PROSECUTER ADDRESSES THE COURT ON THE FINDING:

Sir

As I pointed out to the Court previously I am not here to make an investigation. During the long period at 1 Cdn Det Bks. We are faced with certain charges and as far as the Prosecution is concerned it is merely facts that have been produced that I have to rely on. Under Sec 40 he is charged with receiving a certain order regarding the purchase of liquor and the sale of liquor or spirits in the sgts mess, for the sgts mess, and he acted contrary to that order. He purchased and sold spirits and if I have proved to the satisfaction of the Court that he did this then you must find him guilty.

Now the facts xx are these. So far as the order which is one of the keys to the whole question is concerned we have positive statements of Capt Fern that at that time he was a major and PRI of the sgts mess and had received certain orders from Col Shanklin and passed these orders on to the mess committee and to the accused. There is no question here whether it should have been by the glass or by the bottle, under the counter or over the counter. It is a complete prohibition, the comple lack of spirits by anybody in the sgts mess, and the sale or purchase of spirits for the mess. We have first of all Ex 1 the letter signed to the NAAFI mentioning the number of members of the sgts'mess and on the basis of that letter the NAAFI allocate certain amounts of liquor or spirits, this letter is dated 1 Nov 43 signed by Major Fern, subsequently no more letters were written or sent. Major Fern gave orders for the cancellation of that letter and was told by the accused that it would be tended to and depended upon the accused to have it done. I am not here to say that one person is to be blamed more than another, that is for the Court to decide, but taken everything into consideration I feel that the Court should come to the conclusion that Capt Fern had in fact cancelled that letter and that nothing of its kind was ever sent out after 1 Nov 43 as there was a definite prohibition as to the sale of liquor in the sgts mess.

We have certain invoices which involved the purchase of spirits by the sgts mess, we have the cheques which are in payment for the spirits mentioned in the invoices, all these cheques were thrown into the PRI's basket to be signed and he had too much work to spend all day sorting and comparing and checking those invoices and cheques, he had a staff that was responsible for that sort of work. We have a cheque with Major Fern's name on it a personnal cheque, however he signed that in payment for some spirits which he was under the impressio had been bought privately for him.

Then we have the evidence of the RSM, the senior officer inthe sgts mess who tells us that if he had known that thesgts mess was buying or selling liquor he would have reported the matter, he is aware of the order that there should be no liquor in the sgts mess. To me the question of whether it was sold by the bottle or by the glass does not come into the picture, and the RSM is of the same opinion, he would have had it stopped whether it was by the glass or the bottle. RSM says he bought a bottle from the accused and belives it was a personal transaction, he believes he was not buying stock belonging to the sgts mess. Capt Clark also bought spirits and he too believes it was a personal transaction, here are two people that believe Dwane had special personal contacts, perhaps it was because he had been working in the mess and had been buying for them that gave these people that impression. CSM Raistrich also bought spirits and he says it was a personal transaction and received his bottle off the premises. You will notice that all the members of the mess are anxious to point that any transaction was off the presises and was a personal transaction between them and the

accused. Everyone make it clear that he did not know it was liquor that belonged to the sgts mess, and some, those in authority have stressed that had they known the matter would immediately have been reported. I must remind the Court that even if other members of the mess were not convicted in this matter there is only one man on trial today, the accused is on trial and the accused alone charged with a contravention of orders issued to him by Major Fern. It is obvious from the evidence of all the witnesses for the Prosecution that there was liquor around and in the mess, and in a couple of cases that at least three bottles were mess property, those that were raffled at Christmasstime, those three bottles alone if there had been no more was a contravention of the orders received by the accused and that would consitute grounds for these charges. The accused sent Jean-Louis to Aldershot and collected some spirits that were delivered to the home of Major Fern, these spirits were bought in the name of the sgts mess, 1 Cdn Det Bks and charged to that account. With this evidence before the Court I leave the decision to you, I feel that the Prosecution has produced sufficient evidence to find him guilty on both charges.

DEFENDING OFFICER ADDRESSES THE COURT ON THE FINDING:

Sir,

The charges against the accused relate to the purchase and sale of spirits after being warned by Capt Fern not to do so. The evidence of Capt Fern tells us that he knows he warned the accused, on crossexamination it was made plain that less than a month ago he was not positive that he warned the accused. I suggest that his conviction arises from evidence stated and discussion with others since he gave his evidence at the summary. I would like to draw attention to two or three slight mistakes in the evidence as outlined by the Prosecutor in his address. With relation to the letter of 1 Nov, the Prosecutor states that Major Fern's evidence was that no more letters were sent but actually Major Fern said that no more letters were signed by him or to his knowledge. Also the Prosecutor suggested that Capt Fern said that the letter was cancelled and not sent out, actually he said he told the accused to cancel it, but he did not write a cancelling letter or take any effective steps to have a letter cancelled that had been mailed 25 days. Now it is significant that Capt Fern never warned anyone of the order, the RSM says he heard this order from the CO who told several members of the mess at the same time, but no one corroborates Capt Fern's statement that it was he that told them of this order or of any order. The Prosecutor next referred to the evidence of the RSM and said that the RSM was unaware of the transactions, and that if he had known he would have reported them. It is true that he had no knowledge of them, it is also true that all witnesses are anxious to deny any knowledge of anything to do with this case, but CSM Hurrel and Bennison said that the RSM did know of these incidents and there is no evidence that he reported anything. On that point the RSM has talked himself out of the Court. Now what are the facts of this case? The case as we see it took place between 25 Nov and 18 Feb, the accused bought and sold spirits for the mess, that in itself is not enought to convict, the Prosecution must convince the Court that he received the order that he must not do so. On the evidence which the Prosecution relies we have the evidence of SM Hurrel, Steele and Sgt Bennison and S/Sgt McArthie to the fact that it was announced in the mess by the RSM that liquor could not be sold by the glass, but it was decided in some way that liquor could be sold by the bottle, that is endorsed by the evidence of the accused who understood the same. What order then was he contravening? Only if the Court believes that Capt Fern

personally warned the accused, can they find that he acted contrary to the order because the only other evidence, apart from that of Capt Fern is that of the RSM and CSM Raistrich who bought bottles os spirits from the accused. I submit that the Court cannot believe that these transactions, large transactions involving over 80 bottles of spirits could have occured in the under hand fashion that the Prosecution suggests. And if, as SM Hurrel and Sgt Bennison and McArthie state that sales made were common knowledge and that this liquor was for sale in the mess what are we to believe. Are we to believe that the whole mess were involved in a huge conspiracy. In that case it would appear more logical than what I've heard about certain people who were in and out of the mess every day and yet didn't know that whiskey was being sold. In that case must we prosecute the whole mess? or are we to believe that the sale of liquor in the fashion in which it did take place was not prohibited.

It is true, as the Prosecutor said, a number of times that a number of witnesses were anxious to point out that they did not see liquor in the mess and they add that had they done so they would have stopped it, and that any transactions they had were private transactions between themselves and the accused. All these people have gone free and the accused prosecuted, there has been no evidence that these people know that the transactions were private, no one offered any suggestion as to where he could get the liquor in some of the quantities that he seemed to be able. The accused has come before the Court and told you the whole story, he bought and sold this spirits as a favour not only to the members of the sgts mess but as a convenience to the officers who did not have a mess, there was no personal profit for him, all moneys were placed in the account of the sgts mess. We have the evidence of the chairman of the bar committee and the president of the mess who authorized the purchase of this liquor, the accused made up the cheques, signed them and then placed them together with the invoices before the PRI for his signature. If Capt Fern did not have to check these invoices and do the job properly then he should have asked for assistance, and no mention has been made of his applying to the CO for help in any particular job. There was two bottles of spirits in the mess the two that were raffled, and they were raffled with the mess presidents sanction, and if, as the Prosecutor says even two bottles proves that there was a contravention to the rule, then as the two responsible people of the mess knew of the contravention, who is then responsible. I submit that the responsibility was taken off the accused shoulders and others are responsible for any wrongs or contraventions to the order regarding liquor in this mess, I therefore feel that the accused should be acquitted. It is of course that it is the law that in order to find an accused guilty on either charge in such a case as this that there must be no doubt in the minds of the members of the Court, and in this particular case there is conflicting evidence and I am sure that it has not been proven to this court beyond all reasonable doubt that the facts to support the charges are true and have been proved by the evidence produced, and if the Court is not satisfied beyond all reasonable dout that some of the essential facts has been proved in evidence then it is the duty under the law to acquit the accused, and that applies equally to both charges.

COURT IS CLOSED TO CONSIDER THE FINDING

COURT IS RE-OPENED AND THE PRESIDENT ANNOUNCES THAT THE ACCUSED IS FOUND NOT GUILTY ON BOTH CHARGES.

~~CANADIAN DETENTION BARRACKS~~
~~CANADIAN ARMY OVERSEAS~~ Exhibit A

CDB/S-0-0
1 Nov 43

The manager
Mines and Spirits Dept.,
N.A.A.F.I.,
Esher, Surrey

Re: Sergeants Mess Mine and Spirit Entitlement

1. I hereby certify that the number of warrant officers and sergeants on strength this Unit as of today's date is one hundred and twenty two (122).

2. May this unit be supplied with the necessary forms to purchase out entitlement under the existing rationing scheme.

3. For yourconsideration and necessary action, please.

(signed) (A. Fern) Major,
O/C
CANADIAN DETENTION BARRACKS
CANADIAN ARMY OVERSEAS

Certified true Copy 8 Sep 44
John Bellchambers

Certified true copy of the original thereof:

President.....

EX 1
MM

Copy/saw

CANADIAN DETENTION BARRACKS
CANADIAN ARMY, OVERSEAS

CDB/9/0/0
22 Nov 43

EX 2

The Manager,
Lloyds Bank Ltd.,
Grayshott, Surrey.

Re: Canadian Detention Barracks, Sergeants Mess Account

1. Kindly be notified that all previous powers of signing cheques are cancelled with effect to-day and the following is substituted on the a/m account.

2. All cheques will be signed in future by a member of the Board of Management and by the A/Commandant Major W.Fern.

3. Specimen of signatures:-

..... CSM	..... S/Sgt	..... Major
(J.T.Steel)	(J.R.Dwane)	(W.Fern)

4. All cheques will be signed by either one of the a/m Non-Commissioned -Officers and by Major W Fern, A/Commandant.

5. For your information and necessary action, please.

.....Major
(W.Fern) A/Commandant.
Canadian Detention Barracks
Canadian Army, Overseas

Certified true copy of the original thereof
President. .....

NAVY ARMY AND AIRFORCES INSTITUTES Exhibit 73

No. L. 07298

NAAFI, Stationery Branch,
Kennings Way,
London, SE 11

1st December, 1943

Pro forma Invoice

PRESIDENT SERGEANTS MESS
CANADIAN DETENTION BARRACKS
C.A.I.E.
HASELMERE, SURREY

Please send your remittance with this Invoice to NAAFI Stationery Branch, Kennings Way, London, SE11

If remittance is not received within one month from date of this Invoice this transaction will be automatically cancelled.

IMPORTANT

Loss in Transit, Damage, etc.

Damage, loss or discrepancy in weight must be noted on the delivery sheet and the sheet signed accordingly, a written notification advising the damage or shortage must be sent immediately to the Railway Company or Carrier.

If goods are not received within ten days of the despatch of your remittance to the Warehouse the Railway Company or Carrier which usually delivers goods should be notified.

A copy of such notification should be sent to Manager, NAAFI Stationery Branch, Kennings Way, London, SE 11

		Price	Amount
30 bottles	Whiskey @	22/9½	33-18-9
12 bottles	Gin @	22/0½	13-4-6
3 bottles	Sherry (SA) @	10/4	1-11-0
2 bottles	Port (Empire) @	10/4	1-0-8
1 bottle	Cordials @	1/11½	0-2-0
4 containers	@	15/-	3-0-0
	£		52-16-11

CONSIGN TO HASELMERE SURREY RLY STN

Certified true Copy of Seg 44

Certified true copy of the original thereof:

President.

EX 3

MG

Certified true copy of the original thereof:

Exhibit "C"

D No. 347 15 Dec 43

31026

LLOYDS BANK LIMITED
Grayshott
PAY Navy Army and Airforce Institutes

Fifty two Pounds, sixteen shillings, eleven pence.

(signed) (JR Dwane) S/Sgt
(W. Fern) Major

52-16-11
CANADIAN DETENTION BARRACKS SERGEANTS MESS
WESTMINSTER BANK LTD
NEWINGTON BUTTS BRANCH
A/C NAVY ARMY AND AIR FORCE INSTITUTES
NOT NEGOTIABLE

Ex 4
RM

Official Receipt E40353 ~~Exhibit "D"~~
Navy Army and Air Force Institutes

Received PSM Date 10th Dec 1943
Canadian Detention Barracks, CAIE,
Haselmere, Surrey

FIFTY TWO----------Pounds
SIXTEEN----------Shillings ELEVEN----------Pence

Cash (Net)

		Discount Allowed	10% Premium added
Credit A/C			
Deposit A/C			
Total	52	16	11

Regd No. SAB LDN

For NAAFI (signed)
(HJ Baker)

Area Inv I. 07298

Certified true Copy 8 Sep 44
J. de L. Kellett Maj

Certified true copy of the original thereof:

President. [illegible] Col

Ex 5
PMS

Exhibit "E"

Copy E. 07874

1-1-44

President Sgts Mess,
Canadian Detention Barracks.

DR: to Navy Army and Air Force Institutes.

Kennings Way, Kennington, SE 11

QUANTITY	DESCRIPTION	PRICE	AMOUNT
25	Bottles, Whiskey	22/7½	28-5-8
12	" Gin	22/0½	13-4-6
2	Sth African Sherry	10/4	1-0-8
1	Port	13/0½	13-0
8	Cordials	1/11½	15-8
	4 containers	15/-	3-0-0
		£	46-19-6

Certified true copy & Sig 44

John Sellers Capt

Certified true copy of the original thereof:

President. [redacted] Capt

EX 6

WLG

Certified true copy of the original thereof:
President

Jan 1944

No. 347586

Ex 7 RM

Exhibit 4

31026

6 January, 1944

Certified true copy & say so
John Bellchambers

LLOYDS BANK LIMITED

Grayshott

PAY Navy, Army and Airforce Institutes or Order
Forty-Six Pounds, nineteen shillings and six pence
(signed) W. Fern, Major
J.R. Dwane, S/Sgt.

46-19-6
CANADIAN DETENTION BARRACKS SERGEANTS MESS ACCOUNT
WESTMINSTER BANK LTD
NEWINGTON BUTTS BRANCH
A/C Navy Army and Air Force Institutes,
NOT NEGOTIABLE

7546

Copy/saw

No B042264 London 12 January 1944

BANK OF MONTREAL
9, Waterloo Place, Pall Mall, S.W.

Pay To Cash or Order

Nineteen Pounds

£-19-0-0

"W FERN"

LLOYDS BANK
Grayshott, Hindhead Surrey.

Certified true copy of the original thereof:

President.....

EX 8

Copy/saw

7546

No B 254305

London 13 January 1944

Bank of Montreal
9, Waterloo Place, Pall Mall, S.W.

Pay To Cash or Order

One pound ten shillings

£ 1-10-0.

"W. FERN"

LLOYDS BANK
Grayshott, Hindhead Surrey.

Certified true copy of the original thereof
President. [illegible] 11/01
Ex 9
MY

Copy/saw

7546

No B 254311

London 15 February 1944

Bank of Montreal
9, Waterloo Place, Pall Mall, S.W.

Pay To Cash or Order

Six pounds five shillings

£ 6-5-0.

W. FERN

Certified true copy of the original thereof:

President. EX 10

VMS

LLOYDS BANK
Grayshott, Hindhead Surrey.

Navy Army and AirForce Institutes. Red Z 248659
R. 182403

Exhibit "G"

INVOICE for supplieson 3-1-44
TO Sgts Mess, Cdn Detention Bks
Headquarters

Quantity	Article	Price
2	Scotch @ 21/9	2-11-6
1	Gin	1-5-3
		3-16-9
		7-7
	Total	3-9-2

RECEIVED GOODS AS PER INVOICE
SIGNATURE XXX
DATED

R. 182403

Certified true copy 8 Sep 46

Certified true copy of the original thereof:

President.....

Ex 11

SUMMARY OF EVIDENCE
In the case of

D. 71212 Private DWANE, James Rodgers, Canadian Provost Corps on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian ArmyOverseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

The officer taking the Summary of Evidence warned Captain William Fern, Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit that if he is asked questions that would tend to incriminate him at his own trial he need not answer, but in any case this evidence would not be used against him at his own forthcoming trial.

FIRST WITNESS for the prosecution

Captain William Fern, Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn, states:

I am Captain William Fern, Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit.

From the 11 of April, 1944 until 23 August, 1944 I was D.A.P.M. 2 CBRG, Canadian Army Overseas. Now I am presently on the strength of No. 1 Canadian General Reinforcement Unit. Between the 25 November, 1943 until 18 February, 1944 I was the Assistant Commandant of Canadian Detention Barracks, Canadian Army Overseas. Between the 25 November, 1943 and 18 February, 1944 Private Dwane, whom I now recognize as the accused was a Staff Sergeant at Canadian Detention Barracks. He was N.C.O. employed in the office of the Accounts Officer and Sergeants' Mess Treasurer. To the best of my recollection sometime in November on or about the 25 I gave an order to the accused to the effect that there would be no purchases or sale of spirits for the Sergeants' Mess, Canadian Detention Barracks. I recall having signed a letter, Exhibit "A", CDB/9-0-0 dated 1 November, 1943 addressed to Manager, Wine and Spirits Department, N.A.A.F.I., Esher, Surrey, reference Sergeants' Mess, Wine and Spirit entitlement. I believe that sometime in November I told the accused not to send that letter and to cancel it. I remember having bought some spirits from the accused when he was Sergeants' Mess Treasurer. I paid by cheque made out to cash as I figured it was a personal transaction between me and the accused. I do not recall having seen the Invoice, Exhibit "B", No. L.07298 dated 1 December, 1943 addressed to the President of Sergeants' Mess, Canadian Detention Barracks, containing purchase of spirits, wine and cordials and containers in the amount of £52.16.11.. I can see that this invoice represents purchase of spirits by the Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. Kenningsway, London, SE 11. I don't recall having seen the official receipt, Exhibit "D", No. F 40353 dated 10 December, 1943 for the amount of £52.16.11 covering payment alleged in the invoice L. 07298. I identify as Exhibit "C", cheque No. 347--2 of Lloyd's Bank Limited, Grayshot dated 6 December, 1943 payable to N.A.A.F.I. in the amount of £52.16.11 and signed by myself, W. Fern, then Acting Major and J.R. Dwane, then Staff Sergeant. I signed the cheque to cover payment for sup-

Certified true copy of the original thereof.

President.....

Certified true copy of the original thereof
President

Official Receipt Z248659

Navy Army and Airforce Institutes,
Headquarters - Ruxley Towers, Claygate, Esher, Surrey
DATE Feb 3rd, 1944

RECEIVED
of Sgts Mess Detention Bks
Three POUNDS Nine SHILLINGS two PENCE

Amount Paid 3-9-2
Discount 7-7
Total £ 3-16-9 (signed) (E. Marsden)
for NAAFI

Command Aldershot Regd No. 36689

Exhibit "B"

Ex 13 certified true copy & sig

Exhibit "A"

Certified true copy of the original thereof:
President.....

31026
February, 1944

certified true copy
[illegible]

LLOYDS BANK LIMITED
Grayshott

PAY Navy Army and Airforce Institutes or Order

EX 12 Three Pounds Nine Shillings Twopence
(signed) (W. Fern) Maj
(JR Dwane) S/Sgt.

3-9-2
CANADIAN DETENTION BARRACKS SERGEANTS MESS ACCOUNT

plies for the Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. I don't recall having seen, during that period, copyof invoice, Exhibit "E", L.07874 dated 1 January, 1944 addressedto the President, Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I., Kenningsway, Kennington, SE 11 containing purchase of spirits, wine, cordials and containers for the amount of £46.19.06. I can see that this invoice was to cover the purchase of spirits by Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. I recall having seen cheque No. 347586, Exhibit "F", Lloyd's Bank Limited, Grayshot, dated 6 January, 1944, payable t o N.A.A.F.I. for the amount of £46.19.06 and signed by myself, W. Fern, then Acting Major and J.R. Dwane, then Staff Sergeant. As for the first cheque it was in prepayment of supplies bought for the Sergeants' Mess, Canadian Detention Barracks from N.A.A.F.I. I can assume that the cheque, Exhibit "D" was to cover the purchase alledged in the invoice, Exhibit "B". I can also assume that the cheque, Exhibit "F" was to cover the amount alledged in the Invoice, Exhibit "E". ~~Regimental Sgt Major Illingsworth and Company Sgt Major Steele, J.T.,~~ I gave an order to Regimental Sgt Major Illingsworth and Company Sgt Major Steele, J.T., at the time President of the Sergeants' Mess, Canadian Detention Barracks, that no spirits were to be sold, by bottle or otherwise in the Sergeants' Mess, and to the best of my recollection it included the accused. That order also included that no spirits would be purchased for the Sergeants' Mess, Canadian Detention Barracks. To the best of my recollection that order was given on or about the 25 November, 1943.

The accused declines to cross-examine this witness.

(W. Fern) ~~Major~~ CAPT

SECOND WITNESS for the prosecution

H. 6234 Regimental Sgt Major Illingsworth, D., Canadian Provost Corps on the strength of Canadian Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am H. 6234 Regimental Sgt Major Illingsworth, D. Canadian Provost Corps on the strength of Canadian Detention Barracks. I was appointed Regimental Sgt Major on 23 November, 1943 at Canadian Detention Barracks, Canadian Army Overseas. I recognize Private Dwane as the accused. The accused was a Staff Sergeant at the Canadian Detention Barracks between the 25 November, 1943 and 18 February, 1944. During that period he was the Sergeants' Mess Treasurer. I don't recall having told the accused that there would be no purchase or sale of spirits in the Sergeants' Mess. Some time in October I asked the accused to get me a bottle of spirits and I got it sometime in December, 1943 from the accused, to whom I paid the regular price. That transaction did not occur in the Mess. During that period, due to quite intensive outside work I was not very often in the Sergeants' Mess and while I was there I did not notice any raffle of spirits.

The accused declines to cross-examine this witness.

H. 6234 RSM Illingsworth, D.

~~Certified true copy of the original thereof~~

President.....

THIRD WITNESS for the prosecution

Pursuant to R.P. 76 of M.M.L., take notice that Captain W.A. Clark, RCAPC, attached to Canadian Detention Barracks, will give evidence at your forthcoming trial as follows:

Captain W.A. Clark has ~~not~~ bought some spirits from the Sergeants' Mess, Canadian Detention Barracks sometime between 25 November, 1943 and 18 February, 1944.

The accused declines to cross-examine this witness.

~~W.A. Clark, Capt~~

FOURTH WITNESS for the prosecution

M. 37281 CSM Raistrick, W., Canadian Provost Corps on the strength of No. 22 Canadian Special Employment Company, Canadian Army Overseas, having been duly sworn, states:

I am M. 37281 Company Sgt Major Raistrick, W., Canadian Provost Corps on strength of No. 22 Canadian Special Employment Company. I was Company Sgt Major in Canadian Detention Barracks, Canadian Provost Corps during the period 25 November, 1943 to 18 February, 1944. I know the accused. During that period he was Staff Sergeant in Canadian Provost Corps at Canadian Detention Barracks, Canadian Army Overseas. The accused was Treasurer of the Sergeants' Mess. I bought some spirits during that period from the accused. I asked him about October if he could get me a bottle for Christmas and he said he would try. One day, somewhere around the end of December I asked him if he could get me a bottle and he said "yes" and he let me have one outside the Barracks. I remember a raffle during that period but I don't remember if it was spirits or not. I think it was chicken and I never paid much attention to these raffles anyway. During that period I never saw any bottles of spirits in the bar of the Sergeants' Mess, Canadian Detention Barracks.

The accused declines to cross-examine this witness.

W. Raistrick

M. 37281 CSM Raistrick, W.

FIFTH WITNESS for the prosecution

D. 105754 Private Jean-Louis, RCASC, attached Canadian Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am D. 105754 Private Jean-Louis, RCASC, attached Canadian Detention Barracks. I have been a driver for Canadian Detention Barracks since 6 January, 1943. I recall having been ordered by the accused, then a Staff Sergeant, to go to McEwan and Youngers, Aldershot and pick up a parcel to be delivered to Captain, then Acting Major, Fern. I did pick up that parcel as ordered and I found it was two bottles of spirits and I delivered them to Captain, then Acting Major, Fern's private residence. When I was handed over the parcel I was given the bill which I gave back to the accused, then Staff Sergeant. I don't know if these bottles were bought for the Sergeants' Mess.

The accused declines to cross-examine this witness.

A. Jean-Louis

D105754 Pte Jean-Louis

Certified true copy of the original thereof

President.....

8 SIXTH WITNESS for the prosecution

A. 34002 Company Sgt Major Hurrell, P., Canadian Provost Corps on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am A. 34002 Company Sgt Major Hurrell, P., Canadian Provost Corps on strength of No. 1 Canadian General Reinforcement Unit. I was Acting Staff Sergeant, Canadian Detention Barracks between the 25 November, 1943 and 18 February, 1944. During that period I was Chairman of the Bar Committee, Sergeants' Mess, Canadian Detention Barracks. I inspected the bar of the Sergeants' Mess at least once a day. Around the end of November or the beginning of December during the course of my inspection of the bar of the Sergeants' Mess, I noticed two bottles of spirits at the bar on the shelf. They were in plain sight entering the bar from the bar door. Between the 25 November, 1943 and 18 February; 1944 I noticed once a raffle of bottles of spirits in the Sergeants' Mess. To my knowledge two bottles were raffled. The first one was raffled for 45 shillings, the second one was dropped down ten shillings by the President of the Mess, making a total of 35 shillings for the second bottle. There were no minutes kept by the Bar Committee during that period while I was Chairman of the Bar Committee. I remember that Staff Sergeant Adams and Staff Sergeant Fowler were also members of the Bar Committee. I never bought any spirits from the accused during that period. I don't remember if the accused was or was not a member of the Bar Committee during that period.

The accused declines to cross-examine this witness.

Hurrell
A34002 CSM Hurrell, P.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you givem will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of 4 pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e)(f) and 76 have been complied with.

(JULES PELLETIER) Capt.,
Headquarters, CRU
Officer detailed to take Summary of Evidence.

~~Certified true copy of the original thereof:~~

In the Field
5 September, 1944.

~~President.....~~

ADDITIONAL SUMMARY OF EVIDENCE

In the case of

D71812 Private DWANE, James Rodgers, Canadian Provost Corps on the strength of No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of theCommanding Officer, the additional Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

C. 30146 Sgt Bennison, J., Canadian Provost Corps, on strength of Canadian Detention Barracks, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am C30146 Sgt Bennison, J., Canadian Provost Corps, on strength Canadian Detention Barracks, ~~Canadian Provost Corps~~. I was Sergeants' Mess Caterer for the Canadian Detention Barracks between the 25 November, 1943 and 18 February, 1944. Staff Sergeant Dwane informed me just before Christmas last year that it had cost him 32 shillings in taxi fares to bring some spirits to the Mess, so I suggested that he raffle three bottles off in the Mess. The first bottle we raffled off I got two Pounds 6 shillings and while I was raffling the second bottle off, CSM Steele intimated that we were getting too much money and he cut it down to 35 shillings. That was in the Sergeants' Mess. I gave the proceeds of the raffle to the accused, whom I now recognize and who was then a Staff Sergeant and, as far as I can remember, was Treasurer of the Sergeants' Mess, Canadian Detention Barracks. During that period I saw 5 full cartons of spirits in the Sergeants' Mess, that would be 60 bottles. There was a few bottles down below underneath the trapdoor in the bar of the Sergeants' Mess and some in the porch and a couple of bottles in a little cupboard we had on the shelf, probably two or three bottles. When I was through raffling the three bottles of spirits off I purchased one bottle myself, to the amount of 30 shillings from the accused, out of one of these cartons and one I handed to CSM Raistrick on a note from Dwane. I was just in charge of the beer sale and the accused was looking after the stock of spirits. The shipments of spirits were brought in the Mess by the accused and they were kept in the bar of the Mess as I said in the beginning. I didn't keep any record in the stockbook of the liquor coming into the bar of the Sergeants' Mess. The stockbook wasn't kept in the bar. The stockbook was looked after by somebody from the bar committee or one of the committees but I don't know who he was. Sometime during that period I was requested to get our monthly assignment from McEwan and Youngers, sometime in January. I think in all I got seven bottles and then sometime later on I was asked to make inquiries about our monthly ration of spirits by the accused. Sometime in January I went to McEwan and Youngers, Aldershot, to get the entitlement of spirits for the Sergeants' Mess, Canadian Detention Barracks. I was told then that the Sergeants' Mess, Canadian Detention Barracks had already had their share of spirits for that month. I said that I never saw this entitlement of spirits and McEwan and Youngers showed me an invoice alleging three bottles of spirits as having been delivered to the Sergeants' Mess, Canadian Detention Barracks. The said invoice being signed by Pte Jean-Louis, a driver at Canadian Detention Barracks. At the request

Certified true copy of the original thereof

President.....

of the accused at the beginning of February, 1944 I went to Borden. I bought there for the Sergeants' Mess, from the Manager NAAFI Borden, three bottles of spirits. These bottles were handed over to me with an invoice that I identify as Exhibit "G", #R. 182803 addressed to Sergeants' Mess, Canadian Detention Barracks covering that purchase. Attached to it was an official receipt that I identify as Exhibit "H", #Z. 248659 addressed to Sergeants' Mess, Canadian Detention Barracks covering the amount of purchase mentioned in the Invoice, Exhibit "G". I had with me a cheque which I identify as Exhibit "J" #347591 Lloyd's Bank Limited, Grayshot, dated February, 1944 payable to NAAFI and signed by JR Dwane, Staff Sergeant, the accused and W. Fern, Major. The amount in that cheque was left blank. The accused had instructed me to fill in the amount on that cheque according to the amount of the purchase. I didn't have my glasses with me, but Staff Sergeant McLean, who xxxx was with me, who is now CSMS somewhere in France, in my presence, filled in the amount £3-9-2 to cover the payment of the amount alleged in the Invoice, Exhibit "G". I brought that stock of spirits to the mess and handed it over to the accused with the Invoice, Exhibit "G" and the official receipt, Exhibit "H".

The accused declines to cross-examine this witness.

C30146 Sgt Bennison, J.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down inwriting and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing additional Summary of Evidence, consisting of 2 pages was takendown by me in the presence and hearing of the accused and that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

(Jules Pelletier) Capt.,
Headquarters, CRU,
Officer Detailed to take additional
Summary of Evidence.

In the Field
8 Sep 44

~~Certified true copy of the original thereof:~~

~~President.....~~

LIST OF EXHIBITS

Exhibit "A" Letter CDB/9-0-0 dated 1 Nov 43 addressed to Manager, Wines and Spirits Dept, N.A.A.F.I. signed by W. Fern, Major, S i/c Cdn Det Bks, Camp.

Exhibit "B" Invoice No. L. 07298 dated 1 Dec 43 addressed to President, Sgts Mess, Cdn Det Bks from N.A.A.F.I. Stationery Branch, Wennings Way London, SE 11 disclosing a purchase of spirits for £58.16.11

Exhibit "C" Lloyd's Bank Limited Grayshott, cheque No. 347--8 dated 6 Dec 43 payable to N.A.A.F.I. to the amount of £58.16.11 signed by W.R. Dwane, S/Sgt and W. Fern, Major.

Exhibit "D" Official Receipt Z40285 dated 10 Dec 43 from N.A.A.F.I. of the amount of £58.16.11 addressed to President Sgts Mess, Cdn Det Bks.

Exhibit "E" Copy of Invoice 107874 dated 1 Jan 44 addressed to President Sgts' Mess, Cdn Det Bks from N.A.A.F.I., Wennings Way, Wennington, SE 11 involving a purchase of spirits for £46.19.6.

Exhibit "F" Lloyd's Bank Limited, Grayshott, cheque No. 347585 dated 6 Jan 44 payable to N.A.A.F.I. to the amount of £46.19.6 signed by W. Fern, Major and W.R. Dwane, S/Sgt.

Exhibit "G" Invoice No. B. 182403 dated 3 Jan 44 addressed to Sgts Mess, Cdn Det Bks from NAAFI, Borden, disclosing a purchase of spirits for £3-9-2

Exhibit "H" Official Receipt Z248659 dated 3 Feb 44 from NAAFI of the amount of £3-9-2 addressed to Sgts Mess, Cdn Det Bks

Exhibit "J" Lloyd's Bank Limited, Grayshott, cheque No. 347591 dated February 44 payable to NAAFI to the amount of £3-9-2 signed by W. Fern Major and JR Dwane, S/Sgt.

Certified true copy of the original thereof:

President.....

LIST OF WITNESSES

For the Prosecution

1. Capt W. Fern	1 C.G.R.U.
2. H. 6234 RSM Illingsworth, D.	Cdn Det Barracks
3. Capt W.A. Clark (RCAFC)	
4. M. 37281 CSM Raistrick, W.	22 Cdn Spec Emp Coy
5. D. 105754 Pte Jean-Louis	Cdn Det Barracks
6. A. 34002 CSM Hurrel, P.	1 C.G.R.U.

For the Defence

N I L

LIST OF WITNESSES (ADDITIONAL SUMMARY)

For the Prosecution

1. G. 30146 Sgt Bennison, J.	Cdn Det Barracks

For the Defence

N I L

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B-40548	Sgt.	Duval, W.A.	Lincoln & Welland Regt.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Drunkeness (Sec 19) ... 1 ... times.

For n/a ... ... times.

For n/a ... ... times.

For n/a ... ... times.

Date of first entry in Field Conduct Sheet 30 Mar 42

Date of last entry in Field Conduct Sheet 30 Mar 42

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused at the present time is under sentence for~~ ~~imprisonment~~ ~~with hard labour~~ ~~beginning on the~~ ~~day of~~ ~~fine~~

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for 0 days in military custody, *i.e.*, Cond 9 days in open arrest, Cond. days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 39 years 4 months

6. The date of his attestation ~~calling up for military service~~ is 6 July 40

7. The service which the accused is allowed to reckon is 3 years 10 months

†State the military decorations (if any) held by accused.

8. The accused is in possession of† C.V.S.M. & C.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of L/Cpl	10 Sep 40
In the war substantive rank of Cpl	1 Dec 41
In the acting rank of L/Sgt	1 Jul 42
In the rank of Sgt	1 Apr 43

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt.8870/668 100,000 4/42 A. & E.W.Ltd. Gp.698
(22489) Wt.29258/1873 80,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Nil	Nil	Nil	Nil	Nil

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 3rd day of April, 1944

(J.G. McQueen) Lt-Col,
Comd 1 Bn Linc & Welld R.

EEE-29

PTE ESSELMONT J.J. 6 Aide

ENTERED IN RECORDS OF C.M. 6666 29

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

D21

A.

Order convening the Court.

On Active Service, this Twentieth day of January, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* I am unable to appoint —
*(~~Three Officers to form the Court~~)
*(~~A Field Officer as President~~)
for the following reasons, namely :—

PROCEEDINGS REVIEWED
21 Mar 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.E. Leach	P.P.C.L.I.

Members.

Rank.	Name.	Regiment.
Captain	R.W. Blake	Sask. L.I.
Captain	L.V. McGurran	L. Edmonton Regt

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed C.B. Ware
(C.B. Ware) Lt.-col.
T/Commanding 2 Cdn Inf Bde
Convening Officer.

D21

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K52158 Private Esselmont, J.J. The Seaforth Highlanders of Canada.	First Charge When on active service, Committing a Civil Offence. A.A. Sec. 41. 3 cd.	Guilty	Guilty To be imprisoned with hard labour for twelve months. 24th Jan 44 Lt-col. Major Presidt. 2 C.I.M.	Confirm the finding and sentence of the Court. C.B. Ware Lt.Col. T/Commanding 2 Cdn Inf Bde.
	R.P. 35(B) has been complied with.			
	See charge sheet annexed, marked 'G'			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) C.B. Ware (Signed) Lt-col. Major
(C.B. Ware)Lt.-col.
T/ Commanding 2 Cdn Inf Bde.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twenty forth day of January, 1944, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The Interpreter)
~~*(4. The officers under instruction)~~
were duly sworn.

*Omit if not applicable.

Signed this twenty forth day of January 1944.

Lt-col. Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 28th day of January 1944.

C.B. Ware Lt Col.
Confirming Officer.

Promulgated and extracts taken in the case of K52158 Pte Esselmont J.J., Seaforths.

(*a*) (Dated) 29 Jan 44 (Signed) A Stretton Capt for O.C. 'B' Coy. Seaforth H.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23579) W1.46179/859 50,000 2-43 A.& E.W.Ltd. Gp.698

Lieut. Major, President D.F.C.M.

CHARGE SHEET

G

K52158 Pte. ~~John James~~ James John G.B.W. ESSELMONT, The Seaforth Highlanders of Canada, a soldier in the Canadian Army, Overseas, is charged with,
While On Active Service,

First Charge:
Sec. 41
Army Act

COMMITTING A CIVIL OFFENCE,

that is to say, burglary, with intent to commit a felony contrary to section 25 (1) of the Larceny Act, 1916, in that he, in the field, on the 10th January 1944 during the night, did break and enter the dwelling house of Signora Amina Politi, with intent to commit a felony therein.

A Creighton

(A.J. Creighton) Lt.-col.
O.C. The Seaforth Highlanders of Canada.

In the Field

6 Bty Rcv A.A. Regt. 20 Cdn.
T/Commanding 2 18th Lt A.A. Bde. ~~15~~ Jan 44

To be tried by F.G.C.M.

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) PARA 557

I certify that I have this morning examined

No K52158 Rank Pte Name Esselmont, J.J.

of The Seaforth Highlanders of Canada

and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station In the Field

Date 24 Jan 44

Geo. W. Woodyatt
Medical Officer

Trial of K52158 Pte Emelwood, [illegible] James John S. H. of C., C.
Army Overseas, C.M.F.

Capt. F. Bonnell, S. H. of C. appears as prosecutor

Lt. L. M. McBride, S. H. of C. defending officer appears as
counsel.

R.P. (110) A is complied with

K42 546 Sgt Delroyia, J, appears as interpreter.

The accused pleads guilty to the charge which is read read.

The Summary of Evidence as taken by Capt. F. H. Bonnell
S. H. of C. was read to the accused and is herein after
marked "H".

The accused having been duly sworn states as follows:

On Jan. 10 we were having a party. We ran out
wine. myself and a few of the other boys went out to
for some. We went to two or three places and had a
more drinks. After that I don't remember very much
about what happened until on M.C. about a couple of men
came and got picked on. I was told the next morning
what had happened. That is about all I can say
for.

Evidence as to character and particulars of service of accused.

Capt. H. F. Williamson, S. H. of C. being duly sworn states

I am Capt. H. F. Williamson assistant adjutant of S. H. of C.
Emelwood JJ, K52158 came to this battalion as a

imprisonment vacate and his MFH's 6 & 4 (digest.) have
not been record from Adm. Section, HQ & station. I produce
this supplementary sheet and this statement as to
character and particulars of service of accused.

The accused declined to address the court in connection with the
conduct sheet or statement as to character and particulars of service.

Address of Defending Officer.

In mitigation of punishment I would like to point out
that they: First the long service of the accused during the
6 Sept 1939. Secondly the fact that the accused was stunned
by point that in his own words he didn't know what
about when went on.

The court is closed to consider the sentence

Finding: The court finds the accused Guilty of the charge

Signed & dated this 24th day of Oct
1944

Lead. Major
President, F.G.C.

14 Jan 44

M.F.M. 6
R82158 Pte Esselmont, J.J.

M/n document not available at present time.

W.D. Reid Capt.
Adjt. The Seaforth Highlanders of Canada.

Summary of Evidence in the case of No K 2158
Pte Eastment J. of the Seaforth Highlanders
of Canada.

No. K 42646 Pte/Sgt. Eastment J. of the Seaforth Highlanders of Canada was admonished & required oath to act as interpreter

First witness:

Signorina Polita Bice Bicca of 50 Via Sofia 70 B.
Witness having been duly sworn deposes as follows:

I am Signorina Polita Bice Bicca of 50 70 B
Via Sofia Artoni. At about 10 o'clock in the evening of 10 January 1918 I was at home at 50 Via Sofia. I saw the accused whom I now identify and two other soldiers climb up the balcony of my house. The accused had a revolver in his hand. He entered the house and demanded cognac. We had no cognac and the accused opened all the drawers in the house looking for it. I was in bed and the accused ordered me to get up. I then told the accused we had no cognac so one of the others told me to go back to bed which I did. The accused then made me get up again and go outside. I told him I was cold so then the soldiers and my sister and myself went into my cousins house. The accused told us to stay where we were until he told us to come.

my cousin opened the door and the accused again demanded cognac. my cousins did not have any cognac so then the soldiers went away and stayed in my house until approximately 1130. I did not retire until they had left. I remind about 1130 and locked the doors and I the accused I cannot say which one fired a shot through the door. The next morning I complained to A.M.C.O. Office.

On the 16 January I attended an identification parade of soldiers and picked out the accused as being one of the soldiers who had visited my house on the evening of 10 January 1944.

Robin Price

The accused declines to cross examine this witness.

Second witness

Sigriard Anina Politi of 50 Via Sofia Arlona having been duly sworn depose as follows.

On the night of the 10 January 1940 at about 10 o'clock I was selling in my house and I heard a lot of noise around the balcony. I saw two soldiers come into the house from the balcony. Two or three minutes after a third soldier came in. I recognize the accused as being one of the soldiers who came in. The accused asked for cognac he had a pistol in his hand and kept it there. The accused went to look through all the drawers. He never found any cognac. The soldiers locked me in a room so I could not see what they did after that. I had a key to the room and got out and went to my sisters room. The accused then took me to another door, it wouldn't open so he kicked it open. This was the room of Nicola Romano. My sister myself and the two soldiers went into this room and the soldiers demanded cognac again. Nicola Romano did not have any cognac. The accused grabbed Mr Romano by the coat, he then hit him two or three times and his companion was asking the accused not to hit him. He would not listen. After this my sister and I went back into our room. All I heard after that was one shot fired.

Cross examined by accused "Where did I hit Mr. Romano?"

Answer "you grabbed hold of him by the coat and slapped his face."

Junction "Irene was my gun at destine"
Summer "by this blouse."

Amina Polite

Hostile witness.

K 52036 ~~Sgt~~ C.S.M. Gibson J. of the Seaforth Highlanders of Canada being duly sworn, deposes as follows:

On the 11 June 1944 at about 1400 hrs. ~~the R.C.M.P.~~ a private from the R.C.M.P. came to see me and asked to have an identification parade of this Coy. I did so on the 12 June 1944, five Italian women and a man ~~prisoners~~ attended the parade separately and each of them picked out the accused. J Gibson.

The accused declines to cross-examine this witness

Fourth witness

I Nicola Romano having been duly sworn depose as follows:

I live at 50 Via Forlì Ortona, in the same house with my cousins Signorina Bice and Signora Palitto. On the night of the 10th Jan. 44 at about 11 o'clock I heard a lot of screaming. I opened my door and went outside, and in the hall saw two soldiers, one was pointing a revolver at me, he was the accused. He demanded cognac. The soldiers went into my room and again demanded cognac. I did not have any cognac. The accused grabbed me by the jacket and slapped my face two or three times. One of the soldiers went outside and I heard one shot. I saw two soldiers upstairs and one down below.

On the 12th January 1944 I attended a parade of soldiers and picked out the accused as being one of the soldiers who broke into the house on the evening of the 10th January 44.

Nicola Romano

The accused declines to cross examine witness
The accused having been duly cautioned in accordance with Rule of Procedure 44 declines to make any statement.

Taken down by me in the field, this 13 day of January in the presence of the accused.
Rule of Procedure 44 complied with.

J A Bennett Capt.
The Seaforth Highlanders of Canada.

Read. Major, President J.A.G.M. H

Summary of Evidence in the case of No. K52158 Pte. James John ~~James~~ Esselmont, The Seaforth Highlanders of Canada.

No. K42546 A/L/Cpl. Degrazio, J., The Seaforth Highlanders of Canada was administered the required oath to act as interpreter.

First Witness

Signorina Polita Bice of 50 Via Sofia, Ortona, having been duly sworn deposed as follows:
"I am Signorina Polita Bice of 50 Via Sofia, Ortona. At about 10 o'clock in the evening of 10 January 1944 I was at home at 50 Via Sofia. I saw the accused whom I now identify and two other soldiers climb up the balcony of my house. The accused had a revolver in his hand. He entered the house and demanded cognac. We had no cognac and the accused opened all the drawers in the house looking for it. I was in bed and the accused ordered me to get up. I then told the accused we had no cognac so one of the others told me to go back to bed which I did. The accused then made me get up again and go outside. I told him I was cold so then the soldiers and my sister and myself went into my cousins house. The accused told us to stay where we were until he told us to move. My cousin opened the door and the accused again demanded cognac. My cousins did not have any cognac so then the soldiers went away and stayed in my house until approximately 1130. I did not return until they had left. I returned about 1130 and locked the doors. One of the accused I cannot say which one fired a shot through the door. The next morning I complained to AMGOT officer.
On the 12th January I attended an identification parade of soldiers and picked out the accused as being one of the soldiers who had entered my house on the evening of 10 January 1944."

sgd. Polita Bice

The accused declines to cross-examine this witness.

Second Witness

Signora Amina Politi of 50 Via Sofia, Ortona, having been duly sworn deposed as follows:
"On the night of the 10 January 1944 at about 10 o'clock I was sitting in my house and I heard a lot of noise around the balcony I saw two soldiers come into the house from the balcony. Two or three minutes after a third soldier came in. I recognize the accused as being one of the soldiers who came in. The accused asked for cognac he had a p istol in his hand and kept it there. The accused went to look through all the drawers. He never found any cognac. The soldiers locked me in a room so I could not see what they did after that. I had a key to the room and got out and went to my sisters room. The accused then took me to another door, it wouldn't open so he kicked it open. This was the room of Nicola Domarco. My sister myself and the three soldiers went into this room and the soldiers demanded cognac again. Nicola Domarco did not have any cognac. The accused grabbed Nicola Domarco by the coat, he then hit him two or three times and his companion was asking the accused not to hit him. He would not listen. After this my sister and I went back into our room. All I heard after that was one shot fired."

Cross-examined by the accused:
Q. Where did I hit Nicola Domarco?
A. Slapped his face.
Q. Where was my gun at this time?
A. In his blouse.

sgd. Amina Politi

Third Witness K52026 CSM Gibson, J., of "D" Coy The Seaforth Highlanders of Canada, having been duly sworn, deposes as follows:
"On the 11 Jan 1944 at about 1000 hrs a private from the R.C.M.P. came to see me and asked to have an identification parade of this Coy. I did so on the 12 Jan 1944. Two Italian women and a man attended the parade separately and each of them picked out the accused."

sgd. J. Gibson

The accused declines to cross-examine this witness.

Fourth Witness I, Nicola Domarco having been duly sworn depose as follows
" I live at 50 Via Sofia, Ortona, in the same house with my cousins Signorina Rice and Signora Polita. On the night of the 10th Jan 44 at about 11 o'clock I heard a lot of screaming. I opened my door and went outside in the hall and saw two soldiers, one was pointing a revolver at me, he was the accused. He demanded cognac. The soldiers went into my room and again demanded cognac. I did not have any cognac. The accused grabbed me by the jacket and slapped my face two or three times. The soldiers went outside and I heard one shot. I saw two soldiers upstairs and one down below. On the 12th January 1944 I attended a parade of soldiers and picked out the accused as being one of the soldiers who broke into the house on the evening of the 10th January 1944.

sgd. Nicola Domarco

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 declines to make any statement.
Rule of Procedure 4 complied with.
Taken down by me in the Field this 13th day of January in the presence of the accused.

sgd. F.H. Bonnell, Capt.
The Seaforth Highlanders of Canada

List of Witnesses in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Signorina Polita Bice	50 Via Sofia, Ortona
Signora Amina Politi	50 Via Sofia, Ortona
K52026 CSM Gibson, J.	Seaforth of C
Nicola Domarco	50 Via Sofia, Ortona

List of Exhibits in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Nil

Officer Commanding
Seaforth of C

Sir:

I respectfully request that Capt. E.D. Sutton

be appointed to represent me at my forthcoming F.G.C.M.

J.J. Esselmont

No. 52158 Name ESSELMONT, T.T. Sqn., Battery, or Company D. Corps SEAFORTH OFC. Date of enlistment 6.7.89. G.C. Badges. Service or Proficiency Pay 1/30.

M.F.M. 6 (A.F.B. 122) 17251—7-41 (1219-26) H.Q. 1772 39-1052

Date of last entry in Company Conduct Sheet. No. and date of last drunk. Period not reckoning towards freedom from extra fine. Sheet No. Signature O.C. Company, etc. Character bad.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SUPPLEMENTARY SHEET — ORIGINAL SHEET NOT AVAILABLE					N/A

(P.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K52156	Pte	Baselmont J.J.	Seaforth of C

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For M.F.M. 6 sent down to Cdn Sec GHQ 2 Echelon-	times	Same as other side times
For not not returned to	times	times
For unit	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~ MR

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and dispensations with trial under ~~A.F.A. 73~~ A.A. 73 are set out in the Schedule ~~MR~~ annexed to this statement.

3. ~~The accused is not under sentence at the present time.~~

or,

~~The accused at the present time is under sentence for XXX beginning on the XXX day of XXXXXX~~ MR

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 4 days in ~~Air Force~~ military custody, making a total of 4 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 28 years - mos days

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper 6 Sep 1939 MR

7. The service which the accused is allowed to reckon towards discharge is from ~~XXX~~ 6 Sep 1939 MR

8. ~~The accused has not served in any X.X. for the purpose of determining his rate of pay.~~ MR

9. ~~The accused is in possession of or entitled to a XXXXX decoration, or XXXXX reward (or is in possession of or entitled to).~~ State any ~~air force~~ decoration or reward. ~~(withheld).~~ MR

10. ~~The Accused was granted XXXXX~~ The accused has no available service which has been forfeited ~~XXXXX~~ during the period of ~~his~~ service. MR

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Army the rank of Private (Tpr) and

~~XX/XXXXXXX dated X X XX/X XXXXXXXXXX, and in his regiment or corps, the rank of~~

~~XX/X~~ ~~dated~~ ~~X/XX~~ N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A

Date of promotion

~~In the rank of~~ ~~X/X~~ ~~XXXX~~

~~In the rank of~~ ~~X/X~~ ~~XXXX~~

~~In the rank of~~ ~~X/X~~ ~~XXXX~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 42 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number K52158 Rank Pte

Name Esselmont, J.J. of Seaforth of C Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of January 1944

W.D.Reid Capt.
Adjt. The Seaforth Highlanders

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president and annexed to the proceedings.

CERTIFIED TRUE COPY.
A. McDougall CAPT.

Correspondence to be PINNED here

Army Form [illegible].

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twentieth day of January, 19 44,

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [xxxx

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K52158 Private Esselmont J.J. The Seaforth Highlanders of Canada.	First Charge When on active service, Committing a Civil Offence A.A. Sec. 41 "J.C.J. R.P. 35(B)Has been complied with See Charge Sheet annexed marked "C"	Guilty	Guilty to be imprisoned with hard labour for twelve months 24 Jan 44 "J. Leach" Major President FGCM	I confirm the finding and sentence of the Court. "C.B. Ware" Lt.Col. T/Commanding 2 Cdn Inf Bde.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) "C.B. Ware" (*Signed*) "J. Leach" Major

T/*Commanding* 2 Cdn Inf Bde
Convening Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22Aug41	Pte		(3rd) Tried by FGCM. AWARDED 60 dys Detn. Remitted to 45 dys. Close arrest 23 dys 23 hrs. Forfeits 45 dys pay 149(1)(b). Forfeits 24 dys pay 149(1)(c)(i). Total forfeiture 69 days pay.					
Field	18Oct41	Pte		AA Sec 15(1) AWL 17 hrs 1 min.		1 dys' CB			1 dys' pay aut.
Field	13May42	Pte		AA Sec 15(1) AWL [illegible]					forf's 59dys'pay.
Field		Pte		AA Sec 15(1) AWL 12 dys		28 dys' detn			14 dys' pay aut.
								Total forf.	43 dys' pay.
Field		Pte		AA Sec 15(1) AWL 10 hrs				"	4 dys pay.
Field	16Mar43	Pte		Tried by FGCM for AWL 58 dys 22 hrs. 31 minutes. & AA 24(2) Deficient am't of [illegible] AWARDED [illegible] 6 months detention. Forfeits 184 dys' pay FR&I 149(1)(b). Forfeits 59 days pay FR&I 149(1)(a). Forfeits 12 dys pay 149(1)(c)(i). Forfeits 7s10d for FR&I 172(8). Forfeits £11/8/5 under FR&I 158(2). Total forf. 255 dys' pay & £11/16/3½.					
Field		Pte		AA Sec 15(1)		Admonished			forf. 1 dys'pay
Field		Pte		AA Sec 15(1) AWL 1 dy 11 hrs 1 min.		15 dys' pay			2 dys' pay aut.
									Total forf.
				(Cont. on page two)					17 dys' pay.

No K52158 Name ESSELMONT JJ | Sqn. Battery or Company | Corps CIC | Date of enlistment 26/9/39 | GC Badges | Service or Proficiency Par | MFM 6 (AFB 122) 40/P&S/136 (2438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA Sec 15(1) AWL 24½hrs					2 dys' pay aut.
Field		Pte		AA Sec 15(1) AWL 12 hrs					1 dys' pay aut
Field		Pte		AA Sec 15(1) AWL 48 hrs		7 dys' pay			2 dys' pay aut.
Field		Pte		AA Sec 15(1) AWL 87 hrs		14 dys' pay			4 dys' pay aut
Field		Pte		AA Sec 15(1) AWL 10 dys 6 hrs 10 mins.		27 dys' Detn.			11 dys' pay aut
Field		Pte		AA Sec 15(1) AWL 11 dys 3 hrs 55 mins.		15 dys' pay			12 dys' pay aut
Field		Pte		(1) AA Sec 15(1) AWL 2 dys 8½ hrs. (2) Breaking out of Bks.		28 dys' pay 149(1)(b)			Tot. forf 27 dys' pay. 3 dys pay aut. Total forf. 31 dys pay.

(P.T.O.)

(FTO)

No K52158 Name ESSELMONT JJ | Sqn. Battery or Company | Corps CIC | Date of enlistment | CO Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA Sec 15(1)		10 dys' pay FR&I 149(2)			5 dys' pay FR&I 149(1)(a) Total forf. 15 dys' pay
Field		Pte		AA Sec 11(g) XXXXXXXXX AA Sec 10(3)		8 dys' F.P. & 8 dys' Pay.			

CERTIFIED COPY OF TRUE EXTRACT FROM MF M4

(D.M. Owen) Lieut.
for Officer i/c Cdn Section GHQ 2 Echelon AAI.
26 Jul 44

(PTO)

"J.E. Leach, Major" President F.G.C.M.

"G"

CHARGE SHEET

"CBW"

K52158 Pte. James John ESSELMONT, The Seaforth Highlanders of Canada, a soldier in the Canadian Army, Overseas, is charged with,
While on Active Service,

First Charge:
Sec. 41
Army Act

COMMITTING A CIVIL OFFENCE,

that is to say, burglary, with intent to commit a felony contrary to section 25 (1) of the Larceny Act, 1916, in that he, in the field, on the 10th January 1944 during the night, did break and enter the dwelling house of Signora Amina Politi, with intent to commit a felony therein.

A.J. Creighton

(A.J. Creighton) Lt.-Col.
O.C. The Seaforth Highlanders of Canada.

"CBW"

In the Field "C.B. Ware Lt-col 20 Jan 44
T/Commanding 2 Cdn Inf Bde.

To be tried by F.G.C.M.

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) PARA 557

I certify that I have this morning examined

No K52158 Rank Pte Name Esselmont, J.J.

of the Seaforth Highlanders of Canada

and in my opinion he is ~~unfit~~ fit to undergo trial

by Court Martial.

Station In the Field

Date 24 Jan 44

G.E. Wood Major
(Medical Officer

Trial of K-52158 Pte ESSELMONT James John S.H. of C. Canadian Army, C.M.F.

Capt F.H. Bonnell, S.H. of C. appears as prosecution.

Lieut L.M. McBride, S.H. of C. defending officer appears as counsel.

R.P. (110)A is complied with.

K42346 L/Cpl DeGrogia J. appears as interpreter.

The accused pleads guilty to the charge which he heard read.

The Summary of Evidence as taken by Capt F.H. Bonnell, S.H. of C., was read to the accused and is herewith attached marked "H".

The accused having being duly sworn states as follows:

On Jan 10 we were having a party. We ran out of wine. Myself and a few of the other boys went out to look for some. We went to two or three places and had few more drinks. After that I don't remember very much about what happened until an N.C.O. and a couple of men came out and fetched me. I was told the next morning what had happened. That is about all I can say, Sir.

Evidence as to Character and Particulars of Service of Accused

Capt H.F. Williamson, S.H. of C., having been duly sworn states:

I am Capt H.F. Williamson, assistant adjutant of S.H. of C., Pte Esselmont J.J. K52158 came to this battalion as a reinforcement soldier and his M.F.M.'S 6 & 14 (original), have been received from Cdn Section, 2nd Echelon. I submit the supplementary sheet, and this statement as re. character and particulars of Accused.

The accused declined to address the court in connection with his conduct sheet or statement as to character and particulars of service.

Address of Defending Officer

In mitigation of punishment I would like to point out two things. First the long service of the accused from 6 Sept 39. Secondly the fact that the accused was drunk, to point that in his own words he didn't know much about what went on.

The Court is closed to consider the sentence.

Finding The Court finds the Accused Guilty of the Charge.

Signed at Ortona this 24th day of January, 1944.

J.E. Leach, Major.
President, F.G.C.M.

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2968)

No. K 52158 Name ESSELMONT J.J. Sqn., Battery, or Company D Corps SEAFORTH OF C Date of enlistment 6.9.39 G.C. Badges Service or Proficiency Pay 31.10

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character BAD

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SUPPLEMENTARY SHEET - ORIGINAL SHEET NOT AVAILABLE					"U.P." "H.L.R."

H.L. REED
ADJUTANT S.H. & C.

(P.T.O.)

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-520
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A52158	Pte	Esselmont J.J.	Seaf rth of C.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	M.F.M. 6 Sent down to Cdn Sec GHQ 2 Echelon times	times
For	not returned to unit, times	same as other side. times
For	times	times
For	times	times

or,

"WR"

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. "WR"

3.

or,

"WR"

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 4 days in military custody, making a total of 4 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 28 years- mos dys

6. The date of his attestation specified in his attestation paper 6 Sep 1939 "WR"

7. The service which the accused is allowed to reckon towards discharge is from 6 Sep 1939 "WR"

8. "WR"

9. "WR"

"WR"

10. "WR"

11. ~~(In the case of an officer.) The accused holds~~ in the Royal Canadian ~~Air Force~~ the rank of W/O
~~Permanent Force~~
~~unit~~
~~dated~~, and in his ~~regiment (or corps)~~, the rank of
~~dated~~ "WR"

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~

~~Date of promotion~~

~~In the rank of~~ ~~years~~

~~In the rank of~~ ~~years~~ "WR"

~~In the rank of~~ ~~years~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number K52158 Rank Pte Unit

Name Esselmont J.J. of Seaforth of C Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of January 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked W.D. Reid signed by the president, and annexed to the proceedings.

Adjutant, Seaforth Highlanders.

J.E. Leach, Major, President F.G.C.M.

"H"

Summary of Evidence in the case of No. K52158 Pte James John Esselmont, The Seaforth Highlanders of Canada.

No. K.42546 A/L/Cpl. Degrazio, J., the Seaforth Highlanders of Canada was administered the required oath to act as interpreter.

First Witness — Signorina Polita Bice of 50 Via Sofia, Ortona, having been duly sworn depose as follows:
"I am Signorina Polita Bice of 50 Via Sofia, Ortona. At about 10 o'clock in the evening of 10 January 1944 I was at home at 50 Via Sofia. I saw the accused whom I now identify and two other soldiers climb up the balcony of my house. The accused had a revolver in his hand. He entered the house and demanded cognac. We had no cognac and the accused opened all the drawers in the house looking for it. I was in bed and the accused ordered me to get up. I then told the accused we had no cognac so one of the fellows told me to go back to bed which I did. Theaccused then made me get up again and go outside. I told him I was cold so then thesoldiers and my sister and myself went into my cousins house. Theaccused told us to stay where we were until he told us to move. My cousin opened the door and the accused again demanded cognac. My cousins did not have any cognac so then thesoldiers went away and stayed in my house until approximately 1130. I did not return until they had left. I returned about 1130 and locked the doors. One of the accused I cannot say which one fired a shot through the door. The next morning I complained to AMGOT officer.
On the 12th January I attended an identification parade of soldiers and picked out the accused as being one of the soldiers who had entered my house on the evening of 10 January 1944.

sgd. Polita Bice

The accused declines to cross examine this witness.

Second Witness — Signora Amina Politi of 50 Via Sofia, Ortona, having been duly sworn depose as follows:
"On the night of the10 January 1944 at about 10 o'clock I was sitting in my house and I heard a lot of noise around the balcony I saw two soldiers come into the house from the balcony. Two or three minutes after a third soldier came in. I recognize the accused as being one of the soldiers who came in. The accused asked for cognac he had a pistol in his hand and kept it there. The accused went to took through all the drawers. He never foundany cognac. The soldiers locked me in a room so I could not see what they did after that. I had a key to the room and got out and went to my sisters room. The accused then took me to another room, it wouldn't open so he kicked it open. This was the room of Nicola Domarco. My sister myself and the three soldiers went into this room and the soldiers demanded cognac again. Nicola Domarco did not have any cognac. The accused grabbed Nicola Domarco by the coat, he then hit him two or three times and his companion was asking the accused not to hit him. He would not listen. After this my sister and I went back into our room. All I heard after this was one shot fired.

Cross examined by the accused:
Q. Where did I hit Nicola Domarco?
A. Slapped his face.
Q. Where was my gun at this time?
A. In his house?

Sgd. Amina Politi.

Summary of Evidence in the case of No. K52158 Pte. James John Esselmont, The Seaforth Highlanders of Canada.

Third Witness

K52086 CSM Gibson, J., of "D" Coy the Seaforth Highlanders of Canada, having been duly sworn, depose as follows:
"On the 11 Jan 1944 at about 1000 hrs a private from the R.C.M.P. came to see me and asked to have an identification parade of this Coy. I did so on the 12 Jan 1944. Two Italian women and a man attended the parade separately and each of them picked out the accused."

sgd. J. Gibson.

The accused declines to cross-examine this witness.

Fourth Witness

I, Nicola Domarco having been duly sworn depose as follows:
"I live at 50 Via Sofia, Ortona, in thesame house with my cousins Signorina Bice and Signora Polita. On the night of the10th Jan 44 at about 11 o'clock I heard a lot of screaming. I opened my door and went outside in the hall and saw two soldiers, one was pointing a revolver at me, he was the accused. He demanded cognac. The soldiers went into my room and again demanded cognac. I did not have any cognac. The accused grabbed me by the jacket and and slapped my face two or three times. The soldiers went outside and I heard one shot. I saw two soldiers upstairs and one down below. On the 12th January 1944 I attended a parade of soldiers and picked out the accused as being one of the soldiers who broke into the house on the evening of 10th January 1944.

sgd. Nicola Domarco

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 declines to make any statement.
Rule of Procedure 4 complied with.
Taken down by me in the Field this 13th day of January in the presence of theaccused.

sgd. F.H. Bonnell, Capt.
The Seaforth Highlanders of Canada.

List of Witnesses in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Signorina Polita Bice	50 Via Sofia, Ortona
Signora Amina Politi	50 Via Sofia, Ortona
K52026 CSM Gibson, J.	Seaforth of C
Nicola Domarco	50 Via Sofia, Ortona

List of Exhibits in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Nil

Officer Commanding
Seaforth of C

Sir:

I respectfully request that "Capt. E. Sutton

be appointed to represent me at my forthcoming F.G.C.M.

J.J. Esselmont

14 Jan 44

M.F.M. 6
K52158 Pte Esselmont, J.J.

M/n document not available at present time.

"W.D. Reid"

W.D. Reid Capt.
Adjt. The Seaforth Highlanders of Canada.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Twenty-fourth day of January, 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)

~~were~~ "J.L." were duly sworn.

*Omit if not applicable.

Signed this Twenty-fourth day of January 1944.

"J. Leach" Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of s.70 of the Army Act~~ have been complied with.

Signed this "JL"

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 28th day of January 1944.

"C.B. Ware" Lt-Col
Confirming Officer.

(a) (Dated) 29 Jan 44 (Signed) Promulgated and extracts taken in the case of 4-52158 Pte Esselmont, J.J. Seaforth of C.
"E.D. Fulton" Capt.
for O.C. "D" Coy Seaforths of C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20704) W1.47533/242 25,000 2/42 A.& E.W.Ltd. Gp.698
(21782) W1.19088/1159 40,000 7/42

C.H.O.S.-1-54

Pt. Essery, NF.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H45898 Pte Essery W. A.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in less of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date(s))~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

The court sentence the accused, H45898 Pte Essery W.A. 3 Cdn Inf Div See Catering Pool CAOF to undergo detention for six months.

(Sgd) ..... Judge-Advocate, if any. 13 Nov 45 Date awarded. (Sgd) H.B. Patrick President. (RP 45, 46(A).) Major

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 14 NOV 45 (Sgd) W.K. Colling Lt-Col H.Q. R.C.A.S.C. 3 Cdn Inf Div (Conf.)

Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-45898 Pte Essery, W.A.	14 Nov. 45	J.D.K. Blair, Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 C.A.O.F. - 1 - 54

FIELD GENERAL COURT-MARTIAL

CF A96 (In lieu of AF A3) (1/P.A.M./1606 (2864))

Convened by Order of Lt-Col W.K. Colling Comd Base dated 10 Nov 45

3 Cdn Inf Div CAOF

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H45898	Pte		William Alfred	Essery	3 Cdn Inf Div Pool CAOF

5 Pcls to A.J. Prod. mag

REVIEWING OFFICER, JAG BRANCH C.M.H.Q. RECEIVED

PROCEEDINGS RE: ESSERY CAOF

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 13 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (N) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (not) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H.B. Patrick	2/9 C.I.B. Coy Base CAOF
Member	Capt	J.K. Armitage	2/7 C.I.B. Coy Base CAOF
Member	Lt	R.L. Maingay	2 M.A.C. Base CAOF
Judge-Advocate	N/A		
Prosecutor	Capt	D.R. Sailens	2/3 Div Tps Coy Base CAOF
Defending Offr	Capt	E.P. McGovern	2/9 C.I.B. Coy Base CAOF

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused H45898 Pte Essery WA before arraignment make(s) (no) (~~a~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (not) arraigned (separately) on all charges in the charge sheet.(1) The accused does (not) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CAOF 2/1

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY a:

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No Sir.(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~ The Court decides (not) to advise accused to change his ~~(their) plea(s) of Guilty to Not Guilty on the charge(s).~~ The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on the charge(s).~~ Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or parts not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans No Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans I wish the Defending Officer to make a statement Sir.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Mr President. Members of the court.

The accused H. 45898 Pte Emery W.
of 3 Can Inf Div Re Catering Pool (R of F)
has pleaded guilty to the charge of
being A.W.O.L. It becomes necessary
the punishment which will be set by
you the President, and members of
this court.

In setting the punishment in
this particular case I feel that the
following points should be carefully
considered.

1e The accused has served in
the Can Army for a period of 5 years
and 4 mos. Most of this time has
been spent overseas.

2e He has always been a model
soldier, obedient on duty and has
established the reputation of being a
hard and cheerful worker.

3e This soldier has previously
suffered from loss of memory. Major
the Neil of the R C A M C has examined
this man and has stated that Pte Emery
should be returned to Canada because
of his mental stability.

4º The accused has been stationed in Germany whilst awaiting repatriation. And as he is a cook he has been frozen.

5º As he was awaiting a posting in the catering prof and with no particular job to do, he had a great deal of spare time on his hands, in such a position it is only natural for a man to become rather morose.

6º The accused did go AWL but had no intention of staying away. Enjoying the company of friends he putting off his return until he was picked up by the Provost.

7º He has previously been found guilty of a number of small charges but never of one of disobedience. He made no effort to resist arrest and at all times has been a model soldier whilst awaiting trial.

8º Every day spent in detention will lengthen the time before his discharge to civilian life. As the accused is now 25 years of age the readjusting it will be very difficult to readjust himself to civilian life.

9º Due to the previously mentioned reasons I feel that as light a sentence as possible should be given the accused.

H P Thorsen Capt.

Ex "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H.45898	Pte.	Essery, W.A.	3 Cdn Inf Div Sec Catering Pool (CAOF)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL 9 times.

For Breaking out of barracks 1 times.

For Fraternizing 1 times.

For Falsefying a leave pass 1 times.

Date of first entry in Field Conduct Sheet 4 May 42

Date of last entry in Field Conduct Sheet 7 Sep 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused has no previous convictions for~~ ~~xxxx~~ ~~xxxx

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 21 Feb 44	A.A. Sec 15(1)	90 days Fd. Punishment	30 days remitted.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of Nov 45

H.C. Pattison Major

(H.C. Pattison) Major
Officer having custody of records.

/

9 RP

CHARGE SHEET

The accused H.45898 Pte. Essery, W.A. of 3 Cdn Inf Div Sec Catering Pool (CAOF) a soldier of the Canadian Army Overseas is charged with:

First Charge
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field, in Germany, did absent himself without leave from 2230 hrs 6 Oct 45 until apprehended by 2/4 Cdn Provost Coy, in Oldenburg Germany, at 1415 hrs 29 Oct 45.(Total Time Absent: 22 days, 15 hrs, 45 mins.)

In the Field
2 Nov 45.

H.B. Sellers Major
(C.D. Hazard) Capt
Officer Commanding
3 Cdn Inf Div Sec Catering
Pool (CAOF)

To be tried by Field-General Court Martial.

DATE 10 Nov 45

W.H. Colling
(W. H. Colling) Lt-Col
C, RASC
3 Cdn Inf Div CAOF

FIELD GENERAL COURT-MARTIAL

CFA 96 (In lieu of AFAB) 40/F&S/1697 (2468)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 45898	Pte		William Alfred	Essery	3 Cdn Inf Div Sec Catering Pool (CAOF)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 10 Nov 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~Being unable to appoint (a) three Offrs to form the Court, (b) a Sd Offr as President, for the reasons I have stated hereto,~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.E.Petrick	2/9 Cdn Inf Bde Coy RCASC (CAOF)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.R.Armitage	2/7 Cdn Inf Bde Coy RCASC (CAOF)
Lieut	R.L.Mainguy	2 Cdn M.A.C. RCASC (CAOF)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	R.C.L.Hunter	2 Cdn M.A.C. RCASC (CAOF)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country)

W.H.Colling (W.H.Colling personally. RP 105 fn 2)

Lt.-Col (Rank.)

Date 10 Nov 45

Commanding R.C.A.S.C. 3 Cdn Inf Div (CAOF)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

13 Nov 45

I certify that No. H.45898 Pte Cossey W.A. .....of 3 Cdn Inf Div Sec Catering Pool CAOF is ...fit...to undergo trial by Court-Martial.

.....
Signature of Medical Officer.

Summary of Evidence in the case of 11405398 Pte Essery W. A. of 3 Cdn Inf Div Sec Catering Pool (CAOF)

The Officer Commanding directs that the evidence be taken on oath

First Witness - K 53582 S/Sgt Crowe-Swords W.E. of 3 Cdn Inf Div Sec Catering Pool (CAOF) sworn states

I am K 53582 S/Sgt Crowe-Swords of 3 Cdn Inf Div Sec Catering Pool (CAOF) employed as instructor. On 6 Oct 45 at 2230 hours I made a check of personnel in billets and found one empty bed. On inquiring I was informed it belonged to Pte Essery I then called his name and receiving no answer made a thorough check of the billets but could not

First Witness (cont'd) find Pte Essery. Immediately reported him as absent without leave as from 2230 hours 6 Oct 45. Pte Essery has been continuously absent from that time until 1415 hrs 29 Oct 45 when he was turned over to me by ~~by~~ F87079 L/Cpl Johnson H.A. of 2/4 Cdn Provost Coy (C.A.O.F.). I then placed him under close arrest and turned him over to the Cpl of the guard and informed Pte Essery that he was charged with being absent without leave.

The accused declines to Cross examine this witness.

H.E. Crowe-Swords.

Third Page

Second Witness F87079 L/Cpl Johnson H.Q.
of 2/4 Cdn Provost Coy (C.A.O.F.)
duly sworn states

I am F87079 L/Cpl Johnson H.Q.
of 2/4 Cdn Provost Coy (C.A.O.F.).
At approximately 1100 hrs 29
Oct 45 I was called to 26
Wilhemstrasse to apprehend
a civilian women, there
I found Pte Essery D. Hodg-
kins 2/4 Provost Coy later
appeared upon the scene
and instructed me to
escort Pte Essery back
to his unit and to find
out if he was A.W.O.L.
I did not place Essery under
arrest, he accompanied
me willingly. On arriv-
al at 3 C&D Section Catering
Pool I found Essery had
been absent since the
sixth of Oct, I turned Pte
Essery over to S/Sgt Crowe
swords who stated he
would charge Pte Essery.

The accused declines to Cross-examine this
witness

The accused was cautioned as follows

Ques! Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Ans. I do not wish to make a statement sir

W. Casey

The accused does not call any witnesses

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) and (F) have been complied with

In the field
2 Nov 45

D. R. Sautters Lt
2/3 Cdn Inf Div Pro Coy
R.C.A.S.C. (Coast)

Ex "A"

SUMMARY OF EVIDENCE IN THE CASE OF H45898 PTE ESSERY, W.A. of 3 CDN INF DIV SEC CATERING POOL (CAOF)

THE OFFICER COMMANDING DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH

FIRST WITNESS

K53582 S/Sgt Crowe-Swords, W.E. of 3 Cdn Inf Div Sec Catering Pool (CAOF) sworn states:-

I am K53582 S/Sgt Crowe-Swords of 3 Cdn Inf Div Sec Catering Pool (CAOF), employed as instructor. On 6 Oct 45 at 2230 hours I made a check of personnel in billets and found one empty bed. On inquiring I was informed it belonged to Pte. Essery. I then called his name and receiving no answer made a thorough check of the billets but could not find Pte. Essery. I immediately reported him as absent without leave as from 2230 hours 6 Oct 45. Pte. Essery has been continuously absent from that time until 1415 hours, 29 Oct 45 when he was turned over to me by F87079 L/Cpl Johnson, H.A., of 2/4 Cdn Provost Coy (CAOF). I then placed him under close arrest and turned him over to the Cpl of the guard and informed Pte Essery that he was charged with being absent without leave.

The accused declines to cross-examine this witness.

W.E. Crowe-Swords.

SECOND WITNESS

F87079 L/Cpl Johnson, H.A. of 2/4 Cdn Provost Coy (CAOF) duly sworn states.

I am F87079 L/Cpl Johnson, H.A. of 2/4 Cdn Provost Coy (CAOF). At approximately 1100 hours 29 Oct 45 I was called to 26 Wilhemstraase to aprehend a civilian woman, there I found Pte Essery. Lt. Hodgkiss 2/4 Provost Coy later appeared upon the scene and instructed and instructed me to escort Pte Essery back to his unit and to find out if he was A.W.O.L. I did not place Essery under arrest, he accompanied me willingly. On arrival at 3 C.I.D. Section Catering Pool I found Essery had been absent since the sixth of Oct, I turned Pte. Essery over to S/Sgt Crowe-Swords who stated he would charge Pte Essery.

The accused declines to cross-examine this witness.

H.A. Johnson

The accused was cautioned as follows:

Ques 1 - Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Ans - I do not wish to make a statement, sir.

W.A. Essery.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that RP 4 (c), (d), (e) and (f) have been complied with.

In the Field
2 Nov 45.

D.R. Gaitens Lt
2/3 Cdn Inf Div Tps Coy RCASC
(CAOF)

CERTIFIED TRUE COPY

In the Field
2 Nov 45

D.R. Gaitens Lt

JOB NUMBER 44 REEL NUMBER 10-1

RETAKE CERTIFICATE

I HEREBY CERTIFY THAT THE MICROPHOTOGRAPHS APPEARING BETWEEN "START OF RETAKE" AND THIS "RETAKE CERTIFICATE" ARE TRUE COPIES OF THE RECORDS DESCRIBED BELOW.

"A" Side.	"B" Side
DUVAL, P.	ESSELMONT, J.J.
[illegible]	ESSERY, W.A.
DYANE, J.R.	

DATE: DEC. 8 1952

SIGNATURE OF CAMERA OPERATOR: Gisèle Hiaux

Book No. 8-5 B. P.

END OF RETAKE


44.19.1

SP-142.

Re Emery. J.L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F44815 Ite James Leonard EMERY CIC 2 CITR

	Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 36, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 4.)

R At present undergoing ~~No X~~ ~~Reckoning for Hard~~ 2 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1b days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of eight (8) months.

(Sgd) _____ Judge-Advocate, if any. 20 Jul 45 Date awarded. (Sgd) "D L Redman" Lt Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed.

~~I direct that the record in this case be laid before a Board of Review under Section 47A of the Act.~~ (1) JAW

(1. AA 57A. Delete if not used.)

(Sgd) "J A Wilson" Col

Date 25 Jul 45

Commanding T/Cond 13 Cdn Inf Trg Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
F44815 Ite Emery J L	24 Jul 45	"I Saperia" Lt 2 CITR

Entered Order No 176
Date 27 Jul 45
By ????????

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received 8 Aug 1945 JAG Branch CMHQ

RECORDED AT CMHQ IN AB 160 5P-142

FIELD GENERAL COURT-MARTIAL

CPASS (In lieu of AFA3) 40/P & B/1088 (6144) 4/38B

Convened by Order of Brigadier K G Blackader Comd 13 CITB dated 17 Jul 45
DSO MC ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F44815	Pte	James Leonard	EMERY	CIC 2 CITR

Proceedings Reviewed
"AWWS" J H Ready Capt 8 Aug 45
Reviewing Officer, JAG Branch, CMHQ.

Certified true copy of original proceedings herein.
[illegible] Capt

PROCEEDINGS OF TRIAL.

R Held in the Fd in (country) England on (date(s)) 14 to 16 Jul 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~Waiting Member, JA, if any, and Offr under Trg, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

R A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)

R The Court is satisfied that it is properly convened and constituted(2), accused is ~~XX~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is ~~XX~~ brought before the Court. At 1030 hours trial commences.

R A4. The Prosecutor produces a Medical Certificate that accused is ~~XXX~~ fit to undergo trial by court-martial.(1)

R ~~The Prosecutor informs the Court that accused elected to be tried by Court Martial instead of being dealt with summarily by his CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

R A5. ~~Prisoner no account~~ Do you object to ~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 50, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans. No Sir.[5]
(1. *RP 37(B).* 2. *RP 37(D) fn 4.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....[1]
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. *RP 39(E), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP 114, 115, 116. For procedure see notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. *AA 54(3) (4), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans. No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 3 and Ex C respectively.[3]
(1. *AFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans. Beg Leave Offr (Note 111)
(1. *RP 37(C), 44(D).* 2. *Address, if any, recorded see Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564, Overseas AO 309, 1323, MML p 66, 757-759. As to sentences consigned for civil offences to the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 93(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to custody and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F44815 Pte James Leonard EMERY, CIC on strength of 2 Cdn Infantry Training Regt, a soldier of the Cdn Army Overseas, is charged with:

Sec 15(1) Army Act — WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 0800 hrs, 5 Dec 44, illegally absented himself without leave until he surrendered himself to the Civil Police at WILSDEN at 1030 hrs 23 Feb 45.

(Total time absent: 80 days, 2 hrs, 30 min)

In the Field
14 July 45

"J G Bourne"
(J G Bourne) Lt Col
A/Comd 2 CITR

To be tried by Field General Court Martial.

"K G Blackader"
(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

In the Field
17 Jul 45

DLR

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F44815 Pte James Leonard EMERY CIC 2 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
R ~~3rd~~			
~~4th~~			
~~5th~~			
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

R At present undergoing ~~No X~~ Nothing for Nov X (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 1b days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of eight (8) months.

(Sgd) _____ Judge-Advocate, if any. 20 Jul 45 Date awarded. (Sgd) "D L Redman" Lt Col President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be AT ~~RELEASED~~ be held in custody under further orders. JAW (1. AA 57A. Delete if not used.)

(Sgd) "J A Wilson" Col

Date 23 Jul 45

Commanding T/Comd 13 Cdn Inf Trg Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F44815 Pte Emery J L	24 Jul 45	"I Saperia" Lt 2 CITR

Entered Order No 176
Date 27 Jul 45
By ??????? ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received 8 Aug 1945 JAG Branch CMHQ

RECORDED AT CMHQ IN AB 160 5F-142

FIELD GENERAL COURT-MARTIAL

CPA88 (To thru of AFA3) 40 F & S/1600 (6/44) 4/38B

Convened by Order of Brigadier K G Blackader DSO MC ED Comd 13 CITB dated 17 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F44815	Pte	James Leonard	EMERY	CIC 2 CITR

Proceedings Reviewed
"WMWS" J H Ready Capt 8 Aug 45
Reviewing Officer, JAG Branch, CMHQ.

Certified true copy of original proceedings herein.
4 Dec 45
W Robinson Capt

PROCEEDINGS OF TRIAL.

R Held in the Fd in (country) England on (date(s)) 17 Jul 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~Waiting Member~~ JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure where a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

R A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)
R The Court is satisfied that it is properly convened and constituted(2), accused is (RR) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is (RR) brought before the Court. At 1030 hours trial commences.

R A4. The Prosecutor produces a Medical Certificate that accused is (RR) fit to undergo trial by court-martial.(1)
R ~~The Prosecutor informs the Court that accused elected to be tried by Court Martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

R A5. ~~Prosecutor to accused: Do you object to XXXXXXXXXXXXXXXXXXXX as interpreter? Ans~~
R ~~The interpreter is sworn.~~(1) Do you object to Pte(b) Sgt A H Sinclair as shorthand writer? Ans No
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

R A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	D L Redman	HQ CRU
Member	Capt	W A Schofield	5 CITR
Member	Lt	C E Cartmel	2 CITR
R ~~Judge Advocate~~			
Prosecutor	Lt	L Buchanan	2 CITR
Defending Offr	Lt	E L Hume	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans no (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (3) and fn 2 were not followed. See D/ p 2.)

R A8. The accused before arraignment make(s) (no) (RR) plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

R A9. The accused is (RR) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (RR) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 7 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

R A10. The Court (RR) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans No Sir.[5]
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to Not Guilty to the charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. *Under B1 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....[1]
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans .....
Do you intend to call witnesses on your behalf ? Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1. B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statements, evidence and any summing up by the JA under RP 42, 80(B)(c).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. *AA 54(2), (6), RP 43, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.S. 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 3 and Ex 4 respectively.[3]
(1. *AFB 353 or AFB 296.* 2. *MML p 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans Nothing Offr (NOTE !!!)[2]
(1. *RP 37(C), 44(C).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. *When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 68, 118, 119(A), KR Can 558, 559, 563-566, Overseas NO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of records after trial see notice on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F44815 Pte James Leonard EMERY, CIC on strength of 2 Cdn Infantry Training Regt, a soldier of the Cdn Army Overseas, is charged with:

Sec 15(1) Army Act — WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 0800 hrs, 5 Dec 44, illegally absented himself without leave until he surrendered himself to the Civil Police at WILSDEN at 1030 hrs 23 Feb 45.

(Total time absent: 80 days, 2 hrs, 30 min)

In the Field
14 July 45

"J G Bourne"
(J G Bourne) Lt Col
A/Comd 2 CITR

To be tried by Field General Court Martial.

"K G Blackader"
(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

In the Field
17 Jul 45

DLR

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F44815	Pte	James Leonard	EMERY	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Jul 45 endorsed by me, (*or by an offr on my staff for me*), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior practical offr~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~If any unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have already stated.~~ KGB
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redman VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by Comd	5 CITR
Lieutenant	To be detailed by Comd	2 CITR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	To be detailed by Comd	3 CITR

~~JUDGE ADVOCATE~~: KGB

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

"K G Blackader" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Dat: 17 Jul 45

(K G Blackader)
Commanding 15 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (In lieu of AFA 3; 40/F & S/1097 (8148)) (*See overleaf for oaths and notes for use on trial.*)

DLR

MED OFFRS CERTIFICATE 2 CITR/11 DLR

KR Can para 557

I certify that I have this morning examined No B44815
Pte Emery J L and in my opinion he is fit to undergo
trial by Court Martial.

Station 2 CITR

Date

"G MacDonald" Capt
RCAMC Attached to 2 CITR

19 Jul 45

PLEA OF MITIGATION

Sirs:

I ask the Court to consider certain mitigating factors in this case.

Pte Emery is 23, he joined the army September 3rd 1939 and came overseas with the West Nova Scotia Regiment as a despatch rider.

In 1940 he was transferred to Ordnance Workshops as a driver mechanic and despatch rider.

After D Day he paraded three times before his Commanding Officer, asking to be sent overseas, this was refused without any reason being given.

He was then transferred to the Canadian Infantry Corps where there was no employment for him along the line of work he had been doing for the past five years. He felt very dissatisfied over this, and while still feeling very disgruntled he was granted privilege leave at a time when there were no credits in his pay book and he had only one pound. He was paraded for an advance of pay but this was refused.

These are the factors which caused Pte Emery to overstay his leave and be absent until surrendering himself to the civilian police.

I ask the court for leniency in this case, because a heavy sentence would deprive this man of certain rehabilitation credits.

E-3 DLR

SUMMARY OF EVIDENCE

In the case of F44815 Pte James Leonard EMERY, CIC, on strength of 2 Cdn Inf Trng Regt, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness Prosecution - Lieut A W Geddes, RHQ, 2 CITR, having been duly sworn states as follows:

"I am Lieut A W Geddes, RHQ, 2 CITR, and I produce the following documents pursuant to Overseas RO 5352 which have been read over and shown to the accused and which are attached hereto as exhibits:-

Exhibit "A" - Certif. True Copy of Declaration of Court of Inquiry held on 4 Jan 45, showing that F44815 Pte Emery J L illegally absented himself without leave from 0800 hrs 5 Dec 44, and that on the date of the Court (4 Jan 45) he was still so absent.

Exhibit "B" - Army Form C.1617, showing that F44815 Pte James Leonard EMERY surrendered himself to the Civil Police at WILSDEN at 1030 hrs 23 Feb 45.

Which above exhibits pertain to the accused here...

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

"A W Geddes" Lieut
(A W Geddes)

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

In the Field
13 July 45.

"P Saperia" Lieut.
(P Saperia)
Officer detailed to take the Summary of Evidence.

Ex A DLR

Ex A

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 4th day of January 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F44815 Pte Emery J L

DECLARATION

The Court declare that No. F44815 Pte Emery J L

illegally absented himself without leave 0800 hours

at In the Field on the 5th day of Dec 44,

that he is still so absent, and that on the 4 January 45 he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
See Overleaf		See Overleaf	

"T W Metcalfe" President
(T W Metcalfe) Lieut RWLI

Signed at In the Field "H W J Dearness" Member
(H W J Dearness) Lieut RM of C

this 4th day of Jan 19 45 Member

Signature of Commanding Officer "J A Wilson" Col
(J A Wilson) Col Comd 2 C I T S

Certified true copy "J D Lake" Lt
Signature of Officer having custody of original record

3/60B HFB 275-AFB 165 40/F&S/292 (6610)

DLR

Article	Quantity	Vocab Price			Less 25%		
Blouse, battle dress	1	1	3	6	0	17	7½
Boots, ankel prs	1	1	4	5	0	18	4
Cap, Field Service	1	0	2	6	0	1	10½
Drawers, Cellular prs	2	0	3	10	0	2	10
Gloves, knitted prs	1	0	2	1	0	1	7
Greatcoat	1	2	11	8	1	18	9
Jersey, Pullover	1	0	8	0	0	6	0
Overalls, Denim (Trousers)	1	0	11	3	0	8	5½
Socks, prs	3	0	5	0	0	3	9
Trousers, battle dress	1	1	4	1½	0	18	1½
Vests, woollen	1	0	5	4½	0	4	[illegible]
Badges, cap	1	0	0	4½	0	0	3½
Bags, kit	1	0	4	7	0	3	5½
Brushes, polishing	1	0	1	3	0	0	10½
Brushes, shaving	1	0	1	8	0	1	3
Brushes, tooth	1	0	0	6	0	0	4½
Cap, comforyer	1	0	1	6	0	1	1½
Combs, hair	1	0	0	2	0	0	1½
Dressing, First Field	1	0	1	1	0	0	10
Fork Table	1	0	0	4	0	0	3
Holdall	1	0	0	10	0	0	7½
Knife, Clasp	1	0	3	10	0	2	10½
Razor, safety	1	0	0	3	0	0	2
Towels, hand	1	0	1	5	0	1	1
Vests, Gym	2	0	3	2	0	2	5
Belts, Waist	1	0	3	4	0	2	6
Shorts, Gym	2	0	3	10	0	2	11½
Cape, A/G	1	0	12	4	0	9	3
Shirts, Angola	2	0	18	2	0	14	10
Shoes, Canvas prs	1	0	2	11	0	2	3
		£11	3	3½	£ 8	8	11½

Certified that the above prices are in accordance with C A R O.

"W O Toombs"
(W O Toombs) Capt
QM 2 CITH.

COPY Ex "B"

Army Form O.1617
R.A.F. Form 1617

I CERTIFY that the man whose personal description is given below surrendered himself to* PC 1440 Alfred Hodgson at Crabtree Place, Wilsden (hour) 1030 hrs on the 23rd day of February as being No. F44815 (Rank and Name) Pte James Leonard Emery a deserter (or absentee without leave) from Whitley, Surrey and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 23 Height 5'2" Feet ..... Inches

Complexion Sallow Hair Brown

Eyes Blue

Marks War Wound on head

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	
Probable Date of Desertion or beginning of absence, and from what place	9th February 1945 from No 2 CITR Whitley, Surrey.

"A W Appleby" Insp

Signature of Officer of Police in charge of Bingley Station

23rd February 1945 Date of Signature. DLR

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at .....

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

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* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police, e.g., such persons will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 439/1940).

(27892) W.1.22001/3249 30,000 7/41 A & E.W.Ltd. Gp.488

ARMY FORM B 200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F44815	Pte	James Leonard EMERY	2 CITH

1. The following is a fair and true summary of the entries in the ~~regimental~~ conduct sheets[†] of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :— PS

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and attested to the proceedings.

[See para. 677, K.R., 1940.

* The numbers hereinafter should agree with the particulars in the conduct sheets, provided that any difference being given to the most favourable effect in each entry, and to any mitigating detail with or without authority or discreditable conduct.

Instruction.—In the charge to be framed upon the entries the offences must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec 15(1)	0 times	8 times.
For Sec 40	0 times	5 times.
For Sec 15(3)	0 times	1 times.
For	times	times.
For	times	times.

~~[illegible]~~, PS

or

There are no entries in the conduct sheets of the accused.

2. ~~The particulars of previous convictions~~ PS

Previous convictions[†] of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. or ~~The particulars of the present sentence are set out in the schedule annexed to this statement.~~ PS

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 16 days in military custody, making a total of 16 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is PS 24 yrs 7 mos

6. The date of ~~his~~ PS ~~[illegible]~~ attestation is PS 3 Sep 1939.

PS 7. ~~The accused was awarded [illegible]~~

PS 8. ~~The accused is entitled to [illegible]~~

PS 9. ~~The accused is entitled to [illegible]~~

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). CVSM & Clasp

PS 11. ~~(If the accused is entitled [illegible]~~

PS 12. ~~(In the case of [illegible]~~

[illegible] Ex B DLR

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 2448[illegible]5 Rank Pte Name Emery J L of 2 CITR Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Civil	Aldershot 18-8-41	Breach of Recognition	3 years penal servitude.	22 mos remissn.
Civil	Bournemouth 3 Mar 45	Larceny	6 months with H.L.	2 months remission.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of July 45 "P Saperia" Lt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... years, ... Date of Promotion.

In the rank of ..... years ....

In the rank of ..... years, ...

(INSTRUCTION—If any matter in any of the above paragraphs cannot be obtained from the regimental books the paragraph must be struck through—except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available until the paragraph concerned amended accordingly.)

MFM 6
(AFB 159)
40/PAS/138 (3438)

No F44815 Name Emery J L | Sqn, Battery, or Company | Corps COPY | Date of enlistment 1 Sep 39 | Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Extracts from MFM 4 & 14.					
Whitley	2-12-40	Pte		Sec 15(1) AWL from 1100 hrs 2-12-40 to 1400 hrs 23-1-41	Doc'y	90 days Detention	21-2-41	FGCM	Stoppages £3-17-8½ Total forf 105 days Reverted to Pte from L/Cpl
Borden	24-6-41	Pte		Sec 15(1) AWL from 2230 hrs 24-6-41 to 0745 hrs 10-7-41 (16 days)		7 days pay 7 days FF	10-7-41		
Borden	10-11-41	Pte		Sec 40 Wearing decorations to which he was not entitled.		7 days CB	20-11-42		
				Sec 40 Improper remarks to NP		1 days pay			
Borden	9-12-42	Pte		Sec 40 AA Conduct to Prej		10 days pay	15-12-42	Ex C DIR	
				Sec 15(1)					
				Sec 40 AA Conduct to Prej					

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Borden	13-1-42	Pte		Sec 40 Conduct to the Prej etc		5 days pay	29-1-43		36 days pay Stoppages of 10/5
Borden	1-4-43	Pte		Sec 15(1) AA From 2130 hrs 1-4-43 to 1020 hrs 8-4-43 (6 hrs 50 min).		24 days FP 24 days pay FR&I 149(1)(b) 7 days pay FR&I 149(1)(c) 5 days pay FR&I 149(1)(c)	13-4-43		Stoppages of pay 10/5d. Total 36 days pay
Borden	6-10-43	Pte		Sec 15(1) AA AWl to hrs 11 min		14 days CB	16-10-43		
Borden	3-3-44	Pte		Sec 15(1) AWL from 2359 hrs 3-3-44 to 2140 hrs 10-3-44. 6 days 21 hrs 41 min.		7 days FP 7 days pay FR&I 149(1)(a)	15-3-44		Forf 7 days pay.

MFM 6
(AFB 122)
40/PAM/136 (3438)

No. F44815 Name Emery J L | Sqn, Battery, or Company | Corps | Date of enlistment 1 Sep 39 | OC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No Two | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Borden 31-3-44 Pte Field 5 Jan 44 Pte				Being out of Bounds. Sec 15(1) AWL 3 Jan to 14 Jan 46		4 days pay	1-4-44		Tot forf 33 days pay Costs 13-17-2 23 days auto forf.
London		Pte		Charge or breach or recognizion (Civil)		3 yrs penal Servitude	18-8-41		
Field 8 Apr 44 pte				Sec 15(1) AWL from 2230 hrs 8 Apr 44 to 2200 hrs 1 May 44. (22 days 23 hrs 30 min).		28 days pay 28 days FP	25 Oct 44	Lt Col Ahearn	4 3 dys close arrest

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Civil Bournemouth	8-15 Jan 45	Pte		Larceny stealing wallet and 17/10/0 and 2 watches and shoes.		6 months HL	3 Mar 45	Civil	

Certified True Copy consisting of 3 pages.

13 Jul 45.

"P Superia" Lt
Officer having custody of Original.

5B 32

Pk Emm W J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A-11057 Pte (L/Cpl) William James EMM, Perth

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not guilty	Guilty	
2nd	Not Guilty	Guilty	
3rd	Not Guilty	Not Guilty	
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 752, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ [remaining one (date)] ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To suffer penal servitude for a term of five years.

(Sgd) "W. W. Shaw" Capt 7 Feb 45 (Sgd) "R. T. Donnell" Major President. (RP 43, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 740.)

I reserve the finding and sentence for confirmation.

Date 7 Feb 45 (Sgd) "R. E. Somerville" A/Commanding 11 Cdn Inf Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR "on 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 572. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

"I confirm the finding and sentence"

~~I direct that the accused be not committed to prison or detention barracks until further orders (1).~~

(1. AA 57A. Delete if not used.)

(Sgd) "E Weeks" Major General
i/c Administration

Date 19 Mar 45 Commanding Canadian Military Headquarters
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
A11057 Pte EMM W.J.	19 APR 45	J.W. Medhurst Capt for i/c Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA60 (To issue w/ AFA21) 40/P & S/1608 (40-10) 4/388

53-32

Convened by Order of Lt Col R E Somerville A/Comd 11 Cdn Inf Bde dated 4 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A11057	Pte (L/Cpl)	William James	EMM	

CERTIFIED TRUE COPY [signature] 21 Army Group

PROCEEDINGS RECEIVED Date 24 Apr 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ITALY on (*date(s)*) 7 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance as procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1350 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused directed to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to~~ ~~an interpreter ? Ans~~

~~The interpreter is duly sworn.(1) Do you object to~~ ~~a shorthand writer ? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No sir.(2)

(1. RP 116. 2. If no objection, waiting member retires. RP 56(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	R. T. Donnell	C.D.L.
Member	Capt	L. Mundington	Perth
Member	Capt	G. J. Wood	I.R.C.
Judge-Advocate	Capt	W. W. Shaw	HQ 5 Cn Armd Div
Prosecutor	Lieut	F. P. Metcalfe	Perth
Defending Offr	Lieut	A. E. Croxton	Perth

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 33.)

A8. The accused before arraignment make(s) (no) ~~(1)~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 67(F), 109), or as to the jurisdiction of the Court (RP 34, 35(F), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or to one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the submission made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(1)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(2)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 5 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. *After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 37(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A)(C).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(Use Form Loose Sheets of Record)

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No (2)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s) (2) The Court is cleared, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. No neither. Do you intend to call witnesses on your behalf ? Ans. No. Are they witnesses as to character only ? Ans. No

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(c).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A).* 2. *See Notes in Part I of Schedule. See RP 44(B).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ~~1st 2nd~~ charge(s), being subject to confirmation, will be promulgated later.(1) ~~On the President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is deleted and signed by him and the JA, if any.~~

(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No sir

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. *MFR 255 or AFB 2586.* 2. *MFR 6.* 3. *RP 44, KR Can 558. If above documents not produced, see RP 44 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes through Def Offr (2)

(1. *RP 37(C), 46(2).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove no oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 129(A2), KR Can 326, 330, 563-566, Overseas Act 209, 232(3), MML p 60, 737-751. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused A-11852 Pte (L/Cpl) William James ESS, Perth Regiment, C.A. a soldier of the Canadian Army Overseas, is charged with -

FIRST CHARGE WHILE ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE
AA Sec 12(1)(a)

in that he

In the field when in a forward area did absent himself without leave with intent to avoid front line service, from the Perth Regiment from 1830 hours 10 Dec 1944 until 1800 hrs 13 Dec 44.

(Total absence 1 day, 20 hrs, 30 mins.)

SECOND CHARGE WHILE ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE
AA Sec 12(1)(a)

in that he

In the field when in a forward area absent himself without leave with intent to avoid front line service, from The Perth Regiment, from 2130 hrs 20 Dec 44 until 1830 hrs 23 Dec 1944.

(Total absence 3 days, 7 hrs, 30 mins.)

THIRD CHARGE WHILE ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN
AA Sec 9 (2) BY HIS SUPERIOR OFFICER

in that he

In the field when ordered to go to the front by Capt F.L. Waisman refused to go and did not go.

In the field
30 Jan 45.

" W R Andrew "
(W R Andrew) Lt Col
Co A - Perth R

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

4 Feb 45.

" R P Somerville "
(R P Somerville) Lt Col
A/O Comd 11 Cdn Inf Bde.

Crimes
RPB.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) uppmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A11057	Pte	(1/Cpl)	William James	Eaton	Perth

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) endorsed by me, (~~re by an offr of my staff for me~~); "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~;)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Unit.)
Major	R. . Bennell	

(Must be named. RP 106.)

MEMBERS.

(Rank.)		(Unit.)
Capt	A. Birmington	Perth
Capt	G. I. Wood	D&G

(Named or detailed. RP 106.)

WAITING MEMBER.

(Rank.)		(Unit.)
Capt	K. C. Tracy	R&P

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
Capt	W. . W. Shaw	HQ 5 Cdn Armd Div

(Must be named, if any. RP 106.)

On Active Service in the Fd

in ITALY (Country.)

R. P. Somerville (Signed personally. RP 105 fn 2.) Lt Col (Rank.)

Date 4 Feb 45 Commanding 11 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for alts and notes for use on trial.)

4/38A (Para 126 Sec III AFAO 45 P & C 1/39) (Amd)

I certify that I have this day examined No. A.11057

Rank L/Cpl Name Ramm, WJ, of THE PERTH REGT and have

found him fit for TRIAL BY FIELD GENERAL COURT MARTIAL

Date Feb 7-19-45 "WARNS" ??? ??? ???? Capt

FIRST WITNESS

PTE BOOTON A-1158 L/Sgt Benford W.A., Perth, duly sworn, states:

As in Sp Coy. Know & recognise L/Cpl Dan, he is there (pointing). On 10 Dec 44 I was attd to A Coy for crossing of Lacone River. I saw accd at approx 1630 hrs when having evening meal. I gave accd the scores told them the time of the crossing and the plan - accd was present. I did not see accd again until approx 1130 hrs on 11 Dec 44 when he reported to me at B Coy. Gave him the plan which did [illegible] a time to move that might but now can't swear what time it was. On the Arbon side of river after reaching objective accd not there.

On 19 Dec we were attd to B Coy. We were stranded from B Coy - I had a sec of B Coy with me and my own sec, accd was in my sec then - I moved forward with the 2 secs and got as far as the Nestor RAP about 200 yds from the dyke. Was ordered forward to contact B Coy what I started to do and on reaching dyke accd was not there. Reached dyke about noon on the 20 Dec. Got secs together at RAP of Nestor and told them moving forward and accd was present then. Here at Nestor RAP from 0700 hrs to 1100 hrs, 20 Dec. Accd was present when we left there.

I had 9 of my own men and 2 sec of B Coy. Accd was i/c of a grp consisting of 2 secs. Two sec leaders were missing. I carried on with B Coy and did not see accd until we came out of line again on Xmas Day. On 19 Dec there was shelling - we were crossing Lacone - Jerry was on the other side.

On 19 Dec the dyke was the front line.

Cross Examined

Accd been with me since Brisbane in Coy in Tk hunting PL. Have no criticism of his previous actions.

When I was relieved on 19 Dec I needed map and did not ask where had been. We came out that night and went in again on the 19 Dec when we went to join B Coy. There was confusion around B Coy. Could be possible for him to have gone off on a tangent.

Re-examined - Nil

C.F. 87 (b) complied with.

SECOND WITNESS

PTE BOOTON A11765 Sgt Hankelow G, Perth, duly sworn, states:

As in Sp Coy. Know Cpl Dan, he is accd (pointing). On 10 Dec 44 I was attd to A Coy with my sec. At about 1630 hrs the accd reported to me. He just said he was reporting to me. I sent him back to Sp Coy. He was not attd to my sec and dont know where he had been previously. There was confusion around that area at the time.

Cross Examination

Came up and said reporting to you. Known him since 1935. Have been all through Gothic line with him. He did his job well. He was i/c Vickers M.G.

Re examined Nil

C.F. 87 (b) complied with.

THIRD WITNESS

PTE BOOTON A11367 Cpl [illegible] S.L., Perth, duly sworn, states:

As in Sp Coy. Know Cpl Dan, he is accd (pointing). At approx 1500 hrs 23 Dec 44 accd, accompanied by Donnelly reported to me at Coy Hq in Villanova stating he had been absent from his section. I placed him under open arrest and sent him to his billets in that vicinity. Asked where had been and he said in a house, could not remember.

Cross examination

Was on ground 2 Coy when they were at X rds about 1000 yds from Lamone - no confusion when I was there. Was large house at X rds and several houses to right.

Aged has been in my Coy - have not been closely associated with him in action. He has been in all actions with coy and no reasons to find fault with his work.

Re exam : Nil

Court : Sp Coy HQ has been there at least 2 or 3 days. Coy HQ had followed up the line of the advance.

R. . Pj (b) complied with.

Fourth Witness

PROSECUTION : Capt D.I.Watman, Perth, duly sworn, states:

On 24 Dec was A/OC of Sp Coy. Recognise Cpl [illegible], he is shot (pointing). My HQ in Villarosa and he was ahead of this facing South river [illegible] to send up to B Coy all available personnel. Turned personnel [illegible] up. Shortly after the last one other soldier came to me and said the small box up to the front. That called me out of my office into hall. I called [illegible] to [illegible] what. Was angry & I said [illegible] charge and [illegible] that was reason he did not wish to go up again because he not want to plunge a 3 charge. I went to see Sgt Lorrose and a result told good to report to B Coy HQ and reasons to Sgt and explain case to Mc. They refused. I pointed them of consequences. They said could rather be placed under a close arrest. They were subsequently placed in arrest, after warning there no recollection of lapse until saw me. Remainder of troops were preparing to move off.

Cross Exam : Nil

Court : Not prepared to swear how long after but remember moved off shortly after these men placed in arrest. They would have to gather kit together in preparation to move so it was only short time. Don't know if sent [illegible] made any preparations.

[illegible] up a [illegible] Cpl Neal. [illegible] to write front. I don't [illegible] was hearing involved in. Sent was I gave him direct order. Someone else named then for front, I did not.

R.P. Pj (b) complied with.

PROSECUTION CLOSED.

PRO IN CLOSING : I have facts to the Court.

DEF OPN TO CLOSING : Nil

LA SUM UP : Function of court, credibility of witnesses, presumption of [illegible], burden of prosecution, reasonable doubt, intent, desertion and AWL, disobeying lawful cmd, AA , S OF A (1).

Def/Pr in attenuation

[illegible] offence of [illegible] Neal. Was [illegible] out at after being in action some considerable time. In fact these offences had continued himself well, and efficient. Character good enough for promotion and he put f/o [illegible]. Trusting point for everything and be reached it. Very partially to fit me for sending out back into action with [illegible] charge of desertion over his head.

Prosecution Capt

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-11057	L/Cpl	EDM, William James	Perth Regt

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded instance of gallantry or distinguished conduct should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For .... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 44 days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is .....

6. The date of his attestation / calling up for military service is .....

7. The service which the accused is allowed to reckon is .....

†Here the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM and Clasp

9. (*If the accused is a warrant officer or a N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of L/Cpl	15 Oct 44

"A"

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through*

(*23072) W.L.[illegible] 2,500 3-44 A.& E.W.Ltd. Gp.699

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 7th day of Feb 45

"A" W.W.W.S.

O.H. Swartz, Capt
Officer i/c Regtl Books

No. A-11052 Name EMM, William James | Sqn, Battery, or Company SP | Corps C.I.C. | Date of enlistment | GC Badges 16/2/40 | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet 24-2-41 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed 24 Feb 41					
				NIL ENTRIES					
				Certified true copy of original M.F.M. 6					
				(sgd) C.W. Swartz, Capt & Adjt Perth Regt.					

(PTO)

ORIGINAL SUMMARY OF EVIDENCE
ACCOMPANIED ORIGINAL PROCEEDINGS

(officer certifying copy)

HJ 101

PTE EMMAN L J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-19450 Pte Lee Theodore Enmon. Can Reg't 1 CDN CONV DEPOT

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Charge	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for 28 Days Detention beginning on (date) 16 Nov 44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 83 days, of which 20 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 120 Days Detention. ~~+ to be placed under stoppage of pay to the extent of $120.00~~

Nov 23rd 1944 (Sgd) Guy Sarard Maj

(Sgd) Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~not~~ committed to prison or detention barrack ~~until further order~~. (1) (1. AA 57A. Delete if not used.)

Date 27 Nov 44 (Sgd) H.C. Hudson Brig COMMANDER 1 CDN BASE RET GROUP Commanding Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
G 19450 Pte Enmon L.T.	28 Dec 44	H.C. Hudson Brig

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4J-101

CPA86 (In lieu of AF A3) 40/P & S 1608 (1944)

FIELD GENERAL COURT-MARTIAL

Convening Order: Brig F.G. Gibson Comd 1 C.B.R.G.C.A.F. dated 21 Nov 44

RECEIVED 7 JAN 1945 JAG BRANCH CMHQ

PROCEEDINGS REVIEWED 1 Can Sec Ch Tech AAI

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G-19450	Pte.	Lee Theodore	Enmon	Can Reg't. 1 CDN CONV DEPOT

PROCEEDINGS REVIEWED 8 Jan 45

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 23rd Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-83

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 46, 92, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~[illegible]~~ as interpreter? Ans ~~[illegible]~~

The Interpreter is sworn.(1) Do you object to ~~[illegible]~~ as shorthand writer? Ans ~~[illegible]~~

The shorthand writer is sworn.(2)

(1. RP 71. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj. Guy Sarard	1st Q and C Regt (R.C.A.) (U.C.C.)
Member	Capt C.A. Gordon	The Irish Regt of Can (U.C.C.)
Member	Lt J.E. Rushton	R.C.A. (U.C.C.)
Judge-Advocate		
Prosecutor	Lt ~~W.S.L.~~ T.G. Forman	Westm Regt (C.A.C.)
Defending Offr	Lt W.S.L. Oakey	9th/10th Bn. C.I.C.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See Dir p 3.)

A8. The accused G-19450 Pte L.T. Enmon before arraignment makes(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. MJO

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L* p 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 39, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans No.[5]

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3. *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not charged the President records finding(s) of Guilty in Part I of the Schedule.[1]

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by vir of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....[1]

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will new proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans .....

Do you intend to call witnesses on your behalf?

Ans .....

Are they witnesses as to character only? Ans .....

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, *B*&*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]

(1. *AA* 54(2) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (*g*) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]

(1. *MFR* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans No. Yes. Hand in.[2]

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.[2]

(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, composed of the punishment or punishments laid down in AA* 41, 44 *and its genesis, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 343-366, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 120. *When accused already under sentence of imprisonment or detention see AA* 44(18), 60(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NO. 1 CANADIAN CONVALESCENT DEPOT, (CMF)

I G 12450 McGrandle hereby acknowledge receipt, free of charge, of one copy of the Charge Sheet and one copy of the Summary of Evidence relating to my trial.

J. McGrandle

I request that an Officer be appointed to represent me at my trial. I request the services of _____ if he is available.

J. McGrandle

9J.

CHARGE SHEET

The accused, G.19450 Private Leo Theodore Enman, Carlton and York Regiment, presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Army Act
Sec 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy whilst in arrest absented himself without leave from 0200 hours 27 July 1944 until apprehended by the Military Police at Salerno at approximately 1330 hours 8 September 1944.

In the Field
17 Nov 44.

A.J.K. Mc. Major
A.J. McTEER
T/Commanding Officer
1 Cdn Convalescent Depot.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
21 Nov 44

(W. G. Gibson) Brigadier
Comd 1 Cdn Base HQ
Cdn Army - IF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 109. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names	Surname	Unit
G19450	Pte		Leo Theodore	EGAN	1 Cdn Conv Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 22 NOV 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G SAVARD (CJC)	1 Cdn Conv Depot

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 1 Cdn Conv Depot		
" " " " " " " " " " " "		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 1 Cdn Conv Depot		

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

(Signed personally. RP 105 fn 2.)
(W. G. GIBSON)

Brigadier
(Rank.)

Date 21 Nov 44

Commanding 1 Cdn Base Repl Gp-CAF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAPD 'On Svc' of AFAO 60-9 & 6/1897 - 60D)

(See overleaf for oaths and notes for use on trial.)

NO. 1 CANADIAN CONVALESCENT DEPOT, C.

MEDICAL OFFICER'S REPORT

I certify that I have this morning examined Regtl No G 19450

Rank PTE Name ENMAN L.T. Unit C.Y.R.

and that he is in a fit state of health to undergo

trial by Court Martial.

Date Nov 23/44

H.J. Kennaught
Signature of Medical Officer

Ex. D.

Statement of G19450 Pte Erman L.T.

Since joining the army in July 41 I have tried to obtain dependants allowance for my mother who is separated from my father. Her only means of support being $20 a month from my brother a soldier in the 2nd LAA. and $20 a month from myself.

During the battle of the "Hitler line" in May I was wounded and while in hospital I received a letter from my mother to say that her home was burnt down with considerable loss of furniture etc. she only had $400 insurance.

My mother also moved to my sister's home and this has also been destroyed by fire.

My girl friend who I have been writing to ever since I was wounded in May 42 and had hoped to marry and set up a home with such that everything between us was finished and that she was marrying someone else.

L.T. Erman.

Ex. A.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of G.19450 Private Leo Theodore Enman, Carlton and York Regiment, presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

G.18048 Sgt Nash, S.W., 1 Canadian Convalescent Depot, having been duly sworn states as follows:-

I was the Regimental Police Sergeant at 1 Canadian Convalescent Depot on the 26th and 27th days of July 1944 and as such I was in charge of the Guard Room at 1 Canadian Convalescent Depot.

The accused, Pte Enman whom I recognize was in my custody as a soldier in arrest in the Guard Room 1 Canadian Convalescent Depot, on 26th July 44 and he escaped from the Guard Room whilst in arrest between 2300 hours 26 July 44 and 0830 hours 27 July 44.

The accused declines to question this witness.

S. W. Nash.

SECOND WITNESS for the Prosecution

Capt. J. McConvey, Adjt., 1 Canadian Convalescent Depot having been duly sworn states as follows:-

I produce a record of the Declaration of a Court of Inquiry which investigated the illegal absence of the accused Pte Enman, L.T., whom I recognize. The Declaration shows that the accused absented himself without leave at 0200 hours 27 July 44 and was still so absent at 0830 hours 2 August 44. (Certified true copy of Declaration admitted in evidence and marked Exhibit "A")

I produce Certificate of Apprehension relating to the accused, G.19450 Pte Enman L.T., which shows the accused was arrested at Salerno at 1330 hours 8 September 1944 and the certificate purports to be signed by the proper military authority. (Certificate of Apprehension admitted in evidence and marked Exhibit "B")

The accused declines to question this witness.

J. McConvey

The accused was asked, "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make any statement and reserves his defence.

Summary of Evidence

Taken down by me in the presence of the accused this 17th day of November 1944. I hereby certify that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

N.B. Bergman Capt.
(N.B. BERGMAN)
Officer detailed to take
Summary of Evidence.

J.

Exhibit 7

In Lieu of Army Form B 115

Record of The Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at

1 Can.Convalescent Depot on the 22nd. day of August 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or clothing of No. G19450, Pte. Ennan, L.T., C.S.Y.R.

DECLARATION

The Court Declare,

1. G19450, Pte. Ennan, L.T. (C.S.Y.Regt) did break arrest between 2300 hrs. 26 July 44 and 0200 hrs. 27 July 44.
2. that G19450, Pte. Ennan, L.T. did illegally absent himself at 0200 hrs. 27 July 44, has been since and is still so absent.
3. that on 21 Aug 44, Pte. Ennan, L.T. was deficient in arms, equipment, clothing and regimental necessaries to the value of 28.16 dollars as shown:

Deficiencies of his kit

3 Blankets, C.S.	9.21
1 Net, mosquito	8.49
1 Plate	.15
1 Basin	.15
1 Boots, ankle	5.46
1 Canvas shoes	.65
1 Shorts, K.D.	1.34
1 Trousers, K.D.	1.58
1 Kit Bag	1.02
1 Discs, identity	.01
1 Drawers, C.S.	.43
2 Knives, table	.30
2 Forks, table	.14
1 Housetops	.43
1 Shirt, angola	2.03
1 Shirt, bush	1.75
2 Socks	.74
2 Spoon dessert	.14
1 Vest, cotton	.36
1 Towel, hand	.32
1 Clothes, brush	.48
1 Shaving brush	.37
1 Tooth brush	.11
1 Comb hair	.04
1 Razor	.06
1 Haversack (web)	1.79

Names of President and Members

Total	37.35 dollars
Less 75%	28.16 "

PRESIDENT - Capt. D.R. Wheldon, ROAPC
MEMBERS - Lieut. R.E. Semple, Seaforths of Can.
Lieut. W.M. Waspyraki, R.C.A.

Signature of Commanding Officer..(F.T. Northwood Major)Can.

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

Exhibit 15
748

Certificate in accordance with the Army Act Sec. 163 (1) (ii)

I certify that

No G19450 Rank Pte. Name ENMAN L.T.

of the Carlton & Yorks Regt, C Coy, att HQ No.1 CBRD.

was arrested at SALERNO at 1330 Hrs.,

on the 8th day of SEPTEMBER 1944

Signature of P.M., A.P.M., or other Officer into whose custody the above named person was taken on arrest. G.R. Horner

Rank Lieut.

Appointment (if any)

Commanding 246 Provost Company CMP.

Date 8 Sept 44.

PS82 WF AM 7-44

EX B

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
G 19450	Pte	LAMAN L.T.	Carleton and York

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be submitted to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA 15 ..... 3 ..... times.

For AA 11 ..... 1 ..... times.

For AA 40 ..... 1 ..... times.

For .... times.

Date of first entry in Field Conduct Sheet 5 APR 42

Date of last entry in Field Conduct Sheet 6 JAN 44

good 2. ~~Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

*Strike out if not applicable.

*3. The accused at the present time is under sentence for 28 days DETENTION beginning on the SIXTEENTH day of NOVEMBER 1944

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for ~~nil~~ 83 days in military custody, *i.e.*, nil days in open arrest, ~~nil~~ 83 days in close arrest, of which 10 days were spent in hospital.

5. The present age of the accused is 21 yrs

6. The date of his ~~calling up for military service~~ attestation is 28 Jul 41

good 7. ~~The service which the accused is allowed to reckon is~~

Strike the military organization with which held by accused

8. The accused is in possession of Canada Volunteer Service Medal and Clasp

good 9. ~~If the accused is a warrant officer or N.C.O.~~ The accused has served continuously, without reduction, to the present date—

Date of Promotion

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

D[illegible] HDP. ME—6[illegible]/44—4,000—9[illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this TWENTY-THIRD day of NOVEMBER 1944

[redacted]

Ex C

MFM 6 (AFB 122) 10/PAM/136 (3458)

No G49450 Name ENMAN L.T. | Sqn, Battery, or Company | Corps | Date of enlistment 28.1.41 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 26/1/42 | No and date of last drunk | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Aldershot N.S.	5/4/42	Pte		Overstaying embkt. leave and remaining from 1200hrsto 0030hrs 8/4/42 AWL	Sgt Zinc W. Pte LeFarte Pte Payne	forf 10 days pay	9/4/42	Maj Manzer	3 days pay
Field	Mar43	Pte		AA Secll WOAS Failing to comply with Wing S.O. for Hut Orderlies Failed to put up Black-outs	Lt. Murray Sgt Thibert	5 days C.B.	3Mar 43	G.H. Hall Capt.	
Field	9Apr43	Pte		WOAS Sec 40AA Cond. in public place deficient Identity disc	L/Cpl Bernard Pte Theriene	forf 1 dayspay	15/4/43	Lt-Col F.D. Tweedie	
Field	8/7/43	Pte		Sec15(1) AA AWL 0600hrs 8Jul43 to 1145hrs 9 Jul 43	Sgt Elliott	10 days F.P.	9 Jul 43	Maj. WW Moir	forf 2 dys pay
Field	6/1/44	Pte		AASec15(1) AbsentW.L. from 0600 hrs 6/1/44to 2145hrs 6/1/44	Documentary	28 days detn	12Jan44	Lt-Col McNae DSO	forf 28 days pay forf 1 days PRI 142(1)(2)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16/11/44	Pte.	11 July	A.A. Sec. 15(1) A.W.L. from 0715 hrs 11th July to 1945 hrs 25 July 44	Documentary	28 Days Detn.	16/11/44	Lt-Col [illegible]	Forfeits 14 days Pay.

Certified true copy from Regimental books in my custody

[illegible] Capt. & Adjutant, R.E.

R.E. NO. 1 CONVALESCENT DEPOT, C.A.E.F.

4P 27

Pte. Emmen Lt.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G19450 Pte. Leo Theodore Enman

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15 (1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 6.)

At present under sentence for 120 Day Detention beginning on (date) 23rd Nov 1944
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial—a total of 42 days, of which 40 days were spent in hospital~~
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 9 months detention

(Sgd) _____ Judge-Advocate, if any. Date awarded. 5th Jan 1945 (Sgd) B MacLachlan President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attested before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the portion of the sentence in excess of [illegible] be remitted.
(1. AA 57A. Delete if not used.)

(Sgd) _____ CCL

Date 5 JAN 45 Commanding Training Units.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
G 19450 Pte. Enman, L.T.	10 January 1945	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4P. 27

CPAMS (To Hdq of APA) 40/P 26 B/1868 (4/44)

FIELD GENERAL COURT-MARTIAL

4/385

Convened by Order of Colonel S.A. Lee m.c. Comd 1 C B R G P. dated 31st Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prumt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G19450	Pte	Leo Theodore	Enman	1 Cdn Basic Trg Centre

PROCEEDINGS REFERRED TO REVISING OFFICER, JUDGE-ADVOCATE

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 4th Jan 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2G-59

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made [illegible] appropriate or preceding para number herein. See back of Convening Order, CF A95, for aids and instrs on how to record proceedings, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 54, 63-70, 73, 74, 84, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

(1. KR Can 557. 2. AA 46(B), RP 40 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to _____ as shorthand writer? Ans _____

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	D MacLachlan M.C.	C.I.C. 1 Cdn C.D.
Member	Capt	J.A. McKechan	C.A.C. 1 Cdn C.D.
Member	Capt	J.A. MacKenzie	R.C.A.S.C. 1 Cdn C.D.
Judge-Advocate			
Prosecutor	Lieut	Burns F.A.	C.I.C. 1 Cdn C.D.
Defending Offr	Lieut	Moran J.O.	C.I.C. 1 Cdn C.D.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See [illegible] p 3.)

A8. The accused _____ before arraignment makes(s) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 68(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 66, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned [illegible] on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A84 to record proceedings. 2. RP 32, 33. 3. If amendments, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 12

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. M118

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and priveleges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D5 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B6 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence considered as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A), (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statements, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(2), RP 46, 117. No alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form F, below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex *B* and Ex *C* respectively.(3)
(*1. MFE 255 or AFE 294. 2. MFM 6. 3. RP 46, KR Con 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans *I have the following facts to make a plea in Mitigation*
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 363-366, Overseas KO 309, 2373, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(3), 65(1), KR Con 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G.19450 Private Leo Theodore Enman, Carlton and York Regiment, presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy, whilst in arrest, absented himself without leave from 2320 hours 2 December 1944 until apprehended by the Military Police at Salerno at approximately 1100 hours 10 December 1944.

In the Field
15 Dec 44

Major
A.J. McTEER
T/Commanding Officer
1 Cdn Convalescent Depot.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
31 Dec 44

[S. W. LEE] Colonel
A/Comd, 1 Cdn Base Rft Cp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G19450	Pte		Leo Theodore	ENMAN	1 Cdn Conv Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) 21 Dec 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint an Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)				(Must be named. RP 106.)		(Unit.)
Major	M	F	MacLACHLAN	MC	(CIC)	2 Cdn RETD

MEMBERS.

Capt or Lieut to be detailed by the OC 1 Cdn Conv Depot

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 1 Cdn Conv Depot		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 1 Cdn Conv Depot		

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

(Signed personally. RP 105 fn 2)
(S. A. LEE)
A/Commanding 1 Cdn Base Rft Gp-CMF
Convening Officer.

Colonel
(Rank.)

Date 21 Dec 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

9 Feb

MEDICAL OFFICER'S RECEIPT

I certify that I have this morning examined Regtl No 3.9450

Rank Pte Name Enman C T Unit C.Y.R.

and that he is in a fit state of health to undergo trial

by Court Martial.

Date 11 Jan 43

Signature of Medical Officer

E.B.

Plea for Mitigation of Punishment

G 19450 Pte. ENMAN, L. T.

I hereby wish to put forward a plea on behalf of Pte Enman L.T. for mitigation of punishment.

Firstly Pte. Inman as a member of the C.M.F. Regt has seen considerable action as he was with his unit from August 1943 until May 1944 when he was wounded in the Hitler Line Italy. This in itself is indeed creditable and speaks for itself & show that when Pte Inman is with his unit, he is primarily a good soldier. Again I must point out & the court that unfortunately it is virtually impossible & have an officer come down from the C.M.F. Regt & speak on behalf of Enman as a character witness. I hope the court will bear this in mind!

At the present time Pte Inman is undergoing a period of detention for an AWL charge and I feel sure that to add a great deal to his present time would indeed only be keeping a good soldier from his unit where he would be doing more good & would behave himself.

With regard to the case in hand, Pte Inman went AWL from a guardroom at the same time as four other members of the guardroom. I feel that the situation which presented itself at the time offered

is great a temptation for most people to overlook. Pte Inman regrets his behaviour very much indeed and I am convinced that he is sincere when he tells me he only wishs to pay for his misbehaviour and return to his Regt. as soon as possible.

I ask the court to keep in mind when deciding on the sentence to be awarded Pte Inman — firstly, that he is a good soldier & is more use to his regt than in detention and secondly, that his recent A.W.L. was more unfortunate than deliberate.

John D. Moron Lt.
defending Officer.

Exhibit A.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of G.19450 Private Leo Theodore Enman, Carlton and York Regiment, presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

K.2434 Sgt Bell, J., 12 Canadian Armoured Regiment, 1 Canadian Convalescent Depot, having been duly sworn states as follows:-

I am employed at 1 Canadian Convalescent Depot as Sergeant in charge of the Guardroom and Regimental Police and as such I have custody of the soldiers in arrest at the Guardroom, 1 Canadian Convalescent Depot. At 1800 hours daily the soldiers in custody in the Guardroom are turned over to the special Convalescent Guard. I make a regular check every evening of the Guardroom and I visited the Guardroom at approximately 2300 hours to make a check up. At approximately 2315 hours, 2 Dec 44, I checked up on the soldiers in custody in the cells and I found that the accused, Pte Enman, whom I recognize had escaped. I then gave certain instructions which were carried out.

The accused declines to question this witness

J. Bell

SECOND WITNESS for the Prosecution

B.15714 Sgt Morewood, J.M., Toronto Scottish Regiment, presently a convalescent at 1 Canadian Convalescent Depot, having been duly sworn states as follows:-

I was Sgt of the Guard at 1 Canadian Convalescent Depot on 2 December 44 and I took over my duties as such at 1800 hours on that day. The accused, Pte Enman, whom I recognize was one of the soldiers in custody awaiting promulgation of sentence of his trial by FGCM. I personally checked the soldiers in custody at approximately 1900 hours and Pte Enman was in custody then.

At approximately 2300 hours Sgt Bell visited the Guardroom and at approximately 2315 hours he went in to the cells to check on the soldiers in custody and as a result of certain information which he gave me I personally checked the soldiers and found Pte Enman missing.

The accused declines to question this witness.

J. Morewood

THIRD WITNESS for the Prosecution

Capt J. McConvey, Adjt., 1 Canadian Convalescent Depot, having been duly sworn states as follows:-

I am Adjutant at 1 Canadian Convalescent Depot. I produce a Certificate of Apprehension relating to the accused and bearing the same number, name and initials of the accused, Pte Enman, whom I recognize. The Certificate purports to be signed by the proper military authority. (Certificate admitted in evidence and marked Exhibit "A")

The accused declines to question this witness.

J. McConvey

SUMMARY OF EVIDENCE

The accused was asked, "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make any statement and reserves his defence.

Taken down by me in the presence of the accused this 15th day of December 1944. I hereby certify that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

W.S. Bergman Capt.
(W.S. BERGMAN)
Officer detailed to take
Summary of Evidence.

Exhibit P
7668

CERTIFICATE OF ARREST.

Certificate in accordance with the Army Act Section 153 (1) (ii).

I, Capt.E.Braithwaite. certify that :-

No G/19450. Rank Pte. Name Enman L.T.

Unit 1st Bn Carlton & Yorks Regt. 1 C.C.Depot. was arrested at Salerno.

at 1100. hours on the 10 December. 1944.

Signature of P.M., APM., or other officer into whose custody the above named was taken on arrest.

Braithwaite Capt.

Commanding,

Date 10 Dec. 1944. 246 Provost Company.CMP.

123/174. M&S/2044/44.

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G.19450	Pte.	Enman, L.T.	Carleton & York Regt

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—As a trial by field general court martial the prisoner may be acquitted from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with the statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The words in square brackets should be struck out in the case of a soldier whose service records are not available.

Instructions.—In the space below write the entries to be considered and state the dates.

	* Within last 12 months.	*Since Enlistment.
For A. A. Sec. 15 (1)	3 times	5 times.
For A. A. Sec. 11	0 times	1 times.
For A. A. Sec. 40	0 times	1 times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

or

There are no entries in the conduct sheets of the accused.

~~2. The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

~~3. The accused is not under sentence of the present time,~~ or The accused at the present time is under sentence for 120 Days Detention beginning on the 25 day of November 1940

~~4. The accused has been in confinement awaiting trial on the present charges for Nil days in civil custody, and 18 days in military custody, making a total of 18 days of which Nil days were spent in hospital.~~

5. The present age of the accused according to his ~~record of service attestation paper~~ is 22 Yrs.

6. The date of his ~~commission~~ attestation specified in his ~~record of service attestation paper~~ is July 28 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is —

8. The accused is entitled to deferred pay or gratuity in respect of — service.

9. The accused is entitled to reckon — service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). C.V.S.M. & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G 19850 Rank Pte. Name E. [illegible], L.T. of C.S. York Regiment (or as the case may be).

(INSTRUCTION—*A verbatim extract from the regimental books, stating those convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
E.C.C.M.	28 Nov 1944	A.A. Sec. 15 (1) (A.W.L. 0200 hrs. 31 July 44 until apprehended at 1330 hrs. 8 Sep. 44)	120 Days Detn.	Nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of January 45

[illegible] for a signing officer

[illegible] appointment of signing officer

---

19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ... years ...

In the rank of ... years ...

In the rank of ... years ...

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

NO. 1 CANADIAN CONVALESCENT DEPOT (CMF)

I Sgt Emmard hereby acknowledge receipt, free of charge, of one copy of the Charge Sheet and one copy of the Summary of Evidence relating to my trial.

Sgt. Emmard

I request that an Officer be appointed to represent me at my trial. Irequest the services of _____ if he is available.

Sgt. Emmard.

No. G.19450 Name ENMAN L.T. | Sqn, Battery, or Company | Corps | Date of enlistment 28 Jul 41 | RC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/156 (5486)

Date of last entry in Company Conduct Sheet 26/1/42 | No and date of last drunk | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot N.S.	5/4/42	Pte		Overstaying embkt. leave and remaining from 1200 hrs to 0030 hrs 8/4/42	Sgt Zinc W. Pte LeFarte Pte Payne	forf 10 days pay	9/4/42	Maj. Manzer	3 days pay
Field	Mar 43	"		AA Sec 11 WOAS Failing to comply with Wing S.O. for Hut Orderlies ie. Failed to put up Black-outs	Lt. Murray Sgt Thibert	5 days C.B.	3 Mar 43	C.H. Hall Capt.	
Field	9 Apr 43	Pte		WOAS Sec 40 AA Cond. in public place deficient Identity Disc	L/Cpl Bernard Pte Theriene	forf 1 days pay	15/4/43	Lt-Col. A.D. Tweedie	
Field	8/7/43	Pte		Sec 15(1) AA AWL 0600hrs 8 Jul 43 to 1145 hrs 9 Jul 43	Sgt Elliott	10 days F.P.	9 Jul 43	Maj. WW Muir	forf 2 days pay
Field	6/1/44	Pte		AA Sec 15 (1) AWL from 0600 hrs 6/1/44 to 2145 hrs 6/1/44	Documentary	28 days detn	12 Jan 44	Lt-Col Memme DSO	forf 28 days pay forf 1

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order Superseding trial	By whom awarded	Remarks
Field	16/11/44	Pte		AA Sec 15(1) A&L From 11 July44 0715 hrs till appr. 1945 hrs 25 Jul 44	Documentary	28 days detn.	16/11/44	Lt-Col Corrigan	forfs 14 days pay
Field	27 Jul 44	Pte		WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE in that he In the Field, in Italy whilst in arrest absented himself without leave from 0200 hours 27 Jul 44 until apprehended by the M.P. at Palermo at approx. 1330 hrs 8 Sep 44.	DOCUMENTARY	to undergo 120 days detn.	23 Nov 44	FGCM	

Certified true copy from Regimental books in my custody.

[illegible]

GEM-A 147

Ste. Emma V

FALSE DOCKET

FALSE DOCKET

M.F.B. 387a
500M—6-41 (712)
H.Q. 1773-39-455

No.

H.Q.

DEPARTMENT OF NATIONAL DEFENCE, CANADA

CROSS REFERENCE

G.C.M-A-147

EMMONS, V. Pte. G.C.M. 17 May 44.

C-119503 1 Cdn Corps & Army Tps Sub Pk, RCOC

2 Years.

General Registry	Date	F. A. or H. P.	Initials	Reference to	For Remarks	Initials	Date
		(If paper for which referral cannot be expressed on one line, add minute to file and enter here "With Minute")					

H.Q.

DO NOT WRITE BELOW THIS LINE

A

Army Form A 9.

**Form of Proceedings for General ~~and District~~ Courts-Martial.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Proceedings of a General Court-Martial held ~~at~~ in the Field

on the 17th day of May 19 44 by order of

Lt-Gen E.L.M.Burns, OBE, MC

Commanding 1 Camdian Corps

dated the 14th day of May 19 44

President

Colonel J.W. Bishop
HQ 1 Cdn Corps

Members

Lt-Col F.J.Thorne, MBE, MC.
1 Cdn L.A.A.Regt, RCA

Major D.E.Mounteer
5 Cdn Armd Ord Sub Pk, RCOC

Capt J.V. Cooke
HQ 1 Cdn Corps Tps RCASC

Capt D.R.Fletcher
1 Cdn Svy Regt, RCA

Major G.M. Morrisan, DJA 1 Cdn Corps , Judge Advocate.

Trial of*

C119503 Pte Victor EMMONS,
1 Cdn Corps & Army Tps Sub Pk, RCOC

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt A. DesRosiers, ADJA 1 Cdn Corps, ~~for the~~

~~defending officer~~† Capt S.G. Main, Sask L.I.

At 1000 o'clock the Trial commences.

The order ~~convening~~ the Court is read, and is marked "a" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

(1) *Question by the President to the accused.*

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer (1)

No sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

RECEIVED 6 JUL 1944 JAG BRANCH G.M.H.Q.

SECTION N.W. ISHOT G.H.Q. 2nd ECHELON 1 JUN 1944

H126

5

PROCEEDINGS REVIEWED 19 Sep 44

REVIEWING OFFICER, JAG BRANCH G.M.H.Q.

Q-2 Do you object to B-24293 S/Sgt H.R.Adams, HQ 1 Cdn Corps, acting as shorthand writer

A-2 No sir

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Capt P.M. Peterson, 44 Cdn Gen Tpt Coy, RCASC
Capt E.C. Maltby, 1 Cdn Corps Sigs, RCCS

The shorthand writer is duly sworn.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The prosecutor presents medical certificate of accused's fitness to stand trial, which is signed by the president, marked "G-2" and attached to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the charge against you, which you have heard read? *Question to the accused.* 3

Not guilty *Answer.* 3

[redacted]

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

03

Re Bishop C.1.

Encl.

CHARGE SHEET

The accused, No C-119503 Private Victor EMMONS, of 1 Cdn Corps & Army Tps Sub Pk, RCOC, a soldier of the Canadian Army (Overseas) is charged with:

WHEN ON ACTIVE SERVICE, WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MANSLAUGHTER,

in that he,

Charge
Section 41
Army Act

in the Field, in Italy, on the 5th day of May, 1944, unlawfully killed ASN 42024162 Pvt Ralph L. Lyke, 439th Company, 93rd Replacement Battalion, United States Army.

P.M. Irwin

(P.M.Irwin) Major.
Comd 1 Cdn Corps & Army Tps Sub Pk, RCOC

In the Field,
14 MAY 44

To be tried by General Court-Martial.

E.L.M. Burns

(E.L.M.Burns) Lieut-Gen.
G.O.C. 1 Cdn Corps

In the Field,
14 MAY 44

Exhibit 5

C

Proceedings on Plea of Not Guilty.

*Instruction (See R. P. 39 (A))

4 Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

4 Answer. No sir

The prosecutor makes an opening address [redacted] (See Exhibit "T")

The prosecutor proceeds to call witnesses.

First witness for prosecution. Lieut A.R. Pengelly, 1 Svy Regt, R.C.A.,

being duly sworn, is examined by the prosecutor.

Q-5 I understand you recently made a plan of a certain section of Highway 87 on which there was recently an accident

A-5 I have this plan here made up of the scene of the accident one plan scale 1/5000 covering approximately one mile on either side of where the accident occurred, and another plan scale 15' to 1" of the scene of the accident. This sketch was prepared by me from information received regarding the circumstances of the accident

Plan is handed to Court, signed by President, marked Exhibit "H" and attached to the proceedings

The witness explains particulars of the sketch to the Court

Cross-examined by Defending Officer

Q-6 There is no drop from the edge of the ashpalt to the shoulder at that point?

A-6 No it is level

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(b)

The witness withdraws

SECOND WITNESS FOR THE PROSECUTION. Lieut R.O. Campbell, Canadian Army Film Unit, being duly sworn is examined by the prosecutor.

Q-7 Did you recently take photographs of a stip of road on Highway 87

A-7 I did

Q-8 Will you please file these photos as exhibits

A-8 The first picture is taken facing S.W. with my back to Caiazzo from the r.h. side of the road showing the stone culvert on the l.h. side.

Photograph described in A-8 is handed to the Court, initialled by the President, marked Exhibit "J" and attached to the proceedings

A-8a The second photograph is taken also looking S.W. taken from the centre of the road, showing both sides of the road

Photograph described in A-8a is handed to the Court, initialled by the president, marked Exhibit "K" and attached to the proceedings

A-8b The third photograph is taken looking N.E. showing the left side of the road and the right

Photograph described in A-8b is handed to the Court, initialled by the President, marked Exhibit "L" and attached to the proceedings

Pros: All these photos were taken on information received by the witness, I intend to have witnesses give further particulars

Court: That is correct?
Witness That is right, they were taken on 12 May

No Cross-examination

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(B)

The witness withdraws.

THIRD WITNESS FOR THE PROSECUTION. 2nd Lieut Robert D. Warren, 33rd Repl Bn, 2nd Repl Depot, U.S. Army, being duly sworn is examined by the prosecutor:

Q-9 Please identify yourself to the Court
A-9 I am 2 Lieut Robert D. Warren, assigned to training 33 Bn, 2 Repl Depot

Q-10 Could you tell the Court in your own words all you know about an automobile accident which happened on the 5 MAY 44
A-10 The battalion assembled that night about eight o'clock and moved out at 8.25 so as to cross the I.P. (identified as Initial Point) at 8.30. At 8.30 we crossed, I was leading "A" platoon, we went out the West gate, turned right on Highway 87. We were marching on Highway 87 in column of threes on the right side of the road, blackout discipline was maintained throughout the march, we showed no lights and there was no talking or noise making in the column. We marched about 20 minutes or so when I saw the lights of a truck approaching, we were marching East, the truck was travelling West. This truck was keeping to the right side of the road, he had his headlights on, I judge this truck to have been travelling about 25 m.p.h. I could see nothing behind him. Just as the truck was almost in front of us. about 12 yards, I could make out a second truck running without lights attempting to pass the one with the headlights. I immediately wanted to get the troops off the road and I sort of jumped forward, and evidently the truck driver saw us at the same time, because as I jumped forward and turned around I could see he pulled over to the right and attempted to avoid us, and as I turned around the trucks were almost opposite me and I could hear the crash as he side swiped the other truck, then he came right by me evidently lost control of his truck and drove into the column of troops

Exhibit 7

Q-11 What happened then?
A-11 He drove into the column of troops and ended up in the ditch where he stopped, the first truck stopped after he side-swiped it, and we sent to the R.A.P.Station for ambulances. I went around to the wounded and tried to give them sulfanalamide tablets and also warned the men not to move them

Q-12 What casualties were there
A-12 That night seven were killed and twenty four wounded and the next morning another one died

Q-13 Was ASN 42024162 Pvt Ralph L.Lyke a member of that platoon
A-13 Well sir, Lyke was, I might check up the roster of the platoon and see if he was one of the soldiers killed as a result of this accident. Yes, Pte Lyke was one of the men killed by that vehicle.

Q-14 Where was your position on the march
A-14 I was on the left hand side of the column

A-15 In the very first rank
A-15 Yes

Q-16 Was there anyone in front of you
A-16 There was nobody in front of me at all

Q-17 How many ranks were behind you
A-17 Sixteen in ranks of threes

Q-18 Did you take anyparticulars about the truck which drove into the column
A-18 I took the number of the truck, and the number I learned later was the convoy number "69" on the right front fender

Q-19 What kind of a truck was it
A-19 I learned later it was a Chevrolet

Q-20 Did you ascertain the serial number of the truck
A-20 I took the serial number but I do not have it now, it was a CL number

Q-21 (Referring to witness' statement in the summary of evidence) Was it CL-4239467
A-21 I copied it down when I made the statement from the slip of paper I had noted it down on

Q-22 Did you examine the truck when it was in the ditch
A-22 No I did not

Q-23 Did you notice anything about the lights on the truck
A-23 No, I did not see any lights on the truck

Q-24 I show you here Exhibit "H", a plan of part of Highway 87, this plan shows two diagrams of the road, one on a scale of 1/5000 and the other on a scale of 5 yds to 1", could you mark on the plan the exact scene of the accident, on the large scale one first
A-24 (Marking diagram) It was just west of a little culvert bridge over the highway, about as marked on the plan

At 10.40 a.m. the Court adjourns and proceeds with the witness, the prosecutor, defending officer and the accused to view the scene of the accident

Witness explains the scene of the accident to the Court and marks on photographs exhibits "J" and "L" a cross to indicate the point at which the accident occurred, the road plan Exhibit "H" is also marked with a cross by the witness locating the scene of the accident

Exam. 9

At 11.15 a.m. the Court reassembles, the accused is again brought before the Court, the examination of the third witness for the prosecution continues.

Q-24 Cross-examined by defending officer

Q-25 How long had you been at this camp prior to the time you set out on the march that night
A-25 I arrived on 21 MAR 44, about six weeks

Q-26 Had you been on night marches before
A-26 Yes sir

Q-27 You were familiar with that road?
A-27 Yes

Q-28 What was the condition of the road that night
A-28 It was dry

Q-29 What was the density of traffic
Q-29 Not heavier than ordinary, there were vehicles passing back and forth

Q-30 The condition of the light at this time, it was about nine O8clock, was it a dark night
A-30 There was a moon but it was overcast, quite cloudy, once in a while a little bright moonlight and then overcast

Q-31 Could you give an estimate how far ahead a person that night could see without lights
A-31 It is just a guess sir, I would say, 25, 30 or 40 yards

Q-32 Could you see the culvert from where you were at that time
A-32 I did not see it,at the time the truck with the headlights was coming towards us and I was particularly watching the truck

Q-33 Did I understand you to say you were observing blackout discipline on the march
A-33 Yes, we had no light at the head of the column or at the tail

Q-34 Was that the normal way
A-34 It was the normal way

Q-35 Has it been changed
A-35 It has since been changed

Q-36 I understood you to say you were blinded by the light of the first truck, was this for any length of time or momentarily
A-36 As long as I looked at that truck I could not see anything else

Q-37 What sort of lights had this other truck
A-37 They were not blacked out, both lights were on

Q-38 Did these headlights light up the road in front of the first truck adequately
A-38 Well, adequately for that truck, I would say he could see 25 or 30 yds ahead of him with those lights

Q-39 How fast would you say that truck was going
A-39 Roughly 26 m.p.h.

Court: This is the American truck you refer to
Witness: Yes sir, the American truck

Q-40 What was the first sign you saw of the second truck
A-40 Just an outline of the cab and the top of the canopy, I saw that

Q-41 Could you hear it coming

A-41 No sir I could not hear it

Q-42 Did you make an estimate of the speed of the Canadian truck at the time it was passing
A-42 There again it would be a guess

Q-43 The American truck was going you say about 25 m.p.h., was the Cdn truck overhauling it rapidly
A-43 Not very rapidly, he was going to pass it, I would say about 35 m.p.h. for the Cdn truck

Q-44 Did you hear the Cdn truck being shifted down in gear
A-44 No sir I did not hear that, there was too much noise from the other truck I could not distinguish any shifting of gears

Questioned by the J.A.

Q-45 How many men were marching altogether in the column
A-45 Actually I do not know but I would judge there were six or seven hundred

Q-46 And the platoon the Cdn vehicle ran into was the first platoon
A-46 The first platoon

Q-47 Were the ranks of three quite close together
A-47 They usually march within about 30", there was no straggling

Q048 Do you know whether or not the Cdn truck had lights on
A-48 It did not have bright lights on, I cannot say he did not have lights on, blackout lights, all I can say is I did not see them

Q-49 Did you see the accused, do you recognize the accused here
A-49 No sir, I did not see him that night

Q-50 Did you examine the Cdn vehicle after the accident
A-50 After taking the number of it I looked into the cab, the other Canadian was in the cab but I did not see the driver at that time

Q-51 You are not in a position to say anything as to the damages the truck sustained
A-51 No sir

Q-52 And in what manner did ot go into the ditch head on?
A-52 It just angled through the column right into the ditch, the front wheels were twisted around, the right rear wheel was still on the road and the left rear wheel suspended over the ditch

Q-53 This road on which the accident happened to the troops is it used very generally
A-53 I would say military traffic sir, trucks

Q-54 For what formations, what force makes chief use of the road
A-54 I would say more Cdn and British trucks use the road than American trucks

Questioned by the Court

Q-55 How far over on the right hand side of the road was the American vehicle when it was side-swiped
A-55 I cannot say I know I know it was perhaps a foot or two feet from the wall when it stopped

Q-56 But it might conceivably have pulled over after
A-56 Yes it might

Q-57 Could you say whether the Cdn vehicle sounded its horn

A-57 I cannot say, if he did I did not hear it

In the opinion of the Court and the J.A. it is not necessary to comply with R.P.83(B)

The witness withdraws

FOURTH WITNESS FOR THE PROSECUTION. Captain R.L. Davis, 1 Cdn Corps Tps Wksp, RCOC, being duly sworn is examined by the prosecutor:

Q-58 Please identify yourself to the Court
A-58 I am Capt R.L.Davis, 1 Cdn Corps Tps Wksp, RCOC

Q-59 Would you please tell the Court the result of an examination which you made of a Cdn vehicle, describing the damage and identifying the vehicle
A-59 An accident report came in and I went to make an estimate of the damage to the vehicle, I went down and looked at the vehicle and made an estimate of the damage and gave it to one of the lieutenants of the Ord Fd Pk. A day or two later I inspected the braking system. On the front left spring hanger of the vehicle three rivets had been sheared off and the drive shaft had been pulled out of the transfer case. As far as braking system was concerned the only item was that there was only about 2" of brake pedal clearance on it

Q-60 Do you remember off hand the number of the vehicle
A-60 No, it was a Ford 3 ton cab over engine job (after refreshing memory from accident report states: The vehicle was CL-4239467 a Chevrolet 3 ton)

Q-61 Was there other damage
A-61 The right front door hinge was broken, the front bumper bent and the front fender bent, the bumper and fender being the left side, the front spring main leaf was broken and the shock arm broken

Q-62 What was the condition of the headlights
A-62 They were serviceable

Q-63 What kind of headlights were there on this vehicle
A-63 This one had blackout lights and one clearance light on the left hand side

Q-64 What kind of blackout covering did it have
A-64 The standard blackout covering

Q-65 (Producing blackout shield, which is recorded by the Court as Exhibit "M") Will you tell the Court whether the one on the truck was similar to this
A-65 Yes it was similar to this, but I did not inspect it to see if the modifications had been carried out

Q-66 You have specified the damage to the vehicle, what kind of damage was there getting away from a technical explanation
A-66 The only description I can give you is that it was not seriously damaged but was not serviceable until a few minor repairs had been done

Cross-examined by defending officer

Q-67 You belong to 1 Cdn Corps Tps Wksp, RCOC
A-67 Correct

Q-68 And you have considerable experience in examining damaged vehicles
A-68 I have examined a few, not very many

Q-69 Would you say whether or not this Chev 3 ton truck you examined had been travelling at an excessive rate of speed in order to

Q-69 (cont) sustain the damage you just told us about, when it dropped into a ditch, which according to this plan (Exhibit "H") would be between 3' and 3.8" deep

A-69 That I could not answer, the vehicle could have been going fairly slow to drop into the ditch

Q-70 You say the vehicle could have been travelling very slowly and still sustain that damage

A-70 Yes

Q-71 Would you go so far as to say that had it been travelling at a high rate of speed the damage would have been more, worse

A-71 No

Q-72 What would be the cost of repairs to the vehicle

A-72 Cost of the material £1-8-0, and 12 hrs labor at 3/- per hr

Questioned by the J.A.:

Q-73 What would you say as to the condition of the brakes

A-73 As far as the brakes are concerned I would say they were in quite good order

Q-74 You did not test it

A-74 The only way it could be tested was after it had been repaired

Q-75 It has not been repaired yet

A-75 No sir

Q-76 This Exhibit "M", this type of lamp was the only effective lamp he had

A-76 Well he would have clearance lights, but to show the highway just that one sir

Q-77 What would be the limit of visibility with this headlamp

A-77 That would depend on the modification, I believe it is about 30 yds

Q-78 That is with this small slit

A-78 That is with the 3/4" slit

Q-79 With this small slit which is now in effect, how far

A-79 You will find with that type of headlight in the neighbourhood of 20 to 30 yds but your beam is not as wide

Q-80 You are not just sure of the width of the light on the damaged vehicle

A-80 No sir

Q-81 Could you just make it clear all the damage there was on the right hand side of this vehicle

A-81 On the right hand side if I remember a pick handle was broken and the right lower hinge broken on the door

Q-82 That was about all the damage on the right hand side

A-82 Yes

Q-83 The vehicle is a right handdrive

A-83 Right hand

Questioned by the Court

Q-84 Was the right hand side of the box on this truck damaged at all

A-84 It was just touched, one of the beams was dented a little

17

Q-85 Assuming you were in a 3 ton lorry and the brakes were as you say and you were travelling 35 m.p.h. how long would it take to brake her down

A-85 It would depend on the road surface, on the booster brake, on the brake drums, I could not say definitely

Q-86 A vehicle in the same condition as the one you examined on a tarmac surface, a good road

A-86 At 35 m.p.h. in the neighbourhood of 40 yds

Q-87 That is bringing it right to a standstill

A-87 Yes sir

Q-88 Had this vehicle been travelling or been shifted into 3rd gear it would stop in a shorter space of time

A-88 Yes it would

Q-89 Have you much driving experience

A-89 Some

Q-90 Would you say it would be a reasonable precaution to take when passing another vehicle to shift down into 3rd gear

A-90 I would myself, yes

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

At 11.40 a.m. the Court adjourns for lunch

At 1.00 p.m. the Court re-assembles, the accused is again brought before the Court, the trial proceeds

FIFTH WITNESS FOR THE PROSECUTION. 2nd Lieut Dale E. Gilreath, 33rd Repl Battalion, 2nd Repl.Depot, U.S.Army, being duly sworn is examined by the prosecutor:

Q-91 Please identify yourself to the Court

A-91 Dale E. Gilreath, 2nd Lieut, 33rd Repl Bn, 2nd Repl Depot US Army

Q-92 Will you please tell the Court what you know about this incident

A-92 On the night of May 5th at 2030 hrs 439 Coy, "A" Pl, were across the IP (Initial point) on a night march. We reached the West gate of the Camp and turned East on Highway No 87. The troops were marching in column of threes. They marched approximately a mile along the road and at that time I was about 150 yds from the head of the column and heard a crashing noise at the head of the column and I ran up and saw that a truck had hit "A" Pl and injured a number of men. I sent for an ambulance

Q-93 What kind of a truck was this

A-93 I know it was a British or Canadian truck, I found out later it was a 3 ton Cdn lorry

Q-94 What time was it the truck ran into the troops

A-94 Around 8.50 or 9.00 o'clock, not exactly sure

Q-95 What kind of visibility was there

A-95 At that time the moon had not risen, it was rather dark and I could not see the head of the column at that time

Q-96 From where you were you could not see the head of the column

A-96 No sir

Q-97 That was about 150 yds ahead

A-97 Yes

Q-98 Before the accident did you see any traffic on the road
A-98 There were trucks passing of course but nothing in connection with the accident

Q-99 Did you see any trucks in connection with the accident
A-99 At the time I reached the head of the column after the accident had happened Lieut Warren sent a truck after an ambulance, one of the trucks that was involved in the accident

Q-100 Did you notice anything about the lights of that British or Cdn truck
A-100 There were no lights on it

Q-101 Where was it when you saw it
A-101 In the ditch, hanging right across the ditch

Q-102 Did you examine it closely
A-102 No, not at that time, we were busy working on the men

Cross-examined by defending officer

Q-103 Immediately prior to the time that you heard this crash did you notice the lights of a truck approaching
A-103 No I did not

Q-104 You did not notice the lights of the American truck or the Cdn truck
A-104 No sir I did not

Q-105 There were no warning lights carried at the head or tail of the marching troops
A-105 No sir, no lights at all

Q-106 Did you see the driver of the Cdn truck at the time you ran up or within a reasonable time afterwards
A-106 No sir I did not

Questioned by the Judge Advocate

Q-107 Do I understand you to say that the vehicle that ran into the troops did not have any lights burning
A-107 No sir, there were no lights on the truck at all

Q-108 Upon what basis do you make that statement
A-108 At the time I got up to the truck there were no lights burning, the only lights were on the truck which had pulled up on the left, the other truck had no lights at all

Q-109 Were you marching in the midst of the column or on the outside
A-109 I was marching on the outside alongside the ranks

Q-110 And when you say you could not see the head of the column was that on account of darkness
A-110 Yes sir, due to darkness

Questioned by the Court

Q-111 As to the lights of the American truck which was approaching you, you were on the outside of the column, I was wondering what obstructed your view
A-111 Nothing, I just did not look up at the time, I was walking along and talking to the men in the column

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

SIXTH WITNESS FOR THE PROSECUTION. No 36145870 Pvt Jerold SIMPKINS, HQ Coy, 2nd Replacement Depot, U.S.Army, being duly sworn is examined by the prosecutor:

Q-112 Will you please tell the Court your number, rank name and unit
A-112 36149870 Pvt Jerold SIMPKINS, HQ Coy, No 2 Repl Depot

Q-113 Will you tell the Court what you know about an accident that happened on the 5 MAY 44
A-113 I was driving down route 87 on the 5 MAY 44 at approximately 8.45 p.m.going West about one mile East of the East gate into camp and a Canadian truck came up behind me and started to pass me. I did not hear the vehicle coming and I did not see any lights and failed to hear any horn. The vehicle partly passed me, I saw the front end of it coming, and it hit the front left wheel of my truck and then slewed into the marching troops on the other side of the road; the troops were marching towards me

Q-114 What truck were you driving
A-114 I was driving a 2½ ton GMC truck

Q-115 What speed were you going
A-115 Approximately 15 m.p.h.

Q-116 You say this truck which started to pass you ran into some troops, did you see them
A-116 I saw them quite a distance ahead of me when I slowed down

Q-117 What formation were they in
A-117 They were four abreast at the head of the column

Q-118 When did you first notice that a vehicle was passing you
A-118 When I saw the radiator of his vehicle coming past my door

Q-119 At what speed was it going to the best of your knowledge
A-119 To the best of my knowledge it was travelling thirty miles or so per hour

Q-120 What kind of lights did you have on your truck
A-120 My lights were clear

Q-121 What lights
A-121 Both headlights and my tail light were on

Q-122 After that truck which was passing you hit the front left wheel of your truck what did it do afterwards
A-122 It bounced to the South side of the road at an angle

Q-123 Where did it end up
A-123 Both front wheels were in the ditch on the South side of the road

Q-124 Did it hit any of the troops
A-124 It hit the soldiers marching on the road

Q-125 When did you see the troops for the first time, could you say approximately what distance the troops were from you when you first saw them
A-125 Approximately 150 yards away

Q-126 Did you see any soldiers before seeing that column
A-126 No sir, I saw no soldiers before that

Cross-examined by defending officer

Q-127 You say your headlights were clear lights
A-127 That is right

Q-128 They gave a good light

A-128 On a clear night they show better than 200 yards

Q-129 Was this a normal night
A-129 It was dusk and the lights would show about that distance

Q-130 This happened about nine o'clock
A-130 About 8.45

Q-131 You said, I believe, that you had slowed down because you had seen the troops
A-131 That is correct

Q-132 How did you slow down, by braking?
A-132 I was only travelling about 20 or 25 m.p.h. when I first saw the troops and I just left my foot off the gas

Q-133 What driving experience have you had, how many years
A-133 I drove approximately 10 years before I came to the Army

Q-134 Would you say that it is reasonable and sensible a precaution to take to change gears down when going past another vehicle
A-134 I believe if I was passing another vehicle I would break down gears I generally do when passing another vehicle

Q-135 The question of the horn, did you say you did not hear a horn
A-135 I did not hear a horn

Q-136 Is it possible you might not have heard the horn though one was sounded on account of the noise from both vehicles
A-136 There was some noise from both vehicles

Questioned by the J.A.

Q-137 Did you hear the noise of the other vehicle before you actually saw it
A-137 Just immediately before, yes

Q-138 What did you do then, if anything
A-138 I stopped my vehicle immediately after he hit me

Q-139 Before he hit you did you do anything at all
A-139 I tried to pull to the right as close as I could when I saw him coming up

Q-140 As I understand it at that particular part of the road there is a high stone wall bordering the road to your right; before you saw the other vehicle how far was your vehicle away from the stone wall
A-140 Approximately 2'

Q-141 And as he was passing you tried to get in closer still
A-141 Yes

Q-142 Did you hit the stone wall
A-142 No sir

Q-143 What damage was sustained by your truck
A-143 The left front fender bent and broken in two places, that is all the damage I could find

Q-144 Did this collision cause you to lose control of your vehicle at all
A-144 No sir, it did not

Q-145 Did you stop it immediately the collision occurred
A-145 I stopped immediately

Gmm. 25

Q-146 How far would you travel after the collision before your vehicle came to a stop
A-146 About fifteen or twenty feet

Q-147 Was your truck right hand or left hand drive
A-147 My truck is left hand drive

Q-148 Do I understand you to say that there was still some daylight at the time of this occurrence
A-148 There was still some daylight, it was between daylight and dark

Q-149 What type of road is this Highway 87
A-149 An asphalt road

Q-150 At the scene of the accident was it quite smooth or pitted
A-150 The road has pot holes

Q-151 Was anyone in your vehicle with you
A-151 There were two boys riding in the back

Q-152 Is it a covered vehicle
A-152 There is no canvas over the back

Q-153 Who were these soldiers in the back
A-153 Two English soldiers

Q-154 Did you pick them up driving along the highway
A-154 Yes I picked them up about four miles before the accident occurred, just gave them a lift

Questioned by the Court

Q-155 With the normal width of the highway and with the lights you have on your truck is it possible to show the left hand ditch clearly
A-155 Definitely

Q-156 For what distance could you see the entire road and the ditch on the right hand side and left hand side
A-156 On this highway my lights showed about 150 yds and about 6' on the outside of each ditch

Q-137 Do you know the overall witdth of your vehicle
A-157 No sir I do not

Q-158 Is your vehicle wider than most vehicles
A-158 It is approximately 7½' wide

Q-159 Approximately in your estimation how far ahead were the marching troops when you first saw this Cdn vehicle passing
A-159 The troops were marching past my truck when I saw the Cdn vehicle passing me

Q-160 In your evidence you say the vehicle you were driving was a 6x6; were you driving in two wheel drive or all wheels
A-160 Just the back wheels

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

SEVENTH WITNESS FOR THE PROSECUTION. 1891557 Spr H. Johnson, 256 Fd Coy, RE, being duly sworn is examined by the prosecutor:

Q-161 Your number, rank, name and unit
A-161 1891557 Spr Johnson, H. 256 Fd Coy, RE

Q-162 Will you tell the Court what you know about this case
A-162 I was travelling in an American truck between Piano di Caiazzo and going in the direction of Capua

Q-163 When was that
A-163 At night time about a quarter to nine on the 5 MAY 44, tavelling about 15 m.p.h. we got about half way between Piano di Caiazzo and the American Camp, the one we are now in, keeping well to the right hand side of the road, I was facing the same way as the truck was going

Q-164 What then
A-164 I heard the truck coming up behind and looked around and it was a 3 ton truck with a tarp over it. I looked in front again and saw some American troops marching in the opposite direction to which we were travelling. Looking around again this truck was passing and in passing it swerved and hit the front wheel of the American truck rebounded and went into the ditch on the side on which the American troops were marching

Q-165 How far from the troops were you when you first saw them
A-165 About 15 yds

Q-166 What was your position on the back of the truck
A-166 In the front part of it, on the right hand side, sitting down

Q-167 On the side near the edge of the road
A-167 Yes

Q-168 On the floor
A-168 No, on the seat

Q-169 Are they longways of the truck or crossways
A-169 Longways

Q-170 When you first say the troops they were fifteen yards away
A-170 Yes

Q-171 When was the truck behind at that time
A-171 About fifteen yards behind

Q-172 At what speed would you say the truck behind you passed
A-172 About 45 m.p.h.

Q-173 Did you notice anything about that truck
A-173 Only that it was a 3 ton truck

Q-174 Did you notice anything about lights
A-174 No sir, I did not pay any particular attention to lights

Q-175 You said you heard a truck, what noise did you hear about that truck
A-175 I heard him revving up to pass us

Q-176 Did you hear any other sound
A-176 No sir

Q-177 Did you hear any special sound as the truck was trying to pass you
A-177 No sir

Q-178 Did you hear anything about the horn, brakes, or anything like that, or changing of gears
A-178 I did not hear the horn, but he tried to pull up just as he was passing

Q-179 Did you hear any sound of that
A-179 No sir

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Cross-examined by defending officer

Q-180 How far behind was the Cdn truck when you first saw it
A-180 About 15 yds

Q-181 Are you sure it could not have been further away than that
A-181 It may have been, it is a rough guess

Q-182 It might have been 20 yds, in the summary of evidence you said 20 yds, it might have been 20 yds
A-182 Yes

Q-183 How many seconds did it take for the truck to catch up and come alongside you
A-183 About two seconds

Q-184 Do you know if the Cdn truck was in low gear when he tried to pass you
A-184 About middle gear

Q-185 It was not in top gear
A-185 No sir

Q-186 Were the two vehicles making much noise between them
A-186 The American truck was pretty quiet, the Cdn truck was a good bit louder due to the speed

Q-187 I suggest to you it is possible the driver of the Cdn vehicle might have sounded his horn but you did not hear it on account of the noise of the vehicles
A-187 Yes

Q-188 That is possible
A-188 Yes

Q-189 Did you notice any lights on the Cdn vehicle
A-189 No sir

Q-190 Are you acquainted with the type of blackout mask which British vehicles use (producing Exhibit "X")
A-190 Yes sir

Q-191 Do you know if you would have notifed that type of light on the Cdn vehicle
A-191 No sir, I was not paying attention to them

Q-192 You could see the vehicle 20 yds away
A-192 Yes sir

Questioned by the Judge Advocate

Q-193 Was there a cab on the vehicle you were riding in
A-193 Yes, it was a closed cab on the American truck

Q-194 What was the position of the Cdn vehicle on the highway when you first saw it
A-194 About the middle of the road

Q-195 And you are not prepared to swear whether or not the horn was blown or whether the vehicle had lights
A-195 No sir

Q-196 Could you see it plainly
A-196 Yes

Q-197 Was it still daylight
A-197 Very little daylight

Q-198 Why did you say it was in middle gear
A-198 I do not know much about driving but I thought it might be in middle gear, the sound of the engine and the speed of it

Q-199 Do I understand you to say that when this vehicle collided with the one in which you were driving it was slowing down at the time
A-199 He tried to slow down

Q-200 Did you notice the difference in speed
A-200 No sir

Q-201 How did you know
A-201 I was looking at the American troops and it seemed to slow down

Q-202 Do you know the accused
A-202 No sir

Q-203 What exactly happened after the Cdn vehicle struck the vehicle in which you were riding
A-203 He landed with his two front wheels in the ditch with a lot of American troops lying and screaming on the road

Q-204 Did you actually see the vehicle run into the American troops
A-204 No sir, I looked away

Questioned by the Court

Q-205 How long in minutes would you say this Cdn vehicle was trailing you before he decided to pass you
A-205 I could not say

Q-206 How long were you conscious some vehicle was behind you
A-206 About half a minute

Q-207 You state you say the truck approaching and you say the troops ahead, did you try to tell the driver there was a truck trying to pass
A-207 I tried to but it was too late

Q-208 Did you try to signal the Cdn truck down
A-208 No sir I could not very well, I was on the opposite side of the truck, on the right

Q-209 You would not be in a position to say whether the driver of the American vehicle signalled for anyone not to pass
A-209 No sir

Q-210 What happened to your vehicle after the accident occurred
A-210 He stopped pretty well level with the other truck, I think a bit behind it, the Cdn truck went a little distance, the American truck stopped almost immediately

Q-211 What was the position of the American truck when the collision occurred
A-211 Well over to the right of the road

Q-212 Quite a number of men in the American truck
A-212 About ten or twelve British troops

Q-213 There was about two seconds from the time you first saw the vehicle until it came up even with you. You had been conscious of the vehicle trailing you for about half a minute; could you explain how you knew there was a vehicle trailing you if you did not see it
A-213 I did not look back until I heard the truck trying to ogertake us

Q-214 Then you could not have been aware of it for 30 seconds
A-214 No sir

Q-215 You did not see this truck trailing you until you looked up and saw it 15 or 20 yards behind, where does the half a minute come in

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A-215 I thought the truck had been trailing us

Q-216 You were just guessing about that
A-216 Yes sir

Q-217 Are you a qualified driver yourself
A-217 No sir I am not a driver at all

Q-218 A while ago in your evidence you said the vehicle was passing at 45 m.p.h., are you sure on 45 m.p.h.
A-218 No sir

Q-219 You would not say between any two speeds, 35 and 45 m.p.h. or anything like that
A-219 No sir, I could not say off hand

Q-220 Approximately at what speed had your vehicle been travelling until it slowed down before passing the troops
A-220 About 15 m.p.h.

Q-221 Had it been going that speed all the way from Piano di Caiazzo
A-221 Yes sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B) The witness withdraws

EIGHTH WITNESS FOR THE PROSECUTION. T/153578 Spr J. Raisen, 256 Fd Coy, RE, being duly sworn, is examined by the prosecutor:

Q-222 Your number, rank, name and unit
A-222 T/153578 Spr J. Raisen, 256 Fd Coy RE

Q-223 Will you tell the Court what you know about an accident happening on 5 MAY 44
A-223 I was a passenger in the back of an American truck travelling towards Capua. He was travelling along the road and I noticed a truck coming up behind, all of a sudden this truck came up to pass us, at the same time we pulled over to the right as far as we could go, the truck hit our left front wheel, the truck bounced off our truck into the ditch running into the American troops at the same time

Q-224 At what time was that
A-224 About a quarter to nine at night

Q-225 What kind of truck was the American truck in which you were travelling
A-225 A GMC open truck

Q-226 Where were you in that truck
A-226 I was sitting nearest the tailboard

Q-227 On what side
A-227 On the right hand side of the truck, that is, the side nearest the edge of the road

Q-228 On what highway were you travelling
A-228 The number is 87 I believe

Q-229 When did you first notice the Cdn truck coming behind
A-229 It would be about 15 to 20 yds away

Q-230 Did you notice anything special about it
A-230 Well I never noticed any lights on it, it was travelling in the middle of the road at quite a speed

Q-231 What speed would you say
A-231 About 40 m.p.h.

Q-232 Did you hear anything of the truck
A-232 No sir

Q-233 At any time did you hear any special noises about that truck
A-233 No sir

Q-234 No noise at all
A-234 No sir

Q-235 When it started to overtake you did you hear anything
A-235 No sir

Q-236 Did you hear the sound of a horn being blown
A-236 No sir

Q-237 Did you hear any sound of brakes being applied
A-237 No sir

Q-238 Did you hear any sound of gears being shifted
A-238 No sir

Q-239 You say you did not notice any lights on the truck
A-239 No sir, none at all

Q-240 Can you say definitely whether or not this Cdn truck had lights on
A-240 No sir

Q-242 Do you say it had no lights on on or you did not notice any lights
A-241 I did not notice any

Q-242 Is it possible it had lights on and you did not notice them
A-242 If he had lights on they would be very small

Q-243 Did you see any troops on the road, when did you see them first
A-243 I cannot say for sure, but while we were travelling down the road I looked over the cab and saw troops were coming down the road, they were about 10 yds away when I noticed them

Q-244 When you saw the troops had you seen the truck
A-244 No sir

Q-245 It was after you saw the troops you noticed the truck
A-245 Yes, I was looking over the cab and turned around and saw the truck

Q-246 And it was 15 to 20 yds behind you
A-246 Yes sir

Q-247 Did you notice any lights with the troops
A-247 No sir

Cross-examined by defending officer

Q-248 Would you say it was possible for the Cdn vehicle to sound his horn and you were unable to hear it because of the noise of the vehicle
A-248 No sir

Q-249 Are you familiar with the usual type of blackout mask which British vehicles use (producing Exhibit "M")
A-249 Yes sir

Q-250 If the Cdn vehicle had that type of mask on and the light was lit do you think you would have noticed that small spot of light
A-250 Yes sir

Q-251 What was the condition of light at the time
A-251 The moon was showing at the time and on the left hand side of the road there was a line of trees, and the moon shining on the trees was casting a shadow on the road

Questioned by the Judge-Advocate

Q-252 When did you first notice the truck behind you
A-252 When it was about 15 or 20 yds away

Q-253 You did not notice it before
A-253 No sir

Q-254 Had you been looking behind
A-254 Yes sir, I had been looking all around

Q-255 You say you stood up and looked over the cab
A-255 Yes sir

Q-256 Why
A-256 Just to see where I was going no particular reason

Q-257 No particular reason
A-257 No sir

Q-258 And then you say the troops ten yards or so ahead of your truck
A-258 Yes sir, something like that

Q-259 What speed was your vehicle going
A-259 Between 10 and 15 m.p.h.

Q-260 At the time of the collision
A-260 Well it was slowing down at the time of the collision

Q-261 At the time of the collision it was going more slowly than before that
A-261 Before that it had been travelling about 20 m.p.h.

Q-262 What position was it in
A-262 Close to the right hand side of the road

Q-263 Did you notice a stone wall there
A-263 Yes sir

Q-264 Did you notice what damage was done to the truck you were in as a result of the accident
A-264 No sir

Q-265 Do you recognize the accused
A-265 No sir, I never saw the driver before

Q-266 Was it completely dark at the time
A-266 Not completely dark sir, no

Q-267 Would you say at the time this collision occurred you could see better with or without lights on the vehicle
A-267 I should say you would see better with them on

A-268 Are you a driver yourself
A-268 No sir

Q-269 You are not used to driving a vehicle
A-269 No sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

NINTH WITNESS FOR THE PROSECUTION. Major Norman G. Long, Medical Corps, #0290255, 2nd Replacement Depot, U.S.Army, being duly sworn, is examined by the prosecutor:

Q-270 Would you please identify yourself to the Court
A-270 Major Norman G. Long, 2nd Replacement Depot, Medical Detachment, #0290255

Q-271 Will you please tell the Court what you know about an accident happening on the 5 MAY 44
A-271 I was called about 8.30 or a quarter to nine that night to visit an accident which had taken place some distance away from the West gate, I went there with a spare ambulance, additional doctors and eight men. Going there I saw a British truck and some four or five bodies, these I declared dead. Then looking around I saw some 10 or 12 men to whom I gave first aid or directed first aid be given, and then across the road I saw four or five more men also. Some men had been given first aid assistence and some had been taken to 74th Station Hospital before I arrived. That is more or less the story that I have of the accident

Q-272 Did you later go to the hospital
A-272 That is correct, after I had seen the wounded evacuated I went to 74 Station Hosp to render what aid I could

Q-273 Did you see any of the bodies there in 74 Stat Hosp
A-273 No I did not

Q-274 Are you in a position to specify identities in individual cases
A-274 Not by name, the certain types of injuries, but I did not associate names with them I had no time

Cross-examined by dfending officer

Q-275 You said when you arrived at the scene of the accident you found four or five bodies there would you tell us the cause of death
A-275 There again I would not want to say the exact causation, but we assumed it was the truck straddled across the ditch. It was due to an automobile accident

Questioned by the Court.

Q-276 You did not examine the vehicle
A-276 No sir, the provost were there, I assumed the provost would take care of that

Q-277 Are you used to driving vehicles
A-277 Yes sir

Q-278 At the time you reached the scene of the accident would you say visibility would be better with the lights on or off
A-278 There I would not like to quote I would not like to make a statement on that

Q-279 What was the condition of daylight or darkness at that time
A-279 I do not think I could answer that question

Q-280 At the time you were taking care of the wounded personnel did you do it by daylight or use a flashlight
A-280 I used a flashlight

Q-281 When your vehicle drove up did it have lights
A-281 The lights were on the vehicle in which I drove up

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

TENTH WITNESS FOR THE PROSECUTION. Cpl Lawrence Geist, #33568199, M.P. Detachment, 2nd Replacement Depot, U.S.Army, being duly sworn, is examined by the prosecutor:

Q-282 Your number, rank, name and unit
A-282 Cpl Lawrence Geist, #33568199, M.P.Det, No 2 Repl Depot

Q-283 Will you please tell the Court what you know about this accident which happened on the 5 MAY 44
A-283 On the evening of 5 MAY 44 at approximately 2050 hrs I was in the Provost Marshal's office when a call came from our East gate, as a result of the information I went out in front of the Provost Marshal's office and waited for the ambulance to come along. I got in and proceeded to Route 87 approximately one mile East of the gate. There on the road were a large number of American troops, and on the left hand side, the South side going West on Route 87 was an English vehicle in the ditch on the l.h. side. I got out of the ambulance and looked around, saw bodies lying around on the road and on the banks, and some of our troops there. I stayed at the scene until after everyone left, there were four MPs left on the scene. After everyone had left Sgt Chardenier and myself walked approximately 15' West of the truck, there was a soldier standing there, I did not recognize him, I did not recognize him as either a British or Canadian soldier, he had on a uniform similar to an English uniform. I walked to within a few feet of him and he said "What do you want me to do" I said "Who are you" and he said "I am the driver of the vehicle". At this time I told Sgt Chardinet that probably the Provost Marshal would like to see him and for him to take him to the office. It was at that time about ten minutes to eleven

Q-284 When you arrived at the scene of the accident what was the visibility
A-284 I would say it was pretty dark

Q-285 Was the moon on
A-285 There was not much of a moon when I appeared on the scene

Q-286 Did you examine at all this British truck that was in the ditch
A-286 Yes sir

Q-287 Did you notice anything about the lights
A-287 No sir

Q-288 Can you say whether they were on or not, did you actually check the headlights or notice the absence of glare
A-288 I noticed the absence of glare. I noticed a couple of bodies behind the truck and there were three men under the truck, we went around a Lieutenant and myself and crawled under the truck, at the time there were no lights because I loaned the lieutenant my flashlight

Q-289 You can recognize the soldier to whom you spoke
A-289 No sir

Cross-examined by defending officer

Q-290 This soldier dressed in battle dress to whom you spoke what was his condition, would you say he had been drinking
A-290 To the best of my knowledge he had not been drinking I did not smell an odour of alcohol or anything on him

Exhibit #3

Questioned by the Judge Advocate

Q-291 Is that the same man who was taken to the Provost Marshal's office
A-291 Yes sir

Q-292 Did you have any conversation with him other than you have already given
A-292 No sir, I did not

Q-293 What actually happened to the vehicle
A-293 A British wrecker came along and hauled the vehicle out of the ditch and hooked on the front end and took it away. One of our MPs went for the wrecker

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

ELEVENTH WITNESS FOR THE PROSECUTION. B-131235 Pte W.P. Overkott, 1 Cdn Corps & Army Tps Sub Pk, RCOC, being duly sworn is examined by the prosecutor:

Q-294 Your number, rank, name and unit
A-294 B-131235 Pte Overkott, W.P., 1 Cdn Corps & Army Tps Sub Pk, RCOC

Q-295 Will you tell the Court what you did on the 5 MAY 44
A-295 We were travelling West on Highway 87, we had been out all day delivering stores and were driving back home, I went to sleep in the truck and the next thing I knew I woke up in the hospital on the operating table

Q-296 In what truck did you go to sleep
A-296 In the truck driven by Pte Emmons

Q-297 Where were you in that truck
A-297 We were delivering stores to the units that day, we were all along the line down to the other side of Telese and were on our way back to the camp

Q-298 What time did you leave the last unit beyond Telese
A-298 It was late in the afternoon

Q-299 Did you stop anywhere along the way
A-299 We stopped at Amarosi

Q-300 What time did you stop there
A-300 A little after six o'clock

Q-301 How long did you stop there
A-301 Approximately about an hour

Q-302 What did you do in Amarosi during that hour
A-302 We just stopped and had a rest and I was out trying to get some onions

Q-303 You left the truck for a while to get some onions, how long
A-303 About five or ten minutes

Q-304 When did you go to sleep, what time of the evening. You left Amarosi about seven o'clock, how long after that did you go to sleep
A-304 It was not very long after that

Q-305 Did you sleep all the time or did you wake up occasionally
A-305 I woke up at times

Q-306 Did you wake up at any time while it was dark
A-306 No I could not have

Q-307 Did you notice anything about the headlights of the truck
A-307 I know he put the headlights on but when I do not know

Q-308 How do you know they were put on
A-308 He put the switch on, but it was not dark enbugh for them to show

Q-309 You had been with the accused how long that day
A-309 We left the unit shortly after nine o'clock in the morning

Cross-examined by defending officer

Q-310 You are a technical storeman in the Sub Pk
A-310 Yes

Q-311 You went along to deliver the stores and Emmons was your driver
A-311 Yes sir

Q-312 In other words it was a duly authorized trip
A-312 Yes sir

Q-313 You set off at nine o'clock in the morning and you were away delivering all day
A-313 Yes sir

Q-314 Did your driver do any drinking that day while you were out in the truck
A-314 No sir

Q-315 You are quite sure of that
A-315 Yes sir

Q-316 Are you familiar with the vehicle in which you were riding, had you ridden in it previously
A-316 I had been in it twice before

Q-317 Do you know whether it was fitted with this type of blackout mask (producing Exhibit "M")
A-317 I am not sure

Q-318 At the time Emmons switched on the lights, you remember him putting on the switch, you say it was not dark enough for them to show; have you any idea what time that was
A-318 I do not know just what time it would be

Q-319 What was the condition of light at the time
A-319 It was getting dusk

Q-320 Was the moon up yet
A-320 I did not notice

Questioned by Judge Advocate

Q-321 To how many units did you deliver parts that day
A-321 I think it was nine sir

Q-322 Which was the last one
A-322 I do not know which was the last, it was my first trip down this way, the last delivery we made was on the other side of Telese

Q-323 Where is your unit located
A-323 Down near 5 CCS about 21 miles from Cassino in the main road

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Q-324 Near the X rds where Highway 6 meets the road going over the Mundorf Bridge
A-324 Yes, right near the hospital

Q-325 Coming through Highway 87 would be the shortest way home for you
A-325 I do not know, I was relying on the driver

Q-326 Where did you actually stop in Amarosi
A-326 I would not quite know it was the first time I have been in there

Q-327 Was it in the street
A-327 It was around the back of a street

Q-328 You drove in there and what did you do
A-328 Just had a rest, the driver was sleepy, he had been driving all day. I did not go to sleep at all, the accused did not really go to sleep, he was nodding
Q-329 Did you do any drinking while there
A-329 No sir not there

Q-330 Did you do any drinking that day
A-330 I had a glass of wine, I do not know what place, but shortly after noon

Q-331 At a unit or in a town
A-331 In a town

Q-332 What town
A-332 I don't know

Q-333 Before you came to Amarosi did the accused have anything to drink
A-333 No sir

Q-334 Did you purchase anything
A-334 No sir

Q-335 Did you purchase any wine or liquor that day
A-335 No sir

Q-336 Do you remember giving evidence in the summary of evidence in this case
A-336 Yes sir

Q-337 Did you say this: "In one of the towns I purchased a glass of wine from a boy and drank it on the spot"
A-337 Yes sir

Q-338 Is that all you purchased that day
A-338 Yes sir

Q-339 You had nothing in the vehicle
A-339 No sir

Q-340 It was after you left Amarosi you saw the accused turn on the lights
A-340 Yes sir

Q-341 Did he leave them on
A-341 I suppose he did, I did not see him turn them off

Q-342 How long after you left Amarosi
A-342 I do not know just how long

Q-343 As near as you can recall
A-343 I was sleeping off and on, I did not know the time

Q-344 It was during one of the lucid intervals of wakefulness, or were you half asleep at the time

A-344 I would go to sleep and wake up, one of these times I saw him put the light on

Q-345 You saw him, you do not know at what time or where you were
A-345 I do not know the exact time

Q-346 How long after you left Amarosi did you first go to sleep
A-346 Not very long maybe 10 minutes

Q-347 Did you buy any onions in Amarosi
A-347 No sir

Q-348 Try to buy any
A-348 Yes, I tried to buy some but did not get any

Q-349 I understand you to say that was the first time you had delivered stores
A-349 I had been out with the truck before, but the first time down there

Q-350 Have you any recollection at all of the collision your vehicle had with another truck
A-350 No sir, I know nothing about it at all

Q-351 You do not know how long you had been sleeping
A-351 I know I woke up on the table in the hospital and they told me about the accident

Q-352 You were sitting in the front seat with the driver
A-352 Yes

Q-353 Did the accused say anything about being tired and wanting to rest
A-353 He did not say anything, but I noticed in the afternoon he was nodding at the wheel

Q-354 Can you drive yourself
A-354 A little

Q-355 Did you offer to take over from him
A-355 No sir

Q-356 Why
A-356 I do not know sir

Q-357 Did you not feel a bit afraid of driving with a man who was nodding at the wheel
A-357 I did not think of it at the time

Q-358 Were there any further instances of this kind, what do you mean to say by "nodding at the wheel"
A-358 I mean his head would drop down and he would bring it up suddenly

Q-359 When was that
A-359 Around the middle of the afternoon

Q-360 Did you suggest to the accused he should have a rest,or sleep
A-360 No sir

Q-361 And he did not say anything to you about being tired
A-361 No sir

Questioned by the Court

Q-362 How far is it from Amarosi to the scene of the accident
A-362 I do not know, I did not know where the accident occurred until after

Q-363 Can you explain how it would take from 1700 hrs to 1830 hrs to travel from Amarosi to Piano di Caiazzo, a distance of about 15 miles, how would you account for the time from when you left Amarosi until the accident

A-363 I don't know

Q-364 Did the truck stop from the time you left Amarosi until the accident

A-364 It did not stop unless it stopped while I was asleep

Q-365 Are you quite sure you left Amarosi around seven o'clock

A-365 As far as I can figure it would be seven o'clock

Q-366 You are storeman i/c truck when you go out like that

A-366 I do not know sir, I am in charge of the stores, the driver is in charge of the vehicle

Q-367 Would you have any idea how fast you were driving after you left Amarosi, were you going 10 m.p.h. or 20 m.p.h.

A-367 I do not know how fast but not very fast

Q-368 You were empty and you were heading for home

A-368 Yes

Q-369 So the chances were you would be going at a fair clip

A-369 We were not going very fast

Q-370 One glass of wine was all you had to drink that day

A-370 Yes sir

Q-371 Why did you stop at Amarosi

A-371 To have a rest

Q-372 On whose suggestion

A-372 Well there was really no suggestion at all he just stopped there to have a rest

Q-373 Who chose the place to stop

A-373 There was no question of choosing the place, he was the driver and stopped

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

Pros: My next witness, Sgt Black, does not appear on the summary of evidence, I have advised the defence and they have no objection

Def: We have no objection to this witness

TWELFTH WITNESS FOR THE PROSECUTION. A-64153 Sgt W.E. Black, 1 Cdn Corps & Army Tps Sub Pk, RCOC, being duly sworn is examined by the prosecutor:

Q-374 Please identify yourself to the Court

A-374 A-64153 Sgt Black, W.E. 1 Cdn Corps & Army Tps Sub Pk, RCOC

Q-375 What is your appointment in your unit

A-375 Transport sergeant

Q-376 Is the accused one of your drivers

A-376 Yes sir

Q-377 Do you recall what his duties were on the 5 MAY 44

A-377 He was on the milk route peddling M.T.Stores from the unit

Q-378 Who was he with

A-378 Pte Overkott

Q-379 Where would his duties take him that day
A-379 From our unit to clean back 15 miles the other side of Telese to 7 A/T Regt and 26 L.A.D.

Q-380 Did you notice the type of blackout mask on that truck the accused was driving that day
A-380 It is the last type blackout mask, modified

Q-381 I show you Exhibit "M" would this be the type
A-381 It was like this but with the last modification

Q-382 Then it was not exactly similar to this
A-382 It was like this one, like this but the slot is 3/4" wide

Q-383 Which is larger than the one on Exhibit "M"
A-383 Yes, and the inside of the hood is white

Q-384 Do you know anything about the duty as regards the accused on the night previous to that trip
A-384 On the night previous to that trip he was on guard

Q-385 At what time
A-385 From six at night until six in the morning

Q-386 What times
A-386 Two hours on, four hours off

Q-387 Do you know in what condition that vehicle was before it left
A-387 In A1 condition

Q-388 As far as brakes are concerned, horn, lights, etc.
A-388 Yes sir

Q-389 It was in a perfect state of maintenance
A-389 Yes sir

Cross-examined by defending officer

Q-390 How long have you had the accused under you as one of your drivers
A-390 Since about last August

Q-391 Has he driven very much in this country
A-391 No sir

Q-392 How much has he driven
A-392 He has driven about two months steady in that time between England and here

Q-393 Would you say he is a good driver, a fair driver
A-393 A good driver, a very careful driver

Q-394 Do you know what two hour periods the accused was on guard duty that night
A-394 No I could not tell you that

Q-395 Did you see the vehicle after the accident
A-395 Yes sir, I picked it up the next day

Q-396 You examined it yourself
A-396 Yes sir

Q-397 Will a Chev 60 cwt travel 45 m.p.h. in 3rd gear
A-397 No sir

Q-398 Could you tell us how fast it would go in 3rd gear
A-398 In 3rd gear you would get around 30 m.p.h.

Questioned by the Judge Advocate

Q-399 How many gears are there
A-399 Four ahead and one reverse, low low, 1st, 2nd, 3rd and reverse

Q-400 What is the usual one on ordinary travel, on average roads
A-400 Fourth, that is, high gear

Q-401 Had you driven this vehicle yourself
A-401 Yes sir

Q-402 How long before the 5 MAY 44
A-402 We have had them all out, the fitter and I have had them all out, we check them and take them out for a road test

Q-403 When did you have this truck out
A-403 We had it before the chap who was on it before went to hospital. The accused only had it about four days before the accident

Q-404 So about four days before the accident you drove it
A-404 Yes

Q-405 In darkness, in complete darkness without moonlight, how far ahead of the vehicle would you be able to see with the type of light on that vehicle
A-405 Not very far, about 10' in front of you

Q-406 In other words you have vision only 10' ahead
A-406 Yes

Q-407 Could you say now, assuming the brakes of that vehicle were in good condition, what would be the highest speed it could go in order to stop in 10' on an asphalt road
A-407 It should be able to stop in twice the length of the vehicle travelling at 30 m.p.h.

Q-408 At what speed would it be going in order to stop it within 10'
A-408 You could not possibly go over 15 or 20 m.p.h.

Q-409 Could you stop the vehicle in 10' at that speed
A-409 On a good road sir

Q-410 Did your guards have an opportunity to sleep when not actually on their beat
A-410 They did, they had four hours between shifts

Q-411 Do you know whether or not the accused got any sleep the night before
A-411 I could not say sir

Q-412 Is that the custom in the unit to send men out on duty notwithstanding the fact they have been on duty the night before
A-412 Yes sir

Q-413 In other words he came off guard at six o'clock and went out with a truck about nine
A-413 About 8.30

Q-414 How many units would he deliver to
A-414 On the whole milk route he would visit about eleven

Q-415 Visiting these units would he have occasion to drive on highway 87
A-415 There is no route laid down on which he had to travel

Q-416 The ones around Telese were 26 LAD and 7 A/T Regt
A-416 I do not know exactly

Q-417 Returning from there, from Telese, what is the route
A-417 There is no particular route, one driver would take the other route turning right at Caiazzo and the other fellow would take this one

Q-418 Which is the shorter
A-418 I do not know, there are practically three ways could be used

Q-419 Do you know whether the lights were in working order after the accident
A-419 They were sir

Q-420 The brakes
A-420 I do not know about that we never tried the brakes

Questioned by the Court

Q-421 I do not know whether I misunderstood you but when the defence asked you a question about the speed of a 60 cwt in 3rd gear you said 30 m.p.h., were you referring to this as high or 2nd
A-421 Second, sir

Q-422 How far would you say you are from this table
A-422 Approximately 9'

Q-423 The blackout light would give you that much light
A-423 Yes sir, approximately

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

THIRTEENTH WITNESS FOR THE PROSECUTION. Lieut John E. Groth, #01542272, M.A.C., 74 Station Hospital, U.S.Army, being duly sworn is examined by the prosecutor:

Q-424 Please identify yourself to the Court
A-424 I am Lieut John E. Groth, Medical Administrative Corps, 74 Station Hospital, U.S.Army

Q-425 I understand you are the registrar of the 74 Station Hospital
A-425 I am

Q-426 (Producing document) Will you identify this document
A-426 This is a true copy of the original report of the death of 42024162 Pvt Ralph L. Lyke, 439th Coy, 33rd Replacement Battalion

Copy of Death Report referred to in Q & A 426 above is handed to the Court, signed by the President, marked Exhibit "N" and attached to the proceedings

The defending officer declines to cross-examine

Questioned by the Judge Advocate

Q-427 You know the evidence contained in Exhibit "N" to be true and correct
A-427 Yes sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

FOURTEENTH WITNESS FOR THE PROSECUTION. Lieut William B. Hopper, #01797649, C.M.P., 2nd Replacement Depot, U.S.Army, being duly sworn is examined by the prosecutor:

Q-428 Please identify yourself to the Court
A-428 William J. Hopper, 1st Lieut, #01797649, CMP, 2 Repl Depot

Q-429 Will you please tell the Court what you know about this case, more specifically about what happened on the 6 MAY 44

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A-429 On the 6 MAY 44 I took statements from all witnesses involved in an accident case

Q-430 What did you do as far as the accused was concenned
A-430 As far as the accused was concerned I took a statement from him as to how he was implicated, in the presence of Lieut Macdonnell

Q-431 Did you warn the accused
A-431 Yes I warned him that anything he might say might be used in evidence the warning was as follows: "It is my duty to warn you of your right in this case, you are not required to make a statement, you may remain silent; however if you do answer any questions or make any statements, whatever you can say may be used for you or against you should this investigation result in a trial. Do you understand what I have just said." To which the accused replied "yes"

Q-432 How did you get the statement from the accused in what way
A-432 I asked questions of the accused and he replied, and the answers were put down to the best of my ability in his own words

Q-433 Did you write it as question and answer
A-433 No sir, in narrative form

Q-434 After you had written it down what did you do
A-434 I wrote it in longhand and it was typed by a clerk and the accused read it. After the accused read it I had him sworn and he signed it

Q-435 Did you sign it as a witness
A-435 I signed it as a witness

Q-436 I show you a statement, did you sign this
A-436 Yes, that is a copy of the accused's statement and signed by him

The defence has no objection to the admission of this statement and the J.A. informs the Court that they must be satisfied that the statement was made voluntarily on the part of the accused without any threat or promise of any kind

The Court is satisfied that it was a voluntary statement

Statement of the accused referred to in Q & A 436 above is read, handed to the Court, signed by the President, marked Exhibit "O" and attached to the proceedings

Cross-examined by defending officer

Q-437 Did you see the accused on the night of the accident
A-437 I did not

Q-438 Then you are unable to make any statement as to his sobriety
A-438 I did not see him that night so I am unable to tell

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

FIFTEENTH WITNESS FOR THE PROSECUTION. L-93454 Sgt H.A. Rioux, 1 Cdn Corps & Army Tps Sub Pk, RCOC, being duly sworn is examined by the prosecutor:

Q-439 Your number, rank, name and unit
A-439 L-93454 Sgt Rioux, H.A. 1 Cdn Corps & Army Tps Sub Pk RCOC

Q-440 What is your appointment in your unit
A-440 I am orderly room sergeant

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Q-441 I show you here a document, will you identify this
A-441 This is a copy of Part I Orders No 87 dated 2 MAY 44 of 1 Cdn Corps & Army Tps Sub Pk RCOC, this order was posted on the order board

Q-442 Is that the regular way unit orders are published within the unit
A-442 Yes

Q-443 When was that posted
A-443 This one was posted on the 2 MAY 44

Copy of Part I Orders No 87, dated 2 MAY 44 of 1 Cdn Corps & Army Tps Sub Pk RCOC is handed to the Court, signed by the President, marked Exhibit "P" and attached to the proceedings. The attention of the Court being drawn to para 5 of the order "Speed Limits"

Q-444 I show you a further document, please identify this
A-444 This is a copy of Part I Orders No 89, 1 Cdn Corps & Army Tps Sub Pk, RCOC, dated 4 MAY 44

Q-445 How was this posted
A-445 In the same manner as the other, on the order board, and was posted on the 4 MAY 44

Copy of Part I Orders No 89, dated 4 MAY 44 of 1 Cdn Corps & Army Tps Sub Pk RCOC is handed to the Court, signed by the President, marked Exhibit "Q" and attached to the proceedings. The attention of the Court being drawn to para 2 of the order "Guards"

Cross-examined by defending officer

Q-446 Do you know the accused
A-446 Yes I do

Q-447 Do you recall the duty on which he had been sent out on the 5 MAY 44
A-447 Yes I do sir

Q-448 Was it a properly authorized duty
A-448 Yes it was sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

SIXTEENTH WITNESS FOR THE PROSECUTION. Major Kenneth L. Athey, #11688001, Medical Corps, 74 Station Hospital, U.S.Army, being duly sworn is examined by the prosecutor:

Q-449 Please identify yourself to the Court
A-449 Kenneth L. Athey, Major, Medical Corps, 74 Station Hospital

Q-450 What is your appointment in 74 Station Hosp
A-450 I am chief of surgery

Q-451 Did you on the night of 5 MAY 44 have anything to do with the examination of a number of casualties in a road accident case
A-451 I did

Q-452 At what time did you examine these casualties
A-452 Approximately 9.30 p.m., I did not look at the time I went right in and started working, operating

Q-453 Did you examine 4204162 Pvt Ralph L. Lyke who is mentioned in Exhibit "N" (produced to witness) "Letter Report of Death"
A-453 Yes

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Q-454 Was he alive at that time
A-454 He was dead

Q-455 Was the cause of death as mentioned in Exhibit "N"
A-455 It was

Cross-examined by defending officer

Q-456 Were the injuries to Pte Lyke such as would be occasioned in a motor accident
A-456 They were

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(3)

The witness withdraws

THE PROSECUTION I S CLOSED

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

FIRST WITNESS FOR THE DEFENCE. C-119503 Pte Victor Emmons, 1 Cdn Corps & Army Tps Sub Pk, RCOC, being duly sworn is examined by the defending officer:

Q-459 Pte Emmons you are the accused in this case and you are a driver on the strength of 1 Cdn Corps & Army Tps Sub Pk, RCOC
A-459 Yes sir

Q-460 This afternoon we have had evidence that on the night of the 4/5 May last you were on guard duty; during what hours were you actually on duty
A-460 10.30 p.m. until a quarter to one in the morning, and from five in the morning until a quarter to seven

Q-461 Two shifts
A-461 Right

Q-462 The next day, the 5 MAY, you had to go out on certain duties, will you tell the Court what these duties were
A-462 Delivering stores to units

Q-463 How many units did you call on
A-463 Eleven

Q-464 Do you know how many miles you drove
A-464 I do not know exactly but about 160 miles

Q-465 What time did you leave in the morning
A-465 I was on parade at eight o'clock and left with the lorry about nine

Q-466 Was there any relief driver along with you
A-466 No sir

Q-467 You did all the driving yourself
A-467 Yes sir

Q-468 You have heard one witness, Overkott, state you stopped at Amarosi, what time did you stop there
A-468 Between six and six thirty

Q-469 What was the purpose of that stop
A-469 For a rest

Q-470 Did anyone suggest it
A-470 No one

Q-471 How did it come about
A-471 I pulled up myself to have a rest

Q-472 How long did you stay there
A-472 I could not say exactly, an hour or an hour and a half, as I dozed off

Q-473 You dozed off while you were there, whereabouts, right in the cab
A-473 Yes sir

Q-474 Did you leave the truck at all
A-474 No sir

Q-475 Do you know what time you left Amarosi
A-475 No sir

Q-476 Overkott, the technical storeman, was with you on the trip, did he leave the truck
A-476 Yes

Gnam. 65

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The prosecution is closed.

Defence.

R.P.40 is complied with

Q-457 *Question to the accused.* Do you apply to give evidence yourself as a witness?

A-457 *Answer.* Yes

Q-458 *Question.* Do you intend to call any other witness in your defence?

A-458 *Answer.* No sir

[redacted]

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

Gnam. [redacted]

(Where the accused does not give evidence upon oath.)

Question to the accused. [redacted] Gnam

Answer. [redacted] Gnam Gnam Gnam

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

Grim
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Q-477 Why
A-477 He said he was going down to the black market

Q-478 Do you know how long he was away
A-478 No sir, he was there when I woke up

Q-479 Do you know how long you were asleep
A-479 No sir

Q-480 Did you have anything to drink from the time you left in the morning until the time of the accident
A-480 No sir

Q-481 Did Overkott have anything
A-481 I saw him have one glass

Q-482 What were light conditions like when you woke up
A-482 Still daylight

Q-483 What did you do
A-483 I drove on

Q-484 How long had you been driving when you noticed the American truck in front of you which you eventually tried to pass
A-484 About an hour

Q-485 How long did you follow this truck
A-485 About fifteen or twenty minutes

Q-486 At what distance
A-486 About 35 or 40 yards

Q-487 What were the light conditions at that time
A-487 It was getting fairly dark

Q-488 Was it dark enough to use headlights
A-488 Yes sir

Q-489 Did you turn yours on
A-489 Yes

Q-490 Do you know if they went on
A-490 Yes sir

Q-491 Did you see the glow
A-491 Yes sir

Q-492 Did you actually see this American truck in front of you for 20 minutes or just the tail light
A-492 Just the tail light

Q-493 Was there any reason you attempted to pass this truck
A-493 Yes sir, he was going very slowly

Q-494 What speed
A-494 Between 10 and 15 m.p.h., I was following him and he slowed down to 10 or 15 m.p.h.

Q-495 Do you decided to pass
A-495 Yes

Q-496 Did you notice any oncoming traffic in the opposite direction
A-496 No sir

Q-497 Did you notice any troops
A-497 No sir

Q-498 Did you notice any lights coming in the opposite direction
A-498 No sir

Comm. #69

Q-499 Did you take any precautions in passing this truck
A-499 I blew my horn and pulled out to the left hand side of the road

Q-500 Then what did you do
A-500 I kept on passing him

Q-501 Did you change gears
A-501 I shifted down into 3rd

Q-502 What geat had you been travelling in
A-502 4th

Q-503 Is that a normal precaution
A-503 Yes, she has not enough power in high gear

Q-504 How fast will your vehicle travel in 3rd gear
A-504 It will not do over 30 m.p.h.

Q-505 How fast were you going
A-505 Between 25 and 30 m.p.h.

Q-306 What type of vehicle were you driving
A-306 A Chev 3 ton

Q-307 What was the first warning you had that there were troops on the road
A-307 When I saw them

Q-308 How far ahead of you
A-508 Five or six feet

Q-509 Were they directly in front of you or off to one side
A-509 A little off to my left

Q-510 What did you do in order to endeavour to avoid running into them
A-510 I had not much time, I stepped on the brake and pulled over to the right towards the other truck and I hit him and swung off him into the ditch

Q-511 Where was the American truck on the road, was he allowing lots of room
A-511 He was allowing plenty of room

Q-512 Was everything normal about the pass you were trying to make
A-512 Yes sir

Q-513 You would say it was a perfectly normal pass
A-513 Yes

Q-514 How many years experience have you had in driving
A-514 Six years in civilian life

Q-515 How long in the Army
A-515 Not very long, I just drove off and on

Q-516 How long with your present unit
A-516 I came to them in August, I only drove twice in England

Q-517 How long have you been in Italy
A-517 I cannot exactly say, six or seven months

Q-518 Have you been driving much over here
A-518 I have been driving about a month here

Q-519 You mean you started about a month ago
A-519 No, I started about four months ago and have been driving off and on

Q-520 In your statement which has been put in as an exhibit by the prosecution this statement appears"I got one bottle of vino at Amarosi from an Italian for a friend of mine at Camp" "I did not have any wine to drink at any time." What happened to that vino

A-520 It was left in the truck

Q-521 Was anything taken out of it

A-521 No sir

Q-522 Who was it for

A-522 A friend of mine at camp, Pte Bruce

Q-523 I ask you once again did you have anything to drink during your trip delivering stores

A-523 No sir, I had nothing

Defending Officer submits Transport Work Ticket No 095308, authorizing the trip of this vehicle in question on "milk route" 5 MAY 44. Work ticket is handed to Court, signed by the President, marked Exhibit "R" and attached to the proceedings

Defending Officer also submits W.D.Driving Permit, AFA 2036, Serial 26, issued to C-119503 Pte V.Emmons, and identified by him, for the period 1 FEB 44 to 1 FEB 45. This is handed to the Court, signed by the President, marked Exhibit "S" and attached to the proceedings

Cross-examined by prosecutor

Q-524 When were you issued with driving permit, exhibit "S"

A-524 I do not know the date but it was around February of this year

Q-525 Did you go through a course in training before actually getting that license

A-525 I did in Canada, sir

Q-526 Did you drive in Canada while training 3 ton lorry Chevrolet

A-526 I did on my course, yes

Q-527 With right hand drive

A-527 Yes

Q-528 So you did know how to operate and were quite familiar with that type of vehicle

A-528 Yes

Q-529 Just previous to this accident what kind of visibility was there

A-529 Not very much sir

Q-530 Do you remember if the moon was out

A-530 No sir

Q-531 The moon was not out

A-531 No sir

Q-532 You had your headlights on

A-532 Yes

Q-533 Did it have a covering similar to Exhibit "M"

A-533 Similar, but the slit seemed higher up

Q-534 How far could you see in front

A-534 The light showed down on the ground about 10' in front

Q-535 What kind of light

A-535 A light broadening out

Q-536 Could you see both sides of the road with that beam

A-536 Yes

Q-537 What speed were you travelling from Amarosi
A-537 About 20 to 25 m.p.h.

Q-538 To your knowledge going 25 m.p.h. in what distance could you stop, bring to a complete stop a 3 ton lorry
A-538 Fifteen to twenty feet

Q-539 And yet you could not see more than 10(in front of you. In the course of your driving and in your previous experience as a driver is it not a fact you avoid overtaking a vehicle on a curve
A-539 Yes

Q-540 And not overtake a vehicle on a hill where you cannot see what is going on in front
A-540 That's right

Q-541 If you were driving in a thick fog would you go as fast as on a clear day
A-541 No sir

Q-542 In other words you have been trained to always have your vehicle under control
A-542 Yes sir

Q-543 You told us you could see about 10' ahead of you and that at 25 m.p.h. it would require from 15 to 20' to bring your car to a complete stop, therefore when you did go 30 m.p.h. to overtake that truck you could not see what was ahead further than 10'
A-543 That's right sir

Q-544 Therefore you could not have your car under control for anything that might be ahead over 10'
A-544 That's right sir, but anything on the road at night is supposed to have lights

Q-545 I am not questioning on what was done or not done by the other side I am questioning you on what you actually did. Did you not think when passing that truck there might be something on the road, a donkey cart, troops or a pedestrian
A-545 I thought there would be something of a warning if anything or anyone was on the road

Q-546 Had you been over the road before
A-546 It was the first time I had driven over it, but I had been over it before

Q-547 You heard one witness, Overkott, say in the afternoon you were nodding at the wheel
A-547 I do not recall it, If I feel sleepy I stop the truck

Q-548 You stopped it in Amarosi
A-548 Yes

Q-549 Did you sleep in the cab
A-549 I was not actually sleeping I dozed off

Q-550 How were you feeling
A-550 Good

Q-551 Did you at any time feel sleepy between Amarosi and the scene of the accident
A-551 No sir

Q-552 Now you say that you bought a bottle of vino in Amarosi
A-552 I did not say that, it was given to me

Q-553 Who gave it to you
A-553 A kid came and gave it to me, he did not exactly give it to me he told me to take it back to camp

Gunn
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Q-554 Did you see any signs along the road indicating ~~indicating~~ there were troops in the vicinity
A-554 No sir

Q-555 Did you meet any troops before these ones you saw
A-555 No sir

Q-556 You ~~h~~hanged gears when you went to overtake
A-556 Yes

Q-557 Is that the normal procedure you adopt
A-557 Yes, these trucks haven't much guts in high gear, it is safer to take it in 3rd gear

Q-558 Were you in high gear before you changed into 3rd
A-558 Yes sir

Q-559 Did you turn your lights off at any time during that trip
A-559 No sir

Q-560 Were they still on when you hit the ditch
A-560 No sir, as soon as I hit the troops they went out

Q-561 You say when you saw the troops you put on the brakes
A-561 They were close and I went over to try and miss the troops

Q-562 Did you apply the emergency brake at all
A-562 No sir

Q-563 Did you think you would have passed the troops when you swung to the right
A-563 They were actually in my way when I swung the wheel

Q-564 Yet you say this American truck gave you plenty of room to pass
A-564 He was about two or three feet from the wall on his side of the road

Q-565 I imagine you were quite tired
A-565 I was tired but not sleepy

Q-566 Were your reactions as fast as they would be if you were not tired
A-566 Yes I think so, just about

Q-567 Did you not feel in view of that tiredness you should go more slowly than you actually would under ordinary circumstances
A-567 I do not think so

Q-568 Were there one or two headlights on your vehicle
A-568 One, on the right

Q-569 There was no other light, on the right hand side
A-569 Just a light on the fender

Q-570 How far from the American truck were you when you pulled out to see what was ahead
A-570 I was in the middle of the road about 15 or 20 yards behind and came up to within about 15 or 20 feet from him when I pulled out and looked ahead there was nothing as far as I could see

Q-571 You saw darkness in front of you except for the tail light
A-571 Yes

Questioned by the Judge-Advocate

Q-572 During your tour of guard duty the night before did you sleep between the tours of duty
A-572 I did not sleep before the first tour, I slept between that and the second tour for about two hours

Grimm '77

Q-573 Was Amarosi on your way on the road back
A-573 Yes, it is the only route I use

Q-574 What did you do immediately your car went into the ditch
A-574 I turned the engine off and pulled it out of 3rd gear and got out of the truck and helped the Americans with the dead and wounded

Q-575 You were there all the time
A-575 Yes, when they were moved I reported to the MP

Q-576 Prior to that you did not make your identity known
A-576 No sir, they were busy and I did not want to bother them, I reported as soon as everything was clear

Q-577 What happened to the man with you
A-577 As far as I know he bumped his head on the windshield, the Americans lifted him out of the cab, he was unconscious, I had no conversation with him

Q-578 Did you have any conversation with him on the ride from Amarosi
A-578 No sir, he dozed off to sleep most of the time

Q-579 How do you know when you got to Amarosi
A-579 I do not know, I judge it was about six or six thirty

Q-580 And you judge you were there about an hour
A-580 About an hour or an hour and a half

Q-581 Do you know how it happened the boy came up with a bottle of wine
A-581 He knew me, we were stationed out there and I used to go up to his house

Q-582 How did he happen to know you were there, you were parked at the house
A-582 No, about a block away

Q-583 How did the boy discover you
A-583 He was playing around

Q-584 And saw you
A-584 Yes

Q-585 Can he speak English
A-585 No sir, but I understand a little Italian, he said "Do you want a bottle of vino to take back to camp for Bruce"

Q-586 What is the distance from Amarosi to where this accident took place
A-586 I cant exactly say, I was only over it three or four times

Q-587 Could you make an estimate
A-587 About 25 miles, that is just a guess

Q-588 You say your lights went out as soon as you hit some of the troops
A-588 I was about half way through them when they went out, that is as it seemd to me

Q-589 Do you know what happened to them
A-589 No sir

Q-590 You did not try to turn them on again
A-590 No sir, it happened so quick I did not have time

Q-591 Did you see the truck ahead of you pick up any soldiers on the road
A-591 No sir

Q-592 You were following it how long

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A-592 Fifteen or twenty minutes I would not say exactly about that

Q-593 How far behind were you
A-593 About forty yards

Q-594 And you followed 40 yards behind for about 15 or 20 minutes
A-594 About that time, all I could see of the truck was the tail light

Q-595 It was quite dark was it
A-595 Yes sir

Q-596 And you are quite sure you realize what you are saying you could only see ten feet of your vehicle which carried the regulation lights
A-596 That is the way they put them on the truck sir

Q-597 Your speed at the time you ran into the other vehicle was what
A-597 I slowed down a little, I was doing around 25 or 30

Q-598 Do I understand you changed into 3rd gear in order to get more speed
A-598 No, in order to get more power, more pick up

Q-599 So you were depending upon any traffic walking in the opposite direction to you depending on them having lights
A-599 They should have sir

Q-600 Did you pass any people walking along the road after leaving Amarosi
A-600 No sir

Q-601 Could you say what your speed was before changing to the lower gear
A-601 About 20 or 25

Q-602 Then you picked up speed after that
A-602 Yes

Q-603 How old are you
A-603 Twenty two

Q-604 Referring to this Exhibit "P" setting forth speed limits, were you familiar with them
A-604 Yes sir

Q-605 You knew the speed limit for your vehicle was 25 m.p.h.
A-605 Yes sir

Questioned by the Court

Q-606 How is it the bright headlights of the American truck did not show up the troops as you were passing as the effect would be the same as if the headlights were on your truck
A-606 I did not see them, I have a right hand drive

Q-607 You were something like 15 to 20 yards behind at the time you were about over in the middle of the road, at that time would you not be able to see past the American vehicle and past the truck to the left hand side of the road
A-607 No sir, you have to be right over on the left of the road before you can see past a truck on the right hand side

Q-608 You started out in the morning and I suppose you took lunch with you
A-608 Yes sir

Q-609 And you had nothing to eat since lunch
A-609 No sir

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Q-610 And that meant you would not eat again that night until ten thirty
A-610 That's right it would be 10.30 anyway

Q-611 You would get fed when you got home
A-611 If they told anyone we were out we would get something

Q-612 You say travelling behind this vehicle you travelled at between 10 and 15 m.p.h.
A-612 Yes

Q-613 In the matter of Pte Overkott, he had something to drink, where was that
A-613 At Amarosi about one or two o'clock in the afternoon

Q-614 This place you parked, there is a main cross road through the town
A-614 I do not know that sir

Q-615 In your statement, exhibit "O" you state "Overkott had several drinks of wine in Amarosi"
A-615 I only saw him have one but I figured he had more

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

THE DEFENCE IS CLOSED

PROSECUTOR'S CLOSING ADDRESS:

The Judge Advocate when he sums up will explain the law in this case, I merely want to state briefly that in the case of manslaughter, manslaughter may be divided into two classes, one of which is death caused by the negligence of the accused.

In reviewing the evidence of this case I think the facts disclose that there has certainly been a serious negligence on the part of the accused. I will be very brief because I think the facts are quite clear.

True this accused had been on guard duty the night before did not have much sleep and may have been asked to do a duty which should not have been asked of him but which he undertook to do.

In the course of doing that duty he drove a considerable length of time and quite a distance, still he undertook to do it.

Coming back on Highway 87 there is no doubt that from Amarosi and a certain distance past Amarosi it was getting darker and darker and the accused at a certain time put his headlight on, which was a regulation blackout headlamp. By the accused's own admission it did not throw much light on the road.

Now the J.A. will tell you there is no such thing as contributory negligence in a criminal charge, the acts of the accused have to be weighed on their own.

It the Army has decreed that our vehicles will be equipped with this blackout it is up to the drivers to use the amount of caution required by the visibility given by these lights.

This visibility the accused states is ten feet, he may be exaggerating against himself, but taking this distance of ten feet I submit a driver must have his car under control at all times

Having a car under control means you must be in a position to stop it in the required length, thus, if you see the road in front of you a speed of sixty m.p.h. might not be illegal or improper, but if you do not see ahead of you I can figure where a speed of 10 m.p.h. might be negligence.

Take under the circumstances driving in a thick fog, or as on these roads a thick cloud of dust, certainly a driver who can only see ten or fifteen feet ahead of him in this is taking upon himself the liability of what may happen if he cannot stop within fifteen feet. In other words there is an area which he cannot see in which something may happen, and ignoring this is considered a case of manslaughter.

You have the evidence that at the time of the accident the accused was going 30 m.p.h., he was in 3rd gear, the speed below the high level in which gear there is more pick up and there is more braking action by the compression of the engine, but still a truck certainly cannot be stopped within five or six feet the distance at which the accused first saw the troops, I stand to be corrected if I am not right on this distance but I think it is the distance claimed by the accused, and I submit it is the duty of any driver of a car to just think ahead and to think of the possibility of something being ahead of him.

The accused tells us it was completely dark, naturally he pulls to the left hand side of the road, he has a right hand drive and has to pull over to the left of the road, and if he sees blackness and does not see what was ahead I submit he should not go ahead and if he undertakes to do so he is committing that degree of

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negligence that may cause manslaughter, by driving his vehicle into something unknown, into something where lives might be risked and damage might be done, I submit the accused was negligent, and that the negligence was tantamount to manslaughter in this case.

You have evidence that Pte Ralph L. Lyke was killed as a result of this accident and I submit that it was so caused by the speed at which the accused was travelling when he overtook the American vehicle.

The prosecution has not tried to establish anything other than negligence, they do not contend that he was under the influence of liquor and are satisfied that the accused was completely sober, but I submit the speed at which he was going is sufficient to warrant the Court in coming to a finding of guilty.

DEFENDING OFFICER'S CLOSING ADDRESS:

The J.A. will doubtless instruct the Court on the principles of law involved, but before going any further I would like to point out one thing which the members of the Court should bear in mind, I would refer you to MML p.58, Ch.V. para 57 "Burden of proof" quotes: Now gentlemen I think you are all familiar with that, I would just like to bring out that it is the prosecution's duty to prove the guilt of the accused he does not have to prove he is not guilty.

Now the prosecution has based their case on the assumption that the accused has been guilty of neglect and through that neglect on the part of the accused a death has resulted, a death of a human being. Again I refer to MML, page 117 a portion of para 46: "where death results from negligence it must be shown, in order to justify a conviction for manslaughter, that the negligence was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime against the State and to conduct deserving punishment". It is not sufficient for the prosecution to show negligence, they must show negligence of such a gross and culpable nature as to amount to a crime against the State. Mere simple negligence such as would suffice to collect damages in a civil suit are not sufficient, this is as far as I am going to deal with the matter.

Just one more reference to MML. As you know manslaughter may be homicide, but homicide may be either manslaughter or murder. "Homicide is excusable (1) where a man doing a lawful act, without any intention of hurt, by accident kills another" (MML, p.116, Ch. VII, para 43). In other words mere misadventure as from an accident which causes death is not punishable under the Criminal Code.

I propose to examine the evidence to see whet the accused has been guilty "of such gross and culpable negligence and shown such disregard for the life and safety of others as to amount to a crime against the State and to conduct deserving punishment."

I submit when I review the evidence you will see he has not been guilty of negligence to that extent.

The first question is that of light on the vehicle. The evidence shows this; the accused first of all claims he had his lights on he claims he turned the switch and could see the glow of the lights on his vehicle, the technical storeman who was travelling with the accused claims he saw the accused turn the switch. Lieut

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Warren who was leading the column of American troops says he could not say if the Canadian vehicle had lights or not, and he further claims he was momentarily blinded by the lights on the American truck, and it may be on this account he could not distinguish the much dimmer lights of the Canadian truck. Spr Johnson said he had no lights, Spr Raisen says he did not know whether the lughts were on, Sgt Black says the lights were working on the truck. Of these witnesses two say the lights were on, three say they could not say whether the lights were on or not, and the other, Sgt Black, says they were in working order. It is reasonable to say that if the lights were in working order they were on. I submit the Court should accept the word of the accused and Overkott that the lights were on if it was dark enough to justify the using of lights. Further more the prosecution has not borne the onus of proof, they have produced three witnesses who are not prepared to say the lights were on or not on the vehicle.

I think the Court can take official cognizance of the fact that the standard Canadian vehicle only has one headlight on the left.

The next thing is the condition of light at that time of day. Lieut Warren says he could only see about ten or twenty yards, but says the moon was out and the sky overcast. Lieut Gilreath who was apparently in charge of the whole column says there was no moon and it was rather dark. Pte Simpkins the driver of the American vehicle says there was still some daylight, it was not yet dark. Spr Johnson saysthere was very little light but he could see the Canadian truck behind plainly at 20 yds. Spr Raisen who was also riding on the truck, the American truck, says the moon was shining but a row of trees cast shadows on the road. The next two witnesses Cpl Geist and Major Long both state when they arrived at the scene it was dark and they needed lights but that was some time after the accident occurred, and if they arrived fifteen minutes later their evidence on that point would not be of much use. What it does boil down to is this, that there is some dispute amongst the prosecution witnesses as to whether it was dark or light; in other words it was a matter of judgment whether or not headlights were necessary, and if the Court does not accept the accused's statement that his lights were on then that is merely an error of judgment on his part and a man cannot be convicted of manslaughter on an error of judgment.

Regarding the horn. The accused says he sounded the horn. Lieut Warren says he did not hear the horn but possibly the noise of the truck drowned it out. Pte Simpkins says he heard no horn, that there was some noise from both vehicles, and that he heard the Canadian vehicle before he saw it; so I submit there again the Court can infer Pte Simpkins did not hear the horn because of the noise of the vehicles. Spr Johnson says he did not hear the horn. Spr Raisen makes the statement with reservation that he heard no horn. There are four prosecution witnesses two of whom admit they might not have heard the horn because of the noise of the vehicles, one makes a statement he heard no horn, he admits there was noise in the vehicle. The fifth witness is the accused who claims he sounded it. Again I claim the prosecution evidence is not strong enough to discharge the onus which lies upon it.

The next question is speed, the speed of the Canadian vehicle. On this the prosecution based the weight of his argument. First of all I would like to rebut one or two things Captain Desbarats said. First of all he said the accused was on guard duty the previous night but nevertheless undertook a duty the next day. I submit it is not a question of the accused undertaking a trip "he was bloody well told to go, and went" it is not a question of the accused undertaking a duty, he was detailed for duty and had to do it.

3mm 89

The prosecutor says the accused could not see very far ahead because of the lights being blacked out, and he says if that is so the accused was negligent in driving at such a rate of speed as to be unable to stop within the range of his vision. I submit the amount of care required of an Army driver must vary with the exigencies of the service and more risks may be taken in a theatre of operations in war time. If the Army vehicles were required to move at a speed under which they could stop within the range of vision then the war would have been much slower than it has been, take tanks and trucks on dusty roads and at night. I submit it is not fair to apply the standards of a civilian driver in peace time against an Army driver in a theatre of operations, and the standard should not be so rigid.

The speed of the Cdn vehicle. Capt Davis, RCOC officer, says that damages sustained by the Cdn vehicle are consistent with that vehicle having been driven at a high rate of speed, and on cross-examination he says the vehicle could have sustained the same damage had it been travelling quite slowly. Pte Simpkins, driver of the American truck, says the Cdn vehicle was travelling about 35 m.p.h. Spr Johnson, guessing, says 45 m.p.h. Spr Raisen says 40 m.p.h. and also admits he is not a driver. In connection with these two witnesses I would suggest that the noise of a vehicle in 3rd gear would create the impression of speed to an inexperienced person. Now Sgt Black the transport sergeant, and the accused, both claim the vehicle will not do 45 m.p.h. in 3rd gear and will only do 30 m.p.h. and I submit that is the outside speed the Court can find. The accused says he was travelling 25 to 30 m.p.h. and he says that is a guess but he estimates the speed as he was in 3rd gear.

What experience has the accused had in driving, six years in civilian life and about six months in the Army, two months driving in Italy. He has had the drivers' course in Canada, Sgt Black says the accused is a good driver, a careful driver.

The next thing I want to deal with is the precautions the accused took before trying to pass. The accused says he shifted down into 3rd gear, Spr Johnson says he thought the truck was in a middle gear. Capt Davis says it is a reasonable and sensible precaution to shift down to 3rd when passing.

The condition of the road from the plan, and the view of the scene which the Court had this morning, we know the effective road surface was about 25' wide at the point of the accident. Pte Simpkins says his truck was about 7½' wide and he was 2' from the r.h. side of the road. This would have left the accused 14½' of road space which I submit is adequate to take a 60 cwt through. The plan of the road and the view shows a straight road for 100 to 150 yds.

That review of the evidence shows the accused was not guilty of such a degree of negligence as to justify a conviction of manslaughter, his negligence was very slight, it is not that gross and culpable negligence as required for a conviction of manslaughter and I submit the Court should acquit the accused on the charge of manslaughter.

The Court consider it expedient in view of the exigencies of the service and the distance of travel involved to sit after 6.00 p.m. and complete the proceedings on this date.

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At 6.05 p.m. the Court adjourn for supper

At 6.35 p.m. the Court reassemble. The accused is again brought before the Court.

The President asks the defending and prosecuting officers if they would care to comment on the question as to whether or not the Cdn vehicle having lights is a material factor in the case, having in mind that the American truck apparently had good lights.

Defending officer: I might bring forth a theory. The Americans were marching in platoons and there was considerable distance between them. Mr Warren's platoon was practically level with the American truck and it is quite possible all his troops were on the near side of the lights, that the headlights were shining behind his platoon and not far enough ahead to light up the following platoon. The accused when asked why he did not see the troops by the light of the American truck said he just did not see them.

Prosecutor: There is also a theory which I would like to put forward, first of all in answer to your question on the glare of the American truck. The accused answered that driving a r.h. drive truck he had to pull out completely before he could see in front, he was very near the American truck at that time, not more than 15 or 20'. Also another explanation on visibility; the uniform of the American troops is certainly a greenish uniform and right along the edge of the road at that point is a greenish background, it is very hard to say that the accused did see them, and as prosecutor I do not intend to submit that the accused did see them and took a chance to pass; I say he did not see;and you make a manoeuvre with your truck which you should not have made it is negligence, if he had seen it would almost amount to a greater offence.

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SUMMING UP BY JUDGE ADVOCATE:

It is my duty as Judge Advocate on this case to sum up for you, particularly so far as the law is concerned.

So far as the facts of the case are concerned, although I have the right to comment on them, and even to give my opinion on them, yet you are not bound by that in any way. You will make your own inferences from the facts and put your own interpretation on them. I prefer to leave the facts to you and deal briefly with the law involved in this case, and should I express any opinion on the facts you may disregard this entirely, as you, gentlemen, are more qualified than I am to interpret the facts because you represent different branches of the Service, all have had considerable experience, and in a case of this kind I prefer to leave questions of fact to you.

The homicide case is always a difficult one for a Court and that is particularly true in what are known as "motor manslaughter cases" as there are no hard and fast rules to guide the Court, and determining whether the degree of negligence is sufficient to warrant a conviction or not is a very difficult one for a Court.

The charge is manslaughter, I will read the charge again to refresh your memory on it. (reads charge).

The charge is manslaughter, or unlawful killing another man, this is what is known as a civil offence and laid under Section 41 of the Army Act which permits military courts to try soldiers for offences under English law.

Possibly the most succint definition of manslaughter is that contained in MML. P.116, Ch.VII, para 46, as amended by Amdt No 14: "It may be taken generally that in all cases where a killing, though not with malice, is nevertheless incapable of justification or excuse, it is manslaughter." That is the general definition of manslaughter.

Now one type of manslaughter is the type of manslaughter alleged here which alleges negligence on the part of the accused. Now then, the question is, and it is the question which will concern the Court most, the degree of negligence necessary to constitute the offence of manslaughter, and I will read to you from "Archbold p.882 with regard to the degree of negligence necessary to constitute the offence. (reads from Archbold on "negligence"). In other words it must be a much greater degree of negligence than would entitle one party to succeed in a claim for damages against another for the death of a person or injury to a property, it must have been such negligence, such disregard for the life and safety of others as to amount to a crime against the State. That is, such negligence that the State is warranted in intervening in order to give the required punishment.

Now there is some mention in this case, and I think I should deal with this point, that troops were marching without any light showing anything to indicate their approach, marching along the road in column of threes. As I think the prosecutor pointed out, if there was any indication of negligence on the part of the deceased or on the part of those under whose orders he was acting, this is not available as a defence for the accused in this case. Criminal action is different from civil action; in civil action two vehicles collide and one driver sues the other for damage, if the person sued can show that the man suing was negligent and contributed to the accident and cause of damage there is liability on the part of the person suing on account of the contributory negligence, but that is not so in criminal cases.

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There have been some cases where a man lying on a road drunk has been run over by a vehicle and killed and in such cases there have been convictions for manslaughter. There is no question but that the man lying on the road contributed to his own death, but that is not a defence.

In considering whether the accused was grossly negligent in this case the Court must have regard to all the surrounding circumstances, the speed of the vehicle, the lighting, the sounding of the horn and all such factors. With regard to the lights for example, you will have to consider not only whether or not the lights on the accused's car were burning, but also, even if not lit, that fact had any bearing on this event. The President has mentioned that point and it was discussed.

There are no hard and fast rules regarding the degree of negligence required to constitute manslaughter, each case stands on its own feet. First of all was there any negligence on the part of the accused at all? If so, was it as serious as to warrant a conviction of manslaughter? An act of negligence warranting conviction under one set of circumstances might not under another. Certainly if two vehicles are racing each other along a highway and a pedestrian is killed as a result that would obviously be manslaughter, but every killing on a highway by a motor vehicle is not necessarily manslaughter. Take the case of a person driving a vehicle in a proper manner through a village and a child without warning jumps from the sidewalk into the path of the vehicle and is killed, that, under the circumstances, would be a pure accident; nothing could have been done to prevent it. If there was no negligence it was what the defending officer termed misadventure. On the other hand if a man is driving a vehicle through a village and the sidewalks are crowded with people who are here and there crossing the road, say there is a fete day in the town, in that case there is a special duty to take care, the chances of causing death should have been foreseen and even if the accused were driving within the speed limit yet if the Court determined he was driving too fast under the circumstances existing at the time and ran into a person stepping off the sidewalk and killed him, a conviction of manslaughter would probably be warranted.

Another element is the extent of use of a highway, whether a driver could reasonably expect other traffic or pedestrians on the road, the test on a back woods country road is not the same as on a road through a town.

Now I might mention another example where a conviction of manslaughter would not be warranted, say where a driver is suddenly confronted by a situation that he could not be expected to have foreseen. He has to respond immediately and turns right instead of left, and because he did so runs on to the sidewalk and kills someone, whereas had he turned the other way there would have been no accident. The death was caused by an error of judgment on his part; his speed was proper, something unforeseen occurred and through an error of judgment he turned the wrong way.

Now I think gentlemen it is further my duty to tell you that on a charge of manslaughter under English law, and it is English law rather than Canadian that governs our military courts, under English law a person charged with manslaughter may be found guilty of reckless or dangerous driving under the Road Traffic Act of England, Sec 11, and I will read that to you (Archbold p.951) "If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be on the road, he shall be liable -". That is for reckless or dangerous driving. Now therefore I say should the Court consider that there

was negligence, but not such gross or culpable negligence as to warrant a conviction for manslaughter, yet they may enter a conviction under that Section for reckless or dangerous driving, not both. There is no definition of these terms, one action might be considered reckless, another dangerous. I do not think there is much difference between the two terms, there is no definite distinction drawn between them in the Section.

Perhaps I might give you an example of what would be reckless driving rather than manslaughter; a case where one vehicle is passing another vehicle which is being passed after receiving due w warning and this other vehicle suddenly turns out in front of the overtaking vehicle to prevent his passing, causing the overtaking vehicle in order to avoid him to go on to the sidewalk. Let us assume the overtaking vehicle was going at an excessive rate of speed; he could have got safely by had not the vehicle being over-taken done the act it did. In this case I think the Court could acquit of manslaughter and convict of reckless driving, although it is true the excessive speed was not the immediate cause of the accident.

I hardly need to mention to the Court that although it is unfortunate that the persons killed belong to a Force other than our own, although it would still have been serious if it had happened to our own forces, yet the Court will not convict the man on that account unless they consider him guilty of a crime; and I am sure our American friends would be the last to suggest a Court should convict a man merely because he killed some of their people if the Court were not satisfied he committed a crime. Their criminal law is essentially the same as our own; the question of policy as distinct from law should not be allowed to interfere with your judgment.

The accused of course is innocent until proven guilty beyond a reasonable doubt; you must take a calm and cool view of the whole evidence, and if, after taking that view, as reasonable men you have doubts as to the accused's guilt you should acquit him. A reasonable doubt is not one conjured up by mental gymnastics, it means a sound sensible doubt as you would have in your ordinary business affairs or in your military affairs.

I am not going to review the evidence and I will now leave the matter in your hands.

The Court adjourn to consider the finding

The Prosecutor produces Statement as to Character and Particulars of Service and Certified True Copy of Conduct Sheet purporting to refer to the accused which he submits to the Defending Officer for examination and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused because they purport to be signed in the manner required by AA 163(1) (g)(h) and (ii) they purport to refer to a soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Exhibits "U" and "V" respectively.

Q-616 Do you wish to address the Court on the Statement and Conduct Sheet and in mitigation of punishment.
A-616 (By Defending Officer) I wish to call one character witness before making a plea in mitigation of punishment.

CHARACTER WITNESS. Captain Harold A Merklinger, Chaplain Services, being duly sworn is examined by the defending officer:

Q-617 You are, I understand, chaplain for 1 Cdn Corps RCOC troops
A-617 That is right

Q-618 And the unit of which the accused is a member comes under your charge
A-618 Yes

Q-619 Are you acquainted with the accused
A-619 Well I know that the accused is a young man who has never been a trouble maker in his unit and I have never been asked by his NCOs or his officers to talk to him as to his attitude, he always has had a good name in his unit

Q-620 Did you make it a practice to find out the bad actors in a unit
A-620 I did

Q-621 And you have never had any bad report of the accused
A-621 I have not

The prosecutor declines to cross-examine

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(3)

The witness withdraws

See Exhibit "W" for Plea in Mitigation of punisnment.

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Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

C-119503 Private Victor Emmons, 1 Cdn Corps & Army Troops Sub Park, RCOC.

is "Not Guilty"of manslaughter, but "Guilty" of reckless driving. (Road Traffic Act Sec 11)

In the Field 17 May 1944

G Williamson Major
Judge Advocate

J C W Bishop Col
Pres.

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

Evidence of character, &c.

The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Endorsement as to course of the notice of the service of the accused to a disciplinary corps, or otherwise, the finding of the Court remains [not] liable to any confirmation, postponement or alteration [or not] to be exercised by the Crown the prosecutor should call the attention of the Court to the fact, and the Court must inquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

(5)

F

Sentence.

The Court sentence the accused

Sentence

C-119503 Private Victor Emmons, 1 Canadian Corps & Army Troops Sub Park, RCOC.

To be imprisoned with hard labour for two years

Imp H.L. for 2 years

In the Field 17 May 1944

E.W. Harrison Major
Judge Advocate

Col
Pres.

I confirm the finding and Sentence of the court

E. L. Burns

24 May 44

LT. GEN.
G.O.C. 1 CDN. CORPS.
25 MAY 1944

Promulgated and extracts taken, in the field, this 27 day of May, 1944.

(P.M. Irwin) Major
Officer Commanding
1 Cdn Corps & Army
Tps Sub Park, RCOC

"3"

GENERAL COURT MARTIAL

Orders by

LT-GEN E.L.M. BURNS, CBE, MC.
COMMANDING 1 CANADIAN CORPS

C-119503 Pte Victor EDMONS
1 Cdn Corps & Army Tps Sub Pk, RCOC

The detail of officers as mentioned below will assemble at HQ Second Replacement Depot, U.S. Army, (Sheet 173, Ref 256836, Benevento, nr Piano di Caizzo) at 1000 hrs Wednesday, 17 MAY 44, for the purpose of trying by a General Court Martial the accused person named in the margin:

PRESIDENT

Colonel J.W. Bishop
HQ 1 Cdn Corps

MEMBERS

Lt-Col F.J.Thorne, MBE, MC.
1 Cdn L.A.A.Regt, RCA

Major D.E.Mounteer
5 Cdn Armd Crd Sub Pk, RCOC

Capt J.V. Cooke
HQ 1 Cdn Corps Tps RCASC

Capt D.R.Fletcher
1 Cdn Svy Regt, RCA

WAITING MEMBERS

Capt P.M.Peterson
44 Cdn Gen Tpt Coy, RCASC

A Captain to be detailed by
OC 1 Cdn Corps Sigs RCCS

JUDGE-ADVOCATE

Major G.M. Morrison
DJA 1 Cdn Corps

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to HQ 1 Cdn Corps.

Signed in the Field, this 14th day of May, 1944.

E.L.M.Burns

(E.L.M.Burns) Lt-Gen.
G.O.C. 1 Cdn Corps

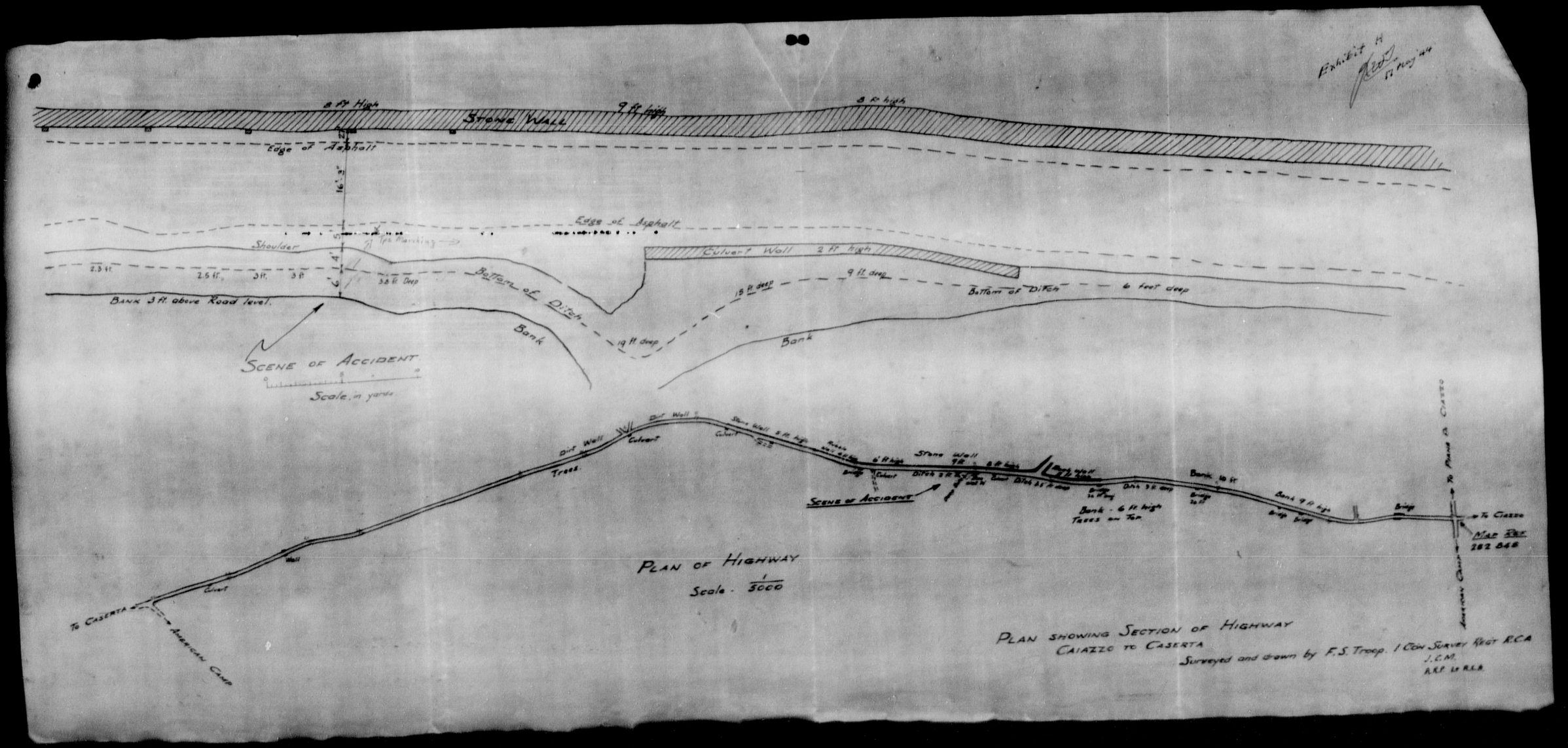
MEDICAL OFFICER'S CERTIFICATE

I Certify that No. C-113[illegible] Pte. [illegible]
RCOC Regiment, is fit/~~unfit~~ to undergo trial by Court
Martial.

17 May 1944

[illegible] Major
(Signature of the Medical [illegible]

J.W. Bisby
Col.
17 May 44


Exhibit H
8 Ft High
Stone Wall
9 Ft high
8 Ft high
Edge of Asphalt
16' 3"
Edge of Asphalt
Shoulder
Tpk Marking
Culvert Wall 2 Ft high
2.3 Ft.
2.5 Ft.
3 Ft.
3 Ft
3.6 Ft Deep
Bottom of Ditch
15 Ft deep
9 ft deep
Bottom of Ditch
6 feet deep
Bank 3 Ft. above Road level.
19 ft deep
Bank
Bank
SCENE OF ACCIDENT
Scale, in yards
Dirt Wall
Culvert
Trees
Dirt Wall
Culvert
Stone Wall 8 Ft high
Culvert
6 Ft high
Stone Wall
Ditch 8 Ft deep
Ditch 8 Ft deep
Bank 10 Ft
Ditch 9 Ft deep
Bank 9 Ft high
Bridge
SCENE OF ACCIDENT
Bank - 6 Ft high
Trees on Top
To Caserta
To Caiazzo
MAP REF
282 848
To Caserta
Culvert
Wall
American Camp
PLAN OF HIGHWAY
Scale - 1/5000
PLAN SHOWING SECTION OF HIGHWAY
CAIAZZO TO CASERTA
Surveyed and drawn by F.S. Troop. 1 Corps Survey Regt R.C.A
J.C.M.
A.R.P. 10 R.S.A



Ex "J"



Ex "K"



Ex "L"

Exhibit "E"
"N"

Exhibit "N" 17 May '44

SECRET

JRH/ltr

OFFICE OF THE REGISTRAR
94TH EVACUATION HOSPITAL
APO 463
US ARMY

6 May 1944

SUBJECT : Letter Report of Death.

TO : HEADQUARTERS, NATOUSA, A.P.O. 534, U.S. ARMY. (Attention: Casualty Branch, AGO).

1. NAME Lyke, Ralph L.

2. ASN 42024163

3. Pvt 439th Company, 93rd Replacement Battalion
GRADE ORGANIZATION

4. 5 May 1944 1 mile West of gate to 2nd Repl Depot on Junction
DATE PLACE OF DEATH
of Route 87 near Piana di Caiazzo, Italy.

5. 1. Fractured skull. 2. Shock. 3. Trauma to chest, abdomen and back.
CAUSE OF DEATH

6. Yes.
PAY STATUS AT TIME OF DEATH

7. Accidentally incurred when truck ran into column of marching troops, at 2045 hours, 5 May 1944 1 mile West of gate to 2nd Replacement Depot on Junction of Route 87 near Piana di Caiazzo Italy.

8. No.
DURATION OF MAY OF EARNS STATUS

9. LINE OF DUTY: Yes

10. LINE OF DUTY AND MISCONDUCT STATUS: Not to be determined by an Investigating Officer.

11. QUALIFICATIONS FOR ADDITIONAL PAY: None.

12. M.O.S.: 1826, Heavy Weapons Crewman.

JOHN R. GRIER
1st Lt., MAC
Registrar

A CERTIFIED TRUE COPY:
JOSEPH H. SIMPSON,
Captain, A. G. D.
Asst. Adj. General

Exhibit "O"

Exhibit "O"
17 May 44

6, May, 1944.

Pvt. Victor T. Emmons, o-119503, 91 Corps Prop Troop Sub Park, Route 6.

Motor Vehicle Accident.

1300 hours, 6 May, 1944, Office Of The Provost Marshal

William E. Boffin, 1st Lt. Inf., Asst. Provost Marshal.

Pvt. Emmons

Sworn

At about 2100 hours, 5 May, I was heading towards route 6, in Serie [illegible]. I had just driven from Morvan. I passed through Chateau Gonthier down the hill and passed by an intersection at the bottom of the hill. I had not seen any troops on the road up until this time. I only had blackout lights on, and couldn't see very good, but I saw the taillight on a truck in front of my vehicle. I cut over to the left of the highway to pass this vehicle. I was driving at about 30 M.P.H. at this time. When I pulled out around this truck I first saw some soldiers. It was a formation of soldiers marching 3 abreast. I stepped on the brake, and in doing so swerved into the side of the truck I was attempting to pass. My vehicle ricochet off the other truck into the first platoon of troops. My truck came to a stop facing west on the left side of the road. I got out of the truck and started to help give some of the injured soldiers aid. After all the injured men were taken away I had my interpreter [illegible] I was brought to the American camp and held in the M.P. guard until morning to wait the arrival of Lt. Greenwall the liaison officer at Chateau Gonthier. I did not see any troops around my truck in front of the soldiers. I had one bottle of wine at around 5:00 p.m. a friend of mine at camp. I did not have any wine to drink at any time. Overseas who was riding with me had several bottles of wine at around. The night before I had been on guard from 1900 hours until 0700 hours in the M.P. 2 hours on, and 4 hours off. We left our camp at about 0900 hours and outside of a shop for a short rest to [illegible] I had been driving all day. At the time of the accident I was not sleepy.

Victor Emmons
Victor T. Emmons

6th Day of May, 1944.

William E. Boffin
WILLIAM E. BOFFIN 01[illegible] 1st Lt. Inf.

Exhibit "P"

PART 1 ORDERS
for
H.Q. 1 CDN CORPS ORDNANCE FIELD PARK, RCOC
1 CDN CORPS & ARMY TROOPS SUB PARK, R.C.O.C.
1 CDN H.Q. CORPS TPS ORD.
1 CDN SALVAGE UNIT, RCOC.
By
Lt-Col. J.R. McGillivray
A.D.O.S. 1 Cdn. Corps Troops

Part 1 Order No. 87 — 2 May 44

1. DUTIES

	Orderly Officer	Orderly Sergeant
2 May 44	Lieut. C.L. Watson	Sgt. Ibbetson, E.
3 May 44	Lieut. S.N. MacLean	Sgt. Black, W.E.
4 May 44	Lieut. W.C. Hicks,	Sgt. McCarthy, F.R.

GUARDS - To mount 1745 hrs at H.Q. Orderly Room.

2 May 44 .. .Cpl. George, C.A. 1/c — L/Cpl. Bolton, G.H. 2 i/c

C-94629	Pte. Defalco, S.	K-90011	Pte. McGuire, J.L.
L-22310	Pte. Feader, W.M.	B-53905	Pte. Glover, R.W.
F-77339	Pte. McKinnon, M.	D-82912	Pte. Hewitt, D.
B-2698	Pte. Morgan, J.A.	D-46760	Pte. Horvath, A.
H-100086	Pte. Yundak, C.	A-59230	Pte. Wickwire, E.G.
M-100401	Pte. Betting, L.H.	E-20240	Pte. Stapleton, W.G.
B-113769	Pte. Burgess, C.W.	A-635	Pte. Young, N.R.
A-56538	Pte. Deeks, C.P.		

3 May 44 — Cpl. Clarke, R.G. 1/c — L/Cpl. Castle, F.V.

M-107694	Pte. Bespalko, KIN. M.	H-95792	Pte. Croall, J.A.
G-23691	Pte. Kelly, K.C.A.	M-67254	Pte. David, R.J.
F-77538	Pte. MacNeil, W.S.	G-52989	Pte. Barton, A.M.
F-95709	Pte. Pearson, F.L.	D-96448	Pte. Bigelow, G.G.
A-55038	Pte. Arnold, F.N.	A-102734	Pte. Chaplinski, H.
M-16761	Pte. Brennan, A.L.	B-134027	Pte. Chapman, N.E.
C-94968	Pte. Burke, A.T.	B-57392	Pte. Eckler, B.
L-102990	Pte. Chancellor, L.T.		

DAY PICQUET - Duties to commence 0645 hrs daily.

3 May 44 H-60195 Pte. Merinuk, Y. H-100086 Pte. Yundak, C.

4 May 44 C-38558 Pte. Forsythe, J.H. A-56538 Pte. Deeks, C.P.

SANITARY FATIGUE

3 & 4 May 44 U-2006 Pte. O'Connell, B.L. C-8132 Pte. Kirkpatrick, B.L.

KITCHEN FATIGUE - 1 May 44 to 7 May 44 (inclusive)

B-95036 - Pte. Mellit, B. C-34643 - Pte. Aylesworth, T.E.
C-38525 - Pte. Townsend, J.E.

MAINTENANCE

Task No. 6 - 3 May 44

Check fuel system for leaks : Clean filters and gas lines and gas tanks if necessary.

2. DRIVING OF WD VEHICLES

(1) Cases have recently been reported of unauthorized driving of WD vehicles.

(2) No person, other than the following, will at any time be permitted to drive any WD vehicle except in an operational emergency.

(a) The properly appointed driver or drivers.

(b) Officers and NCOs of the unit responsible for the maintenance of the vehicle on charge.

(c) Those duly appointed to testing, inspecting and instructional duties.

(d) Men under instruction on journeys specially authorized for that purpose.

(3) When, owing to fatigue or other reason, the driver is not in a fit state to carry out his duties, motorcars may be driven on duty journeys by Officers, other than those referred to above, provided that :-

(a) Such officers are fully qualified to drive.

(b) The driver allotted to the vehicle always accompanies his vehicle.

(3) Any Officer or other rank who in future contravenes this order will be subject to disciplinary action.

(a), A Court-Martial may pay regard to the fact that this warning has been issued when awarding sentence.

3. STOVES OIL HEATING

(1) ALL STOVES OIL HEATING will be turned into Q.M. Stores not later than 1000 Hrs 2 May 44.

(2) Any personnel found in possession of a/m stoves after time stated above will be charged.

4. JEEP WINDSCREENS

Part 1 Orders No. 83 4/28 Apr 44 and 84 4/29 Apr 44 re a/n are cancelled. Jeep windshields will only be turned down and covered with canvas cover issued on Scale 90.

5. SPEED LIMITS

Published hereunder are the s/s for Cdn MV Vehicles.

(1) In non-restricted areas where no speed limit is fixed by law, the following speed limits will apply to vehicles making individual journeys:-

Motorcycles, solo (light)	40 mph
Motorcycles, solo (heavy) and Motorcycles, combination	35 mph
Staff Cars, 2 str.	40 mph
Cars, 5-cwt. (4x4)	35 mph
Vehicles, [redacted]	30 mph
Vehicles, 30-cwt	25 mph
Vehicles over 30-cwt	25 mph
Vehicles with trailers	20 mph

SPEED LIMITS (continued)

Convoy Speed

Convoys will travel at 15 MILES IN HOUR and 20 VEHICLES TO THE MILE unless otherwise specified.

6. FILMS "MALARIA" AND "THE FLY"

Reference Part 1 Order No. 86 dated 1 May 44 the m/n films will NOT be shown tonight, But will be shown at 2030 hrs Friday 5 May 44. Other Movie will be shown tonight, if possible to procure machine.

7. SLIT TRENCHES

Spoil dug up from slit trenches must be removed and hidden from air view.

for (J.R. McGillivray) Lt-Col
A.D.C.S. 1 Cdn Corps Troops

PART I ORDERS
for
H.Q. 1 CDN CORPS ORDNANCE FIELD PARK, ROOC
1 CDN CORPS & ARMY TROOPS SUB PARK, R.C.O.C.
1 CDN H.Q. CORPS TPT COY
1 CDN SALVAGE UNIT, ROOC
By
Lt-Col. J.E. McGillivray
A.D.O.S. 1 Cdn. Corps Troops

4 May 44

Part 1 Order No. 89

1. ROUTINE

Reveille	- 0630 hrs
Breakfast	- 0700 hrs
Sick Parade	- 0745 hrs
Parade & P.T.	- 0800 hrs
Lunch	- 1200 hrs
Supper	- 1700 hrs
Tattoo	- 2100 hrs
Lights out	- 2200 hrs

2. DUTIES

	Orderly Officer	Orderly Sergeant
4 May 44	Lieut. W.C. Hicks	Sgt. McCarthy, V.E.
5 May 44	Lieut. A.C. DeWolfe	Sgt. Bisaux, H.A.
6 May 44	Lieut. M. Orenstein	Sgt. Clemens, R.S.

GUARDS - To mount 1745 hrs at H.Q. Orderly Room.

4 May 44 — Cpl. Murphy, G.E. 1/c — L/Cpl. Cook, A.F. 2 1/c

O-98355	Pte. Riddell, A.A.	O-119503	Pte. Emmons, V.
B-2694	Pte. Stephens, C.A.	L-9766	Pte. Kelat, L.E.
D-128709	Pte. Boyle, F.	B-131235	Pte. Overmott, W.F.
B-3451	Pte. Bishop, G.W.	O-94344	Pte. Prudx, J.B.
O-11598	Pte. Austin, H.E.	B-102342	Pte. Fruhberger, E.V.
F-64718	Pte. Hallowell, I.V.	O-30332	Pte. Greene, C.A.
B-611	Pte. Charrette, J.D.	L-19251	Pte. Pratt, F.L.
	O-100500 Pte. LeCaine, M.C.		

5 May 44 — Cpl. Greener, W.G. 1/c — L/Cpl. Freeman, E.F. 2 1/c

L-19061	Pte. Morisseau, F.	L-110306	Pte. Renaud, F.
O-122780	Pte. Ward, R.J.	B-98200	Pte. Gordon, J.L.H.
F-70953	Pte. Williamson, T.R.	D-129431	Pte. Hillis, E.
O-19239	Pte. Thompson, J.C.	B-67203	Pte. McCarthy, T.A.
L-17224	Pte. Brandberger, P.	B-39686	Pte. Pollard, M.E.
M-11661	Pte. Brace, R.J.	F-87983	Pte. Poirier, G.
B-133305	Pte. Desmarais, J.M.P.	F-35107	Pte. Mitchell, C.E.P.
M-114139	Pte. Dunn, G.L.		

DAY PICKET - Duties to commence 0645 hrs daily.

5 May 44.	O-310	Pte. Garrett, J.A.	B-3599	Pte. Feldman, A.L.	
6 May 44	B-13098	Pte. McDonald, E.	O-101582	Pte. Villeneuve, A.J.	

NIGHT PATROL

5 & 6 May 44 B-2006 Pte. O'Connell, E.L. O-3197 Pte. [illegible], E.L.

Kitchen Patrol - 1 May 44 to 7 May 44 (inclusive)

B-35036 - Pte. Millit, E. O-3483 - Pte. Aylesworth, I.E.
O-3525 - Pte. Townsend, J.F.

[illegible]

[illegible]

[illegible]

MAINTENANCE

Task No. 1 - 5 May 44

Pump up all tires (including spare) : check for proper pressures : Check battery for water : Clean and tighten battery terminals : Check fan belt for tension :

Check tires for stones & nails :
Check horn, lights and switches, etc.

2. FILMS "MALARIA" AND " THE FLY "

All ranks will attend the above ementioned films Friday 5 May 44, except those on duty.
These films will be shown at approx 2030 hrs at "A" section 31 Coy, R.C.A.S.C.
O.R.'s will parade at 2000 hrs under direction of CSM Cumiskey.

There will also be a movie shown after these films.

3. CANADIAN VOLUNTARY SERVICE MEDAL

(a) All reinforcemtns who have arrived since 10 Apr 44 will report to their Orderly Room at the earliest opportunity particulars re the m/m. Whether they have qualified for and NOT received medal, or will qualify in the near future, or have qualified and received medal.

(b) Non-compliance with a/m instructions may result in disciplinary action.

4. VEHICLE EQPT

(1) It has come to notice that personnel are "borrowing" seat cushions, rear view mirrors etc from vehicles.

(2) Any such equipment will be immediately returned to vehicles.

(3) The orderly office on his inspection will report any such equipment removed from vehicles and responsible individuals will be severly disciplined.

5. INNOCULATIONS

(1) The M.O. will be in the Ord FMC on Monday 8 May 44 to carry out innoculations of all units' personnel.

(2) All units will prepare a nominal roll in duplicate of unit personnel incl officers showing dates of last innoculations for:

(a) Typhus
(b) TABT
(c) Vaccination

One copy will be retained by unit, the other to HQ 1 Cdn Corps Ord Fd Pk by 1800 hrs Sunday 7 May 44.

6. ORD FMC REGIMENTAL DUTIES

(1) As from 7 May 44 the following will come into effect:

(a) There will be a Camp Orderly Officer and Camp Orderly Sergeant on duty in Ord FMC from 0800 to 0800 hrs daily. Tour of inspection will incl all unit lines, kitchens, latrines etc in Ord FMC.

(b) The Camp Orderly Officer will submit a report to HQ 1 Cdn Corps Ord Fd Pk Orderly Room by 1000 hrs following his tour of duty.

RD FMC REGIMENTAL DUTIES (continued)

(e)He will attend one meal at each kitchen daily.

(d)The Camp Orderly Officer, Camp Sergeant Major and Camp Orderly Sergeant will be present at the mounting of the Ord FMC guard at HQ 1 Cdn Corps Ord Fd Pk Orderly Room at 1745 hrs daily.

(e)Standing Orders for Gds will be read out by the Camp Sergeant Major.

(f)Camp Orderly Officer will inspect the guard and visit the guard posts and guard tents at least once each night.

(g)Guard posts will be the responsibility of units as shown hereunder:-

(i) HQ 1 Cdn Corps Ord Fd Pk, 1 Cdn Corps & Army Tps Sub Pk & ADOS staff - 3 posts - Res Veh Pk.

(ii) 1 Cdn Inf Ord Sub Pk - 2 posts - (ADOS Dump & West Entrance)

(iii) 5 Cdn Armd Ord Sub Pk - 2 posts - (bridge at South entrance and 1 Cdn Corps & Army Tps S/P own unit lines)

(iv) 1 Cdn Salvage Unit - (North Entrance to camp)

(h)Camp guard will be under the supervision of CSM Cumiskey who will be Camp Sergeant Major.

(j)Each unit will parade its guards under an NCO to HQ Orderly Room to arrive by 1745 hrs each day. The unit NCO will turn the guard of his unit over to the Guard Commander who will form up the complete guard and turn the parade over to the Camp Orderly Officer.

(k)There will be 4 day piequet posts. They will be the responsibility of units as shown hereunder:-

(i) HQ 1 Cdn Corps Ord Fd Pk 1 Cdn Cps & Army Tps S/P ADOS Staff - Post 1 Res Veh Park

(ii)5 Cdn Armd Ord Sub Pk. - Post 2 Bridge at South entrance

(iii)1 Cdn Inf Ord Sub Pk - Post 3 West entrance

(iv)1 Cdn Sal Unit - Post 4 North entrance

(l)Tour of duty of piequets will be from 0645 hrs to 1800 hrs. Arrangements will be made by u/m units to provide reliefs for meals.

(m)Camp Orderly Officer, Camp Orderly Sergeant, Guard Commander and Guard NCO will be drawn in rotation from all units in Ord FMC.

Part 1 Order No. 89 4/4 May 44

GUARD REGIMENTAL DUTIES (continued)

(n)The guard commander and guard NCO will have the day off following their tour of duty.

OP

(J.R. [illegible])
A.D.C. [illegible] Corps Troops

Ex "R"

Army Form G 558

TRANSPORT WORK TICKET

Nº 095301

Make of Vehicle Chev Class 3-ton 4x2 U. S. No. 2403346 Date

Unit Section Driver's Name Simmons J. Hour of Parade

For whom journey is performed	FULL Details of load and service	ROUTE From	ROUTE To	ROUTE Via	Signature of person authorizing journey	TIME TAKEN From	TIME TAKEN To	Miles run
(2)	(5)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Mild Route and Return				A [illegible]			
					B			
					C			
					D			
					E			
					F			
					G			
					H			
					K			
							TOTAL	

Exhibit R

Speedometer Readings Miles

(10) In

(11) Out

Mileage

Fuel Galls.

(12) Held at Start

(13) Add—Amount Drawn

(14) Deduct—Remains on completion

(15) Quantity Consumed

(16) Total hours out on duty

(17) Signature of Driver J Simmons

(18) Countersigned

Rank

Ex "S" 7

Serial No. 26 Army Form A 2038

WAR DEPARTMENT DRIVING PERMIT

(Not valid for driving any mechanically propelled vehicle for private purposes)

Issued under the conditions of A.C.I.699 of 1942.

The undersigned 5119503 Pte Emmons, V.

(description) Ht- 5'4" Weight 150 lbs

Colour of hair - Brown

being employed on Military Service is hereby authorised by the Secretary of State for War to drive mechanically propelled vehicles of:—

All Groups
Group "I"
" III
" IV
" VI
} (Delete Groups inapplicable)

when on Government duty, from 1 Feb 194 4

until 1 Feb 194 5

V Emmons — Signature of Holder

For Permanent Under-Secretary of State for War

W.I.... 6/44

Exhibit "T" Emmons

In the case of
C-119503 Pte Victor Emmons
1 Can Corps & Army Tps Sub Pk, RCOC

PROSECUTOR'S OPENING ADDRESS:

The prosecution intends to prove in this case that on the 5 MAY 44 at approximately 2030 hrs the accused was driving a Canadian 3 ton Chevrolet truck No CL-4239467 along Highway 87 coming from Telesi and going towards Highway No 6, proceeding West.

He was on duty, and at a certain place along the road between Piano di Caiazzo and the 2nd Replacement Depot, U.S. Army, he overtook an American truck. In doing so he had to go on the left hand side of the road, we will prove that he was going at a speed which was a minimum at least of 30 m.p.h. He had on his vehicle what is know as "blackout lights", and when overtaking this vehicle he suddenly came within a few yards of a body of American troops who were marching Easterly on their right hand side of the road three abreast.

The accused tried to avoid them by pulling to the right and in so doing side-swiped the American truck and careening off it into the troops killed some of the troops and injured others, and killed amongst others an American soldier ASN 42022162 Pvt Ralph L. Lyke, of the 439th Company, 33rd Replacement Bn, U.S.Army, thereby committing manslaughter, and I now intend to call witnesses to prove this fact.

A.F.B. 353

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Ex "U"

Number	Rank	Name	Regiment (or unit)
C-119503	Private	Emmons, V.	1 Cdn Corps & Army Tps Sub Pk RCOC

1. The following is a fair and true summary of the entries in the Service and General ~~Engineers and Transport~~ Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court of summary awards under Section 47 of the Air Force Act/Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Absent without Leave	2 times	2 times
For Absent from Duty/Station	1 times	1 times
For Leaving camp/ere relieved + pass		1 times
For No pass after curfew		1 times
Number of sentences of quidentum or dishonourable contents		

There are no entries in the conduct sheets of the accused.

Note.-If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act/Army Act and dispensations with trial under A.F.A.'s 76/A.A.76 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for..... beginning on the ..... day of.....~~

4. The accused has been in confinement awaiting trial on the present charges, for..... days in civil custody, and..... days in Air Force/military custody, making a total of..... days in custody, of which..... days were spent in hospital.

5. The present age of the accused according to his record of service is ..... (attestation paper) ~~in his statement of service in/attestation paper~~

6. The date of his ~~examination/~~attestation ~~specified in his statement of service in/attestation paper~~ is..... 24 Nov 42

7. The service which the accused is allowed to reckon towards discharge is..... 1 year 3 months 22 days

8. The accused is entitled to reckon..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force/military reward (or is in possession of or ~~entitled to~~). ~~State any air force/military decoration or reward.~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the air force/substantive rank of.....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force/Permanent Force the rank of..... dated....., and in his regiment (or corps), the rank of....., dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:-

..... Date of promotion

In the rank of.....Years.
In the rank of.....years.
In the rank of.....years.

Note.- If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force/Army Act, and of cases in which trial has been dispensed with of accused, Number..... Rank..... Name..... of..... Unit Regiment

Note.- A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NIL			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this.....11..... day of.....May 1944.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked..... signed by the president, and annexed to the proceedings.

(P.M. Irwin) Major
Officer Commanding
1 Cdn Corps & Army
Tps Sub Park, RCOC

CERTIFIED TRUE COPY

MFM 6
(AFB 122)
(3438)

No C-119503 Name Emmons, V. Sqn, Battery, or Company Corps R.C.O.C. Date of enlistment 17-8-42 GC Badges Service and Proficiency Pay 1.50 Character "V"

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc R.J. Bruce, Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Certified no entries on completion of six months service					17-2-43	C.M. Robinson, Lt.			
				1st Charge					
the Field	21 Sep 43	Pte.	NIL	A.A. Sec 15(1) AWL, WOAS absent without leave from 2100 hrs 21 Sep 43 to 2210 hrs 21 Sep 43. (Total absence 1 hr: 10 min)	Cpl Clemens L/C Branston	27 days Pay FR&I 149(b)			
						27 Days Field	23 Sep 43	O.B. Sheldrick Lt.	
				2nd Charge					
				A.A. Sec 40-Conduct to the, etc WOAS, did absent himself from Unit Area after being posted for Gd Duties and had to be replaced by Pte. Heard.	Cpl Clemens L/C Branston	Punishument 1 days Auto. forf. of pay FR&I. 150(b)		N.W. Bunnin, Capt.	
The Field	26 Feb 44	Pte.		A.A. Sec.40. Leaving Post without being properly relieved.	Cpl Care HEB	7 days forft. pay FR&I 149(2)	for 28 Feb 44.	Lt-Col. J.R. McGillivray.	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
The Field	15 Mar 44	Pte		Awarded 7 days forf of pay under A.A. Sec 40 "WOAS CONDUCT etc in that he was not in possession of a pass after curfew (2100 hrs)	Documentary	7 days forf of pay	18 Mar 1944	N.W. Bunnin, Capt.	
The Field	2Apr44	Pte.		WOAS AWL. from 0800 hrs to 0900 hrs Apr 44. A.A. Sec 15(1)	S/Sgt Palmer C&M Cumiskey	7 days C.B.	2 Apr 44	N.W. Bunnin, Capt.	
The Field	6Apr44	Pte.		WOAS DID APPEAR ON DUTY UNSHAVEN AA Sec 40.	C&M Cumiskey	7 days C.B.	6 Apr 44	N.W. Bunnin, Capt.	

CERTIFIED TRUE COPY OF REGIMENTAL BOOKS

(P.M. Irwin) Major

Comd 1 Cdn Corps and Army Tps Sub-PW Info

Exhibit "W"

PLEA IN MITIGATION OF PUNISHMENT

An examination of the conduct of the accused which my friend submitted does not show he is what one would call a hardened criminal; it is true there are several entries on his conduct sheet but the most are merely minor offences.

There is a charge of AWL of 1 hr and 10 mins, the next is an AWL charge and missing a duty, the next is the most serious one "leaving his post without being properly relieved", and then a charge under Sec 40 of being out after curfew without a pass, another AWL charge of 1 hr, and the last one under Sec 40 appearing on parade unshaven.

None of these are to my mind vicious crimes which would lead the Court to impose a severe sentence for this offence, and I would ask that the Court in awarding sentence exercise the utmost leniency.

The accused is unmarried.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C-119503 Private V.V EMMONS, 1 Cdn Corps And Army Tps Sub Pk RCOC, a soldier of the Canadian Army Overseas.

By direction of the Commanding officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

2nd Lt Robert D. Warren, 33rd Repl Bn, Second Repl Depot, APO 776, U.S. Army, having been duly sworn stated:-

On the 5 May 44 at 2030 hours, the 33rd Repl Bn started a night march with Training Platoon "A" leading. I was marching in front of "A" Platoon. We went out the West Gate of Camp, turned right and went east on Highway 87 on the right side of the road. We were marching in column of threes. At about 2100 hours, I saw the lights of an approaching truck, travelling West, in opposite direction to our column. I judged it to be travelling at about 20 to 25 m.p.h. It was keeping well over to its side of the road. I did not see nor hear anything behind that truck owing to its noise and being blinded by its headlights, until this truck was just a few yards, that is approx 10 to 12 yards in front of us, then I could make out the faint outline of another truck, running without lights, attempting to pass the first truck. The driver evidently saw us at the same time because he pulled over to the right to try and avoid hitting us, side-swiping the first truck. He then apparently lost control of his vehicle and drove in to the column, and then into the ditch. Just was I saw the second truck, attempting to pass the first one, I jumped forward and faced the troops and tried to order them off the road but as soon as I turned arou nd the second truck was side swiping the first one and then drove into the column, near the head of it, angling off towards the rear and ending in the ditch. I sent the first truck to notify the M.P.'s and then a attended to the injured. About 10 minutes later ambulances arrived on the scene.
I was on the very first rank of the whole column, with the platoon sergeant on my right. There were no scouts in front of the column. Blackout discipline was maintained on the march and there was no lights showing and no talking.
There were 49 men in "A" Platoon making 16 ranks of three behind the Sgt and myself. Platoon "B" would have the same effective.
After looking after the injured, I took particulars of the truck which hit the column and found it was a Canadian 3-ton Chevrolet truck #CL 4239467. On the rig right front fender was serial number 69.
According to the nominal roll of my platoon, the men mentioned in Exhibits "A", "B", "C", "D", "E", "F", "G" and "H" died following that accident. Also the men mentioned in Exhibit "I" belong to my platoon and suffered injuries that night.

Cross examined by the accused.

Q-1 Are you positive I had no lights on my truck?
A-1 I did not see any.

Q-2 Is it not possi ble I had dim lights and you would not have seen them?
A-2 It may be possible but I did not see any lights.

Q-3 Did you hear the sound of a horn being blown?
A-3 No.

Robert D Warren 2nd Lt Inf.
(Robert D. Warren) 2nd Lt Inf.

SECOND WITNESS for the prosecution. 2nd Lt Dale E. GILREATH, 439 Repl Coy, 33 Repl Bn, 2nd Repl Depot, U.S. Army, having been duly sworn states:

On the evening of 5 May 44, at 2030 hours, the 439th Company started on a night march. I stood at the Initial Point, checking my platoons as they marched by. Upon reaching the West gate of the Camp, the column turned east on Highway 87, marching on the right hand side of the road in column of threes. We marched for about 20 minutes, covering approx ½ mile. After my company had passed the initial point, I started marching towards the head of the column. When I was about 100 to 150 yards from the head of the column, I heard a crashing noise and ran up the rest of the way to the head of the column and there I saw that a truck had hit the column, running into "A" platoon injuring most of the men of the platoon. I immediately sent for ambulances.

The truck was either British or Canadian, being a right hand drive. I later ascertained it was a Canadian 3-ton lorry. When the accident happened it was approx 2100 hours. It was dark and I don't believe the moon was out. I did not see the lorry coming, I only saw it when it was stopped in the ditch. I did not see any lights on it.

"A" Platoon was led by 2nd Lt Robert D. Warren. It was leading the whole column. There were no lights in front of the column as we are not allowed to have any on tactical route marches.

The accused declines to cross-examine this witness.

Dale E Gilreath
(Dale E. Gilreath) 2nd Lt Inf.

THIRD WITNESS for the prosecution.

Pvt Jerold SIMPKINS, 36149870, HQ Coy, 2nd Repl. Depot, U.S. Army, having been duly sworn states:-

"On 5 May 44, at approx 2045 hours, I was driving a 2½-ton 6 x 6 truck #W-451938, West on Route 87 at about 15 m.p.h. About 1 mile east of the west gate Road, a Canadian truck tried to pass me. At that moment I was meeting a column of troops marching four abreast in the opposite direction from me, on my left-hand side of the road. While passing me, this truck hit the left front wheel and fender of my own truck then it seemed to lose control and bounced into the troops, ending up into the ditch on the south side of Highway #87. I immediately stopped my vehicle. When I looked at the other vehicle I saw it was a 3-ton Canadian truck. I would say this truck was going at approx 30 m.p.h. while passing me. I had two clear headlights on my truck. At no time did I hear a horn blown. I did not hear any noise but that of the crashing on the side of my truck.

This Canadian truck hit the 2nd platoon from the head of the column. I remained on the scene for a short time, going to notify the M.P.'s about 5 to 10 minutes later. I did not have anything to do with attending to the injured. While the Cdn truck was passing my own I did not see any glare from its headlights.

I did not see any advance scouts ahead of the column. Before meeting the troops when they were approx 150 yards ahead of me, I saw a light blinking either from a flash-light or from a reflection of my own headlights.

I had a red light showing at the back of my truck. I had just rounded a curve when I first saw the troops at approx 150 yards in front. It is immediately after that the truck passed me.

Cross-examined by the accused.

Q-1 Were the troops not marching three abreast?
A-1 From what I saw, the head column was marching four abreast.

Q-2 Are you positive I hit the second platoon?
A-2 You hit the tailend of the first platoon and head of the second platoon.

Q-3 Do you say I had no lights on?
A-3 You may have had lights on, but I did not see any reflection as my own lights were burning and I did not turn around to see.

Q-4 Would you say I did not sound my horn?
A-4 You may have sounded your horn, but I did not hear it, as I was inside the cab of my truck.

Q-5 How far were you from the curve when I overtook you?
A-5 I had just passed the first culvert west of the curve.

(Jerold Simpkins) Pvt

Jerold Simpkins Pvt.

FOURTH WITNESS for the prosecution

1891557 Sapper H. Johnson, 256 Field Coy, RE, having been duly sworn, states:

On 5 May 44 at about 2045 hrs I was travelling on an American truck. It was an open truck and I was sitting in the back facing in the direction in which we were going. We were proceeding at about 15 m.p.h. About half way from PIANO di CAIAZZO and the 2nd Repl Depot I heard the noise of a truck about 20 yards behind us on the left side of the road ready to overtake us. I did not notice the sound of any horn. I turned around and saw a 3-ton truck with a tarpaulin over it. I did not pay much attention to its lights. I cannot say whether its lights were on or not.

I reckoned its speed to be about 45 m.p.h.

I turned around again and suddenly noticed troops marching on the road, three abreast, in the opposite direction to ours and on the opposite side of the road. They showed no lights. At that moment the 3-ton truck was overtaking us and side swiped our own on the left hand front wheel, bouncing off to the left and knocking the troops over. It finished up in the ditch on the side of the road where the troops were marching. The American truck was well into the right-hand side of the road. I heard the sound of brakes being applied on the 3-ton truck just as he was trying to overtake us.

Cross examined by the accused

Q-1 Are you positive this truck was going 45 m.p.h.
A-1 I am just reckoning. It may have been slower but was going pretty fast.

Spr H Johnson

(H. Johnson) Spr RE.

FIFTH WITNESS for the prosecution

153578 Sapper T. Raisen, 256 Fd Coy RE, having been duly sworn, states:

On 5 May 44, at about 2045, I was travelling on the back of an American open truck proceeding on Highway 87 towards CAPUA at about 10 to 15 miles per hour. I was sitting and facing more to the back of the truck. At a certain time I noticed a truck coming behind us. I did not notice any lights on it. He started to overtake us then secured to come right onto our side, touched the side of our truck then bounced off into the ditch, hitting some troops which were marching on the other side of the road in the opposite direction. I did not notice any lights with the troops.

X-X Cross-examined by the accused

Q-1 Are you positive there were no lights on?
Q-2 All I can say, I did not notice any lights on.

Jack Raisen

(Jack Raisen) Spr RE.

SIXTH WITNESS for the prosecution

Corporal Lawrence GEIST, 33568199, M.P. detachment 2nd Repl Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:-

On the 5 May 44, at about 2050 hours, acting on information received I proceeded in the first of some ambulances to the scene of an accident which happened on Highway 87, approx 1 mile east of the west gate of our Camp. On arriving, I saw troops standing around on the road. There were several soldiers lying on the ground and a truck in the ditch on the South side of the road.

I remained on the scene till all the troops and casualties had been removed. Four of us M.P.'s stayed at the scene and another M.P. sent to get a wrecker.

Sgt Chardinet and myself walked approx 15 feet West of the truck where we saw a soldier standing.

On approaching him, this soldier asked me, "What will I do?", I said, "Who are you?". He replied, "I am the driver of the vehicle." Sgt Chardenet then took the soldier to the Provost Marshall's Office. When I first saw this soldier it was 2248 hours.

At that time I could not recognize this soldier.

When I arrived at the scene of the accident it was not very light.

The accused declines to cross-examine this witness.

Lawrence Geist
(Lawrence Geist) Cpl

SEVENTH WITNESS
for the
prosecution

B-131235 Pte W.P. OVERKOTT, 1 Cdn Corps and Army Tps Sub Pk RCOC, having been duly sworn, states:-

On 5 May 44 I was a passenger in a Canadian 3-ton Chevrolet lorry driven by the accused. I was sitting in the front seat, on the left as the vehicle is right hand drive. We were coming back from 67 LAD which was located about 15 miles east of TELESE. We left there in the middle of the afternoon and arrived at AMOROSI around 1700 to 1800 hours. We stayed at AMOROSI about one hour and then started on our way back to our unit. During that hour in AMOROSI we took a rest in the cab of the lorry. I only got out once to try and get some onions. I was gone about 10 minutes. In one of the towns I purchased a glass of wine from a boy and drank it on the spot. That was very early in the afternoon before we went to the 67 LAD. That is all I had to drink that day. The accused to my knowledge did not have any drinks of any kind that day. After we left AMOROSI, I went to sleep. When I woke up I was on a table in an American hospital.

At some time after we left AMOROSI the accused switched on the headlights. It was not very dark then and I could not notice much of the glare.

The accused declines to cross-examine the witness.

(W.P. Overkott) Pte.

W.P. Overkott

EIGHT WITNESS for the prosecution

Captain R.L. Davis, 1 Cdn Corps Tps Wkshop RCOC, having been duly sworn states:

I examined Vehicle #CL4239467 on the 12th May 44 and the brakes on that vehicle were in satisfactory condition. The present condition of the vehicle makes a road test impossible, but this statement is based on the fact that there is approximately 2 inches of pedal clearance, and further, the full effect of the braking system is not utilized without the engine running, due to the booster brake system. The damage to the vehicle was very slight.

The accused declines to cross-examine this witness.

R Davis Capt

(R.L. Davis) Capt

TENTH WITNESS for the prosecution

Major Norman G. LONG, M.C. #0290255 - 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:

At or about 2115 hours on 5 May 1944, I was advised there had been an accident near the camp and that several ambulances had been despatched there. I proceeded to the scene of the accident, which was on highway 87, approx one mile east of the West Gate of the camp. I brought additional medical aid with me. By the time I arrived, first aid had been given but there were approx 12 men unattended, lying on the side of the road, and three others on the other side of the culvert, partially attended. I saw 4 or 5 bodies in the ditch under the body of a truck which was straddling the ditch on the South side of the road. I pronounced these men dead. I then supervised and co-ordinated the first aid squads which by that time were placing the injured on litters and applying splints where indicated and giving first aid as required. Later on that evening, while assisting at 74 Station Hospital I ascertained that seven men were brought in dead on arrival and an eight man died early the following morning.

Due to the number of injured, I am unable to specify individual cases or identities.

The accused declines to cross-examine this witness.

(Norman G Long) Major, M.C.

NINTH WITNESS for the prosecution

Major Franklyn D. FRY, Provost Marshall, 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn states:-

On 5 May 44 at approx 2100 hours, acting on information received I proceeded to the scene of an accident which happened on highway 87, approx one third mile east of the West gate of our Camp.

Upon arriving at the scene of the accident I found a Canadian Army 3-ton truck, serial #CL-4239467 headed in a westerly direction and with both front wheels in the ditch on the south side of the highway, and that a large number of American soldiers were scattered over the road way and in the ditch on the south side of the road. The head of one soldier was wedged in between the left front tire of the 3-ton truck and the south bank of the ditch on the south side of the highway. Ambulances from the 2nd Repl Depot and the 74th Station Hospital arrived soon afterwards and the wou wounded and the dead American soldiers and one Canadian soldier were removed to the 74th Station Hospital.

I detailed my M.P.'s to halt and direct traffic and render whatever assistance possible for them so to do.

I secured a wrecking truck from the 17th Light Recovery Section R.E.M.E. to remove the Canadian truck.

At about 2315 hours, that same even, Sgt Chardenet brought a Canadian Soldier to my office where he was identified by his driver's license as: C-119503 Pte V. Emmens, whom I recognize as the accused.

I got back to my office at about 2400 hours and there I saw the accused. I did not smell his breath nor did I have him medically examined as he appeared sober.

After the scene of the accident had been cleared and prior to the removal of the truck I made a thorough search and examination of the surrounding area.

There were no skid marks whatsoever on the road way.

THE accused declines to cross-examine this witness.

Franklin D. Fry

(Franklin D. Fry) Major A.G.D.

EIGHT WITNESS for the prosecution

Captain R.L. Davis, 1 Cdn Corps Tps Wkshop RCOC, having been duly sworn states:

I examined Vehicle #CL4239467 on the 12th May 44 and the brakes on that vehicle were in satisfactory condition. The present condition of the vehicle makes a road test impossible, but this statement is based on the fact that there is approximately 2 inches of pedal clearance, and further, the full effect of the braking system is not utilized without the engine running, due to the booster brake system. The damage to the vehicle was very slight.

The accused declines to cross-examine this witness.

R. Davis Capt

(R.L. Davis) Capt

TENTH WITNESS for the prosecution

Major Norman G. LONG, M.C. #0290255 - 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:

At or about 2115 hours on 5 May 1944, I was advised there had been an accident near the camp and that several embulances had been despatched there. I proceeded to the scene of the accident, which was on highway 87, approx one mile east of the West Gate of the camp. I brought additional medical aid with me. By the time I arrived, first aid had been given but there were approx 12 men unattended, lying on the side of the road, and three others on the other side of the culvert, partially attended. I saw 4 or 5 bodies in the ditch under the body of a truck which was straddling the ditch on the South side of the road. I pronounced these men dead. I then supervised and co-ordinated the first aid squads which by that time were placing the injured on litters and applying splints where indicated and giving first aid as required. Later on that evening, while assisting at 74 Station Hospital I ascertained that seven men were brought in dead on arrival and an eight man died early the following morning.

Due to the number of injured, I am unable to specify individual cases or identities.

The accused declines to cross-examine this witness.

(Norman G Long) Major, M.C.

ELEVENTH WITNESS for the prosecution — 1st Lt John E. GROTH, MAC, Registrar, 74th Station Hospital, A.P.O. 383, U.S. Army, having been duly sworn states:-

I hereby produce as Exhibit "A" copy of letter Report of Death relating to ASN 38497998, Pvt Joesph F. FEDERER, of 33rd Repl Bn, U.S. Army, who was admitted to our hospital on the 5 May 44, at app approx 2130 hours, suffering from cerebral contusion, as a result of which this soldier died on the 6 May 44, at 0730 hours.

I also produce as exhibits "B", "C", "D", "E", "F", "G" and "H" copies of Letter Reports of Death relating to:-

ASN 36833704 Pvt Steve LESAVICH (NMI) Jr, 439th Coy, 33rd Replacement Depot Bn. (Ex "B")

ASN 42024564 Pvt Donald G. Lamb, 439th Coy, 33rd Replacement Bn. (Ex "C")

ASN 42024162 Pvt Ralph L. LYKE, 439th Coy, 33rd Replacement Bn. (Ex "D")

ASN 42036075 Pvt William R. SCHENCK, 439th Coy, 33rd Replacement Bn. (Ex "E")

ASN 35894423 Pvt Robert R. LOFAVOLD, 439th Coy, 33rd Replacement Bn. (Ex "F")

ASN 39338484 Pvt Robert E. GREENE, 439th Coy, 33rd Replacement Bn. (Ex "G")

ASN 9668675 Pvt Louis J. PARTIKA, 439th Coy, 33rd Replacement Bn. (Ex "H")

whose bodies were brought in this hospital on 5 May 44, at approx 2130 hours.

I Also produce as Exhibit "I" copy of Diagnosis on Enlisted Men relating to 23 therein mentioned soldiers, who were admitted to this hospital on 5 May 44 at approx 2130 hours.

The accused declines to cross-examine this witness

John E. Groth

(John E. Groth) 1st Lt MAC.

TWELFTH WITNESS for the prosecution — Major K.L. ATHEY, MC, 74th Station Hospital, US Army, having been duly sworn states:

I am chief of surgery in this hospital. On the 5 May 44, at approx 2130 hrs, I examined a number of soldiers who had been injured in an accident that same night.

As mentioned in Exhibit "A" Pvt Joseph F. Federer died on 6 May 44 at 0730 hours as a result of cerebral contusion.

After having examined them, I pronounced dead the soldiers mentioned in Exhibits "B", "C", "D", "E", "F", "G" and "H", for the causes mentioned therein.

The accused declines to cross-examine this witness.

/Kenneth L. Athey
(Kenneth L. Athey) Major, M.C.
A.U.S.

THIRTEENTH WITNESS
For the prosecution.

1st Lt William B. HOPPER, CMP, Asst. Provost Marshall, 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:

On the 6 May 44, at 1300 hours, I was present in the office of the Provost Marshall of 2nd Repl Depot, U.S. Army. Lieut C.B. Macdonell, of HQ 1 Cdn Corps and C-119503. Pte Victor W. Emmons whom I now recognize as the accused:

I warned the accused as follows:

"It is my duty to warn you of your rights in this case. You are not required to make a statement. You may remain silent. However, if you do answer any questions or make any statements, whatever you can say may be used for your or against you should this investigation result in a trial. Do you understand what I have just said?." to which the accused replied, "Yes."

I then proceeded to ask questions to the accused. I summarized the answers in narrative form, wrote down the summary and had the accused read the written statement which he signed in my presence and in the presence of Lieutenant Macdonell. He was sworn on this statement before signing it.

I then attested the accused's signature as a Summary Court officer.

I hereby produce this statement as Exhibit "I".

The accused declines to cross-examine this witness.

William B Hopper
(William B. Hopper) 1st Lt CMP.

FOURTEENTH WITNESS
for the pro-secution.

Lieutenant C.B. Macdonell, HQ 1 Cdn Corps, having been duly sworn states:-

On 6 May 44, at 1300 hours, I was present in the office of the Provost Marshall of 2nd Repl Depot, U.S. Army. Lieut William B. Hopper, Asst Provost Marshall, 2nd Repl Depot U.S. Army was also present together with the accused, ~~C-119507~~ whom I recognize.

2nd Lt Hopper warned the accused as follows:

"It is my duty to warn you of your rights in this case. Yo u are n ot required to make a statement. You may remain silent. However, if you do answer any questions or make any statements, whatever you can say may be used for you or against you should this investigation result in a trial. Do you understand w what I have just said?.", to which the accused replied, "Yes.".

2nd Lt Hopper then proceeded to ask questions to the accused. He summarized the answers in narrative form, wrote down the summary and had the accused read the written statement before signing it.

2nd Lt Hopper then attested the accused's signature as a Summary Court Officer.

I recognize the statement marked as Exhibit " " as the statement made by the accused and attested by 2nd Lt Hopper.

The witness declines to cross-examine this witness.

(C.B. Macdonell) Lieut.
HQ 1 Cdn Corps.

FIFTEENTH WITNESS
for the pro-secution

L-93454 Sgt H.A. RIOUX, 1 Cdn Corps and Army Tps Sub Pk, having been duly sworn states:

I am the orderly room sergeant of the accused's unit. I hereby produce as Exhibit "J" Part I order No 87 dated 2 May 44, which was duly posted in the regular places within the unit.

I also produce as Exhibit "K" Part I Order No 89 dated 4 May 44. Accused did his guard duty as detailed.

The accused declined to cross-exam this witness.

(H.A. Rioux) Sgt.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

~~(V.V. Emmens) Pte.~~ VE

I certify that the forgong Summary of Evidence consisting of 18 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

(A DesRosiers) Captain
Officer detailed to take the
Summary of Evidence.

In the Field
13 May 44.

COPY

Subject:- Petition - in the matter of the Trial of C 119503 Pte EMMONS, V Cdn. Corps & Army Troops Sub Park, R.C.O.C. by Court Martial, and in the matter of Para. 574 of the King's Regulations & Orders for the Canadian Militia, 1939.

To:- The Superior Military Authority,
Cdn Sec. 1st Ech A.A.I.
(through Commendant, 56 Military Prison
and Detention Barracks)

The petition of C 119503 Private Victor EMMONS, 1 Cdn Corps and Army Troops Sub Park, R.C.O.C. a soldier of the Canadian Army on Active Service, sheweth:-

(1) On the 17th day of May 1944 your petitioner was tried by General Court Martial on the following charge:-

> When on active service, when in a place not within his Majesty's Dominions, committing a civil offence, that is to say manslaughter,
>
> in that he in the field in Italy on the 5th day of May 1944, unlawfully killed ASN 42024162 Pvt. Ralph L. LYKE, 439 Company, 33rd Replacement Battalion, United States Army,

(2) At the trial upon the conclusion of the prosecution and defence, the Court closed to consider its finding, and upon re-opening the President informed your petitioner that the finding of the Court was subject to confirmation by the Confirming Authority, and that upon confirmation the finding would be promulgated. The Court then proceeded to hear evidence as to the character of your petitioner.

(3) The circumstances leading to the trial of your petitioner, as disclosed in the evidence of the prosecution witnesses and in the sworn testimony of your petitioner, are as follows:-

On the 5th day of May 1944 at about 2045 hrs your petitioner was driving a Chevrolet 60 cwt. lorry West along Route 87 about five miles west of CIAZZO. At this time a company of soldiers of the United States Army was on a night tactical march, proceeding in column of threes in an Easterly direction along route 87 and marching on their right-hand side of the road. At a point about one mile East of No 2 Replacement Depot, U.S. Army, your petitioner commenced to overtake and pass a U.S. Army lorry. As the Canadian lorry came abreast of the American lorry, your petitioner noticed a few feet in front of his vehicle, the leading men of the company of marching soldiers. An attempt to avert an accident was made by applying brakes and turning to the right, but the Canadian vehicle made contact with the American vehicle and then bounced into the marching troops, killing eight soldiers including the deceased named in the charge.

(4) The prosecution sought to prove that your petitioner was negligent in the following respects, and so guilty of manslaughter:-

(a) In driving at night without having the headlight on,

or

(b) If his headlight was on, in driving at such a speed as to be unable to stop within the limited range of that headlight.

and

(c) In attempting to overtake and pass another vehicle without first sounding his horn.

5. An examination of the evidence adduced at the trial, disclosed the following:-

Your petitioner, giving evidence under oath, stated he had switched on his headlight and maintained this under cross-examination by the prosecutor. He further more stated he saw the glow from his headlight on the road.

The prosecution witness OVERCOTT, who was riding in the cab of the Canadian vehicle as a passenger, stated he saw the accused switch on the headlight. The prosecution witness 2nd Lieut. WARREN stated he saw no headlight on the Canadian vehicle, but admitted he was temporarily blinded by the two headlights, of the American truck, which were not fitted with blackout single headlight masks, which might account for his failure to see the Canadian vehicle black-out single headlight. This witnessasaid in cross examination he "could not see beyond the first trunk" i.e., the American lorry. Lieut. WARREN was leading the marching soldiers.

The prosecution witness, Spr JOHNSON, riding as a passenger on the back of the American truck, stated he did not notice if the headlight on the Canadian vehicle was on or not.

The prosecution witness, Spr HAIGEN, also riding as a passenger on the back of the American truck stated he noticed no lights on the Canadian vehicle for damage after the accident, stated it was equipped with the Standard Ordnance black-out mask.

The prosecution witness, Sjt, BLACK, transport Sjt. of your petitioners unit, stated the vehicle was fitted with the standard blackout mask having the latest modification authorized, i.e. increased size of slot, and that the lights were in working order when it left on this trip.

An analysis of the above shows that the prosecution did not produce a single witness who could state positively and without equivocation that the headlight of your petitioner's vehicle was not alight. On the contrary the weight of evidence tends to show that the headlight was alight - the driver swears he switched it on and expert evidence by the transport Sjt. shows the light was in working order. It is only reasonable to suppose that, if a driver has a headlight in working order and he is travelling in the dark, will use that light.

(b). Range of Headlight and Speed.

The prosecution witness Capt DAVIS, a qualified expert stated, the range of visibility for headlight equipped with modified standard Ordnance blackout mask was thirty yards.

The petitioner himself stated he "guessed he could see about ten feet". Your petitioner estimated his own speed to be from twenty five to thirty miles per hour, basing his estimate on the fact that he had shifted gears down to third gear before commencing to overtake the American truck.

The prosecution witness, Pte SIMPKINS, driver of the American truck said the Canadian vehicle was going at thirty miles per hour. This witness said that just as he saw the front part of the Canadian vehicle, it hit the front end of his truck. Surely not a sufficient length of time to make even a fair estimate, of the speed. The witness Spr JOHNSON, said the Canadian was travelling at forty five miles per hour, admits this is a pure guess, and stated he does not drive. This witness also stated that the Canadian truck sounded as if it were in middle gear, from the noise of the engine.

The witness Spr RAISEN, said the Canadian vehicle was going at about forty miles per hour, and also admitted he was no driver. It is suggested that JOHNSON and RAISEN, being inexperienced as drivers, based their estimation of the speed on the noise of the racing engine while the Canadian vehicle was travelling in third gear.

The witness Sjt BLACK, a qualified expert testified that a Chevrolet 60 cwt lorry will not travel at a speed of forty-five miles per hour while in 3rd Gear, stating the maximum speed possible would be "about thirty miles per hour".

From the above it will be seen that the evidence shows your petitioner visibility to have been anything from ten feet to thirty yards. In so far as the speed of the Canadian vehicle is concerned, the prosecution produced two inexperienced persons who guess the speed at forty and forty five miles per hour, and the American driver who estimates thirty miles per hour after a momentary glimpse of the front part of the truck. The petitioner himself based his speed on the fact that he was travelling in third gear and gave the highest possible peeed he could have been travelling. This estimate of twenty five to thirty is substantiated by the expert evidence of Sjt BLACK.

<u>The following shows that the prosecution failed to discharge the onus upon it of proving beyond a reasonable doubt that your petitioner was travelling at such a speed as to be unable to stop within the limited range of his headlight.</u>

The prosecution produced no evidence to show that a Chevrolet 60 cwt lorry travelling in 3rd gear at a speed of twenty-five to thirty miles per hour cannot be stopped within a distance of anywhere from ten feet to thirty yards. On the contrary, the prosecution's witness, Sjt BLACK stated such a vehicle could be stopped within ten feet if travelling on a good tarmac road surface, such as this was.

(c) <u>Horn</u>

The petitioner stated under oath he sounded his horn before commencing to overtake the American vehicle. Lieut. WARREN says he heard nothing behind the American vehicle owing to its noise and could not say whether the Canadian vehicle sounded its horn.

Pte SIMPKINS, says he did not hear a horn blown, but admits there was a noise from both vehicles and that he heard the Canadian vehicle before he saw it. Spr JOHNSON says he heard the Canadian vehicle approaching before he saw it and admits he might not have heard the horn because of the noise of the vehicle engines.

Spr RAISEN says he heard no horn.

<u>Again it is submitted, an analysis of the above evidence will show that the prosecution produced no witness who can say positively that the petitioner did not sound his horn.</u>

There is only the negative statements that the witnesses did not hear a horn, and two admit the noise of the vehicle may have overcome the sound of a horn. Opposed to this is the sworn statement of the petitioner, maintained under cross-examination, that he did sound his horn. It is submitted that the weight of evidence is in favour of the petitioner.

6. An examination of the evidence shows that your petitioner exercised reasonable care and caution in attempting to pass the American vehicle.

(a) It is established that he shifted gears down the third gear which both Capt DAVIS and Pte SIMPKINS, experienced drivers, admitted is a reasonable and sensible precaution to take when overtaking and passing another vehicle.

(b) A plan of the road at the scene of the accident, submitted in evidence by the prosecution, shows this effective width of the road at this place to be twenty-four feet and one half feet wide, and that he was within two feet of his side of the road. This, then, left the Canadian truck a width of fourteen and one half feet of road space in which to pass.

It is submitted that the petitioner exercised such a degree of care as was reasonable, taking into consideration all the circumstances of the case. It is further submitted that the driver of an army vehicle engaged on military duties in a theatre of operations during war-time should not have applied to him the same standard of care as is required of a driver of a vehicle during peacetime. If this standard were required and enforced the progress of the war would be slowed to an infinitesimal pace. Consideration should also be given to the fact that the petitioner had down two, two hour tour of guard duty the night of 4/5 May, had set out on an ordnance delivery route at 0900 hrs. 5 May and had driven at least 160 miles over a period of 12 hours. He had no relief driver with him and when he thought he was tired he stopped and rested by "dosing" in the cab. When he considered himself sufficiently rested he continued on his way. If he was still suffering from fatigue and this fatigue was the cause of him not seeing the marching troops, then this was merely an error in judgment on his part and not negligence and he must not be convicted of manslaughter for a mere error of judgment.

7. To justify a conviction for manslaughter on the grounds of negligence, the onus is on the prosecution to prove the accused to be guilty of such gross and culpable negligence as to amount to a crime against the State and to conduct deserving punishment.

It is submitted that, at the most, the prosecution proved that merely simple negligence not amounting to the gross and culpable negligence required to be proven to justify a conviction for manslaughter and it is further submitted that the finding of the Court is against the evidence and the weight of evidence it ought to have acquitted your petitioner.

8. I wish to emphasize the fact that I was absolutely sober, and had not been drinking at all.

9. During the period of which I have been driving namely two years I have never been picked up for reckless driving.

10. Under the circumstances the accident was unadvoidable, it would have happened to anybody.

Dated in the field this 4th day of September, 1944.

I am Sir,

Your obedient Servant,

(Sgd) V Emmons

A spare copy Item A 147

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General ~~and District~~ Courts-Martial.

Proceedings of a General Court-Martial held at Field in the

on the 17th day of May 19 44 by order of

Lt-Gen E.L.M.Burns, CBE, MC

Commanding 1 Canadian Corps

dated the 14th day of May 19 44

President.

Colonel J.W. Bishop
HQ 1 Can Corps

CANADIAN SECTION 11 JUN 1944 CHELSEA

Members.

Lt-Col F.J.Thorne, MBE, MC.
1 Cdn L.A.A.Regt, RCA

Major D.E.Mounteer
5 Cdn Armd Ord Sub Pk, RCOC

Capt J.V. Cooke
HQ 1 Cdn Corps Tps RCASC

Capt D.R.Fletcher
1 Cdn Svy Regt, RCA

Major G.M. Morrisan, DJA 1 Cdn Corps , Judge Advocate.

Trial of*

C119503 Pte Victor EMMONS,
1 Cdn Corps & Army Tps Sub Pk, RCOC

CERTIFIED TO BE A TRUE COPY EXCLUSIVE OF CANADA'S
D.J.A.(ODI) CORPS

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt A. DesRosiers, ADJA 1 Cdn Corps

defending officer† Capt S.G. Main, Seak L.I.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked "G" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

(1) *Question by the President to the accused.*

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* (1)

No sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q-2 Do you object to B-24293 S/Sgt [redacted]s, HQ 1 Cdn Corps, acting as shorthand writer

A-2 No sir

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Capt P.M. Peterson, 44 Cdn Gen Tpt Coy, RCASC
Capt E.C. Maltby, 1 Cdn Corps Sigs, RCCS

The shorthand writer is duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The prosecutor presents medical certificate of accused's fitness to stand trial, which is signed by the president, marked "C-2" and attached to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [redacted] charge against you, which you have heard read? *Question to the accused.* 3

Not guilty *Answer.* 3

[redacted]

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CHARGE SHEET

The accused, No C-119503 Private Victor EMMONS, of 1 Cdn Corps & Army Tps Sub Pk, RCOC, a soldier of the Canadian Army (Overseas) is charged with:

Charge
Section 41
Army Act

WHEN ON ACTIVE SERVICE, WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MANSLAUGHTER,

in that he,

in the Field, in Italy, on the 5th day of May, 1944, unlawfully killed ASN 42024162 Pvt Ralph L. Lyke, 439th Company, 33rd Replacement Battalion, United States Army.

(P.M.Irwin) Major.
Comd 1 Cdn Corps & Army Tps Sub Pk, RCOC

In the Field,
14 MAY 44

To be tried by General Court-Martial.

(E.L.M.Burns) Lieut-Gen.
G.O.C. 1 Cdn Corps

In the Field,
MAY 44

C

Proceedings on Plea of Not Guilty.

Instruction. (See R. P. 39 (A))

4 *Question.* *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

4 *Answer.* No sir

The prosecutor makes an opening address ~~[illegible]~~ (See Exhibit "T")

The prosecutor proceeds to call witnesses.

First witness for prosecution. Lieut A.R. Pengelly, 1 Svy Regt, R.C.A.,

being duly sworn, is examined by the prosecutor.

Q-5 I understand you recently made a plan of a certain section of Highway 87 on which there was recently an accident

A-5 I have this plan here made up of the scene of the accident one plan scale 1/5000 covering approximately one mile on either side of where the accident occurred, and another plan scale 15' to 1" of the scene of the accident. This sketch was prepared by me from information received regarding the circumstances of the accident

Plan is handed to Court, signed by President, marked Exhibit "H" and attached to the proceedings

The witness explains particulars of the sketch to the Court

Cross-examined by Defending Officer

Q-6 There is no drop from the edge of the ashphalt to the shoulder at that point?

A-6 No it is level

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(2)

The witness withdraws

SECOND WITNESS FOR THE PROSECUTION. Lieut H.O. Campbell, Canadian Army Film Unit, being duly sworn is examined by the prosecutor:

Q-7 Did you recently take photographs of a stip of road on Highway 87

A-7 I did

Q-8 Will you please file these photos as exhibits

A-8 The first picture is taken facing S.W. with my back to Caiazzo from the r.h. side of the road showing the stone culvert on the l.h. side.

Photograph described in A-8 is handed to the Court, initialled by the President, marked Exhibit "J" and attached to the proceedings

A-8a The second photograph is taken also looking S.W. taken from the centre of the road, showing both sides of the road

Photograph described in A-8a is handed to the Court, initialled by the president, marked Exhibit "K" and attached to the proceedings

A-8b The third photograph is taken looking N.E. showing the left side of the road and the right

Photograph described in A-8b is handed to the Court, initialled by the President, marked Exhibit "L" and attached to the proceedings

Pros: All these photos were taken on information received by the witness, I intend to have witnesses give further particulars

Court: That is correct?
Witness That is right, they were taken on 12 May

No Cross-examination

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(B)

The witness withdraws.

THIRD WITNESS FOR THE PROSECUTION. 2nd Lieut Robert D. Warren, 33rd Repl Bn, 2nd Repl Depot, U.S. Army, being duly sworn is examined by the prosecutor

Q-9 Please identify yourself to the Court
A-9 I am 2 Lieut Robert D. Warren, assigned to training 33 Bn, 2 Repl Depot

Q-10 Could you tell the Court in your own words all you know about an automobile accident which happened on the 5 MAY 44
A-10 The battalion assembled that night about eight o'clock and moved out at 8.25 so as to cross the I.P. (identified as Initial Point) at 8.30. At 8.30 we crossed, I was leading "A" platoon, we went out the west gate, turned right on Highway 87. We were marching on Highway 87 in column of threes on the right side of the road, blackout discipline was maintained throughout the march, we showed no lights and there was no talking or noise making in the column. We marched about 20 minutes or so when I saw the lights of a truck approaching, we were marching East, the truck was travelling West. This truck was keeping to the right side of the road, he had his headlights on, I judge this truck to have been travelling about 25 m.p.h. I could see nothing behind him. Just as the truck was almost in front of us, about 12 yards, I could make out a second truck running without lights attempting to pass the one with the headlights. I immediately wanted to get the troops off the road and I sort of jumped forward, and evidently the truck driver saw us at the same time, because as I jumped forward and turned around I could see he pulled over to the right and attempted to avoid us, and as I turned around the trucks were almost opposite me and I could hear the crash as he side swiped the other truck, then he came right by me evidently lost control of his truck and drove into the column of troops

Q-11 What happened then?
A-11 He drove into the column of troops and ended up in the ditch where he stopped, the first truck stopped after he side-swiped it, and we sent to the R.A.P.Station for ambulances. I went around to the wounded and tried to give them sulfanalamide tablets and also warned the men not to move them

Q-12 What casualties were there
A-12 That night seven were killed and twenty four wounded and the next morning another one died

Q-13 Was A8N 42024162 Pvt Ralph L.Lyke a member of that platoon
A-13 Well sir, Lyke was, I might check up the roster of the platoon and see if he was one of the soldiers killed as a result of this accident' Yes, Pte Lyke was one of the men killed by that vehicle.

Q-14 Where was your position on the march
A-14 I was on the left hand side of the column

A-15 In the very first rank
A-15 Yes

Q-16 Was there anyone in front of you
A-16 There was nobody in front of me at all

Q-17 How many ranks were behind you
A-17 Sixteen in ranks of threes

Q-18 Did you take anyparticulars about the truck which drove into the column
A-18 I took the number of the truck, and the number I learned later was the convoy number "69" on the right front fender

Q-19 What kind of a truck was it
A-19 I learned later it was a Chevrolet

Q-20 Did you ascertain the serial number of the truck
A-20 I took the serial number but I do not have it now, it was a CL number

Q-21 (Referring to witness' statement in the summary of evidence) Was it CL-4239467
A-21 I copied it down when I made the statement from the slip of paper I had noted it down on

Q-22 Did you examine the truck when it was in the ditch
A-22 No I did not

Q-23 Did you notice anything about the lights on the truck
A-23 No, I did not see any lights on the truck

Q-24 I show you here Exhibit "H", a plan of part of Highway 87, this plan shows two diagrams of the road, one on a scale of 1/5000 and the other on a scale of 5 chs to 1", would you mark on the plan the exact scene of the accident, on the large scale one first
A-24 (Marking diagram) It was just west of a little culvert bridge over the highway, about as marked on the plan

At 10.40 a.m. the Court adjourns and proceeds with the witness, the prosecutor, defending officer and the accused to view the scene of the accident

Witness explains the scene of the accident to the Court and marks on photographs exhibits "J" and "L" a cross to indicate the point at which the accident occurred, the road plan Exhibit "H" is also marked with a cross by the witness locating the scene of the accident

At 11.15 a.m. the Court reassembles, the accused is again brought before the Court, the examination of the third witness for the prosecution continues.

Cross-examined by defending officer

Q-25 How long had you been at this camp prior to the time you set out on the march that night
A-25 I arrived on 21 MAR 44, about six weeks

Q-26 Had you been on night marches before
A-26 Yes sir

Q-27 You were familiar with that road?
A-27 Yes

Q-28 What was the condition of the road that night
A-28 It was dry

Q-29 What was the density of traffic
A-29 Not heavier than ordinary, there were vehicles passing back and forth

Q-30 The condition of the light at this time, it was about nine O'clock, was it a dark night
A-30 There was a moon but it was overcast, quite cloudy, once in a while a little bright moonlight and then overcast

Q-31 Could you give an estimate how far ahead a person that night could see without lights
A-31 It is just a guess sir, I would say, 25, 30 or 40 yards

Q-32 Could you see the culvert from where you were at that time
A-32 I did not see it, at the time the truck with the headlights was coming towards us and I was particularly watching the truck

Q-33 Did I understand you to say you were observing blackout discipline on the march
A-33 Yes, we had no light at the head of the column or at the tail

Q-34 Was that the normal way
A-34 It was the normal way

Q-35 Has it been changed
A-35 It has since been changed

Q-36 I understood you to say you were blinded by the light of the first truck, was this for any length of time or momentarily
A-36 As long as I looked at that truck I could not see anything else

Q-37 What sort of lights had this other truck
A-37 They were not blacked out, both lights were on

Q-38 Did these headlights light up the road in front of the first truck adequately
A-38 Well, adequately for that truck, I would say he could see 25 or 30 yds ahead of him with those lights

Q-39 How fast would you say that truck was going
A-39 Roughly 25 m.p.h.

Court: This is the American truck you refer to
Witness: Yes sir, the American truck

Q-40 What was the first sign you saw of the second truck
A-40 Just an outline of the cab and the top of the canopy, I saw that

Q-41 Could you hear it coming

A-41 No sir I could not hear it

Q-42 Did you make an estimate of the speed of the Canadian truck at the time it was passing
A-42 There again it would be a guess

Q-43 The American truck was going you say about 25 m.p.h., was the Cdn truck overhauling it rapidly
A-43 Not very rapidly, he was going to pass it, I would say about 35 m.p.h. for the Cdn truck

Q-44 Did you hear the Cdn truck being shifted down in gear
A-44 No sir I did not hear that, there was too much noise from the other truck I could not distinguish any shifting of gears

Questioned by the J.A.

Q-45 How many men were marching altogether in the column
A-45 Actually I do not know but I would judge there were six or seven hundred

Q-46 And the platoon the Cdn vehicle ran into was the first platoon
A-46 The first platoon

Q-47 Were the ranks of three quite close together
A-47 They usually march within about 30", there was no straggling

Q-48 Do you know whether or not the Cdn truck had lights on
A-48 It did not have bright lights on, I cannot say he did not have lights on, blackout lights, all I can say is I did not see them

Q-49 Did you see the accused, do you recognize the accused here
A-49 No sir, I did not see him that night

Q-50 Did you examine the Cdn vehicle after the accident
A-50 After taking the number of it I looked into the cab, the other Canadian was in the cab but I did not see the driver at that time

Q-51 You are not in a position to say anything as to the damages the truck sustained
A-51 No sir

Q-52 And in what manner did ot go into the ditch head on
A-52 It just angled through the column right into the ditch, the front wheels were twisted around, the right rear wheel was still on the road and the left rear wheel suspended over the ditch

Q-53 This road on which the accident happened to the troops is it used very generally
A-53 I would say military traffic sir, trucks

Q-54 For what formations, what force makes chief use of the road
A-54 I would say more Cdn and British trucks use the road than American trucks

Questioned by the Court

Q-55 How far over on the right hand side of the road was the American vehicle when it was side-swiped
A-55 I cannot say I know I know it was perhaps a foot or two feet from the wall when it stopped

Q-56 But it might conceivably have pulled over after
A-56 Yes it might

Q-57 Could you say whether the Cdn vehicle sounded its horn

A-57 I cannot say, if he did I did not hear it

In the opinion of the Court and the J.A. it is not necessary to comply with R.P.85(B)

The witness withdraws

FOURTH WITNESS FOR THE PROSECUTION. Captain R.L. Davis, 1 Cdn Corps Tps Wksp, RCOC, being duly sworn is examined by the prosecutor:

Q-58 Please identify yourself to the Court
A-58 I am Capt R.L.Davis, 1 Cdn Corps Tps Wksp, RCOC

Q-59 Would you please tell the Court the result of an examination which you made of a Cdn vehicle, describing the damage and identifying the vehicle
A-59 An accident report came in and I went to make an estimate of the damage to the vehicle, I went down and looked at the vehicle and made an estimate of the damage and gave it to one of the lieutenants of the Ord Fd Pk. A day or two later I inspected the braking system. On the front left spring hanger of the vehicle three rivets had been sheared off and the drive shaft had been pulled out of the transfer case. As far as braking system was concerned the only item was that there was only about 2" of brake pedal clearance on it

Q-60 Do you remember off hand the number of the vehicle
A-60 No, it was a Ford 3 ton cab over engine job (after refreshing memory from accident report states: The vehicle was CL-4239467 a Chevrolet 3 ton)

Q-61 Was there other damage
A-61 The right front door hinge was broken, the front bumper bent and the front fender bent, the bumper and fender being the left side, the front spring main leaf was broken and the shock arm broken

Q-62 What was the condition of the headlights
A-62 They were serviceable

Q-63 What kind of headlights were there on this vehicle
A-63 This one had blackout lights and one clearance light on the left hand side

Q-64 What kind of blackout covering did it have
A-64 The standard blackout covering

Q-65 (Producing blackout shield, which is recorded by the Court as Exhibit "M") Will you tell the Court whether the one on the truck was similar to this
A-65 Yes it was similar to this, but I did not inspect it to see if the modifications had been carried out

Q-66 You have specified the damage to the vehicle, what kind of damage was there getting away from a technical explanation
A-66 The only description I can give you is that it was not seriously damaged but was not serviceable until a few minor repairs had been done

Cross-examined by defending officer

Q-67 You belong to 1 Cdn Corps Tps Wksp, RCOC
A-67 Correct

Q-68 And you have considerable experience in examining damaged vehicles
A-68 I have examined a few, not very many

Q-69 Would you say whether or not this Chev 3 ton truck you examined had been travelling at an excessive rate of speed in order to

Q-69 (cont) sustain the damage you just told us about, when it dropped into a ditch, which according to this plan (Exhibit "H") would be between 3' and 3.8' deep

A-69 That I could not answer, the vehicle could have been going fairly slow to drop into the ditch

Q-70 You say the vehicle could have been travelling very slowly and still sustain that damage

A-70 Yes

Q-71 Would you go so far as to say that had it been travelling at a high rate of speed the damage would have been more, worse

A-71 No

Q-72 What would be the cost of repairs to the vehicle

A-72 Cost of the material £1-8-0, and 12 hrs labor at 3/- per hr

Questioned by the J.A.

Q-73 What would you say as to the condition of the brakes

A-73 As far as the brakes are concerned I would say they were in quite good order

Q-74 You did not test it

A-74 The only way it could be tested was after it had been repaired

Q-75 It has not been repaired yet

A-75 No sir

Q-76 This Exhibit "H", this type of lamp was the only effective lamp he had

A-76 Well he would have clearance lights, but to show the highway just that one sir

Q-77 What would be the limit of visibility with this headlamp

A-77 That would depend on the modification, I believe it is about 30 yds

Q-78 That is with this small slit

A-78 That is with the 3/4" slit

Q-79 With this small slit which is now in effect, how far

A-79 You will find with that type of headlight in the neighbourhood of 20 to 30 yds but your beam is not as wide

Q-80 You are not just sure of the width of the light on the damaged vehicle

A-80 No sir

Q-81 Could you just make it clear all the damage there was on the right hand side of this vehicle

A-81 On the right hand side if I remember a pick handle was broken and the right lower hinge broken on the door

Q-82 That was about all the damage on the right hand side

A-82 Yes

Q-83 The vehicle is a right handdrive

A-83 Right hand

Questioned by the Court

Q-84 Was the right hand side of the box on this truck damaged at all

A-84 It was just touched, one of the beams was dented a little

Q-85 Assuming you were in a 3 ton lorry and the brakes were as you say and you were travelling 35 m.p.h. how long would it take to brake her down

A-85 It would depend on the road surface, on the booster brake, on the brake drums, I could not say definitely

Q-86 A vehicle in the same condition as the one you examined on a tarmac surface, a good road

A-86 At 35 m.p.h. in the neighbourhood of 40 yds

Q-87 That is bringing it right to a standstill

A-87 Yes sir

Q-88 Had this vehicle been travelling or been shifted into 3rd gear it would stop in a shorter space of time

A-88 Yes it would

Q-89 Have you much driving experience

A-89 Some

Q-90 Would you say it would be a reasonable precaution to take when passing another vehicle to shift down into 3rd gear

A-90 I would myself, yes

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

At 11.40 a.m. the Court adjourns for lunch

At 1.00 p.m. the Court re-assembles, the accused is again brought before the Court, the trial proceeds

FIFTH WITNESS FOR THE PROSECUTION: 2nd Lieut Dale E. Gilreath, 33rd Repl Battalion, 2nd Replacement Depot, APO 887, being duly sworn is examined by the prosecutor:

Q-91 Please identify yourself to the Court

A-91 Dale E. Gilreath, 2nd Lieut, 33rd Repl Bn, 2nd Repl Depot US Army

Q-92 Will you please tell the Court what you know about this incident

A-92 On the night of May 5th at 2030 hrs 439 Coy, "A" Pl, were across the IP (Initial point) on a night march. We reached the West gate of the Camp and turned East on Highway No 87. The troops were marching in column of threes. They marched approximately a mile along the road and at that time I was about 150 yds from the head of the column and heard a crashing noise at the head of the column and I ran up and saw that a truck had hit "A" Pl and injured a number of men. I sent for an ambulance

Q-93 What kind of a truck was this

A-93 I know it was a British or Canadian truck, I found out later it was a 3 ton Cdn lorry

Q-94 What time was it the truck ran into the troops

A-94 Around 8.30 or 9.00 o'clock, not exactly sure

Q-95 What kind of visibility was there

A-95 At that time the moon had not risen, it was rather dark and I could not see the head of the column at that time

Q-96 From where you were you could not see the head of the column

A-96 No sir

Q-97 That was about 150 yds ahead

A-97 Yes

Q-98 Before the accident did you see any traffic on the road
A-98 There were trucks passing of course but nothing in connection with the accident

Q-99 Did you see any trucks in connection with the accident
A-99 At the time I reached the head of the column after the accident had happened Lieut Warren sent a truck after an ambulance, one of the trucks that was involved in the accident

Q-100 Did you notice anything about the lights of that British or Cdn truck
A-100 There were no lights on it

Q-101 Where was it when you saw it
A-101 In the ditch, hanging right across the ditch

Q-102 Did you examine it closely
A-102 No, not at that time, we were busy working on the men

Cross-examined by defending officer

Q-103 Immediately prior to the time that you heard this crash did you notice the lights of a truck approaching
A-103 No I did not

Q-104 You did not notice the lights of the American truck or the Cdn truck
A-104 No sir I did not

Q-105 There were no warning lights carried at the head or tail of the marching troops
A-105 No sir, no lights at all

Q-106 Did you see the driver of the Cdn truck at the time you ran up or within a reasonable time afterwards
A-106 No sir I did not

Questioned by the Judge Advocate

Q-107 Do I understand you to say that the vehicle that ran into the troops did not have any lights burning
A-107 No sir, there were no lights on the truck at all

Q-108 Upon what basis do you make that statement
A-108 At the time I got up to the truck there were no lights burning, the only lights were on the truck which had pulled up on the left, the other truck had no lights at all

Q-109 Were you marching in the midst of the column or on the outside
A-109 I was marching on the outside alongside the ranks

Q-110 And when you say you could not see the head of the column was that on account of darkness
A-110 Yes sir, due to darkness

Questioned by the Court

Q-111 As to the lights of the American truck which was approaching you, you were on the outside of the column, I was wondering what obstructed your view
A-111 Nothing, I just did not look up at the time, I was walking along and talking to the men in the column

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(3)

The witness withdraws

STATE WITNESS FOR THE PROSECUTION. No 36145870 Pvt Jerold SIMPKINS, Hq Coy, 2nd Replacement Depot, U.S.Army, being duly sworn is examined by the prosecutor:

Q-112 Will you please tell the Court your number, rank name and unit
A-112 36149870 Pvt Jerold SIMPKINS, Hq Coy, No 2 Repl Depot

Q-113 Will you tell the Court what you know about an accident that happened on the 5 MAY 44
A-113 I was driving down route 87 on the 5 MAY 44 at approximately 8.45 p.m.going East about one mile East of the East gate into camp and a Canadian truck came up behind me and started to pass me. I did not hear the vehicle coming and I did not see any lights and failed to hear any horn. The vehicle partly passed me, I saw the front end of it coming, and it hit the front left wheel of my truck and then slewed into the marching troops on the other side of the road; the troops were marching towards me

Q-114 What truck were you driving
A-114 I was driving a 2½ ton GMC truck

Q-115 What speed were you going
A-115 Approximately 15 m.p.h.

Q-116 You say this truck which started to pass you ran into some troops, did you see them
A-116 I saw them quite a distance ahead of me when I slowed down

Q-117 What formation were they in
A-117 They were four abreast at the head of the column

Q-118 When did you first notice that a vehicle was passing you
A-118 When I saw the radiator of his vehicle coming past my door

Q-119 At what speed was it going to the best of your knowledge
A-119 To the best of my knowledge it was travelling thirty miles or so per hour

Q-120 What kind of lights did you have on your truck
A-120 My lights were clear

Q-121 What lights
A-121 Both headlights and my tail light were on

Q-122 After that truck which was passing you hit the front left wheel of your truck what did it do afterwards
A-122 It bounced to the South side of the road at an angle

Q-123 Where did it end up
A-123 Both front wheels were in the ditch on the South side of the road

Q-124 Did it hit any of the troops
A-124 It hit the soldiers marching on the road

Q-125 When did you see the troops for the first time, could you say approximately what distance the troops were from you when you first saw them
A-125 Approximately 150 yards away

Q-126 Did you see any soldiers before seeing that column
A-126 No sir, I saw no soldiers before that

Cross-examined by defending officer

Q-127 You say your headlights were clear lights
A-127 That is right

Q-128 They gave a good light

A-128 On a clear night they show better than 200 yards

Q-129 Was this a normal night
A-129 It was dusk and the lights would show about that distance

Q-130 This happened about nine o'clock
A-130 About 8.45

Q-131 You said, I believe, that you had slowed down because you had seen the troops
A-131 That is correct

Q-132 How did you slow down, by braking?
A-132 I was only travelling about 20 or 25 m.p.h. when I first saw the troops and I just left my foot off the gas

Q-133 What driving experience have you had, how many years
A-133 I drove approximately 10 years before I came to the Army

Q-134 Would you say that it is reasonable and sensible a precaution to take to change gears down when going past another vehicle
A-134 I believe if I was passing another vehicle I would break down gears I generally do when passing another vehicle

Q-135 The question of the horn, did you say you did not hear a horn
A-135 I did not hear a horn

Q-136 Is it possible you might not have heard the horn though one was sounded on account of the noise from both vehicles
A-136 There was some noise from both vehicles.

Questioned by the J.A.

Q-137 Did you hear the noise of the other vehicle before you actually saw it
A-137 Just immediately before, yes

Q-138 What did you do then, if anything
A-138 I stopped my vehicle immediately after he hit me

Q-139 Before he hit you did you do anything at all
A-139 I tried to pull to the right as close as I could when I saw him coming up

Q-140 As I understand it at that particular part of the road there is a high stone wall bordering the road to your right; before you saw the other vehicle how far was your vehicle away from the stone wall
A-140 Approximately 2'

Q-141 And as he was passing you tried to get in closer still
A-141 Yes

Q-142 Did you hit the stone wall
A-142 No sir

Q-143 What damage was sustained by your truck
A-143 The left front fender bent and broken in two places, that is all the damage I could find

Q-144 Did this collision cause you to lose control of your vehicle at all
A-144 No sir, it did not

Q-145 Did you stop it immediately the collision occurred
A-145 I stopped immediately

Q-146 How far would you travel after the collision before your vehicle came to a stop
A-146 About fifteen or twenty feet

Q-147 Was your truck right hand or left hand drive
A-147 My truck is left hand drive

Q-148 Do I understand you to say that there was still some daylight at the time of this occurrence
A-148 There was still some daylight, it was between daylight and dark

Q-149 What type of road is this Highway 87
A-149 An asphalt road

Q-150 At the scene of the accident was it quite smooth or pitted
A-150 The road has pot holes

Q-151 Was anyone in your vehicle with you
A-151 There were two boys riding in the back

Q-152 Is it a covered vehicle
A-152 There is no canvas over the back

Q-153 Who were these soldiers in the back
A-153 Two English soldiers

Q-154 Did you pick them up driving along the highway
A-154 Yes I picked them up about four miles before the accident occurred, just gave them a lift

Questioned by the Court

Q-155 With the normal width of the highway and with the lights you have on your truck is it possible to show the left hand ditch clearly
A-155 Definitely

Q-156 For what distance could you see the entire road and the ditch on the right hand side and left hand side
A-156 On this highway my lights showed about 150 yds and about 6' on the outside of each ditch

Q-157 Do you know the overall width of your vehicle
A-157 No sir I do not

Q-158 Is your vehicle wider than most vehicles
A-158 It is approximately 7½' wide

Q-159 Approximately in your estimation how far ahead were the marching troops when you first saw this Cdn vehicle passing
A-159 The troops were marching past my truck when I saw the Cdn vehicle passing me

Q-160 In your evidence you say the vehicle you were driving was a 6x6; were you driving in two wheel drive or all wheels
A-160 Just the back wheels

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(2)

The witness withdraws

SEVENTH WITNESS FOR THE PROSECUTION. 1871557 Spr H. Johnson, 256 Fd Coy, RE, being duly sworn is examined by the prosecutor:

Q-161 Your number, rank, name and unit
A-161 1871557 Spr Johnson, H. 256 Fd Coy, RE

Q-162 Will you tell the Court what you know about this case
A-162 I was travelling in an American truck between Piano di Caiazzo and going in the direction of Capua

Q-163 When was that
A-163 At night time about a quarter to nine on the 5 MAY 44, travelling about 15 m.p.h. we got about half way between Piano di Caiazzo and the American Camp, the one we are now in, keeping well to the right hand side of the road, I was facing the same way as the truck was going

Q-164 What then
A-164 I heard the truck coming up behind and looked around and it was a 3 ton truck with a tarp over it. I looked in front again and saw some American troops marching in the opposite direction to which we were travelling. Looking around again this truck was passing and in passing it swerved and hit the front wheel of the American truck rebounded and went into the ditch on the side on which the American troops were marching

Q-165 How far from the troops were you when you first saw them
A-165 About 15 yds

Q-166 What was your position on the back of the truck
A-166 In the front part of it, on the right hand side, sitting down

Q-167 On the side near the edge of the road
A-167 Yes

Q-168 On the floor
A-168 No, on the seat

Q-169 Are they longways of the truck or crossways
A-169 Longways

Q-170 When you first say the troops they were fifteen yards away
A-170 Yes

Q-171 When was the truck behind at that time
A-171 About fifteen yards behind

Q-172 At what speed would you say the truck behind you passed
A-172 About 45 m.p.h.

Q-173 Did you notice anything about that truck
A-173 Only that it was a 3 ton truck

Q-174 Did you notice anything about lights
A-174 No sir, I did not pay any particular attention to lights

Q-175 You said you heard a truck, what noise did you hear about that truck
A-175 I heard him revving up to pass us

Q-176 Did you hear any other sound
A-176 No sir

Q-177 Did you hear any special sound as the truck was trying to pass you
A-177 No sir

Q-178 Did you hear anything about the horn, brakes, or anything like that, or changing of gears
A-178 I did not hear the horn, but he tried to pull up just as he was passing

Q-179 Did you hear any sound of that
A-179 No sir

Cross-examined by defending officer

Q-180 How far behind was the Cdn truck when you first saw it
A-180 About 15 yds

Q-181 Are you sure it could not have been further away than that
A-181 It may have been, it is a rough guess

Q-182 It might have been 20 yds, in the summary of evidence you said 20 yds, it might have been 20 yds
A-182 Yes

Q-183 How many seconds did it take for the truck to catch up and come alongside you
A-183 About two seconds

Q-184 Do you know if the Cdn truck was in low gear when he tried to pass you
A-184 About middle gear

Q-185 It was not in top gear
A-185 No sir

Q-186 Were the two vehicles making much noise between them
A-186 The American truck was pretty quiet, the Cdn truck was a good bit louder due to the speed

Q-187 I suggest to you it is possible the driver of the Cdn vehicle might have sounded his horn but you did not hear it on account of the noise of the vehicles
A-187 Yes

Q-188 That is possible
A-188 Yes

Q-189 Did you notice any lights on the Cdn vehicle
A-189 No sir

Q-190 Are you acquainted with the type of blackout mask which British vehicles use (producing Exhibit "M")
A-190 Yes sir

Q-191 Do you know if you would have noticed that type of light on the Cdn vehicle
A-191 No sir, I was not paying attention to them

Q-192 You could see the vehicle 20 yds away
A-192 Yes sir

Questioned by the Judge Advocate

Q-193 Was there a cab on the vehicle you were riding in
A-193 Yes, it was a closed cab on the American truck

Q-194 What was the position of the Cdn vehicle on the highway when you first saw it
A-194 About the middle of the road

Q-195 And you are not prepared to swear whether or not the horn was blown or whether the vehicle had lights
A-195 No sir

Q-196 Could you see it plainly
A-196 Yes

Q-197 Was it still daylight
A-197 Very little daylight

Q-198 Why did you say it was in middle gear
A-198 I do not know much about driving but I thought it might be in middle gear, the sound of the engine and the speed of it

Q-199 Do I understand you to say that when this vehicle collided with the one in which you were driving it was slowing down at the time
A-199 He tried to slow down

Q-200 Did you notice the difference in speed
A-200 No sir

Q-201 How did you know
A-201 I was looking at the American troops and it seemed to slow down

Q-202 Do you know the accused
A-202 No sir

Q-203 What exactly happened after the Cdn vehicle struck the vehicle in which you were riding
A-203 He landed with his two front wheels in the ditch with a lot of American troops lying and screaming on the road

Q-204 Did you actually see the vehicle run into the American troops
A-204 No sir, I looked away

Questioned by the Court

Q-205 How long in minutes would you say this Cdn vehicle was trailing you before he decided to pass you
A-205 I could not say

Q-206 How long were you conscious some vehicle was behind you
A-206 About half a minute

Q-207 You state you say the truck approaching and you saw the troops ahead, did you try to tell the driver there was a truck trying to pass
A-207 I tried to but it was too late

Q-208 Did you try to signal the Cdn truck down
A-208 No sir I could not very well, I was on the opposite side of the truck, on the right

Q-209 You would not be in a position to say whether the driver of the American vehicle signalled for anyone not to pass
A-209 No sir

Q-210 What happened to your vehicle after the accident occurred
A-210 He stopped pretty well level with the other truck, I think a bit behind it, the Cdn truck went a little distance, the American truck stopped almost immediately

Q-211 What was the position of the American truck when the collision occurred
A-211 Well over to the right of the road

Q-212 Quite a number of men in the American truck
A-212 About ten or twelve British troops

Q-213 There was about two seconds from the time you first saw the vehicle until it came up even with you. You had been conscious of the vehicle trailing you for about half a minute; could you explain how you knew there was a vehicle trailing you if you did not see it
A-213 I did not look back until I heard the truck trying to overtake us

Q-214 Then you could not have been aware of it for 30 seconds
A-214 No sir

Q-215 You did not see this truck trailing you until you looked up and saw it 15 or 20 yards behind, where does the half a minute come in

A-215 I thought the truck had been trailing us

Q-216 You were just guessing about that
A-216 Yes sir

Q-217 Are you a qualified driver yourself
A-217 No sir I am not a driver at all

Q-218 A while ago in your evidence you said the vehicle was passing at 45 m.p.h., are you sure on 45 m.p.h.
A-218 No sir

Q-219 You would not say between any two speeds, 35 and 45 m.p.h. or anything like that
A-219 No sir, I could not say off hand

Q-220 Approximately at what speed had your vehicle been travelling until it slowed down before passing the troops
A-220 About 15 m.p.h.

Q-221 Had it been going that speed all the way from Piano di Caiazzo
A-221 Yes sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

EIGHTH WITNESS FOR THE PROSECUTION. T/153578 Spr J. Raisen, 256 Fd Coy, RE, being duly sworn, is examined by the prosecutor:

Q-222 Your number, rank, name and unit
A-222 T/153578 Spr J. Raisen, 256 Fd Coy RE

Q-223 Will you tell the Court what you know about an accident happening on 5 MAY 44
A-223 I was a passenger in the back of an American truck travelling towards Capua. We was travelling along the road and I noticed a truck coming up behind, all of a sudden this truck came up to pass us, at the same time we pulled over to the right as far as we could go, the truck hit our left front wheel, the truck bounced off our truck into the ditch running into the American troops at the same time

Q-224 At what time was that
A-224 About a quarter to nine at night

Q-225 What kind of truck was the American truck in which you were travelling
A-225 A CMC open truck

Q-226 Where were you in that truck
A-226 I was sitting nearest the tailboard

Q-227 On what side
A-227 On the right hand side of the truck, that is, the side nearest the edge of the road

Q-228 On what highway were you travelling
A-228 The number is 87 I believe

Q-229 When did you first notice the Cdn truck coming behind
A-229 It would be about 15 to 20 yds away

Q-230 Did you notice anything special about it
A-230 Well I never noticed any lights on it, it was travelling in the middle of the road at quite a speed

Q-231 What speed would you say
A-231 About 40 m.p.h.

Q-232 Did you hear anything of the truck
A-232 No sir

Q-233 At any time did you hear any special noises about that truck
A-233 No sir

Q-234 No noise at all
A-234 No sir

Q-235 When it started to overtake you did you hear anything
A-235 No sir

Q-236 Did you hear the sound of a horn being blown
A-236 No sir

Q-237 Did you hear any sound of brakes being applied
A-237 No sir

Q-238 Did you hear any sound of gears being shifted
A-238 No sir

Q-239 You say you did not notice any lights on the truck
A-239 No sir, none at all

Q-240 Can you say definitely whether or not this Cdn truck had lights on
A-240 No sir

Q-241 Do you say it had no lights on or you did not notice any lights
A-241 I did not notice any

Q-242 Is it possible it had lights on and you did not notice them
A-242 If he had lights on they would be very small

Q-243 Did you see any troops on the road, when did you see them first
A-243 I cannot say for sure, but while we were travelling down the road I looked over the cab and saw troops were coming down the road, they were about 10 yds away when I noticed them

Q-244 When you saw the troops had you seen the truck
A-244 No sir

Q-245 It was after you saw the troops you noticed the truck
A-245 Yes, I was looking over the cab and turned around and saw the truck

Q-246 And it was 15 to 20 yds behind you
A-246 Yes sir

Q-247 Did you notice any lights with the troops
A-247 No sir

Cross-examined by defending officer

Q-248 Would you say it was possible for the Cdn vehicle to sound his horn and you were unable to hear it because of the noise of the vehicle
A-248 No sir

Q-249 Are you familiar with the usual type of blackout mask which British vehicles use (producing Exhibit "M")
A-249 Yes sir

Q-250 If the Cdn vehicle had that type of mask on and the light was lit do you think you would have noticed that small spot of light
A-250 Yes sir

Q-251 What was the condition of light at the time
A-251 The moon was showing at the time and on the left hand side of the road there was a line of trees, and the moon shining on the trees was casting a shadow on the road

Questioned by the Judge-Advocate

Q-252 When did you first notice the truck behind you
A-252 When it was about 15 or 20 yds away

Q-253 You did not notice it before
A-253 No sir

Q-254 Had you been looking behind
A-254 Yes sir, I had been looking all around

Q-255 You say you stood up and looked over the cab
A-255 Yes sir

Q-256 Why
A-256 Just to see where I was going no particular reason

Q-257 No particular reason
A-257 No sir

Q-258 And then you saw the troops ten yards or so ahead of your truck
A-258 Yes sir, something like that

Q-259 What speed was your vehicle going
A-259 Between 10 and 15 m.p.h.

Q-260 At the time of the collision
A-260 Well it was slowing down at the time of the collision

Q-261 At the time of the collision it was going more slowly than before that
A-261 Before that it had been travelling about 20 m.p.h.

Q-262 What position was it in
A-262 Close to the right hand side of the road

Q-263 Did you notice a stone wall there
A-263 Yes sir

Q-264 Did you notice what damage was done to the truck you were in as a result of the accident
A-264 No sir

Q-265 Do you recognize the accused
A-265 No sir, I never saw the driver before

Q-266 Was it completely dark at the time
A-266 Not completely dark sir, no

Q-267 Would you say at the time this collision occurred you could see better with or without lights on the vehicle
A-267 I should say you would see better with them on

A-268 Are you a driver yourself
A-268 No sir

Q-269 You are not used to driving a vehicle
A-269 No sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

SIXTH WITNESS FOR THE PROSECUTION, Major Norman C. Long, Medical Corps, #0290255, 2nd Replacement Depot, U.S.Army, being duly sworn, is examined by the prosecutor:

Q-270 Would you please identify yourself to the Court
A-270 Major Norman C. Long, 2nd Replacement Depot, Medical Detachment, #0290255

Q-271 Will you please tell the Court what you know about an accident happening on the 5 MAY 44
A-271 I was called about 8.30 or a quarter to nine that night to visit an accident which had taken place some distance away from the West gate, I went there with a spare ambulance, additional doctors and eight men. Going there I saw a British truck and some four or five bodies, these I declared dead. Then looking around I saw some 10 or 12 men to whom I gave first aid or directed first aid be given, and then across the road I saw four or five more men also. Some men had been given first aid assistance and some had been taken to 74th Station Hospital before I arrived. That is more or less the story that I have of the accident

Q-272 Did you later go to the hospital
A-272 That is correct, after I had seen the wounded evacuated I went to 74 Station Hosp to render what aid I could

Q-273 Did you see any of the bodies there in 74 Stat Hosp
A-273 No I did not

Q-274 Are you in a position to specify identities in individual cases
A-274 Not by name, the certain types of injuries, but I did not associate names with them I had no time

Cross-examined by dfending officer

Q-275 You said when you arrived at the scene of the accident you found four or five bodies there would you tell us the cause of death
A-275 There again I would not want to say the exact causation, but we assumed it was the truck straddled across the ditch. It was due to an automobile accident

Questioned by the Court.

Q-276 You did not examine the vehicle
A-276 No sir, the provost were there, I assumed the provost would take care of that

Q-277 Are you used to driving vehicles
A-277 Yes sir

Q-278 At the time you reached the scene of the accident would you say visibility would be better with the lights on or off
A-278 There I would not like to quote I would not like to make a statement on that

Q-279 What was the condition of daylight or darkness at that time
A-279 I do not think I could answer that question

Q-280 At the time you were taking care of the wounded personnel did you do it by daylight or use a flashlight
A-280 I used a flashlight

Q-281 When your vehicle drove up did it have lights
A-281 The lights were on the vehicle in which I drove up

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.33(B)

The witness withdrawe

TENTH WITNESS FOR THE PROSECUTION. Cpl Lawrence Geist, #33568199, M.P. Detachment, 2nd Replacement Depot, U.S.Army, being duly sworn, is examined by the prosecutor:

Q-282 Your number, rank, name and unit
A-282 Cpl Lawrence Geist, #33568199, M.P.Det, No 2 Repl Depot

Q-283 Will you please tell the Court what you know about this accident which happened on the 5 MAY 44
A-283 On the evening of 5 MAY 44 at approximately 2050 hrs I was in the Provost Marshal's office when a call came from our East gate, as a result of the information I went out in front of the Provost Marshal's office and waited for the ambulance to come along. I got in and proceeded to Route 87 approximately one mile East of the gate. There on the road were a large number of American troops, and on the left hand side, the South side going West on Route 87 was an English vehicle in the ditch on the l.h. side. I got out of the ambulance and looked around, saw bodies lying around on the road and on the banks, and some of our troops there. I stayed at the scene until after everyone left, there were four MPs left on the scene. After everyone had left Sgt Chardenier and myself walked approximately 15' West of the truck, there was a soldier standing there, I did not recognize him, I did not recognize him as either a British or Canadian soldier, he had on a uniform similar to an English uniform. I walked to within a few feet of him and he said "What do you want me to do" I said "who are you" and he said "I am the driver of the vehicle". At this time I told Sgt Chardinet that probably the Provost Marshal would like to see him and for him to take him to the office. It was at that time about ten minutes to eleven

Q-284 When you arrived at the scene of the accident what was the visibilit
A-284 I would say it was pretty dark

Q-285 Was the moon on
A-285 There was not much of a moon when I appeared on the scene

Q-286 Did you examine at all this British truck that was in the ditch
A-286 Yes sir

Q-287 Did you notice anything about the lights
A-287 No sir

Q-288 Can you say whether they were on or not, did you actually check the headlights or notice the absence of glare
A-288 I noticed the absence of glare. I noticed a couple of bodies behind the truck and there were three men under the truck, we went around a Lieutenant and myself and crawled under the truck, at the time there were no lights because I loaned the lieutenant my flashlight

Q-289 You can recognize the soldier to whom you spoke
A-289 No sir

Cross-examined by defending officer

Q-290 This soldier dressed in battle dress to whom you spoke what was his condition, would you say he had been drinking
A-290 To the best of my knowledge he had not been drinking I did not smell an odour of alcohol or anything on him

Questioned by the Judge Advocate

Q-291 Is that the same man who was taken to the Provost Marshal's office
A-291 Yes sir

Q-292 Did you have any conversation with him other than you have already given
A-292 No sir, I did not

Q-293 What actually happened to the vehicle
A-293 A British wrecker came along and hauled the vehicle out of the ditch and hooked on the front end and took it away. One of our MPs went for the wrecker

In the opinion of the Court and the Judge-Advocate it is not necessary to comply with R.N.83(B)

The witness withdraws

ELEVENTH WITNESS FOR THE PROSECUTION. B-131235 Pte W.P. Overkott, 1 Cdn Corps & Army Tps Sub Pk, RCOC, being duly sworn is examined by the prosecutor:

Q-294 Your number, rank, name and unit
A-294 B-131235 Pte Overkott, W.P., 1 Cdn Corps & Army Tps Sub Pk, RCOC

Q-295 Will you tell the Court what you did on the 5 MAY 44
A-295 We were travelling West on Highway 87, we had been out all day delivering stores and were driving back home, I went to sleep in the truck and the next thing I knew I woke up in the hospital on the operating table

Q-296 In what truck did you go to sleep
A-296 In the truck driven by Pte Emmons

Q-297 Where were you in that truck
A-297 We were delivering stores to the units that day, we were all along the line down to the other side of Telese and were on our way back to the camp

Q-298 What time did you leave the last unit beyond Telese
A-298 It was late in the afternoon

Q-299 Did you stop anywhere along the way
A-299 We stopped at Amarosi

Q-300 What time did you stop there
A-300 A little after six o'clock

Q-301 How long did you stop there
A-301 Approximately about an hour

Q-302 What did you do in Amarosi during that hour
A-302 We just stopped and had a rest and I was out trying to get some onions

Q-303 You left the truck for a while to get some onions, how long
A-303 About five or ten minutes

Q-304 When did you go to sleep, what time of the evening. You left Amarosi about seven o'clock, how long after that did you go to sleep
A-304 It was not very long after that

Q-305 Did you sleep all the time or did you wake up occasionally
A-305 I woke up at times

Q-306 Did you wake up at any time while it was dark
A-306 No I could not have

Q-307 Did you notice anything about the headlights of the truck
A-307 I know he put the headlights on but when I do not know

Q-308 How do you know they were put on
A-308 He put the switch on, but it was not dark enough for them to show

Q-309 You had been with the accused how long that day
A-309 We left the unit shortly after nine o'clock in the morning

Cross-examined by defending officer

Q-310 You are a technical storeman in the Sub-Pk
A-310 Yes

Q-311 You went along to deliver the stores and Emmons was your driver
A-311 Yes sir

Q-312 In other words it was a duly authorized trip
A-312 Yes sir

Q-313 You set off at nine o'clock in the morning and you were away delivering all day
A-313 Yes sir

Q-314 Did your driver do any drinking that day while you were out in the truck
A-314 No sir

Q-315 You are quite sure of that
A-315 Yes sir

Q-316 Are you familiar with the vehicle in which you were riding, had you ridden in it previously
A-316 I had been in it twice before

Q-317 Do you know whether it was fitted with this type of blackout mask (producing Exhibit "B")
A-317 I am not sure

Q-318 At the time Emmons switched on the lights, you remember him putting on the switch, you say it was not dark enough for them to show; have you any idea what time that was
A-318 I do not know just what time it would be

Q-319 What was the condition of light at the time
A-319 It was getting dusk

Q-320 Was the moon up yet
A-320 I did not notice

Questioned by Judge Advocate

Q-321 To how many units did you deliver parts that day
A-321 I think it was nine sir

Q-322 Which was the last one
A-322 I do not know which was the last, it was my first trip down this way, the last delivery we made was on the other side of Teloso

Q-323 Where is your unit located
A-323 Down near 5 CCS about 21 miles from Cassino in the main road

Q-324 Near the X rds where Highway 6 meets the road going over the Mundorf Bridge
A-324 Yes, right near the hospital

Q-325 Coming through Highway 87 would be the shortest way home for you
A-325 I do not know, I was relying on the driver

Q-326 Where did you actually stop in Amarosi
A-326 I would not quite know it was the first time I have been in there

Q-327 Was it in the street
A-327 It was around the back of a street

Q-328 You drove in there and what did you do
A-328 Just had a rest, the driver was sleepy, he had been driving all day. I did not go to sleep at all, the accused did not really go to sleep, he was nodding

Q-329 Did you do any drinking while there
A-329 No sir not there

Q-330 Did you do any drinking that day
A-330 I had a glass of wine, I do not know what place, but shortly after noon

Q-331 At a unit or in a town
A-331 In a town

Q-332 What town
A-332 I don't know

Q-333 Before you came to Amarosi did the accused have anything to drink
A-333 No sir

Q-334 Did you purchase anything
A-334 No sir

Q-335 Did you purchase any wine or liquor that day
A-335 No sir

Q-336 Do you remember giving evidence in the summary of evidence in this case
A-336 Yes sir

Q-337 Did you say this: "In one of the towns I purchased a glass of wine from a boy and drank it on the spot"
A-337 Yes sir

Q-338 Is that all you purchased that day
A-338 Yes sir

Q-339 You had nothing in the vehicle
A-339 No sir

Q-340 It was after you left Amarosi you saw the accused turn on the lights
A-340 Yes sir

Q-341 Did he leave them on
A-341 I suppose he did, I did not see him turn them off

Q-342 How long after you left Amarosi
A-342 I do not know just how long

Q-343 As near as you can recall
A-343 I was sleeping off and on,I did not know the time

Q-344 It was during one of the lucid intervals of wakefulness, or were you half asleep at the time

A-344 I would go to sleep and wake up, one of these times I saw him put the light on

Q-345 You saw him, you do not know at what time or where you were
A-345 I do not know the exact time

Q-346 How long after you left Amarosi did you first go to sleep
A-346 Not very long maybe 10 minutes

Q-347 Did you buy any onions in Amarosi
A-347 No sir

Q-348 Try to buy any
A-348 Yes, I tried to buy some but did not get any

Q-349 I understand you to say that was the first time you had delivered stores
A-349 I had been out with the truck before, but the first time down there

Q-350 Have you any recollection at all of the collision your vehicle had with another truck
A-350 No sir, I know nothing about it at all

Q-351 You do not know how long you had been sleeping
A-351 I know I woke up on the table in the hospital and they told me about the accident

Q-352 You were sitting in the front seat with the driver
A-352 Yes

Q-353 Did the accused say anything about being tired and wanting to rest
A-353 He did not say anything, but I noticed in the afternoon he was nodding at the wheel

Q-354 Can you drive yourself
A-354 A little

Q-355 Did you offer to take over from him
A-355 No sir

Q-356 Why
A-356 I do not know sir

Q-357 Did you not feel a bit afraid of driving with a man who was nodding at the wheel
A-357 I did not think of it at the time

Q-358 Were there any further instances of this kind, what do you mean to say by "nodding at the wheel"
A-358 I mean his head would drop down and he would bring it up suddenly

Q-359 When was that
A-359 Around the middle of the afternoon

Q-360 Did you suggest to the accused he should have a rest or sleep
A-360 No sir

Q-361 And he did not say anything to you about being tired
A-361 No sir

Questioned by the Court

Q-362 How far is it from Amarosi to the scene of the accident
A-362 I do not know, I did not know where the accident occurred until after

Q-363 Can you explain how it would take from 1700 hrs to 1830 hrs to travel from Amarosi to Piano di Caiazzo, a distance of about 15 miles, how would you account for the time from when you left Amarosi until the accident

A-363 I don't know

Q-364 Did the truck stop from the time you left Amarosi until the accident

A-364 It did not stop unless it stopped while I was asleep

Q-365 Are you quite sure you left Amarosi around seven o'clock

A-365 As far as I can figure it would be seven o'clock

Q-366 You are storeman i/c truck when you go out like that

A-366 I do not know sir, I am in charge of the stores, the driver is in charge of the vehicle

Q-367 Would you have any idea how fast you were driving after you left Amarosi, were you going 10 m.p.h. or 20 m.p.h.

A-367 I do not know how fast but not very fast

Q-368 You were empty and you were heading for home

A-368 Yes

Q-369 So the chances were you would be going at a fair clip

A-369 We were not going very fast

Q-370 One glass of wine was all you had to drink that day

A-370 Yes sir

Q-371 Why did you stop at Amarosi

A-371 To have a rest

Q-372 On whose suggestion

A-372 Well there was really no suggestion at all he just stopped there to have a rest

Q-373 Who chose the place to stop

A-373 There was no question of choosing the place, he was the driver and stopped

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(8)

The witness withdraws

Pros: My next witness, Sgt Black, does not appear on the summary of evidence, I have advised the defence and they have no objection

Def: We have no objection to this witness

TWELFTH WITNESS FOR THE PROSECUTION. A-64153 Sgt W.E. Black, 1 Cdn Corps A Army Tps Sub Pk, RCOC, being duly sworn is examined by the prosecutor:

Q-374 Please identify yourself to the Court

A-374 A-64153 Sgt Black, W.E. 1 Cdn Corps A Army Tps Sub Pk, RCOC

Q-375 What is your appointment in your unit

A-375 Transport sergeant

Q-376 Is the accused one of your drivers

A-376 Yes sir

Q-377 Do you recall what his duties were on the 5 MAY 44

A-377 He was on the silk route peddling M.T.Stores from the unit

Q-378 Who was he with

A-378 Pte Overkott

Q-379 Where would his duties take him that day
A-379 From our unit to clean back 15 miles the other side of Telese to 7 A/T Regt and 26 L.A.D.

Q-380 Did you notice the type of blackout mask on that truck the accused was driving that day
A-380 It is the last type blackout mask, modified

Q-381 I show you Exhibit "M" would this be the type
A-381 It was like this but with the last modification

Q-382 Then it was not exactly similar to this
A-382 It was like this one, like this but the slot is 3/4" wide

Q-383 Which is larger than the one on Exhibit "M"
A-383 Yes, and the inside of the hood is white

Q-384 Do you know anything about the duty as regards the accused on the night previous to that trip
A-384 On the night previous to that trip he was on guard

Q-385 At what time
A-385 From six at night until six in the morning

Q-386 What times
A-386 Two hours on, four hours off

Q-387 Do you know in what condition that vehicle was before it left
A-387 In Al condition

Q-388 As far as brakes are concerned, horn, lights, etc.
A-388 Yes sir

Q-389 It was in a perfect state of maintenance
A-389 Yes sir

Cross-examined by defending officer

Q-390 How long have you had the accused under you as one of your drivers
A-390 Since about last August

Q-391 Has he driven very much in this country
A-391 No sir

Q-392 How much has he driven
A-392 He has driven about two months steady in that time between England and here

Q-393 Would you say he is a good driver, a fair driver
A-393 A good driver, a very careful driver

Q-394 Do you know what two hour periods the accused was on guard duty that night
A-394 No I could not tell you that

Q-395 Did you see the vehicle after the accident
A-395 Yes sir, I picked it up the next day

Q-396 You examined it yourself
A-396 Yes sir

Q-397 Will a Chev 60 cwt travel 45 m.p.h. in 3rd gear
A-397 No sir

Q-398 Could you tell us how fast it would go in 3rd gear
A-398 In 3rd gear you would get around 30 m.p.h.

Questioned by the Judge Advocate

Q-399 How many gears are there
A-399 Four ahead and one reverse, low low, 1st, 2nd, 3rd and reverse

Q-400 What is the usual one on ordinary travel, on average roads
A-400 Fourth, that is, high gear

Q-401 Had you driven this vehicle yourself
A-401 Yes sir

Q-402 How long before the 5 MAY 44
A-402 We have had them all out, the fitter and I have had them all out, we check them and take them out for a road test

Q-403 When did you have this truck out
A-403 We had it before the chap who was on it before went to hospital. The accused only had it about four days before the accident

Q-404 So about four days before the accident you drove it
A-404 Yes

Q-405 In darkness, in complete darkness without moonlight, how far ahead of the vehicle would you be able to see with the type of light on that vehicle
A-405 Not very far, about 10' in front of you

Q-406 In other words you have vision only 10' ahead
A-406 Yes

Q-407 Could you say now, assuming the brakes of that vehicle were in good condition, what would be the highest speed it could go in order to stop in 10' on an asphalt road
A-407 It should be able to stop in twice the length of the vehicle travelling at 30 m.p.h.

Q-408 At what speed would it be going in order to stop it within 10'
A-408 You could not possibly go over 15 or 20 m.p.h.

Q-409 Could you stop the vehicle in 10' at that speed
A-409 On a good road sir

Q-410 Did your guards have an opportunity to sleep when not actually on their beat
A-410 They did, they had four hours between shifts

Q-411 Do you know whether or not the accused got any sleep the night before
A-411 I could not say sir

Q-412 Is that the custom in the unit to send men out on duty notwithstanding the fact they have been on duty the night before
A-412 Yes sir

Q-413 In other words he came off guard at six o'clock and went out with a truck about nine
A-413 About 8.30

Q-414 How many units would he deliver to
A-414 On the whole milk route he would visit about eleven

Q-415 Visiting these units would he have occasion to drive on highway 87
A-415 There is no route laid down on which he had to travel

Q-416 The ones around Telese were 26 LAD and 7 A/T Regt
A-416 I do not know exactly

Q-417 Returning from there, from Telese, what is the route
A-417 There is no particular route, one driver would take the other route turning right at Dalazzo and the other fellow would take this one

Q-418 Which is the shorter
A-418 I do not know, there are practically three ways could be used

Q-419 Do you know whether the lights were in working order after the accident
A-419 They were sir

Q-420 The brakes
A-420 I do not know about that we never tried the brakes

Questioned by the Court

Q-421 I do not know whether I misunderstood you but when the defence asked you a question about the speed of a 60 cwt in 3rd gear you said 30 m.p.h., were you referring to this as high or 2nd
A-421 Second, sir

Q-422 How far would you say you are from this table
A-422 Approximately 9'

Q-423 The blackout light would give you that much light
A-423 Yes sir, approximately

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

THIRTEENTH WITNESS FOR THE PROSECUTION. Lieut John E. Groth, #01542272, M.A.C., 74 Station Hospital, U.S.Army, being duly sworn is examined by the prosecutor:

Q-424 Please identify yourself to the Court
A-424 I am Lieut John E. Groth, Medical Administrative Corps, 74 Station Hospital, U.S.Army

Q-425 I understand you are the registrar of the 74 Station Hospital
A-425 I am

Q-426 (Producing document) Will you identify this document
A-426 This is a true copy of the original report of the death of 42024162 Pvt Ralph L. Lyke, 439th Coy, 33rd Replacement Battalion

Copy of Death Report referred to in Q & A 426 above is handed to the Court, signed by the President, marked Exhibit "P" and attached to the proceedings

The defending officer declines to cross-examine

Questioned by the Judge Advocate

Q-427 You know the evidence contained in Exhibit "P" to be true and correct
A-427 Yes sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

FOURTEENTH WITNESS FOR THE PROSECUTION. Lieut William B. Hopper, #01797649, C.M.P., 2nd Replacement Depot, U.S.Army, being duly sworn is examined by the prosecutor:

Q-428 Please identify yourself to the Court
A-428 William J. Hopper, 1st Lieut, #01797649, CMP, 2 Repl Depot

Q-429 Will you please tell the Court what you know about this case, more specifically about what happened on the 6 MAY 44

A-429 On the 6 MAY 44 I took statements from all witnesses inv. an accident case

Q-430 What did you do as far as the accused was concerned
A-430 As far as the accused was concerned I took a statement from to how he was implicated, in the presence of Lieut Macdonnel

Q-431 Did you warn the accused
A-431 Yes I warned him that anything he might say might be used in ev. the warning was as follows: "It is my duty to warn you of your in this case, you are not required to make a statement, you may remain silent; however if you do answer any questions or make any statements, whatever you can say may be used for you or against you should this investigation result in a trial. Do you understand what I have just said." To which the accused replied "yes"

Q-432 How did you get the statement from the accused in what way
A-432 I asked questions of the accused and he replied, and the answers were put down to the best of my ability in his own words

Q-433 Did you write it as question and answer
A-433 No sir, in narrative form

Q-434 After you had written it down what did you do
A-434 I wrote it in longhand and it was typed by a clerk and the accused read it. After the accused read it I had him sworn and he signed it

Q-435 Did you sign it as a witness
A-435 I signed it as a witness

Q-436 I show you a statement, did you sign this
A-436 Yes, that is a copy of the accused's statement and signed by him

The defence has no objection to the admission of this statement and the J.A. informs the Court that they must be satisfied that the statement was made voluntarily on the part of the accused without any threat or promise of any kind

The Court is satisfied that it was a voluntary statement

Statement of the accused referred to in Q & A 436 above is read, handed to the Court, signed by the President, marked Exhibit "O" and attached to the proceedings

Cross-examined by defending officer

Q-437 Did you see the accused on the night of the accident
A-437 I did not

Q-438 Then you are unable to make any statement as to his sobriety
A-438 I did not see him that night so I am unable to tell

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(3)

The witness withdraws

EVIDENCE GIVEN FOR THE PROSECUTION. L-93454 Sgt H.A. Rioux, 1 Cdn Corps & Army Tps Sub Pk, RCOC, being duly sworn is examined by the prosecutor:

Q-439 Your number, rank, name and unit
A-439 L-93454 Sgt Rioux, H.A. 1 Cdn Corps & Army Tps Sub Pk RCOC

Q-440 What is your appointment in your unit
A-440 I am orderly room sergeant

Q-441 I show you here a document, will you identify this
A-441 This is a copy of Part I Orders No 87 dated 2 MAY 44 of 1 Cdn Corps & Army Tps Sub Pk RCOC, this order was posted on the order board

Q-442 Is that the regular way unit orders are published within the unit
A-442 Yes

Q-443 When was that posted
A-443 This one was posted on the 2 MAY 44

Copy of Part I Orders No 87, dated 2 MAY 44 of 1 Cdn Corps & Army Tps Sub Pk RCOC is handed to the Court, signed by the President, marked Exhibit "P" and attached to the proceedings. The attention of the Court being drawn to para 5 of the order "Speed Limits"

Q-444 I show you a further document, please identify this
A-444 This is a copy of Part I Orders No 89, 1 Cdn Corps & Army Tps Sub Pk, RCOC, dated 4 MAY 44

Q-445 How was this posted
A-445 In the same manner as the other, on the order board, and was posted on the 4 MAY 44

Copy of Part I Orders No 89, dated 4 MAY 44 of 1 Cdn Corps & Army Tps Sub Pk RCOC is handed to the Court, signed by the President, marked Exhibit "Q" and attached to the proceedings. The attention of the Court being drawn to para 2 of the order "Guards"

Cross-examined by defending officer

Q-446 Do you know the accused
A-446 Yes I do

Q-447 Do you recall the duty on which he had been sent out on the 5 MAY 44
A-447 Yes I do sir

Q-448 Was it a properly authorized duty
A-448 Yes it was sir

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(3)

The witness withdraws

SIXTEENTH WITNESS FOR THE PROSECUTION, Major Kenneth L. Athey, [illegible], Medical Corps, 74 Station Hospital, U.S.Army, being duly sworn is examined by the prosecutor:

Q-449 Please identify yourself to the Court
A-449 Kenneth L. Athey, Major, Medical Corps, 74 Station Hospital

Q-450 What is your appointment in 74 Station Hosp
A-450 I am chief of surgery

Q-451 Did you on the night of 5 MAY 44 have anything to do with the examination of a number of casualties in a road accident case
A-451 I did

Q-452 At what time did you examine these casualties
A-452 Approximately 9.30 p.m., I did not look at the time I went right in and started working, operating

Q-453 Did you examine 4204162 Pvt Ralph L. Lyka who is mentioned in Exhibit "N" (produced to witness) "Letter Report of Death"
A-453 Yes

Q-454 Was he alive at that time
A-454 He was dead

Q-455 Was the cause of death as mentioned in Exhibit "N"
A-455 It was

Cross-examined by defending officer

Q-456 Were the injuries to Pte Lyke such as would be occasioned in a motor accident
A-456 They were

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

The witness withdraws

THE PROSECUTION IS CLOSED

D

The prosecution is closed.

Defence.

R.P.40 is complied with

Q-457 *Question to the accused.* Do you apply to give evidence yourself as a witness ?

A-457 *Answer.* Yes

Q-458 *Question.* Do you intend to call any other witness in your defence ?

A-458 *Answer.* No sir

[illegible] Given.

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

[illegible] Given.

(Where the accused does not give evidence upon oath.)

Question to the accused. [illegible]

Answer. [illegible] Given.

Instruction. * In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

FIRST WITNESS FOR THE DEFENCE. C-119503 Pte Victor Emmons, 1 Cdn Corps & Army Tps Sub Pk, RCOC, being duly sworn is examined by the defending officer:

Q-459 Pte Emmons you are the accused in this case and you are a driver on the strength of 1 Cdn Corps & Army Tps Sub Pk, RCOC
A-459 Yes sir

Q-460 This afternoon we have had evidence that on the night of the 4/5 May last you were on guard duty; during what hours were you actually on duty
A-460 10.30 p.m. until a quarter to one in the morning, and from five in the morning until a quarter to seven

Q-461 Two shifts
A-461 Right

Q-462 The next day, the 5 MAY, you had to go out on certain duties, will you tell the Court what these duties were
A-462 Delivering stores to units

Q-463 How many units did you call on
A-463 Eleven

Q-464 Do you know how many miles you drove
A-464 I do not know exactly but about 160 miles

Q-465 What time did you leave in the morning
A-465 I was on parade at eight o'clock and left with the lorry about nine

Q-466 Was there any relief driver along with you
A-466 No sir

Q-467 You did all the driving yourself
A-467 Yes sir

Q-468 You have heard one witness, Overkott, state you stopped at Amarosi, what time did you stop there
A-468 Between six and six thirty

Q-469 What was the purpose of that stop
A-469 For a rest

Q-470 Did anyone suggest it
A-470 No one

Q-471 How did it come about
A-471 I pulled up myself to have a rest

Q-472 How long did you stay there
A-472 I could not say exactly, an hour or an hour and a half, as I dozed off

Q-473 You dozed off while you were there, whereabouts, right in the cab
A-473 Yes sir

Q-474 Did you leave the truck at all
A-474 No sir

Q-475 Do you know what time you left Amarosi
A-475 No sir

Q-476 Overkott, the technical storeman, was with you on the trip, did he leave the truck
A-476 Yes

Q-477 Why
A-477 He said he was going down to the black market

Q-478 Do you know how long he was away
A-478 No sir, he was there when I woke up

Q-479 Do you know how long you were asleep
A-479 No sir

Q-480 Did you have anything to drink from the time you left in the morning until the time of the accident
A-480 No sir

Q-481 Did Overkott have anything
A-481 I saw him have one glass

Q-482 What were light conditions like when you woke up
A-482 Still daylight

Q-483 What did you do
A-483 I drove on

Q-484 How long had you been driving when you noticed the American truck in front of you which you eventually tried to pass
A-484 About an hour

Q-485 How long did you follow this truck
A-485 About fifteen or twenty minutes

Q-486 At what distance
A-486 About 35 or 40 yards

Q-487 What were the light conditions at that time
A-487 It was getting fairly dark

Q-488 Was it dark enough to use headlights
A-488 Yes sir

Q-489 Did you turn yours on
A-489 Yes

Q-490 Do you know if they went on
A-490 Yes sir

Q-491 Did you see the glow
A-491 Yes sir

Q-492 Did you actually see this American truck in front of you for 20 minutes or just the tail light
A-492 Just the tail light

Q-493 Was there any reason you attempted to pass this truck
A-493 Yes sir, he was going very slowly

Q-494 What speed
A-494 Between 10 and 15 m.p.h., I was following him and he slowed down to 10 or 15 m.p.h.

Q-495 So you decided to pass
A-495 Yes

Q-496 Did you notice any oncoming traffic in the opposite direction
A-496 No sir

Q-497 Did you notice any troops
A-497 No sir

Q-498 Did you notice any lights coming in the opposite direction
A-498 No sir

Q-499 Did you take any precautions in passing this truck
A-499 I blew my horn and pulled out to the left hand side of the road

Q-500 Then what did you do
A-500 I kept on passing him

Q-501 Did you change gears
A-501 I shifted down into 3rd

Q-502 What gear had you been travelling in
A-502 4th

Q-503 Is that a normal precaution
A-503 Yes, she has not enough power in high gear

Q-504 How fast will your vehicle travel in 3rd gear
A-504 It will not do over 30 m.p.h.

Q-505 How fast were you going
A-505 Between 25 and 30 m.p.h.

Q-506 What type of vehicle were you driving
A-506 A Chev 3 ton

Q-507 What was the first warning you had that there were troops on the road
A-507 When I saw them

Q-508 How far ahead of you
A-508 Five or six feet

Q-509 Were they directly in front of you or off to one side
A-509 A little off to my left

Q-510 What did you do in order to endeavour to avoid running into them
A-510 I had not much time, I stepped on the brake and pulled over to the right towards the other truck and I hit him and swung off him into the ditch

Q-511 Where was the American truck on the road, was he allowing lots of room
A-511 He was allowing plenty of room

Q-512 Was everything normal about the pass you were trying to make
A-512 Yes sir

Q-513 You would say it was a perfectly normal pass
A-513 Yes

Q-514 How many years experience have you had in driving
A-514 Six years in civilian life

Q-515 How long in the Army
A-515 Not very long, I just drove off and on

Q-516 How long with your present unit
A-516 I came to them in August, I only drove twice in England

Q-517 How long have you been in Italy
A-517 I cannot exactly say, six or seven months

Q-518 Have you been driving much over here
A-518 I have been driving about a month here

Q-519 You mean you started about a month ago
A-519 No, I started about four months ago and have been driving off and on

Q-520 In your statement which has been put in as an exhibit by the prosecution this statement appears"I got one bottle of vino at Amarosi from an Italian for a friend of mine at Camp" "I did not have any wine to drink at any time." What happened to that vino
A-520 It was left in the truck

Q-521 Was anything taken out of it
A-521 No sir

Q-522 Who was it for
A-522 A friend of mine at camp, Pte Bruce

Q-523 I ask you once again did you have anything to drink during your trip delivering stores
A-523 No sir, I had nothing

Defending Officer submits Transport Work Ticket No 095304, authorizing the trip of this vehicle in question on "milk route" 5 MAY 44. Work ticket is handed to Court, signed by the President, marked Exhibit "R" and attached to the proceedings

Defending Officer also submits W.D.Driving Permit, AFA 2036, Serial 26, issued to C-119503 Pte V.Emmons, and identified by him, for the period 1 FEB 44 to 1 FEB 45. This is handed to the Court, signed by the President, marked Exhibit "S" and attached to the proceedings

Cross-examined by Prosecutor

Q-524 When were you issued with driving permit, exhibit "S"
A-524 I do not know the date but it was around February of this year

Q-525 Did you go through a course in training before actually getting that license
A-525 I did in Canada, sir

Q-526 Did you drive in Canada while training 3 ton lorry Chevrolet
A-526 I did on my course, yes

Q-527 With right hand drive
A-527 Yes

Q-528 So you did know how to operate and were quite familiar with that type of vehicle
A-528 Yes

Q-529 Just previous to this accident what kind of visibility was there
A-529 Not very much sir

Q-530 Do you remember if the moon was out
A-530 No sir

Q-531 The moon was not out
A-531 No sir

Q-532 You had your headlights on
A-532 Yes

Q-533 Did it have a covering similar to Exhibit "R"
A-533 Similar, but the slit seemed higher up

Q-534 How far could you see in front
A-534 The light showed down on the ground about 10' in front

Q-535 What kind of light
A-535 A light broadening out

Q-536 Could you see both sides of the road with that beam
A-536 Yes

Q-537 What speed were you travelling from Amarosi
A-537 About 20 to 25 m.p.h.

Q-538 To your knowledge going 25 m.p.h. in what distance could you stop, bring to a complete stop a 3 ton lorry
A-538 Fifteen to twenty feet

Q-539 And yet you could not see more than 10(in front of you. In the course of your driving and in your previous experience as a driver is it not a fact you avoid overtaking a vehicle on a curve
A-539 Yes

Q-540 And not overtake a vehicle on a hill where you cannot see what is going on in front
A-540 That's right

Q-541 If you were driving in a thick fog would you go as fast as on a clear day
A-541 No sir

Q-542 In other words you have been trained to always have your vehicle under control
A-542 Yes sir

Q-543 You told us you could see about 10' ahead of you and that at 25 m.p.h. it would require from 15 to 20' to bring your car to a complete stop, therefore when you did go 30 m.p.h. to overtake that truck you could not see what was ahead further than 10'
A-543 That's right sir

Q-544 Therefore you could not have your car under control for anything that might be ahead over 10'
A-544 That's right sir, but anything on the road at night is supposed to have lights

Q-545 I am not questioning on what was done or not done by the other side I am questioning you on what you actually did. Did you not think when passing that truck there might be something on the road, a donkey cart, troops or a pedestrian
A-545 I thought there would be something of a warning if anything or anyone was on the road

Q-546 Had you been over the road before
A-546 It was the first time I had driven over it, but I had been over it before

Q-547 You heard one witness, Overkott, say in the afternoon you were nodding at the wheel
A-547 I do not recall it, If I feel sleepy I stop the truck

Q-548 You stopped it in Amarosi
A-548 Yes

Q-549 Did you sleep in the cab
A-549 I was not actually sleeping I dozed off

Q-550 How were you feeling
A-550 Good

Q-551 Did you at any time feel sleepy between Amarosi and the scene of the accident
A-551 No sir

Q-552 Now you say that you bought a bottle of vino in Amarosi
A-552 I did not say that, it was given to me

Q-553 Who gave it to you
A-553 A kid came and gave it to me, he did not exactly give it to me he told me to take it back to camp

Q-554 Did you see any signs along the road indicating indicating there were troops in the vicinity
A-554 No sir

Q-555 Did you meet any troops before these ones you saw
A-555 No sir

Q-556 You hhanged geare when you went to overtake
A-556 Yes

Q-557 Is that the normal procedure you adopt
A-557 Yes, these trucks haven't much guts in high gear, it is safer to take it in 3rd gear

Q-558 Were you in high gear before you changed into 3rd
A-558 Yes sir

Q-559 Did you turn your lights off at any time during that trip
A-559 No sir

Q-560 Were they still on when you hit the ditch
A-560 No sir, as soon as I hit the troops they went out

Q-561 Ybu say when you saw the troops you put on the brakes
A-561 They were close and I went over to try and miss the troops

Q-562 Did you apply the emergency brake at all
A-562 No sir

Q-563 Did you think you would have passed the troops when you swung to the right
A-563 They were actually in my way when I swung the wheel

Q-564 Yet you say this American truck gave you plenty of room to pass
A-564 He was about two or three feet from the wall on his side of the road

Q-565 I imagine you were quite tired
A-565 I was tired but not sleepy

Q-566 Were your reactions as fast as they would be if you were not tired
A-566 Yes I think so, just about

Q-567 Did you not feel in view of that tiredness you should go more slowly than you actually would under ordinary circumstances
A-567 I do not think so

Q-568 Were there one or two headlights on your vehicle
A-568 One, on the right

Q-569 There was no other light, on the right hand side
A-569 Just a light on the fender

Q-570 How far from the American truck were you when you pulled out to see what was ahead
A-570 I was in the middle of the road about 15 or 20 yards behind and came up to within about 15 or 20 feet from him when I pulled out and looked ahead there was nothing as far as I could see

Q-571 You saw darkness in front of you except for the tail light
A-571 Yes

Questioned by the Judge-Advocate

Q-572 During your tour of guard duty the night before did you sleep between the tours of duty
A-572 I did not sleep before the first tour, I slept between that and the second tour for about two hours

Q-573 Was Amarosi on your way on the road back
A-573 Yes, it is the only route I use

Q-574 What did you do immediately your car went into the ditch
A-574 I turned the engine off and pulled it out of 3rd gear and got out of the truck and helped the Americans with the dead and wounded

Q-575 You were there all the time
A-575 Yes, when they were moved I reported to the MP

Q-576 Prior to that you did not make your identity known
A-576 No sir, they were busy and I did not want to bother them, I reported as soon as everything was clear

Q-577 What happened to the man with you
A-577 As far as I know he bumped his head on the windshield, the Americans lifted him out of the cab, he was unconscious, I had no conversation with him

Q-578 Did you have any conversation with him on the ride from Amarosi
A-578 No sir, he dozed off to sleep most of the time

Q-579 How do you know when you got to Amarosi
A-579 I do not know, I judge it was about six or six thirty

Q-580 And you judge you were there about an hour
A-580 About an hour or an hour and a half

Q-581 Do you know how it happened the boy came up with a bottle of wine
A-581 He knew me, we were stationed out there and I used to go up to his house

Q-582 How did he happen to know you were there, you were parked at the house
A-582 No, about a block away

Q-583 How did the boy discover you
A-583 He was playing around

Q-584 And saw you
A-584 Yes

Q-585 Can he speak English
A-585 No sir, but I understand a little Italian, he said "Do you want a bottle of vino to take back to camp for Bruno"

Q-586 What is the distance from Amarosi to where this accident took place
A-586 I cant exactly say, I was only over it three or four times

Q-587 Could you make an estimate
A-587 About 25 miles, that is just a guess

Q-588 You say your lights went out as soon as you hit some of the troops
A-588 I was about half way through them when they went out, that is as it seemd to me

Q-589 Do you know what happened to them
A-589 No sir

Q-590 You did not try to turn them on again
A-590 No sir, it happened so quick I did not have time

Q-591 Did you see the truck ahead of you pick up any soldiers on the road
A-591 No sir

Q-592 You were following it how long

A-592 Fifteen or twenty minutes I would not say exactly about that

Q-593 How far behind were you
A-593 About forty yards

Q-594 And you followed 40 yards behind for about 15 or 20 minutes
A-594 About that time, all I could see of the truck was the tail light

Q-595 It was quite dark was it
A-595 Yes sir

Q-596 And you are quite sure you realize what you are saying you could only see ten feet of your vehicle which carried the regulation lights
A-596 That is the way they put them on the truck sir

Q-597 Your speed at the time you ran into the other vehicle was what
A-597 I slowed down a little, I was doing around 25 or 30

Q-598 Do I understand you changed into 3rd gear in order to get more speed
A-598 No, in order to get more power, more pick up

Q-599 So you were depending upon any traffic walking in the opposite direction to you depending on them having lights
A-599 They should have sir

Q-600 Did you pass any people walking along the road after leaving Amarosi
A-600 No sir

Q-601 Could you say what your speed was before changing to the lower gear
A-601 About 20 or 25

Q-602 Then you picked up speed after that
A-602 Yes

Q-603 How old are you
A-603 Twenty two

Q-604 Referring to this Exhibit "P" setting forth speed limits, were you familiar with them
A-604 Yes sir

Q-605 You knew the speed limit for your vehicle was 25 m.p.h.
A-605 Yes sir

Questioned by the Court

Q-606 How is it the bright headlights of the American truck did not show up the troops as you were passing as the effect would be the same as if the headlights were on your truck
A-606 I did not see them, I have a right hand drive

Q-607 You were something like 15 to 20 yards behind at the time you were about over in the middle of the road, at that time would you not be able to see past the American vehicle and past the truck to the left hand side of the road
A-607 No sir, you have to be right over on the left of the road before you can see past a truck on the right hand side

Q-608 You started out in the morning and I suppose you took lunch with you
A-608 Yes sir

Q-609 And you had nothing to eat since lunch
A-609 No sir

Q-610 And that meant you would not eat again that night until ten thirty
A-610 That's right it would be 10.30 anyway

Q-611 You would get fed when you got home
A-611 If they told anyone we were out we would get something

Q-612 You say travelling behind this vehicle you travelled at between 10 and 15 m.p.h.
A-612 Yes

Q-613 In the matter of Pte Overkott, he had something to drink, where was that
A-613 At Amarosi about one or two o'clock in the afternoon

Q-614 This place you parked, there is a main cross road through the town
A-614 I do not know that sir

Q-615 In your statement, exhibit "C" you state "Overkott had several drinks of wine in Amarosi"
A-615 I only saw him have one but I figured he had more

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(B)

THE DEFENCE IS CLOSED

PROSECUTOR'S CLOSING ADDRESS:

The Judge Advocate when he sums up will explain the law in this case, I merely want to state briefly that in the case of manslaughter, manslaughter may be divided into two classes, one of which is death caused by the negligence of the accused.

In reviewing the evidence of this case I think the facts disclose that there has certainly been a serious negligence on the part of the accused. I will be very brief because I think the facts are quite clear.

True this accused had been on guard duty the night before did not have much sleep and may have been asked to do a duty which should not have been asked of him but which he undertook to do.

In the course of doing that duty he drove a considerable length of time and quite a distance, still he undertook to do it.

Coming back on Highway 87 there is no doubt that from Amarosi and a certain distance past Amarosi it was getting darker and darker and the accused at a certain time put his headlight on, which was a regulation blackout headlamp. By the accused's own admission it did not throw much light on the road.

Now the J.A. will tell you there is no such thing as contributory negligence in a criminal charge, the acts of the accused have to be weighed on their own.

It the Army has decreed that our vehicles will be equipped with this blackout it is up to the drivers to use the amount of caution required by the visibility given by these lights.

This visibility the accused states is ten feet, he may be exaggerating against himself, but taking this distance of ten feet I submit a driver must have his car under control at all times

Having a car under control means you must be in a position to stop it in the required length, thus, if you see the road in front of you a speed of sixty m.p.h. might not be illegal or improper, but if you do not see ahead of you I can figure where a speed of 10 m.p.h might be negligence.

Take under the circumstances driving in a thick fog, or as on these roads a thick cloud of dust, certainly a driver who can only see ten or fifteen feet ahead of him in this is taking upon himself the liability of what may happen if he cannot stop within fifteen feet. In other words there is an area which he cannot see in which something may happen, and ignoring this is considered a case of manslaughter.

You have the evidence that at the time of the accident the accused was going 30 m.p.h., he was in 3rd gear, the speed below the high level in which gear there is more pick up and there is more braking action by the compression of the engine, but still a truck certainly cannot be stopped within five or six feet the distance at which the accused first saw the troops. I stand to be corrected if I am not right on this distance but I think it is the distance claimed by the accused, and I submit it is the duty of any driver of a car to just think ahead and to think of the possibility of something being ahead of him.

The accused tells us it was completely dark, naturally he pulls to the left hand side of the road, he has a right hand drive and has to pull over to the left of the road, and if he sees blackness and does not see what was ahead I submit he should not go ahead and if he undertakes to do so he is committing that degree of

negligence that may cause manslaughter, by driving his vehicle into something unknown, into something where lives might be risked and damage might be done, I submit the accused was negligent, and that the negligence was tantamount to manslaughter in this case.

You have evidence that Pte Ralph L. Lyke was killed as a result of this accident and I submit that it was so caused by the speed at which the accused was travelling when he overtook the American vehicle.

The prosecution has not tried to establish anything other than negligence, they do not contend that he was under the influence of liquor and are satisfied that the accused was completely sober, but I submit the spped at which he was going is sufficient to warrant the Court in coming to a finding of guilty.

DEFENDING OFFICER'S CLOSING ADDRESS:

The J.A. will doubtless instruct the Court on the principles of law involved, but before going any further I would like to point out one thing which the members of the Court should bear in mind, I would refer you to MML p.58, Ch.V. para 57 "Burden of proof" quotes: Now gentlemen I think you are all familiar with that, I would just like to bring out that it is the prosecution's duty to prove the guilt of the accused he does not have to prove he is not guilty.

Now the prosecution has based their case on the assumption that the accused has been guilty of neglect and through that neglect on the part of the accused a death has resulted, a death of a human being. Again I refer to MML, page 117 a portion of para 44: "Where death results from negligence it must be shown, in order to justify a conviction for manslaughter, that the negligence was so gross and culpable and showed such disregard for the life and safety of others as to amount to a crime against the State and to conduct deserving punishment". It is not sufficient for the prosecution to show negligence, they must show negligence of such a gross and culpable nature as to amount to a crime against the State. Mere simple negligence such as would suffice to collect damages in a civil suit are not sufficient, this is as far as I am going to deal with the matter.

Just one more reference to MML. As you know manslaughter may be homicide, but homicide may be either manslaughter or murder. "Homicide is excusable (i) where a man doing a lawful act, without any intention of hurt, by accident kills another" (MML, p.116, Ch. VII, para 43). In other words mere misadventure as from an accident which causes death is not punishable under the Criminal Code.

I propose to examine the evidence to see whet the accused has been guilty "of such gross and culpable negligence and shown such disregard for the life and safety of others as to amount to a crime against the State and to conduct deserving punishment."

I submit when I review the evidence you will see he has not been guilty of negligence to that extent.

The first question is that of light on the vehicle. The evidence shows this; the accused first of all claims he had his lights on he claims he turned the switch and could see the glow of the lights on his vehicle, the technical storeman who was travelling with the accused claims he saw the accused turn the switch. Lieut

Warren who was leading the column of American troops says he could not say if the Canadian vehicle had lights or not, and he further claims he was momentarily blinded by the lights on the American truck, and it may be on this account he could not distinguish the much dimmer lights of the Canadian truck. Spr Johnson said he had no lights, Spr Raisen says he did not know whether the lights were on, Sgt Black says the lights were working on the truck. Of these witnesses two say the lights were on, three say they could not say whether the lights were on or not, and the other, Sgt Black, says they were in working order. It is reasonable to say that if the lights were in working order they were on. I submit the Court should accept the word of the accused and Overkott that the lights were on if it was dark enough to justify the using of lights. Furthe more the prosecution has not borne the onus of proof, they have produced three witnesses who are not prepared to say the lights were on or not on the vehicle.

I think the Court can take official cognizance of the fact that the standard Canadian vehicle only has one headlight on the left.

The next thing is the condition of light at that time of day. Lieut Warren says he could only see about ten or twenty yards, but says the moon was out and the sky overcast. Lieut Gilreath who was apparently in charge of the whole column says there was no moon and it was rather dark. Pte Simpkins the driver of the American vehicle says there was still some daylight, it was not yet dark. Spr Johnson says there was very little light but he could see the Canadian truck behind plainly at 20 yds. Spr Raisen who was also riding on the truck, the American truck, says the moon was shining but a row of trees cast shadows on the road. The next two witnesses Cpl Geist and Major Long both state when they arrived at the scene it was dark and they needed lights but that was some time after the accident occurred, and if they arrived fifteen minutes later their evidence on that point would not be of much use. What it does boil down to is this, that there is some dispute amongst the prosecution witnesses as to whether it was dark or light; in other words it was a matter of judgment whether or not headlights were necessary, and if the Court does not accept the accused's statement that his lights were on then that is merely an error of judgment on his part and a man cannot be convicted of manslaughter on an error of judgment.

Regarding the horn. The accused says he sounded the horn. Lieut Warren says he did not hear the horn but possibly the noise of the truck drowned it out. Pte Simpkins says he heard no horn, that there was some noise from both vehicles, and that he heard the Canadian vehicle before he saw it; so I submit there again the Court can infer Pte Simpkins did not hear the horn because of the noise of the vehicles. Spr Johnson says he did not hear the horn. Spr Raisen makes the statement with reservation that he heard no horn. There are four prosecution witnesses two of whom admit they might not have heard the horn because of the noise of the vehicles, one makes a statement he heard no horn, he admits there was noise in the vehicle. The fifth witness is the accused who claims he sounded it. Again I claim the prosecution evidence is not strong enough to discharge the onus which lies upon it.

The next question is speed, the speed of the Canadian vehicle. On this the prosecution based the weight of his argument. First of all I would like to rebut one or two things Captain Desbarres said. First of all he said the accused was on guard duty the previous night but nevertheless undertook a duty the next day. I submit it is not a question of the accused undertaking a trip "he was bloody well told to go, and went" it is not a question of the accused undertaking a duty, he was detailed for duty and had to do it.

The prosecutor says the accused could not see very far ahead because of the lights being blacked out, and he says if that is so the accused was negligent in driving at such a rate of speed as to be unable to stop within the range of his vision. I submit the amount of care required of an Army driver must vary with the exigencies of the service and more risks must be taken in a theatre of operations in war time. If the Army vehicles were required to move at a speed under which they could stop within the range of vision then the war would have been much slower than it has been, take tanks and trucks on dusty roads and at night. I submit it is not fair to apply the standards of a civilian driver in peace time against an Army driver in a theatre of operations, and the standard should not be so rigid.

The speed of the Cdn vehicle. Capt Davis, RCOC officer, says that damages sustained by the Cdn vehicle are consistent with that vehicle having been driven at a high rate of speed, and on cross-examination he says the vehicle could have sustained the same damage had it been travelling quite slowly. Pte Simpkins, driver of the American truck, says the Cdn vehicle was travelling about 35 m.p.h. Spr Johnson, guessing, says 45 m.p.h. Spr Ruisen says 40 m.p.h. and also admits he is not a driver. In connection with these two witnesses I would suggest that the noise of a vehicle in 3rd gear would create the impression of speed to an inexperienced person. How Sgt Black the transport sergeant, and the accused, both claim the vehicle will not do 45 m.p.h. in 3rd gear and will only do 30 m.p.h. and I submit that is the outside speed the Court can find. The accused says he was travelling 25 to 30 m.p.h. and he says that is a guess but he estimates the speed as he was in 3rd gear.

What experience has the accused had in driving. six years in civilian life and about six months in the Army, two months driving in Italy. He has had the drivers' course in Canada, Sgt Black says the accused is a good driver, a careful driver.

The next thing I want to deal with is the precautions the accused took before trying to pass. The accused says he shifted down into 3rd gear, Spr Johnson says he thought the truck was in a middle gear. Capt Davis says it is a reasonable and sensible precaution to shift down to 3rd when passing.

The condition of the road from the plan, and the view of the scene which the Court had this morning, we know the effective road surface was about 25' wide at the point of the accident. Pte Simpkins says his truck was about 7½' wide and he was 2' from the r.h. side of the road. This would have left the accused 14½' of road space which I submit is adequate to take a 60 cwt through. The plan of the road and the view shows a straight road for 100 to 150 yds.

That review of the evidence shows the accused was not guilty of such a degree of negligence as to justify a conviction of manslaughter, his negligence was very slight, it is not that gross and culpable negligence as required for a conviction of manslaughter and I submit the Court should acquit the accused on the charge of manslaughter.

The Court consider it expedient in view of the exigencies of the service and the distance of travel involved to sit after 6.00 p.m. and complete the proceedings on this date.

At 6.05 p.m. the Court adjourn for supper

At 6.35 p.m. the Court reassemble. The accused is again brought before the Court.

The President asks the defending and prosecuting officers if they would care to comment on the question as to whether or not the Cdn vehicle having lights is a material factor in the case, having in mind that the American truck apparently had good lights.

Defending officer: I might bring forth a theory. The Americans were marching in platoons and there was considerable distance between them. Mr Warren's platoon was practically level with the American truck and it is quite possible all his troops were on the near side of the lights, that the headlights were shining behind his platoon and not far enough ahead to light up the following platoon. The accused when asked why he did not see the troops by the light of the American truck said he just did not see them.

Prosecutor: There is also a theory which I would like to put forward, first of all in answer to your question on the glare of the American truck. The accused answered that driving a r.h. drive truck he had to pull out completely before he could see in front, he was very near the American truck at that time, not more than 15 or 20'. Also another explanation on visibility; the uniform of the American troops is certainly a greenish uniform and right along the edge of the road at that point is a greenish background, it is very hard to say that the accused did see them, and as prosecuter I do not intend to submit that the accused did see them and took a chance to pass; I say he did not see;and you make a manoeuvre with your truck which you should not have made it is negligence, if he had seen it would almost amount to a greater offence.

SUMMING UP BY JUDGE ADVOCATE:

It is my duty as Judge Advocate on this case to sum up for you, particularly so far as the law is concerned.

So far as the facts of the case are concerned, although I have the right to comment on them, and even to give my opinion on them, yet you are not bound by that in any way. You will make your own inferences from the facts and put your own interpretation on them. I prefer to leave the facts to you and deal briefly with the law involved in this case, and should I express any opinion on the facts you may disregard this entirely, as you, gentlemen, are more qualified than I am to interpret the facts because you represent different branches of the Service, all have had considerable experience, and in a case of this kind I prefer to leave questions of fact to you.

The homicide case is always a difficult one for a Court and that is particularly true in what are known as "motor manslaughter cases" as there are no hard and fast rules to guide the Court, and determining whether the degree of negligence is sufficient to warrant a conviction or not is a very difficult one for a Court.

The charge is manslaughter, I will read the charge again to refresh your memory on it. (reads charge).

The charge is manslaughter, or unlawful killing another man, this is what is known as a civil offence and laid under Section 41 of the Army Act which permits military courts to try soldiers for offences under English law.

Possibly the most succint definition of manslaughter is that contained in MML, P.116, Ch.VII, para 46, as amended by Amdt No 14: "It may be taken generally that in all cases where a killing, though not with malice, is nevertheless incapable of justification or excuse, it is manslaughter." That is the general definition of manslaughter.

Now one type of manslaughter is the type of manslaughter alleged here which alleges negligence on the part of the accused. Now then, the question is, and it is the question which will concern the Court most, the degree of negligence necessary to constitute the offence of manslaughter, and I will read to you from "Archbold P.882 with regard to the degree of negligence necessary to constitute the offence. (reads from Archbold on "negligence"). In other words it must be a much greater degree of negligence than would entitle one party to succeed in a claim for damages against another for the death of a person or injury to a property, it must have been such negligence, such disregard for the life and safety of others as to amount to a crime against the State. That is, such negligence that the State is warranted in intervening in order to give the required punishment.

Now there is some mention in this case, and I think I should deal with this point, that troops were marching without any light showing anything to indicate their approach, marching along the road in column of threes. As I think the prosecutor pointed out, if there was any indication of negligence on the part of the deceased or on the part of those under whose orders he was acting, this is not available as a defence for the accused in this case. Criminal action is different from civil action; in civil action two vehicles collide and one driver sues the other for damage, if the person sued can show that the man suing was negligent and contributed to the accident and cause of damage there is liability on the part of the person suing on account of the contributory negligence, but that is not so in criminal cases.

There have been somecases where a man lying on a road drunk has been run over by a vehicle and killed and in such cases there have been convictions for manslaughter. There is no question but that the man lying on the road contributed to his own death, but that is not a defence.

In considering whether the accused was grossly negligent in this case the Court must have regard to all the surrounding circumstances, the speed of the vehicle, the lighting, the sounding of the horn and all such factors. With regard to the lights for example, you will have to consider not only whether or not the lights on the accused's car were burning, but also, even if not lit, that fact had any bearing on this event. The President has mentioned that point and it was discussed.

There are no hard and fast rules regarding the degree of negligence required to constitute manslaughter, each case stands on its own feet. First of all was there any negligence on the part of the accused at all? If so, was it as serious as to warrant a conviction of manslaughter? An act of negligence warranting conviction under one set of circumstances might not under another. Certainly if two vehicles are racing each other along a highway and a pedestrian is killed as a result that would obviously be manslaughter, but every killing on a highway by a motor vehicle is not necessarily manslaughter. Take the case of a person driving a vehicle in a proper manner through a village and a child without warning jumps from the sidewalk into the path of the vehicle and is killed, that, under the circumstances, would be a pure accident; nothing could have been done to prevent it. If there was no negligence it was what the defending officer termed misadventure. On the other hand if a man is driving a vehicle through a village and the sidewalks are crowded with people who are here and there crossing the road, say there is a fete day in the down, in that case there is a special duty to take care, the chances of causing death should have been foreseen and even if the accused were driving within the speed limit yet if the Court determined he was driving too fast under the circumstances existing at the time and ran into a person stepping off the sidewalk and killed him, a conviction of manslaughter would probably be warranted.

Another element is the extent of use of a highway, whether a driver could reasonably expect other traffic or pedestrians on the road; the test on a back woods country road is not the same as on a road through a town.

Now I might mention another example where a conviction of manslaughter would not be warranted, say where a driver is suddenly confronted by a situation that he could not be expected to have foreseen. He has to respond immediately and turns right instead of left, and because he did so runs on to the sidewalk and kills someone, whereas had he turned the other way there would have been no accident. The death was caused by an error of judgment on his part; his speed was proper, something unforeseen occurred and through an error of judgment he turned the wrong way.

Now I think gentlemen it is further my duty to tell you that on a charge of manslaughter under English law, and it is English law rather than Canadian that governs our military courts, under English law a person charged with manslaughter may be found guilty of reckless or dangerous driving under the Road Traffic Act of England, Sec 11, and I will read that to you (Archbold p.221) "If any person drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be on the road, he shall be liable -". That is for reckless or dangerous driving. Now therefore I say should the Court consider that there

was negligence, but not such gross or culpable negligence as to warrant a conviction for manslaughter, yet they may enter a conviction under that Section for reckless or dangerous driving, not both. There is no definition of these terms, one action might be considered reckless, another dangerous. I do not think there is much difference between the two terms, there is no definite distinction drawn between them in the Section.

Perhaps I might give you an example of what would be reckless driving rather than manslaughter; a case where one vehicle is passing another vehicle which is being passed after receiving due warning and this other vehicle suddenly turns out in front of the overtaking vehicle to prevent his passing, causing the overtaking vehicle in order to avoid him to go on to the sidewalk. Let us assume the overtaking vehicle was going at an excessive rate of speed, he could have got safely by had not the vehicle being overtaken done the act it did. In this case I think the Court could acquit of manslaughter and convict of reckless driving, although it is true the excessive speed was not the immediate cause of the accident.

I hardly need to mention to the Court that although it is unfortunate that the persons killed belong to a Force other than our own; although it would still have been serious if it had happened to our own forces, yet the Court will not convict the man on that account unless they consider him guilty of a crime; and I am sure our American friends would be the last to suggest a Court should convict a man merely because he killed some of their people if the Court were not satisfied he committed a crime. Their criminal law is essentially the same as our own, the question of policy as distinct from law should not be allowed to interfere with your judgment.

The accused of course is innocent until proven guilty beyond a reasonable doubt; you must take a calm and cool view of the whole evidence, and if, after taking that view, as reasonable men you have doubts as to the accused's guilt you should acquit him. A reasonable doubt is not one conjured up by mental gymnastics, it means a sound sensible doubt as you would have in your ordinary business affairs or in your military affairs.

I am not going to review the evidence and I will now leave the matter in your hands.

The Court adjourn to consider the finding

The Prosecutor produces Statement as to Character and Particulars of Service and Certified True Copy of Conduct Sheet purporting to refer to the accused which he submits to the Defending Officer for examination and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused because they purport to be signed in the manner required by AA 163(1) (g)(h) and (ii) they purport to refer to a soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Exhibits "U" and "V" respectively.

Q-616 Do you wish to address the Court on the Statement and Conduct Sheet and in mitigation of punishment.
A-616 (By Defending Officer) I wish to call one character witness before making a plea in mitigation of punishment.

CHARACTER WITNESS. Captain Harold A Merklinger, Chaplain Services, being duly sworn is examined by the defending officer:

Q-617 You are, I understand, chaplain for 1 Cdn Corps RCOC troops
A-617 That is right

Q-618 And the unit of which the accused is a member comes under your charge
A-618 Yes

Q-619 Are you acquainted with the accused
A-619 Well I know that the accused is a young man who has never been a trouble maker in his unit and I have never been asked by his NCOs or his officers to talk to him as to his attitude he always has had a good name in his unit

Q-620 Did you make it a practice to find out the bad actors in a unit
A-620 I did

Q-621 And you have never had any bad report of the accused
A-621 I have not

The prosecutor declines to cross-examine

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P.83(3)

The witness withdraws

See Exhibit "W" for Plea in Mitigation of punishment.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

G-119503 Private Victor Emmons, 1 Cdn Corps & Army Troops Sub Park, RCOC.

is "Not Guilty" of manslaughter, but "Guilty" of reckless driving. (Road Traffic Act Sec 11)

In the Field 17 May 1944
(Sgd) G Nelson Wilson Maj.
Judge Advocate

(Sgd) J.W. Bishop Col.
Pres.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Evidence of character &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Substitution.—If by reason of the nature of the service of the accused as a supernumerary artificer, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused *Sentence*

C-119503 Private Victor Emmons, 1 Canadian Corps & Army Troops Sub Park, RCOC.

To be imprisoned with hard labour for two years Imp H.L. for 2 years

In the Field 17 MAY 1944

(sgd) G.M.Morrison. Major
Judge Advocate

(sgd) J.W.Bishop. Col
Pres

I confirm the finding and sentence of the Court

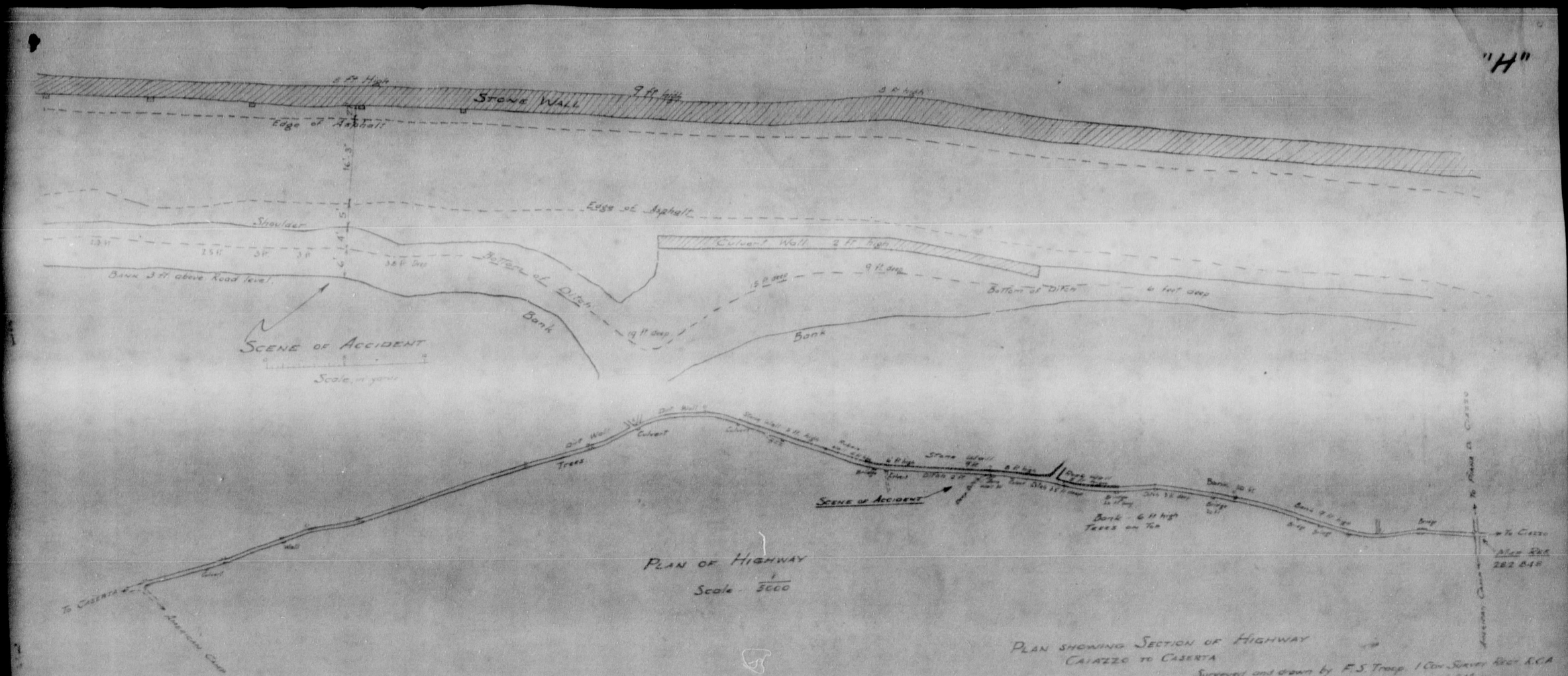
24 MAY 44

(sgd) E.L.M. Burns. Lt-Gen
G.O.C. 1 Cdn Corps.

Promulgated and extracts taken, in the Field, this 27 day of May, 1944.

(sgd) P.M.Irwin. Major
Officer Commanding
1 Cdn Corps & Army
Tps Sub Pk, RCOC.

"H"


Stone Wall
Edge of Asphalt
Shoulder
Bank 3 ft. above Road level
Bottom of Ditch
Bank
Culvert Wall 2 ft. high
Bottom of Ditch
Bank
SCENE OF ACCIDENT
Scale, in yards
PLAN OF HIGHWAY
Scale 1/3000
SCENE OF ACCIDENT
Bank 6 ft high
Trees on Top
To Caserta
To Caiazzo
PLAN SHOWING SECTION OF HIGHWAY
CAIAZZO TO CASERTA
Surveyed and drawn by F.S. Troop. I Corps Survey Regt. R.C.A.



"J"



"K"



"L"

Exhibit "F"

In the case of
O-119503 Pte Victor Simons
1 Con Corps & Army Tps Sub Pk, RCOC

PROSECUTOR'S OPENING ADDRESS:

The prosecution intends to prove in this case that on the 5 MAY 44 at approximately 2030 hrs the accused was driving a Canadian 3 ton Chevrolet truck No C1-4239467 along Highway 87 coming from Telesi and going towards Highway No 6, proceeding West.

He was on duty, and at a certain place along the road between Piano di Caiazzo and the 2nd Replacement Depot, U.S. Army, he overtook an American truck. In doing so he had to go on the left hand side of the road, we will prove that he was going at a speed which was a minimum at least of 30 m.p.h. He had on his vehicle what is know as "blackout lights", and when overtaking this vehicle he suddenly came within a few yards of a body of American troops who were marching Easterly on their right hand side of the road three abreast.

The accused tried to avoid them by pulling to the right and in so doing side-swiped the American truck and careening off it into the troops killed some of the troops and injured others, and killed amongst others an American soldier ASN 42022162 Pvt Ralph L. Lyke, of the 439th Company, 33rd Replacement Bn, U.S.Army, thereby committing manslaughter, and I now intend to call witnesses to prove this fact.

Exhibit "W"

PLEA IN MITIGATION OF PUNISHMENT

An examination of the conduct of the accused which my friend submitted does not show he is what one would call a hardened criminal, it is true there are several entries on his conduct sheet but the most are merely minor offences.

There is a charge of AWL of 1 hr and 10 mins, the next is an AWL charge and missing a duty, the next is the most serious one "leaving his post without being properly relieved", and then a charge under Sec 40 of being out after curfew without a pass, another AWL charge of 1 hr, and the last one under Sec 40 appearing on parade unshaven.

None of these are to my mind vicious crimes which would lead the Court to impose a severe sentence for this offence, and I would ask that the Court in awarding sentence exercise the utmost leniency.

The accused is unmarried.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of C-119503 Private V.V EMMENS, 1 Cdn Corps And Army Tps Sub Pk RCOC, a soldier of the Canadian Army Overseas.

By direction of the Commanding officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the prosecution

2nd Lt Robert D. Warren, 33rd Repl Bn, Second Repl Depot, APO 776, U.S. Army, having been duly sworn states:-

On the 5 May 44 at 2030 hours, the 33rd Repl Bn started a night march with Training Platoon "A" leading. I was marching in front of "A" Platoon. We went out the West Gate of Camp, turned right and went east on Highway 87 on the right side of the road. We were marching in column of threes. At about 2100 hours, I saw the lights of an approaching truck, travelling West, in opposite direction to our column. I judged it to be travelling at about 20 to 25 m.p.h. It was keeping well over to its side of the road. I did not see nor hear anything behind that truck owing to its noise and being blinded by its headlights, until this truck was just a few yards, that is approx 10 to 12 yards in front of us, then I could make out the faint outline of another truck, running without lights, attempting to pass the first truck. The driver evidently saw us at the same time because he pulled over to the right to try and avoid hitting us, side-swiping the first truck. He then apparently lost control of his vehicle and drove in to the column, and then into the ditch. Just as I saw the second truck, attempting to pass the first one, I jumped forward and faced the troops and tried to order them off the road but as soon as I turned around and the second truck was side swiping the first one and then drove into the column, near the head of it, angling off towards the rear and ending in the ditch. I sent the first truck to notify the M.P.'s and then attended to the injured. About 10 minutes later ambulances arrived on the scene.

I was on the very first rank of the whole column, with the platoon sergeant on my right. There were no scouts in front of the column. Blackout discipline was maintained on the march and there was no lights showing and no talking.

There were 49 men in "A" Platoon making 16 ranks of three behind the Sgt and myself. Platoon "B" would have the same effective.

After looking after the injured, I took particulars of the truck which hit the column and found it was a Canadian 3-ton Chevrolet truck #CL 42338467. On the right front fender was serial number 69.

According to the nominal roll of my platoon, the men mentioned in Exhibits "A", "B", "C", "D", "E", "F", "G" and "H" died following that accident. Also the men mentioned in Exhibit "I" belong to my platoon and suffered injuries that night.

Cross examined by the accused.

Q-1 Are you positive I had no lights on my truck?
A-1 I did not see any.

Q-2 Is it not possible I had dim lights and you would not have seen them?
A-2 It may be possible but I did not see any lights.

Q-3 Did you hear the sound of a horn being blown?
A-3 No.

Sgd
(Robert D. Warren) 2nd Lt Inf.

SECOND WITNESS for the prosecution.

2nd Lt Dale E. GILREATH, 439 Repl Coy, 33 Repl Bn, 2nd Repl Depot, U.S. Army, having been duly sworn states:

On the evening of 5 May 44, at 2030 hours, the 439th Company started on a night march. I stood at the Initial Point, checking my platoons as they marched by. Upon reaching the West gate of the Camp, the column turned east on Highway 87, marching on the right hand side of the road in column of threes. We marched for about 20 minutes, covering approx ½ mile. After my company had passed the initial point, I started marching towards the head of the column. When I was about 100 to 150 yards from the head of the column, I heard a crashing noise and ran up the rest of the way to the head of the column, and there I saw that a truck had hit the column, running into "A" platoon injuring most of the men of the platoon. I immediately sent for ambulances.

The truck was either British or Canadian, being a right hand drive. I later ascertained it was a Canadian 3-ton lorry. When the accident happened it was approx 2100 hours. It was dark and I don't believe the moon was out. I did not see the lorry coming, I only saw it when it was stopped in the ditch. I did not see any lights on it.

"A" Platoon was led by 2nd Lt Robert D. Warren. It was leading the whole column. There were no lights in front of the column as we are not allowed to have any on tactical route marches.

The accused declines to cross-examine this witness.

Sgd
(Dale E. Gilreath) 2nd Lt Inf.

THIRD WITNESS for the prosecution. Pvt Jerold SIMPKINS, 36149870, HQ Coy, 2nd Repl. Depot, U.S. Army, having been duly sworn states:-

On 5 May 44, at approx 2045 hours, I was driving a 2½-ton 6 x 6 truck #W-451938, West on Route 87 at about 15 m.p.h. About 1 mile east of the west gate Road, a Canadian truck tried to pass me. At that moment I was meeting a column of troops marching four abreast in the opposite direction from me, on my left-hand side of the road. While passing me, this truck hit the left front wheel and fender of my own truck then it seemed to lose control and bounced into the troops, ending up into the ditch on the south side of Highway #87. I immediately stopped my vehicle. When I looked at the other vehicle I saw it was a ¾-ton Canadian truck. I would say this truck was going at approx 30 m.p.h. while passing me. I had two clear headlights on my truck. At no time did I hear a horn blown. I did not hear any noise but that of th crashing on the side of my truck.

This Canadian truck hit the 2nd platoon from the h head of the column. I remained on the scene for a short time, going to notify the M.P.'s about 5 to 10 minutes later. I did not have anything to do with attending to the injured. While the Can truck was passing my own I did not see any glare from its headlights.

I did not see any advance scouts ahead of the column. Before meeting the troops when they were approx 150 yards ahead of me, I saw a light blinking either from a flash-light or from a reflection of my own headlights.

I had a red light showing at the back of my truck. I had just rounded a curve when I first saw the troops at approx 150 yards in front. It is immediately after that the truck passed me.

Cross-examined by the accused.

Q-1 Were the troops not marching three abreast?
A-1 From what I saw, the head column was marching four abreast.

Q-2 Are you positive I hit the second platoon?
A-2 You hit the tailend of the first platoon and head of the second platoon.

Q-3 Do you say I had no lights on?
A-3 You may have had lights on, but I did not see any reflection as my own lights were burning and I did not turn around to see.

Q-4 Would you say I did not sound my horn?
A-4 You may have sounded your horn, but I did not hear it, as I was inside the cab of my truck.

Q-5 How far were you from the curve when I overtook you?
A-5 I had just passed the first culvert west of the curve.

Sgd
Jerold Simpkins Pvt
(Jerold Simpkins) Pvt

FOURTH WITNESS for the prosecution

1891557 Sapper H. Johnson, 256 Field Coy, RE, having been duly sworn, states:

On 5 May 44 at about 2045 hrs I was travelling on an American truck. It was an open truck and I was sitting in the back facing in the direction in which we were going. We were proceeding at about 15 m.p.h. About half way from MIANO di CAIAZ CAIAZZO and the 2nd Repl Depot I heard the noise of a truck about 20 yards behind us on the left side of the road ready to overtake us. I did not notice the sound of any horn. I turned around and saw a 3-ton truck with a tarpaulin over it. I did not pay much attention to its lights. I cannot say whether its lights were on or not.

I reckoned its speed to be about 45 m.p.h.

I turned around again and suddenly noticed troops marching on the road, three abreast, in the opposite direction to ours and on the opposite side of the road. They showed no lights. At that moment the 3-ton truck was overtaking us and side swiped our own on the left hand forward wheel, bouncing off to the left and knocking the troops over. It finished up in the ditch on the side of the road where the troops were marching. The American truck was well into the right hand side of the road. I heard the sound of brakes being applied on the 3-ton truck just as he was trying to overtake us.

Cross examined by the accused

Q-1 Are you positive this truck was going 45 m.p.h.
A-1 I am just reckoning. It may have slower but was going pretty fast.

Sgd
Spr H. Johnson.

(H. Johnson) Spr RE.

FIFTH WITNESS for the prosecution

153578 Sapper T. Raisen, 256 Fd Coy RE, having been duly sworn, states:

On 5 May 44, at about 2045, I was travelling on the back of an American open truck proceeding on Highway 87 towards CAPUA at about 10 to 15 miles per hour. I was sitting and facing more to the back of the truck. At a certain time I notice a truck coming behind us. I did not notice any lights on it. He started to overtake us then seemed to come right onto our side, touched the side of our truck then bounced off into the ditch, hitting some troops which were marching on the other side of the road in the opposite direction. I did notice any lights with the troops.

Cross-examined by the accused

Q-1 Are you positive there were no lights on?
Q-2 All I can say, I did not notice any lights on.

Sgd
Jack Raisen

(Jack Raisen) Spr RE.

SIXTH WITNESS for the prosecution

Corporal Lawrence GEIST, 33568199, M.P. detachment 2nd Repl Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:-

On the 5 May 44, at about 2050 hours, acting on information received I proceeded in the first of some ambulances to the scene of an accident which happened on Highway 87, approx 1 mile east of the west gate of our Camp. On arrving, I saw troops standing around on the road. There were several soldiers lying on the ground and a truck in the ditch on the South side of the road.

I remained on the scene till all the troops and casualties had been removed. Four of us M.P.'s stayed at the scene and another M.P. sent to get a wrecker.

Sgt Chardinet and myself walked approx 15 feet West of the truck where we saw a soldier standing.

On approaching him, this soldier asked me, "What will I do?". I said, "Who are you?". He replied, "I am the driver of the vehicle." Sgt Chardenet then took the soldier to the Provost Marshall's Office. When I first saw this soldier it was 2248 hours.

At that time I could not recognize this soldier.

When I arrived at the scene of the accident it was not very light.

The accused declines to cross-examine this witness.

Sgd

(Lawrence Geist) Cpl

SEVENTH WITNESS for the prosecution

R-131235 Pte W.P. OVERKOTT, 1 Cdn Corps and Army Tps Sub Pk RCOC, having been duly sworn, states:-

On 5 May 44 I was a passenger in a Canadian 3-ton Chevrolet lorry driven by the accused. I was sitting in the front seat, on the left as the vehicle is right hand drive. We were coming back from 67 LAD which was located about 15 miles east of TELESE. We left there in the middle of the afternoon and arrived at AMOROSI around 1700 to 1800 hours. We stayed at AMOROSI about one hour and then started on our way back to our unit. During that hour in AMOROSI we took a rest in the cab of the lorry. I only got out once to try and get some onions. I was gone about 10 minutes. In one of the towns I purchased a glass of wine from a boy and drank it on the spot. That was very early in the afternoon before we went to the 67 LAD. That is all I had to drink that day. The accused to my knowledge did not have any drinks of any kind that day. After we left AMOROSI, I went to sleep. When I woke up I was on a table in an American hospital.

At some time after we left AMOROSI the accused switched on the headlights. It was not very dark then and I could not notice much of the glare.

The accused declines to cross-examine the witness.

Sgd
(W.P. Overkott) Pte.

NINTH WITNESS for the prosecution

Major Franklyn D. FRY, Provost Marshall, 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn states:-

On 5 May 44 at approx 2100 hours, acting on information received I proceeded to the scene of an accident which happened on highway 87, approx one third mile east of the West gate of our Camp.

Upon arriving at the scene of the accident I found a Canadian Army 3-ton truck, serial #CL-4239467 headed in a westerly direction and with both front wheels in the ditch on the south side of the highway, and that a large number of American soldiers were scattered over the road way and in the ditch on the south side of the road. The head of one soldier was wedged in between the left front tire of the 3-ton truck and the south bank of the ditch on the south side of the highway. Ambulances from the 2nd Repl Depot and the 74th Station Hospital arrived soon afterwards and the wounded and the dead American soldiers and one Canadian soldier were removed to the 74th Station Hospital.

I detailed my M.P.'s to halt and direct traffic and render whatever assistance possible for them so to do.

I secured a wrecking truck from the 17th Light Recovery Section R.E.M.E. to remove the Canadian truck.

At about 2315 hours, that same evening, Sgt Chardenet brought a Canadian Soldier to my office where he was identified by his driver's license as: C-119503 Pte V. Emmens, whom I recognize as the accused.

I got back to my office at about 2400 hours and there I saw the accused. I did not smell his breath nor did I have him medically examined as he appeared sober.

After the scene of the accident had been cleared and prior to the removal of the truck I made a thorough search and examination of the surrounding area.

There were no skid marks whatsoever on the road way.

THE accused declines to cross-examine this witness.

Sgd

(Franklin D. Fry) Major A.G.D.

TENTH WITNESS for the prosecution

Major Norman G. LONG, M.C. #0290255 - 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:

At or about 2115 hours on 5 May 1944, I was advised there had been an accident near the camp and that several ambulances had been despatched there. I proceeded to the scene of the accident, which was on highway 87, approx one mile east of the West Gate of the camp. I brought additional medical aid with me. By the time I arrived, first aid had been given but there were approx 12 men unattended, lying on the side of the road, and three others on the other side of the culvert, partially attended. I saw 4 or 5 bodies in the ditch under the body of a truck which was straddling the ditch on the South side of the road. I pronounced these men dead. I then supervised and co-ordinated the first aid squads which by that time were placing the injured on litters and applying splints where indicated and giving first aid as required. Later on that evening, while assisting at 74 Station Hospital I ascertained that seven men were brought in dead on arrival and an eight man died early the following morning.

Due to the number of injured, I am unable to specify individual cases or identities.

The accused declines to cross-examine this witness.

Sgd
(Norman G Long) Major, M.C.

ELEVENTH WITNESS for the prosecution — 1st Lt John E. GROTH, MAC, Registrar, 74th Station Hospital, A.P.O. 383, U.S. Army, having been duly sworn states:-

I hereby produce as an Exhibit "A" copy of letter Report of Death relating to ASN 38497998, Pvt Joseph F. FEDERER, of 33rd Repl Bn, U.S. Army, who was admitted to our hospital on the 5 May 44, at approx 2130 hours, suffering from cerebral contusion, as a result of which this soldier died on the 6 May 44, at 0730 hours.

I also produce as exhibits "B", "C", "D", "E", "F", "G" and "H" copies of Letter Reports of Death relating to:-

ASN 36833704 Pvt Steve LESAVICH (NMI) Jr, 439th Coy, 33rd Replacement Depot Bn. (Ex "B")

ASN 42024564 Pvt Donald G. Lamb, 439th Coy, 33rd Replacement Bn. (Ex "C")

ASN 42024162 Pvt Ralph L. LYKE, 439th Coy, 33rd Replacement Bn. (Ex "D")

ASN 42036075 Pvt William R. SCHENCK, 439th Coy, 33rd Replacement Bn. (Ex "E")

ASN 35894423 Pvt Robert R. LOFAVOLD, 439th Coy, 33rd Replacement Bn. (Ex "F")

ASN 39338484 Pvt Robert E. GREENE, 439th Coy, 33rd Replacement Bn. (Ex "G")

ASN 9668675 Pvt Louis J. PANTIKA, 439th Coy, 33rd Replacement Bn. (Ex "H")

whose bodies were brought in this hospital on 5 May 44, at approx 2130 hours.

I Also produce as Exhibit "I" copy of Diagnosis on Enlisted Men relating to 23 therein mentioned soldiers, who were admitted to this hospital on 5 May 44 at approx 2130 hours.

The accused declines to cross-examine this witness

Sgd
John E. Groth
(John E. Groth) 1st Lt MAC.

TWELFTH WITNESS for the prosecution — Major K.L. ATHEY, MC, 74th Station Hospital, US Army, having been duly sworn states:

I am chief of surgery in this hospital. On the 5 May 44, at approx 2130 hrs, I examined a number of soldiers who had been injured in an accident that same night.

As mentioned in Exhibit "A" Pvt Joseph F. Federer died on 6 May 44 at 0730 hours as a result of cerebral contusion.

NINTH WITNESS: for the prosecution

Major Fran klyn D. FRY, Provost Marshall, 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been dul sworn states:-

On 5 May 44 at apprex 2100 hours, acting on information received I proceeded to the scene of an accident which happened on highway 87, approx one third mile east of the West gate of our Camp.

Upon arriving at the scene of the accident I found a Canadian Army 3-ton truck, serial #CL-4239467 headed in a westerly direction and with both front wheels in the ditch on the south side of the highway, and that a large number of American soldiers were scattered over the road way and in the ditch on the south side of the road. The head of one soldier was wedged in between the left front tire of the 3-ton truck and the south bank of the ditch on the south side of the highway. Ambulances from the 2nd Repl Depot and the 74th Station Hospital arrived soon afterwards and the wo wounded and the dead American soldiers and one Canadian soldier were removed to the 74th Station Hospital.

I detailed my M.P.'s to halt and direct traffic and render whatever assistance possible for them so to do.

I secured a wrecking truck from the 17th Light Recovery Section R.E.M.E. to remove the Canadian truck.

At about 2315 hours, that same even, Sgt Chardenet brought a Canadian Soldier to my office where he was identified by his driver's license as: C-119503 Pte V. Emmens, whom I recognize as the accused.

I got back to my office at about 2400 hours and there I saw the accused. I did not smell his breath nor did I have him medically examined as he appeared sober.

After the scene of the accident had been cleared and prior to the removal of the truck I made a thorough search and examination of the surrounding area.

There were no skid marks whatsoever on the road way.

THE accused declines to cross-examine this witness.

Sgd

(Franklin D. Fry) Major A.G.D.

EIGHT WITNESS for the prosecution

Captain R.L. Davis, 1 Can Corps Tps Wkshop RCOC, having been duly sworn states:

I examined Vehicle #CL4239467 on the 12th May 44 and the brakes on that vehicle were in satisfactory condition. The present condition of the vehicle makes a road test impossible, but this statement is based on the fact that there is approximately 2 inches of pedal clearance, and further, the full effect of the braking system is not utilized without the engine running, due to the booster brake system.

The accused declines to cross-examine this witness.

Sgd
(R.L. Davis) Capt

TENTH WITNESS for the prosecution

Major Norman G. LONG, M.C. 0290255 - 2nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:

At or about 2115 hours on 5 May 1944, I was advised there had been an accident near the camp and that several ambulances had been despatched there. I proceeded to the scene of the accident, which was on highway 87, approx one mile east of the West Gate of the camp. I brought additional medical aid with me. By the time I arrived, first aid had been given but there were approx 12 men unattended, lying on the side of the road, and three others on the other side of the culvert, partially attended. I saw 4 or 5 bodies in the ditch under the body of a truck which was straddling the ditch on the South side of the road. I pronounced these men dead. I then supervised and co-ordinated the first aid squads which by that time were placing the injured on litters and applying splints where indicated and giving first aid as required. Later on that evening, while assisting at 74 Station Hospital I ascertained that seven men were brought in dead on arrival and an eight man died early the following morning.

Due to the number of injured, I am unable to specify individual cases or identities.

The accused declines to cross-examine this witness.

Sgd
(Norman G Long) Major, M.C.

ELEVENTH WITNESS for the prosecution

1st Lt John E. GROTH, MAC, Registrar, 74th Station Hospital, A.P.O. 383, U.S. Army, having been duly sworn states:-

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I also produce as exhibits "B", "C", "D", "E", "F", "G" and "H" copies of Letter Reports of Death relating to:-

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ASN 42024162 Pvt Ralph L. LYKE, 439th Coy, 33rd Replacement Bn. (Ex "D")

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ASN 9668675 Pvt Louis J. FARTIKA, 439th Coy, 33rd Replacement Bn. (Ex "H")

whose bodies were brought in this hospital on 5 May 44, at approx 2130 hours.

I Also produce as Exhibit "I" copy of Diagnosis on Enlisted Men relating to 23 therein mentioned soldiers, who were admitted to this hospital on 5 May 44 at approx 2130 hours.

The accused declines to cross-examine this witness

Sgd
John E. Groth
(John E. Groth) 1st Lt MAC.

TWELFTH WITNESS for the prosecution

Major K.L. ATHEY, MC, 74th Station Hospital, US Army, having been duly sworn states:

I am chief of surgery in this hospital. On the 5 May 44, at approx 2130 hrs, I examined a number of soldiers who had been injured in an accident that same night.

As mentioned in Exhibit "A" Pvt Joseph F. Federer died on 6 May 44 at 0730 hours as a result of cerebral contusion.

After having examined them, I pronounced dead the soldiers mentioned in Exhibits "B", "C", "D", "E", "F", "G" and "H", for the causes mentioned therein.

The accused declines to cross-examine this witness.

Sgd
Kenneth L. Atkey
(Kenneth L. Atkey) Major, M.C.
A.U.S.

THIRTEENTH WITNESS
for the prosecution.

1st Lt William B. HOPPER, CMP, Asst. Provost Marshall, 2Nd Repl. Depot, A.P.O. 776, U.S. Army, having been duly sworn, states:

On the 6 May 44, at 1500 hours, I was present in the office of the Provost Marshall of 2nd Repl Depot, U.S. Army. Lieut C.B. Macdonell, of HQ 1 Cdn Corps and C-119503 Pte Victor V. Emmens whom I now recognize as the accused:

I warned the accused as follows:

"It is my duty to warn you of your rights in this case. You are not required to make a statement. You may remain silent. However, if you do answer any questions or make any statements, whatever you can say may be used for your or against you should this investigation result in a trial. Do you understand what I have just said?" to which the accused replied, "Yes."

I then proceeded to ask questions to the accused. I summarized the answers in narrative form, wrote down the summary and had the accused read the written statement which he signed in my presence and in the presence of Lieutenant Macdonell. He was sworn on this statement before signing it.

I then attested the accused's signature as a Summary Court officer.

I hereby produce this statement as Exhibit " ".

The accused declines to cross-examine this witness.

Sgd
William B Hopper
(William B. Hopper) 1st Lt CMP.

FOURTEENTH WITNESS
for the pro-secution.

Lieutenant C.B. Macdonell, HQ 1 Cdn Corps, having been duly sworn states:-

On 6 May 44, at 1300 hours, I was present in the office of the Provost Marshall of 2nd Repl Depot, U.S. Army. Lieut William B. Hopper, Asst Provost Marshall, 2nd Repl Depot U.S. Army was also present together with the accused, C2119503 whom I recognize.

2nd Lt Hopper warned the accused as follows:

"It is my duty to warn you of your rights in this case. Yo u are n ot required to make a statement. You may remain silent. Howeve if you do answer any questions or make any statements, whatever you can say may be used for you or against you should this investigation result in a trial. Do you understand what I have just said?.", to which the accused replied, "Yes.".

2nd Lt Hopper then proceeded to ask questions to the accused. He summarized the answers in narrative form, wrote down the summary and had the accused read the written statement before signing it.

2nd Lt Hopper then attested the accused's signature as a Summary Court Officer.

I recognize the statement marked as Exhibit " " as the statement made by the accused and attested by 2nd Lt Hopper.

The witness declines to cross-examine this witness.

Sgd
(C.B. Macdonell) Lieut.
HQ 1 Cdn Corps.

FIFTEENTH WITNESS
for the pro-
secution

L-93454 Sgt H.A. RIOUX, 1 Cdn Corps and Army Tps Sub Pk, having been duly sworn stated:

I am the orderly room sergeant of the accused's unit. I hereby produce as Exhibit "J" Part I order No 87 dated 2 May 44, which was duly posted in the regular places within the unit.

I also produce as Exhibit "K" Part I Order No 89 dated 4 May 44. Accused did his guard duty as detailed.

The accused declined to cross-exame this witness.

Sgd
(H.A. Rioux) Sgt.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

Sgd
(V.V. Emmens) Pte.

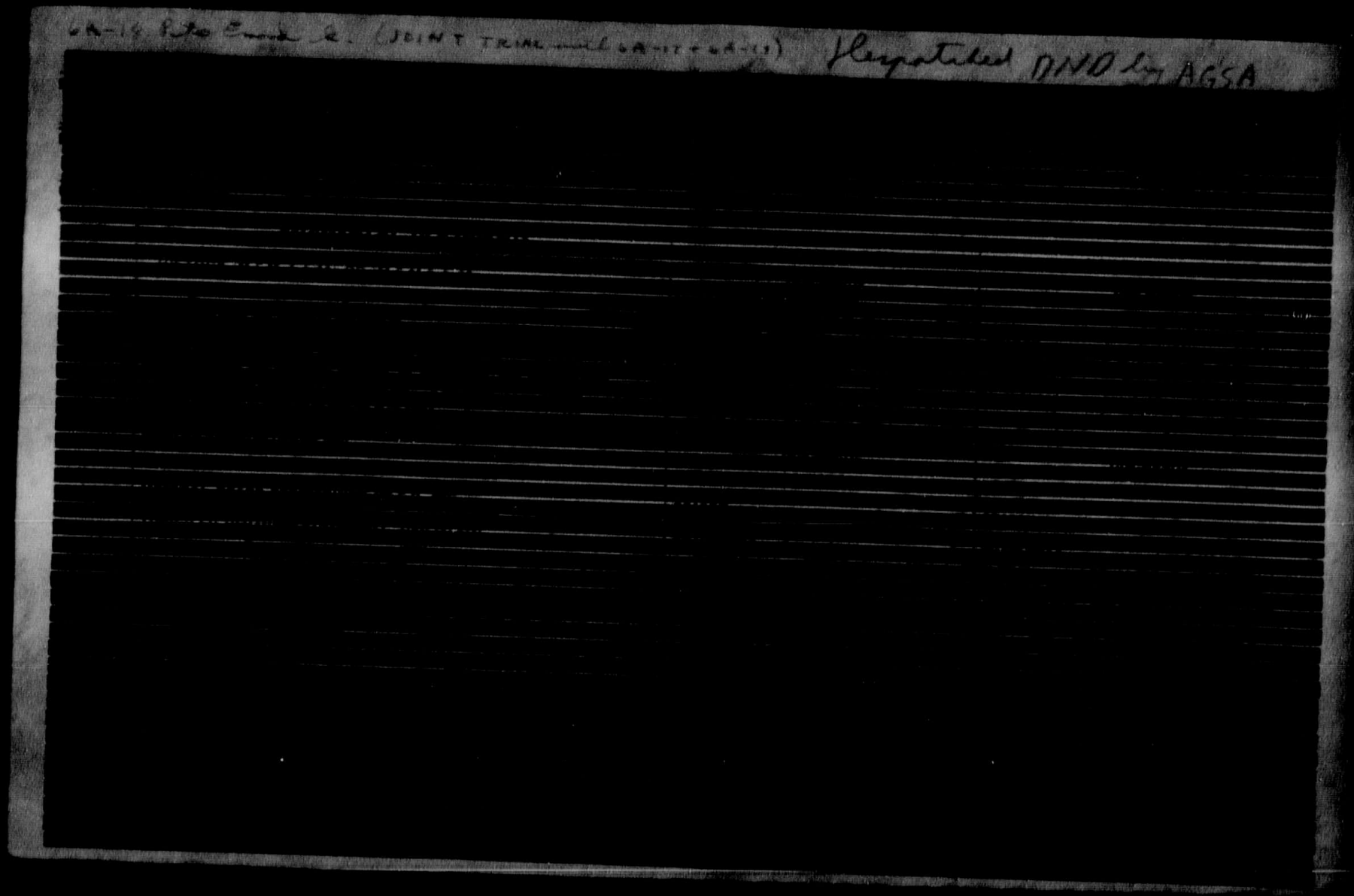
I certify that the forgoing Summary of Evidence consisting of 13 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

Sgd
(A DesRosiers) Captain
Officer detailed to take the
Summary of Evidence.

In the Field
13 May 44.

SZ-109 Pt. Encl 2 Declassified DND by AGSA




GA-14 Pete Smith 2. (JOINT TRIAL with GA-11 & GA-12) Negotiated DNO by AGSA

32-13

Pte. Emard, G

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D118832 Pte (A/Cpl) George EMOND R de Chaud att 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	Guilty	Guilty	
2nd AA 15 (1)	Guilty	Guilty	
3rd AA 15 (1)	Guilty	Guilty	
4th AA 15 (1)	Guilty	Guilty	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

~~At present under sentence for~~ beginning on (date) (1) Mc

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of days, of which days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of two years.

(Sgd) Judge-Advocate, if any. 18 May 45 Date awarded. (Sgd) " G G MacKenzie " Major President. (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(K), 51-56, 120, MML pp 759-767, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn f.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention barracks (until further order).~~ (1) JGS

(1. AA 57A. Delete if not used.)

(Sgd) " J G Spragge "
(J G Spragge) Brigadier
Commanding 2 CDN BASE RFT GP
Confirming Officer.

Date 21 May 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D118832 Pte (A/Cpl) Georges EMOND	26 May 45	" J Medhurst " Lt Col Comdg, 1 Cdn Disciplinary Centre

CR #331
d/26 May 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AS 160 [illegible] CMA - 13

FIELD GENERAL COURT-MARTIAL

CRANBROOK PRESS (AAF) (AF B. 1608 (A) (44))

4/388

Convened by Order of Brig J G Spragge DSO OBE ED Comnd 2 CBRG dated 14 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D118832	Pte (A/Cpl)	Georges	EMOND	R de Chaud att 1 Cdn Disciplinary Centre

CERTIFIED TRUE COPY
[illegible]
Cdn Sec 1 Col Asst JAG

PROCEEDINGS CONFIRMED

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 18 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 33/74

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for notes and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. As 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the O(Sch).~~

(1. KR Can 557. 2. ~~AA 46(B), RP 60 fn 1.~~ For effect see KR Can 561(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans Mc

~~Do you object to~~ as shorthand writer? Ans Mc

~~The Interpreter is sworn.(1) Do you object to the shorthand writer so sworn.(1)~~ Mc

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKenzie MBE	FGH X-9 List 3 Cdn NETD	
Member	Major	G B H Cox	C&C	1 C C M C
Member	Capt	P J Poulin	RCA	1 C C M C
Judge-Advocate				
Prosecutor	Lieut	K A Mackenzie	CIC	1 C C M C
Defending Offr	Lieut	A J Thompson	CIC	1 C C M C

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 38, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 3.)

A8. The accused D118832 Pte(a/Cpl) George EMOND before arraignment makes(s) (no) ~~of~~ plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 36, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 37, RP 53. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*B*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N O (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1). The Court decides (inter alia) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes (change) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ N/C
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

N/C

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 42(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(B) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 113(A). See Notes in Part I of Schedule. 2. RP 44(B).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (c), RP 45, 120(6). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N O
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3) N/C
(*1. MFB 255 or AFB 296. 2. same fn. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Y E S E S (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything then or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(6).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46a-52, 69, 118, 119(4), KR Can 308, 330, 543-564, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Mc

MEDICAL OFFICER'S CERTIFICATE (KR(Can)Para 567)
(CMHQ CL 173)

I certify that I have this day examined D118832
Cpl EMOND and in my opinion he is fit/~~unfit~~ to undergo
trial by Court Martial.

Station 1 Cdn Disciplinary Centre " A A Toms " Capt (3cd)
Medical Officer

Date 18 May 1 Cdn Disciplinary Centre
Unit

Mc

FIELD GENERAL COURT-MARTIAL

CFAGS (To Item of AFAS) 40/F&R/1497 (D68)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D118832	Pte	A/Cpl	Georges	EMOND	R de Chaud att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 May 45 endorsed by me, ~~(or by an offr of my staff for such)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ JGS

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G G MacKenzie MBE		FGH X-9 List 3 Cdn NETD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	G B H Cox	CAC att 1 Cdn Disciplinary Centre
Capt	P J Poulin	Cdn C M Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Date 14 May 45

" J G SPRAGGE " (Signed personally. RP 105 fn 2.)

(J G Sprague)

Commanding 2 CDN BASE RFT GP Convening Offcer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET Mc

The accused, [illegible] Cpl George [illegible], Le Regt De La Chaudiere, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

[illegible] ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the Field, absented himself without leave from 1900 hrs 11 Nov 44 until 2000 hrs 17 Dec 44. apprehended.

(Total absence: 36 days 5 hrs)

SECOND CHARGE
Sec 15 (1)
Army Act

[illegible] ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the Field, absented himself without leave from 0900 hrs 20 Dec 44 until apprehended at 0100 hrs 17 Jan 45.

(Total absence: 28 days 17 hrs)

THIRD CHARGE
Sec 15 (1)
Army Act

[illegible] ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the Field, absented himself without leave from 1735 hrs 17 Jan 45 until 0001 hrs 8 Feb 45. surrendered.

(Total absence: 21 days 6 hrs 26 minutes)

FOURTH CHARGE
Sec 15 (1)
Army Act

[illegible] ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the Field, absented himself without leave from 2000 hrs 8 Feb 45 until apprehended at 1510 hrs 20 Feb 45.

(Total absence: 11 days 20 hrs 10 minutes)

Recorded for Summary of Evidence

In the Field
11 May 45

[signature]
[illegible] Lt Col
Commanding
1 Cdn Disciplinary Centre

Recorded for Field General Court-Martial

In the Field
11 May 45

[signature]
[illegible] Lt Col
Commanding
1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

" J G Spragge " Brig

In the Field
14 May 45

(J G Spragge) Brigadier
Commander
2 Cdn Base Rft Gp

Case of D118832 Cpl EMOND G. EX E3
Mc

MITIGATION PLEA

The accused enlisted in Dec 1941 when he was only 17 years old - and came to England in Aug 1942. He came to France with his unit on D Day, and remained with his unit on the field until he was taken prisoner with the rest of his company on 17 October - a period of nearly 4½ months. After 12 days captivity he was rescued - and sent back into the front line. Hence he probably felt he had some reason for going AWL, after having been through so much.

I would ask the court to consider the above facts in mitigation of punishment.

" A J Thompson " Lieut
Defending Officer

Ex A
Mc

Pte

Summary of Evidence in the case of [illegible] Joseph [illegible] Le Roy Du Chambord, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charges - Absence without leave — Four charges

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 1 dated 7 Jan 45

Exhibit "B" - Certified true copy of Extract from Pt II Order No 6 dated 28 Jan 45

Exhibit "C" - Certified true copy of Extract from Pt II Order No 13 dated 6 Mar 45

Exhibit "D" - Certified true copy of Extract from Pt II Order No 20 dated 6 Apr 45

Exhibit "E" - Certificate of apprehension dated 21 Feb 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (d) (f) (g) (y) and (6) have been complied with.

J. M. Rousseau Capt
(J. Rose Rousseau) Capt
Officer detailed to the Summary of Evidence.

Dated in the Field
11 May 45

Mc

PART II ORDER EXTRACT FORM.

99/20/Chaud/1 (A4c)

TO: OC
1 Cdn Disciplinary Centre
Cdn Army Overseas

29 Mar 1945

EXTRACTS FROM: UNIT LE REGIMENT DE LA CHAUDIERE

Part II Order No 1 dated 7 Jan 45

ABSENCE WITHOUT LEAVE

AWL from 1500 hrs 11 Nov 44 App from AWL 2000 hrs 17 DEC 44
D118832 Pte WOOD G

Certified to be a true extract from the regimental books and documents in my custody.

"H FRANKLIN" Capt
Officer i/c Records "C"
Cdn Sec 2 Echn HQ 21 A Gp

Certified true copy of Exhibit "A"
M. Rousseau Capt

Mc

PART II ORDER EXTRACT FORM

99/20/ Chmnd/1 (A5a)

TO: OC
1 Cdn Disciplinary Centre
Cdn Army Overseas

29 Mar 1945

EXTRACTS FROM: UNIT LE REGIMENT DE LA CHAUDIERE
Part II Order No 6 dated 28 Jan 45

ABSENT WITHOUT LEAVE

AWL from 0900 hrs 20 Dec 44 App from AWL 0100 hrs 13 Jan 45
D118832 Pte ROND C

Certified to be a true extract from the regimental books and documents in my custody

"H PRESTON" Capt
Officer IC Records "G"
Cdn Sec 2 Mob HQ 21 A Gp

Certified true copy of Exhibit "B"
M Rousseau Capt

TO: O C
1 Cdn Disciplinary Centre
Cdn Army Overseas

PART II ORDER EXTRACT FORM

Mc

99/20/Chaud/1 (A5a)

29 Mar 1945

EXTRACTS FROM: UNIT LE REGIMENT DE LA CHAUDIERE
Part II Order No 13 dated 6 Mar 45

ABSENT WITHOUT LEAVE

AWL from 1735 hrs 17 JAN 45 Ret from AWL 0001 hr 8 Feb 45
D118832 Pte RHOMD C

Certified to be a true extract from the regimental books and documents in my custody.

[illegible]
Officer IC Records
Cdn Sec 2 Neh HQ 21 A Gp

Certified true copy of Exhibit "G"
M. Rousseau Capt

PART II ORDER EXTRACT FORM

Mc

99/20/

AB

30 Mar 45

EXTRACTS FROM: UNIT X 3 LE REGIMENT DE LA CHAUDIERE

Part II Order No 32 dated 6 Mar 45

ABSENT WITHOUT LEAVE

3. AWL from 2200 hrs 8 Feb 45

D113832 Pte EMOND G (X3List)

Certified to be a true extract from the regimental books and documents in my custody

"R S C WILLIAMS" LA
Officer IC Records "X"
Cdn Sec 2 Exh HQ 21 A Gp

Certified true copy of Exhibit "P" re Rousseau Exhibit

Mc

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (j)

Certified that No D118832 Rank Pte Name Emond G
of the Regt De Mais, "B" Coy 3 Div Regt was apprehended by B76525
Rank L cpl Name Bourdeau A F of the 2 Cdn L of C Pro Coy
at Ghent at 1810 hrs on the 20th day of Feb 45 as an absentee without
leave. He was wearing military Uniform at the time of his arrest

Place Field GHENT DET 2 Cdn L of C "C WOOD" DAPM 2 CDNC
Provost Coy A Group Capt Cdn Pro Corps

Date 21 Feb 45 Certified true copy of Exhibit "B" [illegible]
Capt

Ex C
Mc

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)

D-11832 The following is a true summary of the Field Conduct Sheet of the accused, exclusive of convictions by court-martial or a civil court:-

For _____ _____ times

For ~~AA Sec 8~~ 1 times

For ~~AA Sec 15 (2)~~ 2 times

For ~~AA Sec 40~~ 1 times

Date of first entry in Field Conduct Sheet 1 ~~AA Sec 11~~

Date of last entry in Field Conduct Sheet ~~26 Sep 42~~ 19 Mar 44

2. Previous convictions of the Accused by a Court-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for _____ beginning on the _____ day of _____. N/A

4. The accused has been awaiting trial on the present charges for N/A days in civil custody and for 86 days in military custody, i.e. _____ days in Open Arrest 86 days in Close Arrest, of which _____ days were spent in hospital.

5. The present age of the accused is 20 years 8 months old.

6. The date of his Attestation is _____.

7. The service which the accused is allowed to reckon _____.

8. The accused is in possession of _____.

9. (If the accused is a warrant Officer or WO) The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of _____	_____
In the War substansive rank of _____	_____
In the acting rank of _____	_____

SCHEDULE OF CONVICTIONS BY COURT MARTIAL OR CIVIL COURT

Description of Court by which tried	Date & Place of trial	Charges upon which convicted	Sentence of court	Remissions or Sentence suspended
FOCH	Field 15 Mar 44	AA Sec 9 (2)	90 days detention	

I HEREBY CERTIFY that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief.

Signed this 18 day of May 1945

_____

Ex B

No D-118032 Name [redacted] Georges | Sqn, Battery, or Company | Corps CIC | Date of enlistment 2 Dec 41 | Rank | Service or Proficiency Pay | MFM 6 (AFB 127) 40/PAM/138 (5438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Pass	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA 8 (insubordinate language to superior officer)		28 days det	26 Dep 42	OC 1 CBRD	
Field		Pte		AA 15 (1) AWL 2 hrs		3 days forf pay	23Jan 43	"	
Field		Pte		AA 15 (1) AWL 6 hrs 30 mins		27 days det	5 Mar 43	"	
Field		Pte		AA 40		3 days forf pay	20 May 43	1 CORU	
Field		Pte		AA 11		3 days forf pay	1 Jun 43	"	
Field		Pte		AA 9(2)		90 days det	15 Mar 44	FGCM	

DUPLICATE CREATED FROM MFM 6 3 Mar 45 RECORD OF CONDUCT IN CANADA NOT AVAILABLE

"B T SAUNDERS" Captain
Officer IC Records "X" Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of MFM 6 in my possession

Adm. Offr.

PTO

FFF-144
PTE EMOND G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D/118832 Pte Georges EMOND, 3 Cdn Inf Tps Wksp, RCOC

	Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Not Guilty	Guilty.	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings sec RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present service sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 90 days

(Sgd) ..... 15 March 44 (Sgd) H.H. Baldwin
Judge-Advocate, if any. Date awarded. President (RP 45, 50 Para 2)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~Sentence is not confirmed. Proceedings are returned for further action.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) R O Gilmour

Date 17 Mar 44 (R O G Morton) Brig
Commanding A/Comd 3 Cdn Inf Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
Emond G	30 MAR 43. 20 Mar 44	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. FFF 144

FIELD GENERAL COURT-MARTIAL

CFAP6 (in lieu of AFA3) 40-P.A.R./1608 (2864)

Convened by Order of Brig R O G Morton A/Comd 3 Cdn Div dated 14 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D/118832	Pte	Georges	EMOND	3 Cdn Inf Tps Wksp, RCOC

PROCEEDINGS REVIEWED
R. Beaurivage
31 MAR 44 Capt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 15 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~to interpreter~~? Ans ~~No~~.
~~The Interpreter is sworn.~~ (1) Do you object to ~~the shorthand writer is sworn.~~ (1) ~~no shorthand writer~~? Ans ~~No~~.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F H Baldwin	27 Cdn Armd Regt
Member	Capt	G C Clarke	C H of C (MG)
Member	Lieut	G R Malcolm	19 Cdn Fd Regt (SP) RCA
~~Judge-Advocate~~			
Prosecutor	Capt.	W.A.C. Williams	3 Cdn Inf Tps Wksp
~~Defending Offr~~			

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans N/A (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Q4, p 3.)

A8. The accused D/118832 Pte Georges EMOND before arraignment makes (no) (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95s to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 105; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 1. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn a. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by one of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans Witness Do you intend to call witnesses on your behalf?
Ans Two Are they witnesses as to character only? Ans No
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.~~(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copies~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFB 325 or MFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans No
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 68, 118, 119(A), KR Can 308, 336, 343-366, Overseas RO 309, 2323, MML p 80, 757-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1E), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused -- D/118832 Pte Georges Emond, 3rd Canadian Infantry Troops Workshop, Royal Canadian Ordnance Corps, a soldier of the Canadian Army placed on active service -- is charged with:

First Charge
Army Act
Sec 9(2)

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field at 1400 hrs 9 Mar 44 did not return to his duties in the kitchen and clean the pots and pans when ordered to do so by Lieut S L Erwin, RCOC.

(J B Annand) Major
Officer Commanding
3 Cdn Inf Tps Wksp, RCOC

In the field
10 Mar 1944

To be tried by Field General Court Martial.

(R O G Morton) Brig
a/Comd 3 Cdn Inf Div

In the field
14 Mar 1944

FIELD GENERAL COURT-MARTIAL

CFA65 (In lieu of AFA3)
40/FMS/1697 (2865)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D/118832	Pte		Georges	EMOND	3 Cdn Inf Tps Wksp, RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 14 Mar 44 endorsed by me, (~~or by an officer that for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial by reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	F H Baldwin		27 Cdn Armd Regt

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	G C Clarke		C H of O (MG)
Lieut	G R Malcolm		19 Cdn Fd Regt (SP) RCA

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	N B Richardson		14 Cdn Fd Regt, RCA

~~JUDGE-ADVOCATE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(*Country*)

TD 9 Mar
(~~Commanding~~ *Seniority, RP 105 fn 2.*) (*Rank.*)
(R O C Horton) Brig
~~Commanding~~ a/Comd 3 Cdn Inf Div
Convening Officer.

Date 14 Mar 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

In the field

Date 15 MARCH 44

I certify that I have this day examined the accused

DUFFY, Pfc Edward G. of 2 Cml Inf Tps WASP & COC

and that he is fit/~~unfit~~ to undergo trial by Field General Court Martial.

[signature] Major MC

Medical Officer

Unit 23 Sub-Fld Ambulance

H.W.B.

Opening address by Prosecution H.W.B.
in the trial by F.G.C.M.

of D48832 Pte. Georges Emond,
a member on Active Service, of
3 Cdn. Infantry Tps. Workshop RCOC (REME)

The accused is charged with an
offence against Army Act 9, Sub. Section
(a) in that he, in the field on Thursday,
9 March 44, disobeyed a lawful command
given by his superior officer in that he
refused ~~[illegible]~~ to carry out an order
given by the Adjutant, Lieut S.L. Erwin,
3 Cdn. Inf. Tps. Wksp. and also that he
subsequently failed to carry out that order.

Evidence will be produced ~~that~~ to prove
that

(a) there was a lawful command
given by his superior officer
(b) there was no prompt and immediate
compliance, ~~and the order~~ as was demanded
(c) the accused understood the order.

H.H. Williams Capt.
3 C I T Wksp
15 Mar 44

H.H. Baldock
Major

1.

Trial of no D118832 Pte GEORGES EDMOND
3 CDN INF TPS WKSP, RCOC

"CAPt WFG WILLIAMS 3 CDN INF TPS WKSP, RCOC appears as prosecutor"

"accused declines to be represented by counsel"

"PROSECUTION"

Prosecutor opening address Evidence will be produced to show

(1) That was a lawful command given the accused by his superior officer

(2) That there was no prompt and immediate compliance with the order as demanded.

(3) That the accused understood the order

1st witness for Prosecution Lt Erwin sworn. 3 Cdn Pay Sta. Adj and admn

At about 1330 hrs on the 9th March 44 Pte Edmond G was paraded before me on due form by the Regtl NCO in order to make a complaint he stated at that time that he had been ordered to do a fatigue task of pots and pans and that he did not feel it was his duty nor was it the duty for which he had been primarily ordered by the Ketchen Attendant ordered him to return to the kitchen and because of what I considered was a misunderstanding, I ordered him to carry out his duties as he understood them to be. I then interviewed the NCO in Ketchen Cpl Boyne and learned from him that the pots and pans were a necessary detail to be accomplished by Pte Edmond and he stated that he had already ordered Pte Edmond to do the pots and pans. I then sent for Pte Edmond and because I thought there was still a chance of misunderstanding on his part of any officer what was required and explained to him that the was a necessary detail and he was to carry out the orders of the NCO in charge

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it was necessary to do the pots and pans. Pte Edmond replied that he understood that it was an order from myself, that he was not disobeying an order but that he would not do the pots and pans. I spoke to Pte Edmond this time and he was attending a detail which was part of his duty and which concluded at 1530 hrs. I then spoke to Pte Edmond at approx 1520 hrs and gave him time to indicate his intention and then, again, ordered by the Regt RCO, Staff Sgt Lowry, I found him in the mens mess which is located some 75 ft from the kitchen & the presence of the RCO and Pte MacIntyre I questioned Pte Edmond as to whether he had understood that I had given him an order he replied that he understood. When queried him as to his understanding of my order specifying his duty to clean the pots and pans he again replied in the affirmative I then stated that I was charging him with disobedience of orders and placing him under close arrest, to which he replied I am not disobeying an order but I will not do the pots and pans.

Prosecution examines witness

~~You ordered accused to carry out his duty as he understood~~

Q. What was your exact order to the accused at 1330 hrs?

A. My order was that he return to the kitchen and carry out his duties as he understood them to be

Q. At what time did you send for him the second time

A. At appx 1340 hrs

Q. What was your specific order at this time

A. To return to the kitchen and report to the pots and pans as he had been ordered

to do by the PCO in charge.
Q. What time did the lecture start
A. Shortly after 1700 hrs.
Cont'd Q. Who gave original order to Pte Edmond
A. I believe it was given by the PCO.
Lecture
The accused then examined witness
No Questions
Second Witness

J. 32134 Gpl Boyne GR RCASC attached
3 Cdn Inf Pro whose, sworn, states;
On returning from meal parade
I told Pte Edmond he would have to
wash pots and pans he answered, I'll
wash pots and pans & said very well
go over to the orderly room I said very well
he went out of the kitchen to the orderly
room & went in and saw the adj
& told me he had seen the adj and
that the adj would send for me later.
I went and explained to case to the
adj the adj asked me to send over
Pte Edmond which I did. When he came
back he asked me what he duties were
back & asked me what he duties were
and I told him pots and pans to wash
and I told him pots and pans to wash
no, next.
The accused declines to cross examine witness
Prosecution ~~cross~~ examines witness
Q. Do you recognize accused as person
named in charge?
A. Yes.
Q. At what time did you order accused
to wash pots and pans?
A. Appx 12 30 or 12 45 hrs
Q. What was your exact order at that time.
A. You will have to do pots and pans.
Q. How long does it usually take for one
man to do the pots and pans
A. About 2 hours
Q. How many men usually do that duty
A. One man only - I mean to say
two hours after each meal only
Q. How much of the duty of cleaning the pots
and pans came out when he was
again in the presence of the adj
A. None. Sir.

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Q. What was your exact order to the accused when he returned from serving the duty.

A. He asked me "What am I to do" and I said pots and pans.

Court Q. Is you assign duties to men allotted to kitchen fatigue

A. Yes.

Court Q. Was accused detached daily or by the week for the task

A. It was the day off for the regular man on pots and pans and it was for that reason I assigned the accused that duty.

The accused declines to cross examine witness

Pte [redacted] Q. State your duties

A. M 60053 Sgt Lowry J M 3 Edm Inf Bde (Sworn) sworn, State: I am regtl NCO Duties by Battalion

Q. Will you tell what you know about the accused that date to the trial?

A. On March 9/18 at appx 1520 hrs I accompanied Lt Erwin to the unit kitchen [redacted] to find Edmond on duty We found him on the mess room Lt Erwin asked him why he was not on duty in the kitchen. Pte Edmond answered, I will go on duty in the kitchen but will not wash pots and pans. Lt Erwin ordered Edmond to go to the kitchen and wash pots and pans Pte Edmond said that he would not do it. Lt Erwin placed him under close arrest.

Q. Is you recognize accused as being the person mentioned in the charge?

A. Yes sir.

"Defence" The accused declines to cross examine witness

"Defence" ~~Nil~~

The accused elected to make a statement under Sec 77 (2)

D 118832 Pte Edmond J. 3 cdn Inf Bde Pro

~~Nil~~ I state my full name is Edmond J. 3 cdn Inf Bde Pro D 118832 Pte Edmond J. I was attached by On 6 March 1944 I was detailed by Cpl Murray to go into the kitchen & peel potatoes on replacement for a man who had gone on 9 days leave. On 9 March Cpl Boyne told me that I would have to wash pots and pans. I had just finished two weeks ~~on~~ pots and pans and two weeks on pots and pans and when I got my day off to be detailed one to the cooks to wash the pots and pans. I was taken off the pots after two weeks because my hands were chopped. Cpl Smith had been bandaging them for me. That is all I have to say.

"Before finding" Accused declines to make a statement in defence, although asked if he desires to do so

"The court was cleared to consider the finding"

"Finding" - Guilty.

"After finding" - The court being re-opened, the accused is again brought before it

---

"Sentence" To undergo detention for a period of 90 days

Signed at field this 15th day of March 1944

W.W. Baldwin Major President FSCM

FMP.

5th Mar 44

Summing up by Prosecutor.

in Case against D 118832 Pte Georges Emond

In sums up it has been proved by evidence of all three witnesses in this case that in two cases specific orders were disobeyed. The accused himself admits that he understood the meaning of the order when he said he owned obey the order and in the next breath that he owned not do pots and pans which was the specific order.

At 1340 hrs on 4 Mar the Adjutant whose testimony you have heard, gave this order to the accused. "You will go to the kitchen and do the pots and pans as ordered by the Cpl. Cook in charge of the kitchen."

Previously at 1230 hrs on the same day the Cpl in charge of the kitchen, the second witness, gave the accused "this order" "You will do pots and pans," to which the accused replied "Not I, let me get my ~~this~~ Mess Tins before I break something up".

The third witness stated he heard the adjutants orders and the reply of the accused.

I submit that a prima facie, case has been brought against the accused because ~~there~~ was a lawful command given by the adjutant and the Cpl Cook, the accused's immediate superiors and because the accused understood the orders as he has admitted in that he did not question the evidence against him and because finally there was no prompt and immediate compliance with the orders to wash pots and pans at any time during the 4 Mar as has been borne out by testimony which again was not questioned by the accused.

May I draw the attention of the Court to MML Chapter III paras 11, 12, & 13 which deal with essential ingredients of offence of disobedience, the meaning of lawful command and the duty of obedience.

J H Williams Capt (Prosecutor)

APPENDIX E

I, D.116832 Pte Georges EMOND, do not desire to have an officer assigned to represent me at my trial by Court-Martial.

(D.116832 Pte Emond G.)

10 Mar 44

Officers under Instruction 15 Jan 44

Lieut. W.C. Bowman - C.H. of O (MG)
Lieut. K. Pauley - C.H. of O (MG)
Lieut. J.G. Thompson - 3 Coy Bn/Tpt HQ Sqn.

J.H. Baldwin
Major.

APPENDIX G

SUMMARY OF EVIDENCE

in the case of

No. D.118632, Pte Georges EMOND, No. 3 Canadian Infantry Troops Workshop, Royal Canadian Ordnance Corps, a soldier of the Canadian Army placed on active service.

CHARGES

1. Disobeying a lawful command given by his superior officer.

The Commanding Officer directs that the evidence be taken on oath.

First witness Lieut. B.L. Erwin, 3 Canadian Infantry Troops Workshop R.C.O.C., having been duly sworn, states:-

I am the Adjutant of the 3 Cdn Inf Tps Wksp, R.C.O., On or about 1330 hrs, on 9 Mar 44, Pte Emond was paraded before me in due form by the Regimental N.C.O. He wished to express his complaint over duties that had been assigned to him in the form of cleaning pots and pans in the kitchen. At that time I did not wish to issue an order to him until I could investigate the circumstances under which he was working in the kitchen, so I instructed him to go back to the kitchen and carry on what he considered were his duties.

About 1340 hrs I spoke with Pte Emond again and explained the situation as I saw it, in that these duties, were unnecessarily required of him and that I was ordering him back to the kitchen to do his duties as assigned by the Corporal-in-charge-Kitchen on the pots and pans. At this time Pte Emond stated he would go back to the kitchen and do his duties but he would not do the pots and pans. I repeated my order and asked him if he understood that I was ordering him to do the pots and pans, to which he replied, that he understood but he would not do the pots and pans.

About 1445 hrs I asked the Regimental N.C.O. to accompany me to see if my orders were being carried out. We found Pte Emond in the Sergeants' Mess attending a class of instruction which he was detailed to attend until 1500 hrs. I considered this proper so I waited until approximately 1520 hrs, and I again sought out Pte Emond accompanied by the Regimental N.C.O. We found him in the Mens' Mess. In the presence of the Regimental N.C.O. and Pte MacIntyre I asked Pte Emond if he had understood my orders to return to the kitchen and do the pots and pans. He replied he understood my order. I then asked if he realized that he was disobeying an order to which he replied, "I am not disobeying an order, but I will not do the pots and pans." I, therefore, turned Pte Emond over to the Regimental N.C.O. and directed that he be placed under close arrest, awaiting charge for disobeyance of an order.

Last witness Lieut S.L. Erwin Statement continued:

The accused declined to cross-examine.

S L Erwin
Lieut

2nd witness M.60053 S/Sgt Lowrey J.M., 3 Cdn Inf Tps Wksp, R.C.O.C., having been duly sworn, states:-

I am the Regimental N.C.O. of 3 Cdn. Inf Tps Wksp RCOC. On the 9 Mar 44, about 1520 hrs, I accompanied Lieut Erwin out to the kitchen. From the kitchen we went to the Mens' Mess where we saw Pte Emond. Lieut Erwin asked Pte Emond what the trouble was and why he was not in the kitchen on duty. Pte Emond said, "He would go in the kitchen but would not wash pots and pans." Lieut Erwin ordered him to report back to the kitchen to wash pots and pans. Pte Emond said, "He would not do it." Lieut Erwin then placed Pte Emond under close arrest.

Cross-examined by Pte Emond:

Question: Did I not say I did not disobey the order, but that I will not wash pots and pans?

Answer: That is correct.

S/Sgt Lowrey J.M.

3rd witness C.138134 Cpl Boyne G.R., 3 Cdn Inf Tps Wksp, R.C.O.C., having been duly sworn, states:-

I am the N.C.O. in charge Cook House and the Cook House fatigue.

When I returned from the Meal Parade at 1230 hrs, 9 Mar 44, I told Pte Emond that he would have to wash the pots and pans. He replied "I will go to the Orderly Room first." I said, "Very well." About an hour later the same afternoon Pte Emond came into the Cook House again, he commenced to peel potatoes, I then asked, "If he had been into the Orderly Room." Where upon he replied, "I have seen the Adjutant, and that he will send for you". I then came over to see the Adjutant myself. The Adjutant ordered me to parade Pte Emond before him at once. Pte Emond then paraded himself to the Adjutant, and on returning to the Cook House after the interval, said to me, "What do you want me to do?", and I replied "Pots and Pans". He replied "Not I. Let me get my Mess Tins before I break something up."

Cross-examined by Pte Emond:

Question: Are you really in charge of the Cook House fatigue?

Answer: Yes, I am in charge of the Cook House Fatigue.

Question: I was detailed by Cpl Murray to peel potatoes in the Cook House in place of a man who was off-duty.

Answer: When Cpl Murray detailed you to peel potatoes you came under me for duty.

Cpl Boyne G.R.

4. WITNESS F.88617 Pte Mac Intyre D.J., 3 Cdn Inf Tps Wksp, R.C.O.C., having been duly sworn, states:-

I was in the Mess Hall, Thursday, 9 Mar 44, about 1500 hrs, Lieut Erwin came in. Pte Emond was also present. I heard Lieut Erwin say, "Are you going to work?", or words to that effect. Pte Emond said that he would go to work in the kitchen but would not work on pots and pans.

The accused declined to cross-examine.

Pte Mac Intyre D J

QUESTION TO THE ACCUSED:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing any may be given in evidence.

ANSER BY ACCUSED:

I have nothing to say.

Emond L.

I certify that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Taken down by me in the presence of the accused at the Field, this 10th day of March, 1944.

Donald Dunn Lt

(D. Dunn) Lieut,
3 Cdn Inf Tps Wksp RCOC.

No D116632 Name EMOND G. | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 2 Dec 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) (TAS/136 (3456))

Date of last entry in Company Conduct Sheet 27 May 43 | No and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ON COMPLETION OF SIX MONTHS SERVICE PREVIOUS SHEET DESTROYED 2 JUL 42, LAST ENTRY 27 MAY 42, CASES OF DRUNKENNESS (NIL									
St. John	7-7-42	Pte		(1) Breaking out of Barracks A.A. Sec 10 (2) Conduct to the prejudice of good order and Military Discipline, Failing to appear on Parade.	L/CPL Brown Sgt Hitchcock Pte Young	For both charges 14 days C.B. Forf. 14 days Pay.	22-7-42	Major W.H. WATSON	
St. John	26-7-42	Pte		Conduct to the prejudice of good order and Military Discipline A.A. SEC 40	CAPT J.W. WHARTON Sgt Feller	168 hrs Detention	28-7-42	Capt J.B. NETTLEFIELD	
Field	2[illegible]-9-42	Pte		Insubordinate language to Superior Officer A.A.S	L/Cpl Sookoloski	28 days Detention	26-9-42	Lt-Co. C.C. FERRIE	

(PTO)

Exhibit B

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Peper Harow	21-1-43	Pte		AA SEC 51 WOAS AWL from 2230 hrs 21-1-43 until 0030 hrs 22-1-43 total time absent 2 hrs.	Pte Bulger Pte Silverman	3 days for. pay FR&I 149(2)	23 Jan 43		
Glasgow	10-2-43	Pte		WOAS Sec 40 AA Conduct to the prejudice of good Order and Military Discipline in that he was improperly dressed.	DOC.	Admonished	3 Mar 43		
Peper Harow	4-3-43	Pte		WOAS Sec 15 A.A. AWL from 1530 hrs 4-3-43 until 2220 4-3-43 total time absent 6 hrs and 50 minutes.	Major Shelley Cpl Oke. Pte Johnson	27 days Detention	5-3-43		

No 5148932 Name EMOND. G Sqn, Battery, or Company Corps R C A C Date of enlistment 7.12.41 GC Badges Service or Proficiency Pay

MFM 6 (AFB 122) (P48/136 (3438))

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 May 43	Pte		A.A.SEC40 conduct to the prejudice of good order and military discipline etc. in that he at Alton at approx. 2130 hrs 1 May 43 did appear improperly dressed wearing a black tie with khaki shirt whilst dressed in Battle Dress.	DOC. Cpl Wignall	Awarded forf. 3 days pay.	20 May 43		
Field	25 May 43	Pte		A.A.SEC 11 CONTRARY to camp orders in that he WCAS at approx 1350 hrs 25 May 43 was apprehended in the village of Bordon without the required pass.	DOC.	Awarded forf. 3 days pay.	1 Jun 43		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified true copy of original documents in my custody.

Donald Dunn Lt

10 Mar. 1944

Exhibit A

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-30-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D.118832	Private	Georges EMOND	3 Cdn Inf Tps Wksp RCOC

1. The following is a fair and true summary of the entries in the Field Service Conduct sheets [illegible] under section [illegible] of the [illegible]

	Within last 12 months			Since enlistment or appointment		
For	A.W.L. A.A. 15	1 times		A.W.L. A.A.15	3 times	
For	Conduct to prejudice A.A. 40	2 times		Conduct to prej. A.A.40	4 times	
For		times		Insubordination A.A. 8	1 times	
For		times		Breaking Barracks A.A.10	1 times	

2. [illegible]

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and ~~SEVEN~~ [illegible] days in military custody, making a total of ~~SEVEN~~ [illegible] days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs. 6 mos.

6. The date of his attestation specified in his record of service is 2 December 1941

7. [illegible]

8. [illegible]

9. The accused is in possession of [illegible] military decoration, [illegible] State any military decoration Cdn Volunteer Service Medal and Clasp.

10. [illegible]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force
..... dated ....., and in his regiment (or corps), the rank of unit
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

J.W. Baldwin President F.S.C.M.
Major

Donald J. [illegible]
D.C.I.T. R.C.
10 Mar. 44.

41-46

Pte. Emond. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : Pte EMOND H.

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA sec 15(1)	Guilty	Guilty	
2nd AA sec 15(1)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~At present under sentence for~~ 1 year imprisonment beginning on (date) 26 June 44. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Term in confinement awaiting present trial on trial of ..... days of which ..... days were spent in hospital.~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.) "CDA"

Sentence Awarded by the Court :

To be imprisoned with hard labour for 19 months.

(Sgd) ..... 11 NOV 44 (Sgd) "C.D. Arnold" Maj.
Judge Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

CONFIRMED

~~I direct that the accused be not permitted to prefer an application for mercy and further orders (1).~~ "TGG"

(1. AA 57A. Delete if not used.)

(Sgd) "T.G. Gibson" Brig.

Date 13 Nov 44. COMMANDER

Commanding 1 CDN BASE SUP GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B38077 Pte Edmond H	15 nov 44	"T. Dick"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

RECORDED AT CMHQ IN AB 168 4I-46

FIELD GENERAL COURT-MARTIAL

4/38B

(D.W. Owen) Capt.
Cdn Sec GHQ 2 Ech - AAI BrigEW Haldenby Comd 1CBRGp dated 8 NOV 44
Convened by Order of ~~6 Dec 44~~.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B133077	Pte	Herve	EMOND	2 Cdn Fd Pun CAMP.

PROCEEDINGS REVIEWED
"W.P. Taylor" MAJOR
22 Nov 44. DJA
Cdn Sec GHQ 2 Ech - AAI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 11 Nov 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE: WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record witnesses, evidence, etc, which instrs are hereafter called "hears". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) "CDA"

(1. As to use of Summary of Evidence see RP 13 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences. "CDA"

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) "CDA"
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO.~~(2) "CDA" "77

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused~~ : Do you object to ..... as interpreter ? Ans .....
The Interpreter is sworn.(1) Do you object to "CDA" as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 50(B). If objection, see procedure AA 51, RP 15, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	C.D. ARNOLD	(CIC)	2 CDN RETD
Member	Capt	D. BAULD	(CIC)	" "
Member	Lieut.	J A MANAHAN	(CIC)	" "
Judge-Advocate				HQ 1 CBRGP
Prosecutor	Lieut.	J H PELLETIER		(CDN PROVOST CORPS)
Defending Offr	Capt.	Y. DUBE	(CIC)	1 Bn 1 CBRD

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See Dir P.S.) "CDA"

A8. The accused Pte H EMOND before arraignment make(s) (no) ~~(a)~~ plea(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 38), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in All cases and name of the accused making the plea.) "CDA"

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

[illegible] to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 68(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 23(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise ~~accused to change his~~ (their) plea(s) of ~~Guilty~~ to Not Guilty ~~for the~~ charge(s). The accused is (are) so informed, and he (they) changes ~~his~~ (their) plea(s) on ~~the~~ charge(s). Part ~~I~~ of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) "CDA"

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex P.5, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) as in* paras D1 to D8 *inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C). CJ 4. 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....Do you intend to call witnesses on your behalf ?

Ans .....Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fn 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CJ 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes to Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(1) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses were sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex P.1 and Ex P.2 respectively.(3) "CDA"

(1. *MFB 355 or AFB 296.* 2. *MFMC 6.* 3. *RP 46, KR Can 158. If shown documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by my defending officer. "CDA"(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (2). Give sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 148, 149(A), KR Can 358. DJO, 563-566. Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"C.D. Arnold" Maj
Pres.

CHARGE SHEET

The accused B133077 Private Herve, EMOND presently a soldier under sentence at No 2 Canadian Field Punishment Camp, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE SECTION 15(1) Army Act. When on active service absenting himself without leave.

in that he

In the Field in Italy at about 1330 hrs on 24 JUl 1944 absented himself without leave until apprehended by the Corps of Military Police at about 2240 hours 12 August, 1944.

SECOND CHARGE SECTION 15(b) Army Act. When on active service absenting himself without leave.

in that he

in the Field in Italy absented himself without leave at about 2215 hrs 20 August, 1944 until apprehended by the Corps of Military Police at about 1345 hourms 20 September, 1944.

In the Field
In Italy
1 November 1944

"W. DICK"
(W.Dick) Captain
Commandant,
No.2 Canadian Field Punishment Camp

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Fd
In Italy
8 Nov 44

"E.W. Haldenby"
(E.W. HALDENBY) Brig.
Comd 1 Cdn Base Rft Gp
Cdn Army - CMF

"C.D. Arnold" Maj
Pres.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 133077	Pte		Herve	EMOND	2 Cdn Fd Pun Camp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on 5 NOV 44 (date) endorsed by me, (or ~~as on above mentioned date~~) "To be tried by Field General Court-Martial". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior authority~~ "EWH"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~ "EWH"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge Advocate to attend the Offr~~ "EWH"
(AP 106(F). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) C.D. ARNOLD (CIC) 2 Cdn RNTD (Unit.)
(Must be named. RP 106.)

MEMBERS.

Capt (Rank.) D. BAULD (CIC) 2 Cdn RNTD (Unit.)

Lt (Rank.) J.A. Manahan (CIC) 2 Cdn RNTD (Unit.)
(Named or detailed. RP 106.)

WAITING MEMBER.

Lt. (Rank.) A. DE GALE (CIC) 2 Cdn RNTD (Unit.)
(Named or detailed, if any. RP 106.)

~~JUDGE ADVOCATE~~ "EWH"

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 5 Nov 44

"E.W. Haldenby"
(E.W. Haldenby)
Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 1 Cdn Base Rft Gp Cdn Army - CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

4/38A CFAMS (To Incl SE AFAI 40/9 & 8/1867 (4/51))

"C.D. Arnold"
Maj
Pres.

This is to certify that Ihave inspected B133077 Pte. EMOND, R.H. on this 11th day of November, 1944 and found him to be fit to undergo trial by F.G.C.M.

"H.W. BOTTOMLEY" Capt.
(Medical Officer)

"C.D. Arnold" Maj.Pres.
NOV 11th 1944

PLEA OF MITIGATION IN FAVOR OF:

B-133077 Pte EMOND H.

Pte EMOND ~~came~~ saw active ~~on~~ for the first time last December, when he fought the CASA BEARD'S battle with "D" Coy of the R 22e R which shocked him badly. He went AWL after the battle was over and was under sentence for that offence when he went AWL again. He regrets his foolishness and would be ready to go back to the field after completion of his sentence.

---

1. B 5
"C.D. Arnold" Maj
Pres.

SUMMARY OF EVIDENCE IN THE CASE OF
No. B-133077 Pte EMOND, H R22R 1 Bn 1 CBRD,
charged with illegal absence from July 24, 1944.
to 20 Sept 1944. AA Sec 15.

By direction of the Commanding Officer the evidence is taken under oath.

1st WITNESS. D76003 Sgt. CAPE J of No. 2 C.F.P.C. C. Provost C. having been duly sworn states:-

I am D76003 Sgt. CAPE, J. of 2 C.F.P.C. C.ProvostC. On the 24th of July 1944, I was Coy Comd of "D" Coy. at approx 1345 hrs. S/Sgt. Hayes, E.J. who at the time was working with "D" coy as a Sgt. came to me and reported that on the main court parade at 1330 hrs, there was one man missing. I immediately fell in the whole of "D" Coy and call ~~t~~the roll, I found that there were two SUS who failed to answer their names. One of them was SUS EMOND who has since been picked up and returned to this camp. After I found these men missing I immediately reported to CSM Poole together we made a search of the camp and could find no sign of theese two SUS Myself, I have no idea how they did escape. This statement was read and verify by the witness. The accused declines to cross-examine this witness.

D-76003 J C CAPE Sgt.

On calling Lt. Bell

"CDA"

2nd WITNESS D98553 S/Sgt. HAYES, E.J. of 2 C.F.P.C. R.C.M.P. C Provost C having been duly sworn states:-

I am D98553 S/Sgt. HAYES E J of 2 C.F.P.C. R.C.M.P. c Provost C. On the 24th July 1944, I took over the "D" Coy from Sgt. Cape. at approx 1330 hrs on the P.M. parade I made the count and it did not correspond with the 1130 hrs parade count. I immediately got in touch with Sgt. Cape and he came back with me and he made roll call or whole "D" Coy and found two SUS missing, one of them was SUS EMOND. Then we made a thorough search of the area and found no sign of them. SUS EMOND HAS been absent from roll call from that date 24 July 1944 at 1330 hrs up to the time he was escorted here on the 10 Oct 1944.

The accused declines to cross- examine the witness.

"E.J. Hayes"

"CDA"

Second Witness C32417 Pte FERGUSON, K.W. R.C.M.P. Cdn Provost Corps, posted to 2 Cdn F.P.C. having been duly sworn states:- I am Pte FERGUSON K.W. (C32417) RCMP Cdn Provost Corps, posted at No 2 C.F.P.C. as Orderly Room Clerk. I produce the following documents which came tinto my hands throughy the usual military channels:-

(B) Certificate of Arrest in accordance with AA 163 (1) (jj) dated 20 Sept 44 (Exhibit "B" hereto)

(A) Certified true copy of X-List Royal 22e Regiment, Para 4 (A) Orders 89 dated 26 Aug 44 (exhibit (A) hereto)

(C) Certified true copy of X List R22R No 97 Dated 19 Sept 1944.

These documents concern that accused whom I recognize.

The accused declines to cross examine the witness.

"K.W. F erguson"

"CDA"

The accused was cautioned as follows

Q. "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to doso, but what ever you say or any evidence you give will be taken down in writing and may be given in evidence."

A. (SUS EMOND) I do not wish to make any statement.

The accused do not wish to call any witness.

I certify that the foregoing Summary of Evidence consisting of 4 pages was taken down by me in the presence of the accused and that R.P. 4 (C)(D)(E)(F) and (G) have been complied with.

In the Field
22 Oct 1944

"J.H. Pelletier" Lieut.
C PROVOST C
Officer taking Summary of Evidence.

Exhibit "A"
"J. Pelletier" Lieut.
Officer taking Summary
of Evidence.

Certified true copy of regimental book
in my possession. "C.D. Arnold" Maj
Pres.
8 NOV 44 "G.A. Boyle" Capt.
Offr i/c Records (Admn)
Cdn Sec GHQ 2nd Ech AAI

Para 4(A & B)
Last Order
No. 88
23 Aug 44

"X" LIST ROYAL 22e REGIMENT
Part II Orders issued by
CANADIAN SECTION GHQ 2 ECHELON AAI

This Order
No. 89
26 Aug 44

"B" OTHER RANKS

"CDA "

Page - 3 -

4. ABSENT WITHOUT LEAVE
(a) A.W.L. from 1300 hrs 24 Jul 44 Ret from AWL 2240 hrs 12 Aug 44
B-133077 Pte EMOND, H X-2 (2 Cdn F.P. Camp)

"J.E. CAMPBELL"
(J E CAMPBELL) Captain,
for Officer i/c
Canadian Section GHQ 2 Echelon AAI

Exhibit "B"
" J H. BELLITIER" Lieut.
Offr taking Summary of Evidence.

"C.D. Arnold" Maj
Prs.

Certificate of arrest

Certificate in accordance with
Army Act Section 163 (1)(JJ)

I certify that No. B 133077 Rank Pte Name EMOND R H

Unit ROYAL 22nd REGT. CANADIAN ARMY

was arrested on Caserta - Naples Road (Place) at 1345 (hrs)

"W. Newman" Capt.
.....

S
i
w

O.C. 501 Provost Coy CMP
.....

Exhibit "C" Certified true copy of regimental book
in my possession 8 NOV 44.

"C.D. Arnold" Maj.
Pres

"G.A. Boyle" Capt.
Offr. i/c Records (Admn)
Cdn Sec GHQ 2nd Echelon AAI

Last Order
No. 96
16 Sep 44

"X" LIST ROYAL 22e REGIMENT
Part II Orders issued by
CANADIAN SECTION GHQ 2 ECHELON AAI

This Order
No. 97
19 Sep 44.

"B" OTHER RANKS

"CDA"

Page - 3 -

9. STRENGTH DECREASE
(b) S.C.S. X-3 List (15 CGH) as a des 12 Sep 44 having been dec
illegally absent by Ct of Inq from 2215 hrs 20 Aug 44 Deficiencies
in in kit to the value of - Not stated.
B-133077 Pte EMOND H.

"J.E. CAMPBELL"
(J E CAMPBELL) Captain,
for Officer i/c
Canadian Section, GHQ 2nd Echelon, AAI

SHB

E 2
"C.D. Arnold" Maj
P.O.S.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B133077	Private	EMOND Herve	CIC Attached to No. 2F.P. Camp

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The standard sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provided credit is given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Intoxication.—If the charge is for drunkenness the entries for drunkenness must be stated separately and listed.

	* Within last 12 months.	*Since Enlistment.
For A.A. Section 19	times	1 times.
For A.A. " 40	2 times	2 times.
For A.A. " 15(1)	times	2 times.
For A.A. " 24(2)	times	2 times.
For	times	times.

Number of instances of [redacted] or

There [redacted] entries in the conduct sheets of the accused.

[redacted] been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 70 of the Army Act, are set out in the schedule annexed to this statement.

3. [redacted] *or* The accused at the present time is under sentence for 1 years imprisonment beginning on the 26th day of JUN 1944

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and ..... days in military custody, making a total of ..... days, of which ..... days were spent in hospital.

5. The present age of the accused according to his record of service is 21 years

6. The date of his attestation specified in his record of service attestation paper is 18-9-42

7. The service which the accused is allowed to reckon towards [redacted]

8. The accused is entitled to deferred pay or gratuity in respect of ..... service.

9. [redacted] is entitled to reckon [redacted]

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). The Cdn Vol Serv Medal & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated .....

and in his regiment (*or corps or department*) the rank of ..... dated .....

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-133077 Rank Pte Name EMOND H of R22Regt. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which trial, or duties of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
FGCM	26 JUN 44 Field	(1) A.A. Sec 15(1) AWL (2) A.A. Sec 24(2) losing by neglect	1 years imprisonment 26 JUN 44.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

"W. DICK" Capt.

Signed this 11 th day of NOV 44.

13. The accused has served as a non-commissioned officer continuously without reduction, to the present date,

Date of Promotion.

In the rank of , years, —

In the rank of , years —

In the rank of , years, —

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph completed accordingly.)

MFM 6
(AFB 122)
60/F&S/158 (3458)

No. B133077 Name EMOND Herve | Sqn, Battery, or Company | Corps CIC | Date of enlistment 18-9-42 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24-10-43	Pte		(1)AA Sec 11 Neglect of standing orders. Found in Brothel Area (2)AA Sec 40 Being improperly dressed. Wearing deck shoes	DOCUMENTARY	7 days FP 14 days pay FP&I 149(2)	26Oct 43	Lt-col. W.P. Bristowe.	
Field	16-11-43	Pte	1	WOAS AASec 19 DRUNKENNESS. WOAS AASec 40 Attempting to conceal identity when apprehended.	Documentary "	Admonished 14 dys CB	17 Nov 43 17 Nov 43		
Field	24-12-43	Pte		AA Sec 15(1) WOAS Absent without leave AA Sec 24(2) Losing by neglect	Documentary	Imprisonment 1 year	26 June 44	FGCM	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY

"W. Dick"
(W. Dick) Captain
Commandant
No. 2 Cdn Field Punishment Camp.

No 2DD (AF) R.Wing CAC (Others) No 5 Coy Afc "C.D. Arnold" Major Pres

B133077 Name EMOND Herve | Regt. Battery or Company | Corps CIC | Date of enlistment 18-9-42 | OC Badges | Service or Proficiency Pay | (AFB 122) 40/P&S/7136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc "D.H. Halliday Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Newmarket Orillia Ont.				Entries Nil 2-10-42 Entries Nil 27-10-42 Entries Nil 15-12-42				B,C. Saunders Capt.	
	(Copy)			SOS as a deserter	17 Mar 43				
	CERTIFIED TRUE COPY J.B. Jalbert Capt. (J.B. Jalbert) Capt. Royal 22e Regiment O.C. 6th Inf Coy A-13								

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier	19-2-42	Pte	(1)	AA Sec 15(1) AWL from 2200/19-2-43 go 0320/13-4-43 Total: 52 dys 5 hrs 20 mins.	Written Testimony D 136148 L/Cpl. Emard J.M.	28 days detention stoppage of pay $27.16	26 Apr 43	Col. P.E. Poirier	Forf 53 days Pay FR&I
			(2)	Losing by Neglect his Eqpt etc amount of $27.16 AA Sec 24(2)					
			(3)	An actto the prejudice, etc. possession of a false registration card. AA Sec 40					
Field	26-9-43	Pte		AA Sec 24(2) Losing by neglect his regt'l necessaries ie: was found deficient of his emergency ration.	CQMS G.A. Crochetiere	Stoppage of pay $21.40 7 days CB	28SEP43	Lt-col W.P Bristowe	Stop of pay £0/2/9 Further stopp £0/2/9 AA Sec 46

40-135

Gr. Enroll J.a.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 118495 Gnr Jean Albert EMOND.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty.	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in lieu of kit see RP 44 fn 6.)

At ~~present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF 8355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF 8355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: 50 days detention

(Sgd) ..... Judge-Advocate, if any. 28 Dec. Date awarded. (Sgd) Jacques Dery President. (RP 47, 52.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 33(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

I direct that the accused be not committed to prison or detention further unless: (2) (2. See AA 57A. Delete if not used.)

(Sgd) ..... Commanding 2 Cdn Armd Bde. Confirming Officer.

Date 30 Dec 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
D 118495 Gnr Jean Albert Emond	3 Jan 45	S/L J Brunson Maj. O.C. "B" Sqn 25 Cdn Armd Del Regt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 8 FEB 1945 C.M.H.Q.

RECORDED AT CMHQ IN AB 160.

2/0 135

CPA88 (To Item of AP43) (C.P.A.S.) (1600) 2/44

FIELD GENERAL COURT-MARTIAL

Convened by Order of A/Brig. G.W. Robinson Comd 2 Cdn Armd Bde dated 21 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 368, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 118495	Gnr	Jean Albert	Emond	"B" Sqn 25 Cdn Armd Del Regt.

PROCEEDINGS REVIEWED MF 8355

Lt Col Lumley RCA

REVIEWING OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 28 Dec 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout ~~the Rules of Procedure~~ the Army Courts-in-NWE Instrs of Procedure RCOs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to contemporaneous or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which oaths are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 106, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 568(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~an interpreter~~? Ans

The Interpreter, as sworn,(1) Do you object to ~~a shorthand writer~~? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.L. DERY	2 Cdn Survey Regt R.C.A.
Member	Capt.	W.G. BURGE	6 Cdn LAA Regt R.C.A.
Member	Lieut	L.W. ANDERTON	1 Cdn Radar Bty R.C.A.
Judge-Advocate			
Prosecutor	Capt.	T.I. Lumby	25 C.A.D.R. - Esqr CAC
Defending Offr	~~Lieut~~ Capt.	E.G. Vance	25 C.A.D.R. - E - CAC

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No

(1. RP 2a, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 3.)

A8. The accused ~~was~~ ~~were~~ before arraignment ~~asked~~ (each ~~if~~ ~~whether~~ (1)

Q. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in lieu to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 36, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and one separate copies of CF 48b to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is about to~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 47(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 102 ; *duty of Prosecutor see RP* 60(*A*) ; (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s),(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which it is your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. *Yes.*
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, ~~and he (they) change(s) his (their) plea(s) on the charge(s).~~ Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement re evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 90(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1 ; 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 113(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*b*), *RP* 45. (2)(*A*). 2. *AA* 54(2). *RP* 45. (2)(*A*). *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. *No*
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* 2 *RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "C" and Ex "C" respectively.(3)
(1. *MFR* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. *Yes. Shortly, after receiving advice.*(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 1.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 7(2)). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 48, 118, 119(*A*), *KR Can* 308, 330, 363-366, *Overseas MO* 309, 2323, *MML p* 90, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 40(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

10.

The accused, D.118495, Gnr Jean Albert EMOND, Increment "B", RCA "E" Syn 25 Cdn Armd Del Regt, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE: WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
A.A.Sec 15(1)

in that he

in the field on 1 Dec 44 absented himself without leave from his regiment, Increment "B" RCA "E" Syn, 25 Cdn Armd Del Regt CAO, from 0740 hrs on the said 1 Dec 44 until he reported to Sgt. Clarke, C.S. at 1100 hrs, 1 Dec 44 (Absent 3 hrs 20 mins)

S L Thomson Maj

(S. L. Thomson) Major
Officer Commanding
"E" Syn 25 Cdn Armd Del Regt

In the Field
1 Dec 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

Geo Robinson Brig

(G.W. Robinson) Brigadier
Comd 2 Cdn Armd Bde

In the Field
27 Dec 44

20.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2958)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if outhorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate outhy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.118495	Gnr	JEAN ALBERT	EMOND	RCA Inf "B" E Sqn 25 Cdn Armd Del Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 Dec 44 endorsed by me, (~~accepted by me as fit to be tried~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to convene for that purpose a Court composed of officers~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three officers from the Army, (b) a Fd Offr as President, for the reasons I have stated.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J. L. Dery		2 Cdn Svy Regt RCA

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	W. G. Burge		6 Cdn LAA Regt RCA
Lieut	L. H. Anderton		1 Cdn Radar Bty RCA

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	W. E. McKinnon		6 Cdn A Tk Regt RCA

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland
(Country.)

Date 27 Dec 44

(Signed personally. RP 105 fn 2.) A/ Brigadier
(Rank.)

(G.W. Robinson)
Commanding 2 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K. R. (Can) Para 557

I certify that I have this morning examined No B 118495 Gnr EMOND, J.A. of RCA Increment "B" att "E" Sqn 25 Cdn Armd Del Regt CAC and in my opinion he is fit ~~unfit~~ to undergo trial by court- martial.

Station Field

Date 28 Dec 44

(Medical Officer)

Plea for Mitigation of Sentence in the case of C 11845 Gnr. Jean Albert Emond

In considering the case of the accused I would ask the Court to consider several circumstances surrounding the A.W.L. charge.

In the first place it appears obvious that there was absolutely no indication of intent on the part of Gnr. Emond to be A.W.L. He went to Nijmegen to visit a friend for the evening, figuring that it would be quite easy to hitch hike a ride back to Weigel, in lots of time for the morning parade. This visit was in order, as there was no rule in effect at that time in the Eqn. which would prevent him visiting outside Weigel. It was not necessary for him to be present at any Tattoo roll call, as a Tattoo roll call was not in practice in his Squadron. He had made similar visits on other occasions and had been able to return in plenty of time for parade.

Unfortunately for Emond, there was light traffic on the night of the 30th and he was unable to get a ride until quite late the next morning.

The fact that Emond walked over 20 kilometres and kept going all night long in order to get back in time proves

believe his good intentions. If he had not cared about being A.W.L. it would have been much simpler for him to have stayed and slept in or around Nijmegan rather than to have carried on during the night in his attempt to return to his Unit. It should be realized here that many stops were made during the night waiting to flag down a ride which will help to explain why it took so long to walk the distance he did.

And then also, in spite of the fact that he was late, Gnr. Emond reported in to his Unit himself, he was not apprehended.

In considering Gnr. Emond's past record would the Court please look at the last entry there. You will note that Emond has had a clear crime sheet ever since 31/3/44. Since he has been in the field in Europe in a theatre of operation, he has not a single crime to his discredit in spite of the fact that previous to 31/3/44 his record was not good. This would appear to be very good proof that Gnr. Emond was sincerely trying to carry on in a soldierly manner and not commit crime against Army discipline.

It would appear that while Gnr. Emond was actually A.W.L. and is quite honest in admitting it, that he is more guilty of using

poor judgment perhaps, than lack of anything else.

I would ask the Court to consider these factors, and for leniency in mitigation of sentence in the case of Gnr. Jean Albert Emond.

E. C. Jones Capt
Defending Officer.

Statement by the accused.

R & D.

When I went to Nijmegen the night of Nov 30th I left between 2130 and 2200 hrs. intending to get back to my Unit in time for the morning parade or before which I found I couldn't do. I was trying to get out of town on the main road, — to get a lift back. But unfortunately I had to walk because I couldn't get a lift. I walked approx. 20 km. before I got a lift. I returned to camp then and I reported to the N.C.O. i/c at the guard and was put under open arrest. I was brought up for office and was remanded for Court Martial. I did not actually intend to be absent because for approx. 8 mos. I haven't had a charge and intended to keep going straight, because I wanted to do the same as the rest of the boys and get my pay book straightened out. so that I could assign some money home to my mother.

The above statement has been read back to the accused.

Exhibit A

Summary of evidence in the case of D 118495 Gnr Jean Albert, EMOND, RCA Increment "B" attached to E Sqn 25 Cdn Armd Del Regt CAC, Cdn Army Overseas, charged with being absent without leave from 30 NOV 44 to 1 DEC 44.

The Officer Commanding directs that the evidence be taken on Oath.

FIRST WITNESS:

F 20339, Sgt CLARKE, C.C., RCA Increment "B" att "E" Sqn 25 Cdn Armd Del Regt CAC, Cdn Army Overseas, sworn, states:

"I was on the 30 NOV 44, and still am Sgt IC RCA Increment "B", E Sqn, 25 Cdn Armd Del Regt . I know D 118495 Gnr EMOND, J.A. and I recognize him as the accused. He has been in my Increment roughly six months. At the first parade at 0820 hrs 1 DEC 44 I called the roll and Gnr EMOND did not answer to his name. I searched the billet and did not find him. I reported the absence of Gnr EMOND to the Sqn SM at 0845 hrs 1 Dec 44. I went on with my duties and did not see Gnr EMOND until 1100 hrs when he reported to me and said that he had arrived back at that time. He said that he had gone to NIJMEGEN the night before and had not been able to get a ride back. I placed him under open arrest, and reported to the Sqn SM that Gnr EMOND had returned."

The accused declines to cross- examine the witness.

C. C. Clarke

(F 20339 Sgt Clarke, C.C.)

SECOND WITNESS:

L 36 Bdr SPRINGER, J.C. of RCA Increment "B", "E" Sqn, 25 Cdn Armd Del Regt CAC, Cdn Army Overseas, sworn, states:

"I was on the 30 NOV 44 and still am Senior NCO in the billet room housing RCA Increment "B". I have been acquainted with D 118495 Gnr EMOND, J.A., whom I recognize as the accused, for a period of approx four months. On the morning of 1 DEC 44 I arose at reveille and also roused some of the other soldiers. I went to breakfast at 0730 hrs and at that time or a little later, say 0740 hrs, I noticed that Gnr EMOND was not present. I made no special check because there is no special place for us to eat and I thought that Gnr EMOND might be eating elsewhere. On first parade at 0820 hrs I noticed that Gnr EMOND did not answer his name".

The accused declines to cross-examine the witness.

J. C. Springer

(L 36 Bdr Springer, J.C.)

Ex "A" J.A.E.

"The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath ? you are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused: "I have no statement to give at this time."

The accused declined to call witnesses in his own behalf.

I certify that R.P. 4 has been complied with.

Taken by me, in the field, in the presence and hearing of the accused this 3rd day of DEC 1944.

L R Bergklint

(Capt L.R. Bergklint)

I do not desire the convening officer to detail an Officer to represent me at my forthcoming trial by FGCM.

J A Emond.

(D 118495 Gnr Emond, J.A.)

5

Exhibit "B"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
D 118495	Gnr	Emond, J.A.	RCA Increment "B" att "E" Sqn 25 Cdn Armd Del Regt.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a Court Martial

For AWL (AA 15 (1)) 14 times.

For Conduct to the prejudice (AA 40) 4 Times.

For _____ times.

Date of first entry in Field Conduct Sheet 4 Sept 41

Date of last entry in Field Conduct Sheet 8 April 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule below.

3. ~~Particulars of proceedings in the civil court for~~ _____ ~~pending at the~~ _____ ~~Y/C~~
(Strike out if not applicable)

4. The accused has been awaiting trial on the present charges for n/a days in civil custody, and for ~~seven~~ 28 Jul days in military custody, i.e., n/a days in open arrest, ~~seven~~ 28 Jul days in close arrest; of which n/a days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation is 12 July 41

7. The service which the accused is allowed to reckon is 3 yrs 1 month

8. The accused is in possession of: (State military decorations (if any)) CVSM

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date— Date of promoti

In the substantive rank of n/a

In the acting rank of n/a

SUMMARY OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court	Date & Place of Trial	Charges	Sentence of the Court
FGCM	12 Dec 43 In the field	WOAS AWL 49 days 2 hrs AA 15 (1)	154 days detention and cost of apprehension

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Dated this 7 [illegible] Dec 44 R L Johnson Maj

MFRR 6
(AFB)(122)
60/PAY/136 (3438)

No. D118495 Name EMOND, J.A. Sqn. Battery or Company — Corps RCA — Date of enlistment 12/7/41 — GC Badges n/a — Service or Proficiency Pay n/a

Company Conduct Sheet Date of last entry in n/a — No and date of last drunk n/a — Period not reckoning towards freedom from extra fine n/a — Sheet No 1. — Signature OC Company, etc — Exhibit "C" — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date award or of order dispensing with trial	By whom awarded	Remarks
Field	4/9/41	Pte		AWL. Sec 15(1)AA Absent 2 dys 23 hrs 40 mins.	Cpl Rouse L/Cpl Dansereau	Admonished	9/9/41	A.T.Howell Major	Forf 3 dys pay FR&I 149 (1)(a)
Field	20/9/41	Pte		AWL. Sec 15(1)AA Absent 21 hrs 1 min. 2nd charge Sec 15(2) AA Failing to appear at place of parade appointed by his C.O.	Cpl Dalrymple Cpl Tobin	7 dys C.B.	22/9/41	F.D.Wright Major	Forf 1 dys pay FR&I
Field	16/3/42	Gnr		AWL. Sec 15(1)AA.in that he at Bordon Hants absented himself without leave from 2200 hrs 16/3/42 until 0630 hrs 17/3/42 Absent 8 hrs 30 mins.	Bdr Bull Bdr Harris	5 dys C.B.	17/3/42	Lt Col G.T. Inch	Forf 1 dys pay FR&I 149(1)(a)

(PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4/11/42	Gnr		WOAS - AWL in that he did absent himself withour leave from 1330 hrs 4 NOV 42 until apprehended by MP's in Manchester at approx 0720 hrs 23 Nov 42 Absent 18 dys 17 hrs 50 mins.	Documentary TSM Dempster Sgt Stremble	28 dys F.P. 28 dys pay 19 dys pay	30/11/42	Lt Col Wright	Stoppages of £ 1/16/2 cost of apprehension.
Field	27/2/43	Gnr		WOAS AWL from 1745 hrs 27/2/43 to 1200 hrs 8/3/43 Absent 8 dys 6 hrs 15 min.	TSM Dempster Docementary	21 dys F.P. with forf	19/3/43	Lt Col H.E. Wright	forf 9 dys pay FR&I 149 (1) (a) & 7 dys pay while in arrest
Field	1/5/43	Gnr		WOAS AWL from 2315 hrs 1/5/43 to 2200 hrs 2/5/43 Absent 22 hrs 45 mins. AA Sec 15(1)	TBSM Dempster Sgt Troughton	forf 1 dys pay	13/5/43	Lt Col H.E. Wright	
Field	5/5/43	Gnr		WOAS AWL while in open arrest from 1800 hrs 5/5/43 to app 1815 hrs 12/5/43 (7 dys 15 mins) AA 15 (1).	Sgt Furniss Documentary TBMS Dempster	28 dys F.P. 28 dys pay	13/5/43	Lt Col H.E. Wright	forf 8 dys pay 149(1)(a) 28 dys pay 149(2)

No D118495 Name EMOND, J.A. Sqn. Battery or Company | Corps RCA | Date of enlistment 12/7/41 | GC Badges n/a | Service or Proficiency Pay n/a | MFM 6 (AFB 152) 40/PAS/130 (3438)

Company Conduct Sheet Date of last entry in n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25/6/43	Gnr		WOAS AWL from 2359 hrs 25/6/43 to 0630 hrs 30/6/43 Absent 4 dys 6 hrs 30 mins. In close arrest 1 dy 17 hrs 30 mins. AA Sec 15(1)	Sgt Tanner L/Sgt Serres	10 dys F.P. 10 dys pay cost of apprehension £ 1/12/7	2/7/43	Lt Col G.T.Inch	Total forf 16 dys pay
Field	10/7/43	Gnr		WOAS AWL from 2300 hrs 10/7/43 to 1815 hrs 27/7/43 Absent 16 19 hrs 15 mins AA Sec 15(1)	Sgt West Documentary	28 dys F.P. 28 dys pay	30/7/43	Lt Col G.T.Inch	Total forf 45 dys pay
Field	28/8/43	Gnr		WOAS Conduct to the prejudice etc. AA Sec 40	Gnr Wild Gnr Mutter	14 dys F.P. 14 dys pay	30/8/43	H.G.S. Franks Maj	Total forf 14 dys pay
Field	15/9/43	Gnr		WOAS AWL from 1600 hrs 15/9/43 to 2200 hrs 18/9/43 Absent 2 dys 6 hrs. AA Sec 15(1) In close arrest 1 dy 1 hr 59 mins.	Bdr McFadden L/Sgt Denamore Documentary.	10 dys F.P. 10 dys pay	20/9/43	G.T. Inch Lt Col	Total forf 14 dys pay

(PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26/9/43	Gnr		(1) WOAS AWL from 1800 hrs 26/9/43 to 1500 hrs 2/10/43 Absent 5 dys 21 hrs. AA Sec 15(1)	Bdr Rice Documentary	28 dys pay	5/10/43	G.T.Inch Lt Col	Total Forf 34 dys pay
	2/10/43			(2) WOAS An act to the prejudice etc AA Sec 40.	Documentary				
	2/10/43			(3) WOAS An act to the prejudice etc. AA Sec 40.	Documentary				
Field	6/10/43			(1) WOAS AWL from 1300 hrs 6/10/43 to 1315 hrs 6/10/43 Absent 50 mins. AA Sec 15(1)	Bdr Rice	7 dys F.P. 7 dys pay	7/10/43	G.T.Inch Lt Col	Total Forf 7 dys pay
	6/10/43			(2) WOAS Conduct to the prejudice etc. AA Sec 40.	RSM Wharton Bdr Rice				
Field	12/10/42	Gnr		AA 15(1) AWL 49 dys 2 hrs.	Documentary Sgt Jones	154 dys detn and costs of apprehension £2/16/3 Released from Detn Brrks 25 Mar 44 having earned 48 dys remission of sentence F.H.Kelley, Capt	12/12/43	FGCM	Total forf 214 dys pay & £2/16/3

MFM 6
(AFB 122)
40/P&S/136 (5438)

No. D 118495 Name EMOND, J.A. Sqn, Battery or Company | Corps RCA | Date of enlistment 12/7/41 | GC Badges n/a | Service or Proficiency Pay n/a

Company Conduct Sheet Date of last entry in n/a | No and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 3 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31/3/44	Gnr		(1) AA Sec 15(1) WOAS AWL from 2359 hrs 31/3/44 to 2359 hrs 2/4/44 Absent 2 dys.	L/Bdr John Documentary	21 dys F.P. 21 dys pay	14/4/44	W.E.Fleury Lt Col	Total Forf 28 dys pay
	8/4/44			(2) AA Sec 15(1) WOAS AWL from 0800 hrs 8/4/44 to 2110 hrs 12/4/44 Absent 4 dys 13 hrs 10 mins.	QMS MacDonald Documentary				

"Certified a true copy"

S.L. Thomson Major
(S.L. Thomson)
Officer Commanding "E" Sqn
25 Cdn Armd Del Regt CAC

(PTO

MMA-122
GNR EMOND J.A.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 118495 GUNNER JOHN ALBERT EMOND

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15 (1) Absence without leave	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which —— days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: 8 MONTHS DETENTION

& to pay costs of apprehension & trial £2-16-3.

(Sgd) Judge-Advocate, if any. 12 DEC 1943 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence but remit 90 days

I direct that the accused be not committed to prison or detention barracks until further orders by me.(1) AA.

(1. AA 57A. Delete if not used.)

(Sgd) H Sparling Brig

Date 14 Dec 43. Commanding R.C.A., 3 Cda Inf Div. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D 118495 Gnr. John Albert Emond.	15 Dec 43	J C Rae Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Proceedings DAAD-122

FIELD GENERAL COURT-MARTIAL

CFAA96 (In lieu of AF A3) 41/P & S/1658 (2864)

Convened by Order of BRIGADIER H.A. SPARLING Comd R.A. 3 Cdn Inf Div dated 10 DEC 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D118495	GUNNER		JOHN ALBERT	EMOND	13 CDN FD REGT RCA

PROCEEDINGS REVIEWED

J Rutherford Capt

10 Mar 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 15 MAR 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 12 DEC 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn HQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF RP5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. AA 49, 50, RP 105-107. 2. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily (or the CO).(2)~~

(1. KR Con 557. 2. AA 46(B), RP 80 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

~~As President to accused: Do you object to~~ as interpreter? Ans

~~The Interpreter is sworn (1). Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn (1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 69(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	B.M. OSLER	4 AA Regt RCA
Member	CAPT	J.R. SOUTAL	19 FD REGT (SP) RCA
Member	LIEUT	P.D BARKER	127 REGT RCA
Judge-Advocate			
Prosecutor	LIEUT.	W.M. RAMSBERRY	13 CDN FD. REGT RCA
Defending Offr	LIEUT.	D.W. RIDEOUT	13 CDN FD REGT R.C.A

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 29 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused GUNNER John Albert EMOND before arraignment makes (~~no~~) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or in case of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 60(*C*); *powers of Court see RP* 60(*A*); *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), to call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans YES B 2 .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (them) pleads (plead) not guilty to the charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex E F and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by one of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*ff*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.
and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, *120*(*A*). 2. *AA* 54(3), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans YES No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex G and Ex G H respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 56. *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES E 3 .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 95(*D*). *One sentence only, comprised of the punishment or punishments limit down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 49-52, 68, 118, 119(*A*), *KR Con* 326, 330, 563-566, *Overseas HO* 209, 1323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and dispatch of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. D118495 Gunner John Albert Emond, Regimental He dquarters, 13 Canadian Field Regiment, R.C.A., a soldier on Active Service with the Canadian Army (Overseas) is charged with:-

ABSENTING HIMSELF WITHOUT LEAVE

Sec. 15 (1) Army Act

in that he

In the field absented himself without leave from 2230 hours 12 Oct 43 until apprehended by the Provost at Kidderminster, at about 0030 hours 1 Dec 43, thereby incurring Cost of Apprehension of £2-10-3.

Absent 49 days, 2 hours.

(G.F. Rainnie) Major,
A/Comd 13 Cdn Fd Regt R.C.A.

In the field
3 Dec 43.

To be tried by F.G.C.M.

(H.A. Sparling) Brigadier,
CRA 3 Cdn Inf Div.

10 Dec 43.

FIELD GENERAL COURT-MARTIAL

CFA 36 (In lieu of AFA 9)
40/PAS/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MMM, Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-118495	Gunner		John Albert	EMOND	13 Cdn Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[x] named above as the accused, being subject to military law, has [xxxx] committed the offence[x] set forth in the Charge Sheet[x] attached and on (date) 10 Dec 43 endorsed by me, [xxxxxxxxxxxxxxxx]" To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[x] should be tried by an ordinary General Court-Martial; [xxxxxxxxxxxxxxx

Dec 12/43

This is to certify that I have examined D 118 495 Pvt Esmond J. A. and find him fit to undergo trial by Court Martial

W. W. Webster Capt M.C.
19th Cdn. S.P. Regt R.C.A.
Can Army

Proc.

P1

Proceedings of Field General Court martial of Gnr Edmond J.A. D118495, 13 Field Regiment R.C.A.

B 2

Statement of Lt. Rideout, Defending Officer

The accused told me that the first night he entered the Regt he was placed on guard. and also he had made arrangements to see friend in Southampton. He asked permission to be relieved which was not granted. During night after finishing his guard, he left Regt and went to Southampton. He spent this leave in Southampton of 9 days + went on to other towns until apprehended by Provost.

Rule 83 B complied with.

Rideout Lt

S4

B 3.

Statement of Lt Rideout, Defending Officer

In regards to character of accused he states and his MFM 6 shows that he has never been accused of drunkeness and now he was picked up by the Provost quite sober even though he was in company of a drunken soldier. Of his life prior to enlistment he was a student and also a law abiding citizen. It is only since joining the Army that he has run into difficulties and has broken the laws and regulations. This is due mainly to the fact that there has been some

misunderstanding between he and his superior officers.

Recorded by Lieut. P.D. BANKIER

Rhodes Mjr.

Name	Rank	Unit
J.A Harslaw	Lt	12th Fd. Regt
C. Duffield	Capt	do.
C.P. Young	Lt	4 L.A.A.
D.E. Steacy	Lt	4 L.A.A.
F.C. Nelson	Lt	19 Fd. Regt.
N.R Allen	Lt	19 Fd. Regt
P.F. Christie	Lt	3 A.T.
J.E Cameron	Lt	3 A.T.

The above officers attended F.G.C.M. for D118495 GNR EMOND J.A. on 12 Dec 1943 for instruction.

Major
President.

M43499 L/Bdr Tisdale, S.G., R.H.Q. 13 Cdn Fd Regt RCA having been duly sworn states:-

On the night of 12 Oct 43 I took the roll call at 2230 hrs. Gnr Emond, J.A. was not present. I reported this to S/Sgt Ladwig, who was in charge of R.H.Q. Billets. I have not seen or heard of Gnr Emond until I went to pick him up at Central Sta., Bournemouth, from the provost on 3 Dec 43 at 1630 hrs.

The accused declined to cross examine the witness.

Signature of Witness S G Tisdale
(S.G. Tisdale)

M43499 L/Bdr Tisdale, S.G., R.H.Q. 13 Cdn Fd Regt RCA having been duly sworn states:-

On the night of 12 Oct 43 I took the roll call at 2230 hrs. Gnr Emond, J.A. was not present. I reported this to S/Sgt Ladwig, who was in charge of R.H.Q. Billets. I have not seen or heard of Gnr Emond until I went to pick him up at Central Sta., Bournemouth, from the provost on 3 Dec 43 at 1630 hrs.

The accused declined to cross examine the witness.

Signature of Witness S.G. Tisdale
(S.G. Tisdale)

Certificate in accordance with the Army Act, Section 163 (1) (a) [illegible] Barracks

I certify that No. D.118475 Rank PRIVATE Name E.M.O.N.D. F.A. Unit [illegible] Field

ROYAL CANADIAN ARMY was arrested at KIDDERMINSTER at 0200 hrs on 1st December 1943.

and that at the time of his arrest he was wearing military uniform.

Station WORCESTER Signature of Provost Marshal, A.P.M. or other Officer into whose custody the a/m person was taken on arrest

Date 1/12/43

OFFICER R.C.M. POLICE.

EXHIBIT "B"

CHARGE Form B 252
(See King's Regulations)

ROYAL CANADIAN ARMY. Regiment

13th.FIELD. Battery / Squadron / Troop or / Company

CHARGE against No. D.118495. Rank PRIVATE.

Name MOND.J.A.

Place In the Field Date of Offence 12 Oct 43

OFFENCE N.O.A.S. 1/Absent from 2230 Hrs 12 Oct 43 until apprehended by the Military Police in the Civilian Police Station, KIDDMINSTER at about 0030 hrs. 1 Dec 43

Names of Witnesses:—
CPL.FOX.W. C.M.POLICE.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Forwarded CPL FOX W. C.M.POLICE.

STATEMENT OF EVIDENCE IN THE CASE OF [redacted]

No.D.118495.PRIVATE.EMOND.J.A.
ROYAL CANADIAN ARMY.
13th.FIELD.
BOURNEMOUTH.

Sir,

At KIDDERMINSTER on the 1st.DECEMBER.1943 at about 0030hrs, I was on duty when I received a call from the CIVILIAN POLICE STATION concerning a CANADIAN soldier. On my arrival, I questioned the above named soldier who had grounds of being an absentee and to this question he replied," I am only absent two days Corporal."

I obtained his particulars which I verified from his Militia Book.M.1 and he was conveyed to the guard-room where he was handed over to the N.C.O. i/c to be detained.

He was Sober.

WORCESTER.
1st,DECEMBER.1943.

CPL.
C.M.POLICE.

REMARKS

EXHIBIT "C"
Wm Bruce Henry Lt.

Expense Voucher No. Ref: K.R. & O. (Can) 539

Reg. No. 116495 Rank Gnr. Name Emond, J. A. Unit 13 Fld Regt. R.C.A.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Birmingham

Date	Particulars	Amount		
2 Dec. 43	Escorts return fare from LONDON To Birmingham		17	0
	Prisoners single fare to LONDON From Birmingham		8	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Beer~~, Meals, Bus fares		6	0
	Total £	1	11	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

T. Brayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 109/33
40(T & N.S.)(3297)

EXHIBIT "D"

Expense Voucher No. — Wm Rawlinson Ltd — Ref: K.R. & O. (Can) 539

Reg. No. D 118493 Rank Gnr Name Emond, J.A. Unit 13 Fd Regt., RCA

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
8 Oct 43	Escorts return fare from LONDON To Bournemouth West		16	6
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Bournemouth West		8	3
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	1	4	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. Thompson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 10[illegible]
6GT & Canadian [illegible]

EXHIBIT "E"
W.T. Rankenight

RECORD of the Declaration of a Court of Inquiry assembled at Field on the 8th day of November 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D118495 Gnr. Emond, J. A.

DECLARATION

The Court declare that No. D118495 Gnr. Emond, J. A.

R.H.A. 13 Can Fd Regt R.C.A.

illegally absented himself without leave at 2100 Hours on the 12th day of October 1943 that he is still so absent, and that on the 8 November 1943 he was deficient, and that he is still deficient of the following articles:—

ARTICLES		VALUE	ARTICLES		VALUE
		Unpriced			
		Value			
Anklets web Prs	- 3 5½	- 2 -7½	Holdall	- -9	- -7
Blouses Battle Dress	2 15 4	2-1- 6	Housewife	- 2 -3	- 1 -11
Boots Ankle Prs	2 3 -	1-12-3	Knives Table	- -9½	- -7
Dressers Cotton Prs	- 4 1	-3-1	Razors Safety	- 1 -10½	- 1- 5
Overalls Coab Prs	1 5 2	-18-10½	Patches Dieting ischio	8	- - 6
Shirts Angola Dreb	- 16-4	-13-9	Shorts Gym Prs	- 3 -10	- 2 -1½
Shoes Canvas Prs	- 8 -10	-6 -7½	Spoons Table	- -4½	- -3
Trousers Battle Dress	2 15-10	2-1 -10½	Vests Cotton	- 3 -0	- 2 -3
Badges Cap Artillery	- - -9	- -4½	Towels Hand	- 1 -11	- 1 -6
Badges Canada Prs	- - -11	- -6½	Attachments Brace	- 4 -1	- - -1
Braces Prs	- 1 -3½	- -4	Belts waist	- 4 -7½	9 3 -6
Brushes Button	- -8	- -6	Braces s/s	- 4 -1	- 3-0
Brushes Cloth	- 1 -1	- -9	Covers Lesstin	- -4½	- -3
Brushes Hair	- 1 -1	- -9	Haversacks	- 9 -7	- 7- 3
Brushes Shaving	- 1 -4	- 1 -0	Helmets Steel	- 10-6½	- 8 -0
Brushes Blacking	- -8	- -6	Nets Camouflage	- -8	- - -6
Brushes Polishing	- -9	- -7	Straps Shoulder	- 4 -0	- 3 -5
Brushes Tooth	- -4½	- -3	Straps web Suptin	1 - 6	1 -10
Combs Hair	- -2	- -1½	Tins Mess	2 -6½	1 -11
Discs Identity Sets	- -4	- -3	Sheets Ground	10-9	8 -1
Dressings First Field	- 1 -1	- -9	Blankets G.S.	- 13-0	9 -9
Forks Table	- -5	- -4			
Gloves Knitted	2 -7½	- 2 -0			
Socks woollen	- 6 -6	- 5 -0			
TOTALS	£15-16-6½	£11-19-6			

Signed at Field

this 9th day of Nov 1943

(R.J. Mutcheson) Capt. RCA President

(H.T. Corbett) Lieut. RCA Member

(W. Simcock) Lieut. RCA. Member

Signature of Commanding Officer [illegible], Maj

Certified true copy

Signature of Officer having custody of original record

M.F.B. 275
A.F.B. 275
HQS—9-41 (750)
H.Q. 275-13-247

EXHIBIT "EF"

SUMMARY OF EVIDENCE

Summary of Evidence in the case of :- D 118495 Gunner John Albert Emond, Regtimental Headquarters, 13 Field Regiment, R.C.A. (A.F.)

Major G.F. Rainnie, A/Officer Commanding, 13 Field Regtiment, R.C.A. (A.F.) directs that all evidence be taken on oath.

1st Witness:

M43499 L/Bdr. Tisdale, S.G., R.H.Q., 13 Cdn. Fd. Regt.,R.C.A. having been duly sworn states:-

On the night of 12 Oct 43 I took the roll call at 2230 hrs. Gnr. Emond was not present. I reported this to S/Sgt. Ladwig who was in charge of the R.H.Q. Billets. I have not seen or heard of Gnr. Emond until I went to pick him up at Central Sta., Bournemouth, from the provost on 3 Dec 43 at 1630 hrs.

The accused declined to cross examine the witness.

Signature of Witness S.G. Tisdale

Certified true copy

(F.J. Davis) Lieut.
Orderly Officer, 13 Field Regiment,RCA.

2nd Witness:

L26332 Sgt. Jones,A.E., R.H.Q.,13 Cdn. Fd. Regt.,RCA., having been duly sworn states :-

On my return to camp from the concentration area on 13 Oct 43, I was informed by S/Sgt. Ladwig that Gnr. Emond was A.W.L., having failed to return at 2230 hrs on 12 Oct 43. I have not seen nor heard of him until I sent an escort to pick him up at the station on 3 Dec. 43.

The accused declined to cross examine the witness.

Signature of Witness

(A.E. Jones)

3rd Witness

Lieut. Frederick John Davis, Regimental Headquarters 13 Canadian Field Regiment, R.C.A. having been duly sworn states:-

I am Orderly Officer of the 13 Cdn Fd Regt R.C.A. and on 3 Dec 1943 received documents referred hereunder as Exhibits A,B,C, & D of D118495 Gnr Emond, J.A. To the best of my knowledge they are correct and refer to Gnr Emond, J.A.

The accused declined to cross examine the witness.

Signature of Witness

(F.J. Davis)

D118495 Gunner John Albert Emond, Regimental Headquarters 13 Canadian Field Regiment, R.C.A. was asked:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be used in evidence."

The accused declined to make a statement.

I hereby certify that Rules of Procedure 4 (c)(d)(e)(f)(g) have been complied with.

Taken before me in the presence of the accused In the Field this 4th day of December 1943.

W.M. Ransberry Lt

(W.M. Ransberry) Lieut.
13 Cdn Fd Regt. R.C.A.

EXHIBIT "H"

M.F.M. 6

No. D.118495 Name EMOND, John Albert | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 12.7.41 | G.C. Badges Nil | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4.9.41	Pte	Nil	AWL (absent 2 days, 23 hrs, 40 mins) Sec 15 (1) AA	Cpl.Rouse L/Cpl.Dansereau	Admonished	9.9.41 2 i/c	A.T.Howell Major C.A.B.T.C.	Aut Forf 3 days pay
Field	20.9.41	Pte	Nil	AWL (absent 21 hrs, 1 mins) Sec 15 (1) AA Failing to appear at the place of parade appointed by his commanding officer. Sec 15 (2) AA	Cpl. Dalrymple Cpl. Tobin	7 days C.B.	22.9.41 O.C.	(F.B.Wright) Major "D" Coy	Aut Forf of 1 days pay.

CERTIFIED TRUE COPY - 4 Dec 43

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16.3.42	Gnr		A.W.L. in that he at Bordon Hants absented himself without leave from 2200 hrs 16.3.42 until 0630 hrs 17.3.42 Absent 8 hrs 30 mins A.A. Sec 15 (1)	Bdr. Bull E.D. Bdr. Harris J.F.	5 days CB	17.3.42	Lt-Col C.T. Inch OC P Wing	forf 1 days pay under PR&I 149(1)
Field	4.11.42	Gnr		A.W.L. in that he did absent himself without leave from 1330 hrs 4 Nov 42 until apprehended by Military Police in Manchester at approx 0720 hrs 23 Nov 42. (Absent 18 days,17 hrs, 50 mins)		Documentary 28 days F.P. TSM Dempster 28 days pay Sgt.Stremble 19 days pay	30.11.42	Lt/Col Wright	Stoppages of pay £1.16.2 Cost of Apprehension
Field	27 Feb 43	Gnr		A.W.L. from 1745 hrs 27 Feb 43 to 1200 hrs 8 Mar 43 (8 days 6 hrs 15 mins)		TBSM Dempster 21 days FP Documentary WITH FORF	19 Mar 43	Lt-Col Wright	Forfs 9 day pay Art 149 (1)(a) and 7 days pay while in arrs

A.F.M. 6

D118495 EMOND J.A. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 12.7.41 | G.S. Badges | Service or Proficiency Pay | Character

No. | Name | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Date of last entry in Company Conduct Sheet | No. and date of last drunk

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	1.5.43	Gnr		WOAS AWL from 2315, 1.5.43 to 2200, 2.5.43 (22 hrs 45 mins) AA Sec 15(1)	TBSM Dempster Sgt Troughton	Forfs 1 days pay	13.5.43	(H.E.Wright) Lt-Col RCA	Forf 8 dey pay 149(1)a
Field	5.5.43	Gnr		WOAS AWL while in open arrest from 1800 5.5.43 to app.1815, 12.5.43 (7 days 15 mins) AA Sec 15(1)	Sgt Furniss Documentary TBSM Dempster	28 days FP 28 Days pay	13.5.43	(H.E.Wright) Lt-Col RCA	28 days pay 149(2)
Field	25 Jun 43	Gnr		WOAS AWL from 2359 hrs 25 Jun 43 until 0630 hrs 30 Jun 43 (Absent 4 days 6 hrs 30 mins) (In close arrest 1 day 17 hrs 30 mins) A.A. Sec 15 (1)	Sjt Tanner L/Sjt Serres Documentary	10 days FP 10 days pay Cost of App. £1.12.7	2 Jul 43	(G.T.Inch) Lt.Col	Total forf 16 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 Jul 43	Gnr		WOAS AWL from 2300 hrs 10 Jul 43 until 1815 hrs 27 Jul 43 (Absent 16 days 19 hrs 15 mins) AA Sec 15 (1)	Sjt West Documentary	28 days FP 28 days pay	30 Jul 43	(G.T. Inch) Lt.Col	Total Forf 45 days pay
Field	28 Aug 43	Gnr		WOAS CONDUCT TO THE PREDJUDICE etc. A.A. Sec 40	Gnr. Wild Gnr. Mutter	14 days FP 14 days pay	30 Aug 43	(H.G.S. Franks) Major	Total Forf 14 days pay
Field	15 Sep 43	Gnr		WOAS AWL from 1600 hrs 15 Sep 43 until 2200 hrs 18 Sep 43 (Absent 2 days 6 hrs) AA Sec 15 (1) In close arrest 1 day 1 hr 59 min	Bdr McFadden L/SjtDeanmore Documentary	10 days FP 10 days pay	20 Sep 43	(G.T. Inch) Lt.Col	Total Forf 14 days pay

A.F.M. 6

No. D118495 Name EMOND, J.A. Sqn., Battery, or Company — Corps R.C.A. — Date of enlistment 12.7.41 G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 3 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	26 Sep 43	Gnr		(1)WOAS AWL from 1800 hrs 26 Sep 43 until 1500 hrs 2 Oct 43 (Absent 5 days 21 hrs) AA Sec 15 (1)	Bdr Rice Documentary	28 days pay	5 Oct 43	(G.T.Inch) Lt. Col	Total Forf 34 days pay
	2 Oct 43	Gnr		(2)WOAS AN ACT TO THE PREDJUDICE etc. A.A. Sec 40	Documentary				
	2 Oct 43	Gnr		(3)WOAS AN ACT TO THE PREDJUDICE etc. A.A. Sec 40	Documentary				
Field	6 Oct 43	Gnr		(1)WOAS AWL from 1300 hrs 6 Oct 43 until 1350 hrs 6 Oct 43 (Absent 50 mins) AA Sec 15 (1)	Bdr Rice	7 days FP 7 days pay	7 Oct 43	(G.T. Inch) Lt. Col.	Total Forf 7 days pay
	6 Oct 43	Gnr		(2)WOAS CONDUCT TO THE PREDJUDICE etc. A.A. Sec 40	RSM Wharton Bdr Rice				

-70

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy (F.J. Davis) Lieut. Orderly Officer 13 Cdn Fd Regt R.C.A.					

EXHIBIT "H"

EXHIBIT "G"

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-30-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D.118495	Gunner	John Albert Emond	13 Cdn Fd Regt., RCA

1. The following is a fair and true summary of the entries in the Regimental [redacted] Conduct sheets [redacted] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L.	Eight times	A.W.L.	Twelve times
For	Sec. 40 A.A.	Four times	Sec. 40 A.A.	Four times
For		times	Sec. 15 (2)	One times
For		times		times

Number of instances of gallantry or distinguished conduct Nil.

or,

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[redacted]

3. The accused is not under sentence at the present time

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charge for Nil days in civil custody, and [redacted] days in military custody, making a total of three days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 21 yrs, 7 mons

6. [redacted]

7. The service which the accused is allowed to reckon towards discharge is 2 yrs, 4 mons

8. The accused is entitled to reckon 2 yrs 4 mons service for the purpose of determining his pension, etc.

9. [redacted]

10. [redacted]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated N.H. ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of ..... years. N A H

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N.H.				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of December, 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked EXHIBIT "G" signed by the president, and annexed to the proceedings.

Judge Advocate.
President.

4E9.
Tpn. EMOND. J. L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.50140, Tpr EMOND, Joseph Loyola - 1 Cdn Asslt Tp

	Charge (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15(1)AA	GUILTY	GUILTY	
2nd	Sec 40 AA	NOTGUILTY	NOTGUILTY	
3rd	Sec 9(2)AA	NOTGUILTY	NOTGUILTY	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)~~ beginning on (date) [1] CWT

Time in confinement awaiting present trial—a total of 23 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer sixty days field punishment and to forfeit all ordinary pay for a period of sixty days

(Sgd) ~~Judge-Advocate, if any~~ CWT 11 Oct 44 Date awarded (Sgd) C.H. Campbell Major President (RP 45, 90.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 4, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence

I ~~direct~~ that the accused be not committed to prison or detention barracks until further orders.[1]
(1. AA 57A. Delete if not used.)

(Sgd)

Date 27/10/44 Commanding 1 Can Armd Bde Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date 25 Oct. 44 Signature of Offr. B Wardell Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 20 NOV 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160 45 9.

FIELD GENERAL COURT-MARTIAL

(Or as in lieu of AFA2) A.F.A.G. 1698 (2nd Ed.)

Convened by Order of Brigadier W.C. Murphy Comd 1 Cdn Armd Bde dated 7 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 309, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.50140	Tpr	Joseph Loyola	EMOND	1 Cdn Asslt Tp

PROCEEDINGS REVIEWED 21 Oct 44 HH

W.C. Murphy Brigr.

REVIEWING OFFICER, JA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 11 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

20 13

A1. The President, Members, waiting Member, ~~JA, if any~~ CWT, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout it on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~have~~ CWT amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 47, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) CWT brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~ CWT
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans

~~The interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~ CWT
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~ CWT, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	A/Major	S H Campbell	5 F & C
Member	A/Major	W J E Simmons	11 C A R
Member	A/Major	F W Simard	12 C A R
Judge-Advocate	CWT		
Prosecutor	Instr	D P M Bissett	R C E
Defending Offr	Instr	J N O'Neil	13 C A R

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 21, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 68 (B) and fn 2 were not followed. See Dil p 3.)

A8. The accused ~~before arraignment makes(s) (no)~~ CWT plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RxP cited. Insert in A8 name and rearm of the accused making the plea.)

A9. The accused is (are) ~~now~~ CWT arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 86A to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "C" CWT

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 89, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans NO (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the ~~first~~ charge(s). The accused is (are) so informed, ~~and he (they)~~ ~~charge(s) his (their) plea(s) on~~ ~~charge(s). Part I of the Schedule is amended accordingly~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ____, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) in use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the second and third charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission ~~is disallowed on the~~ ~~charge(s), and~~ is allowed on the second and third charge(s), ~~and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the~~ ~~latter charge(s).(4)~~ ~~and the accused is found NOT GUILTY of the second and third charges.~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

~~D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, in which case you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.~~

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans _____
Do you intend to call witnesses on your behalf ?
Ans _____
Are they witnesses as to character only ? Ans _____
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before any finding. See RP 44(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes witnesses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.(1)
~~D9.~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith. ~~and that the proceedings are accordingly terminated. Part I of the Schedule is closed and signed.~~(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement[s] as to Character and Particulars of Service(1), and certified true copy [extract] of Conduct Sheet [Sheets], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 105(1) (g) (h), and (ii) they purport to refer to (a) soldier[s] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "E" and Ex "C" respectively.(2)
(1. MFR 255 or AFB 296. 2. MML 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

~~E3.~~ President to accused: Do you wish to address the Court on the Statement[s] and Conduct Sheet[s], and in mitigation of punishment ?(1) Ans ~~Evidence was given on the question of punishment by my witnesses~~
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~each one of them~~.(2)
(1. Where several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Con 503, 330, 563-566, Overseas REG 3(29), 2323, MML p 86, 737-759. As to sentences assigned for civil offences by the law of England see AA 4(1)(l), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see notes on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CWR

CHARGE SHEET.

The accused, B 50140 Trooper Joseph Loyola EMOND, 1st Canadian Assault Troop (CAC), a soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Section 15 (1) Army Act.

When on Active Service
ABSENTING HIMSELF WITHOUT LEAVE
in that he
in the field, in Italy absented himself without leave from 2000 hours 18th August, 1944 until 0730 hours 21st August, 1944.
(Total absence 2 days 9 hours 30 minutes).

2nd Charge
Section 40 Army Act.

When on Active Service
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE
in that he
in the field, in Italy on or about 19th August, 1944 was concerned in the improper possession of a 15-cwt Armoured car, a Canadian Government vehicle.

3rd Charge
Section 9 (1) Army Act.

When on Active Service
DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER
in that he
in the field, in Italy on 19th August, 1944 when ordered by B 148206 A/L/Sgt Mann, S.T.W. to get into a vehicle and return to camp, did not do so.

(J.E. McLean) Lieut
A/Officer Commanding
1 Cdn Assault Tp CAC.

In the field
30 September, 1944.

To be tried by Field General Court Martial.

(W. C. Murphy) Brigadier
Comd 1 Cdn Armd Bde

7 Oct 44

CWR

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3)
40/PAS/1697 (D968)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.50140	Tpr	Joseph Loyola	EMOND	1 Cdn Asslt Tp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [have] committed the offence(s) set forth in the Charge Sheet(s) attached and on 7 Oct 44 (date) endorsed by me, [and whereas it appears expedient that he should be tried by a Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not practicable that the trial of such offence(s) should be postponed until the assembly of a General Court-Martial.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [Take notice of appointment of the Officer Commanding Court (i.e. PJAG Officer as President, for the reasons stated herein)]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [Take notice of Judge Advocate to attend the Court proceedings hereunder.]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) C.H. Campbell (Must be named. RP 106.) CAC Att 14 Cdn Armd Regt (Unit.)

MEMBERS.

A/Major (Rank.) W.J.E. Simmons 11 Cdn Armd Regt (Unit.)

A/Major (Rank.) F.W. Simard (Named or detailed. RP 106.) 12 Cdn Armd Regt (Unit.)

WAITING MEMBER.

Capt (Rank.) As detailed by O.C. 1 Cdn Armd Bde Coy (83 Coy) RCASC (Named or detailed, if any. RP 106.) (Unit.)

~~[Take notice of appointment]~~

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in ITALY (Country.)

Date 7/10/44

(Signed personally. RP 108 fn 1.)
(W. C. Murphy)
Commanding 1 Cdn Armd Bde
Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers Certificate

K.R. (Can) Para 557

AH
CWR

I certify that I have this morning examined

Number S 50140 Tpr EMOND, J.L.

of 1 Cdn Aslt Tp C.A.C. and in my opinion he

is fit/~~unfit~~ to undergo Trial by Field General Court Martial.

Station Field, Italy.

Medical Officer

Date 11 October, 1944.

A1 CWC

Officers under instruction

Captain R B Johnston	83 Coy RCASC
Lieut S. Jouard	11 CAR
Lieut RG Smyth	11 CAR

Prosecution

1st Witness B146206 A/L/Sgt Mann STW 1st Cdn Asslt Tp CAC having been duly sworn states :-

I recognize the accused. I did not place him in charge of the party on 18 Aug 44. He is the regular driver of the 15 cwt which I gave Tpr Ranger and the others permission to use. Tpr Emond being the driver naturally would accompany his truck. I did not give the accused any instructions. I found the accused on the road Sudda – Foglese with the others in the party beside or close to a house. They had been drinking. I did not leave my truck but ordered them from the cab to get into the vehicle and return home. I was on one side of the road and they on the other.

The above evidence read to the witness RP 53 (B)

No cross-examination

Plea by Defence in mitigation of Punishment

While the accuseds conduct sheet is not clear his conduct has greatly improved once he was in the field. He was placed in a peculiar position as duties of the truck as to his liability to transport his passengers home. Evidence has been very vague as to times of return and instructions given. Accused has been under arrest for this offence for 23 days with no time in hospital. The type of men in the asslt Tp is known to the Court and the accused while to blame was more thoughtless than deliberately wilful in this instance.

Exhibit "A" CWR

Summary of Evidence in the case of
No. 50140 Trooper Joseph Sigola Emond,
1 Canadian Assault Troop (CAC)

The Commanding Officer directs that the Evidence be taken on oath

First Witness for Prosecution

B.146206 A/Sgt Mann S.T.W.,
1 Canadian Assault Troop (CAC)
having been duly sworn states:—

"On the 18th August, 44 Tpr Emond along with Tpr Ranger, Tpr McDonald Tpr Shatlow and Tpr Nicholson had permission to leave the camp area in the 15 cwt armoured vehicle at approximately 1800 hrs. and they were to return just before dark which would be 2100 hrs. That night Tpr Emond did not return. He was the driver of the 15 cwt armoured vehicle which was still out with him. I marked him AWL then."

"On the 19th August 1944 I started looking for them at 1400 hrs. I found them between Bindola and Figline approximately 25 kilometres from their camp. They were stopped on the road in front of a house. The vehicle was there with them. I ordered them to get into their vehicle and return to camp. They made no move to obey the order Tpr Emond approached me and said that he had had tire trouble. I asked him why he had gone so far with the tire in that condition. We had had trouble with that tire before. He could not give me an answer. I then again ordered them to get into the vehicle and return to camp. But they still did not make any move to obey. I could not place them under close arrest because I had no escort with me and they were in no condition to handle them as they had been drinking.

I then returned to my camp and arrived there at 1750 hours. I thought that they would follow me but they did not.

On the 21st August 1944 Pte Emond returned with the 15 cwt armoured vehicle at 0730 hours and reported to me. I placed him under close arrest."

On his evidence being read to him the witness decides to make the following further statement:-

"The permission I gave was for them to go to a village 4½ miles from camp. I presumed they were going swimming because on other days they went at that time."

I kept a record of the dates and times of their absence ~~which I produced in the case of Pte Emond~~

The accused declines to cross-examine this witness

(SIGNED) Major R/L Light

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused does not elect to make any statement or give any evidence.

The accused does not call any witnesses for the defence.

I certify that the foregoing summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that Rules of Procedure 47 (C), (D), (E) and (F) have been complied with.

W Wardale Capt.
O.C. 1 Cdn. Guard Bn

In the field
15 Sept. 1914

FGCM - B 60140 Tpr EMOND, J.L.

Notice under RP 76.

Take notice that B 146906 A/L/Sgt Mann,S.T.W. will give further evidence as follows:-

"During the conversation at 1800 hours 18th August,1944, referred to in my evidence in the Summary of Evidence, the accused was not present.

The accused was present and within hearing when the order to get into the vehicle and return to camp was given by me at about 1400 hours 19th August,1944. He was one of the soldiers to whom the order was addressed and he did not obey the order. It was given in a manner requiring immediate obedience.

The 15-cwt Armoured car referred to in my evidence in the Summary of Evidence is a Canadian Government vehicle.

It was customary around 18th August,1944 to allow men of 1st Canadian Assault Tp (CAC)when not on duty to be absent from camp without a pass, up to 2200 hours. After that time men must have permission or a pass to be absentfrom camp. The accused had no permission or pass to be absent after 2200 hours 18th August,1944.

The accused is the regular driver of the 15-cwt Armoured car in question."

In the field
20 September,1944.

(D.F.W.Bissett)Lieut.RCE
Adt 1 Cdn Assault Tp CAC.

Encl. D.P. "B" Court

ARMY FORM B.196.

Statement as to Character and Particulars of Service of Accused.

Number	Rank.	Name.	Regiment (or as the case may be).
B 50140	Trooper	EMOND, Joseph Loyola	1 Canadian Assault Troop CAC.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishments being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		* Since Enlistment.	
For AA Sec 15(1)	Nil	times.	Five	times.
For AA Sec 40	One	times.	One	times.
For		times.		times.
For		times.		times.
For		times.		times.

Number of instances of gallantry or distinguished conduct, Nil

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~The previous convictions of the accused are contained in the conduct sheets of the accused which are produced to the Army Authorities dispensing with trial and not to the court, and the accused is not liable to have any other previous convictions proved against him.~~

3. The accused is not under sentence at the present time, *or* ~~The accused is at the present time under sentence of~~

~~imprisonment for~~ ~~days~~ ~~commencing on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and ~~23~~ days in military custody, making a total of 23 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ ~~pay book~~ is 25

6. The date of his ~~enlistment~~ ~~attestation~~ specified in his ~~record of service~~ ~~pay book~~ is 22 Jun 40.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 years, 2½ mos.

8. The accused is entitled to deferred pay or gratuity in respect of 4 years, 2½ mos service.

9. The accused is entitled to reckon 4 years, 2½ mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~the following decorations, namely,~~ (*or is in possession of no* ~~decorations~~ *state any military decoration or reward*) : Canadian Voluntary Service Medal.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A. dated

and in his regiment (*or corps or department*) the rank of dated

(70844) W3-32705-1877 10,000 10/42 A.S.K.W.Ltd. Gp.698
(23977) W3-32656-1201 12,000 8/43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 50140 Rank Tpr Name SMOND, J.L. of 1 C.A.T. Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the disposing authority	Punishment remitted
Nil	Nil	Nil	Nil	Nil

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of October, 1944.

J E Mclean Lt
O/C Coy & Bde

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years, ... months

In the rank of ..... years, ... months

In the rank of ..... years, ... months

(Instructions.—If any matter to any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph retained amended accordingly.)

Exhibit "C"

MFM 6
(AFB 127)
40/PAM/198 (9456)

No. B50140 Name Emond, J. L. Sqn, Battery, or Company — Corps C.A.E. Date of enlistment 22-6-40 GC Badge — Service or Proficiency Pay N/A — Character

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc

Place	Date of Offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Chippawa Barracks	16/3/42	Pte		'AWL' from 0630 hrs 16-3-42 to 0800 hrs 18-3-42 (Total absence 49½ hrs)	Csm Miller	5 days pay	20-3-42	Lt Col J.L. Ralston	Forfeiture of 5 days pay.
Chippawa Barracks	4/4/42	Tpr		'AWL' from 2359 hrs 4-4-42 to 1845 hrs 17-4-42 (absent 13 days 18 hrs 46 mins)	SSM Hillier	28 days detention	18-4-42	Lt Col J.L. Ralston	Forfeiture of 28 days pay.
Camp Borden	14/6/42	Tpr		'AWL' from 0130 hrs 14-6-42 to 1530 hrs 5-7-42	SSM Hillier	28 days detention	6-7-42	Lt Col J.L. Ralston	Forfeiture of 28 days pay.
Camp Borden	18/6/42	Tpr		'AWL' from 0130 hrs 18-6-42 until 1300 hrs 18-7-42	Documentary	7 days R.B.	19-7-42	Lieut J.P. Lukey	Forfeiture of 7 days pay.
Camp Borden	31/7/42	Tpr		'AWL' from reveille hrs 31st July 42 to 0245 hrs 2nd Aug 42.	Documentary	7 days R.B.	20-8-42	Lt Col W.H. Hewitt	Forfeiture of 7 days pay.
Camp Borden Field	31 July 42	Tpr		6 DCs Conduct to the prejudice of good order and discipline in that he was found in bed after the hour of 1st Reveille during Camp Exercise. 31-7-42.	Pte Hamilton 7 Sgt Edwards 19486 Pte Sgt. Pte	7 days Det. & 2 daily pay fines	20 Aug 42.	Lt Col J.L. Ralston	

Certified true Copy. [illegible] 1/c Reference and Command

(P30)

W-75

L/Cpl. EMOND, M

W-75

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this NINTH day of JANUARY, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of TEMPORARY EIGHT CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~*I am unable to appoint :-~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

* Omit if not applicable.

Judge Advocate

Capt R.A.Ritchie A.D.J.A. 5 Cdn Div

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	V A CIANELLI	R O R S C

Members.

Rank.	Name.	Regiment.
CAPT	C C L GRAMMOND	N SHORE R.
CAPT	A I MATHESON	H A S H Regt
WAITING MEMBER LIEUT	R F L EVANS	R O R S C

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Lt Col

Commanding 5 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
E.10376 L/Cpl Emond, M. Le Regiment de la Chaudiere	First Charge N.H. Sec 11 NEGLECTING TO OBEY OVERSEAS ROUTINE ORDERS in that he, in the field on or about 15 Dec 42 transmitted private correspondence to Mme Azarie Emond, 2504 Frontenac St., Montreal, P.Q., in which he alluded to plans and forecasts for future operations of 3 Cdn Div, contrary to Overseas R.O. 1089, Sec 1, sub-sec 6. Second Charge N.H. Sec 11 NEGLECTING TO OBEY OVERSEAS ROUTINE ORDERS in that he, in the field on or about 13 Dec 42 transmitted private correspondence to Mlle Rita Emond, 2504 Frontenac St., Montreal, P.Q., in which he alluded to plans and made forecasts for future	Guilty Guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [illegible] Major, A/Adt (Signed) [illegible] Brig
Commanding 1 Can Inf Bde — Convening Officer (c) — President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Eleventh day of January 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officer under instruction) ~~not~~

~~was~~ duly sworn.

* Omit if not applicable

Signed this Eleventh day of January 1943.

[signature]
President of the Court Martial.

C. Certificate in case of death sentences. N/A

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders)~~

Signed this 13th day of January 1943.

[signature] Brig.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 13th January 1943 (Signed) Paul Mathieu Major

Promulgated and extracts taken in the case of

(Dated) 13 Jan 43 (Signed) Georges Coderre, Lieut

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this day of , 19 .

Whereas it appears to me, the undersigned, an officer in Command of , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where convening Officer is a Commanding Officer or is of said Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

NOTE.—The President must be named. The members and waiting members [if any] may be mentioned by name, or the

President.

Rank. Name. Regiment.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
	operations of 3 Cdn Div and particularly the Regt de Chaud, contrary to Overseas R.O. 1089, Sec 1, sub-sec 6. Third Charge A.H. Sec. 11 NEGLECTING TO OBEY OVERSEAS ROUTINE ORDERS in that he, in the field on or about 13 Dec 42 sent photographs through the post to Mme. Azarie Emond, 2504 Frontenac St., Montreal, P.Q., without first obtaining proper authority, contrary to Overseas R.O. 1089 (6) and 95.	Guilty	Guilty. Sentenced to be detained [illegible]	I confirm the finding and sentence of the Court, but remit 30 days detention.

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can)Para.557

"H"

I Certify that I have this morning examined

E10376 L/Cpl Emond M and in my opinion
Number Rank Name

he is fit to undrgo trial by Court Martial.

Date 11 Jan 43

Medical Officer (Unit.....)

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a FIELD GENERAL Court-Martial held ~~at~~ IN THE FIELD on the 11th day of JANUARY 1943 by order of LT. COL J. GAVAN POWER A/Commanding 8 CDN INF Bde dated the 9th day of JANUARY 1942

President.

MAJOR V. A. GIANELLI
R.O.R.C.

Members.

CAPT C. C. L. GAMMON.
N. SHORE R

CAPT. A. I. MATHESON
H.Q. 8 CDN INF Bde

, ~~Judge Advocate~~.

Trial of* E. 10376 L/CPL EMOND, M. R de Chaud

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing~~ to

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† LIEUT G. A. CODERE R de Chaud.

Counsel‡ or defending officer† CAPT L. J. DUGAL R de Chaud.

At 1520 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

~~The names~~ of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

---

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

"H"

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can) Para.557

I Certify that I have this morning examined

E10376 Lt/Cpl Emond M and in my opinion
Number Rank Name

he is fit to undrgo trial by Court Martial.

Date 11 Jan 43

Medical Officer (Unit.....)

MEDICAL OFFICER'S CERTIFICATE

K.R.(Can)Para.559

I Certify that I have this morning examined

Number Rank Name _____ and in my opinion

he is fit to undergo trial by Court Martial.

Date _____

_____

Medical Officer (Unit.....)

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a FIELD GENERAL Court-Martial held AT IN THE FIELD on the 11th day of JANUARY 1943 by order of LT. COL J. GAVAN POWER A/ Commanding 8 CDN INF BDE dated the 9th day of JANUARY 1942

President.

MAJOR V.A. GIANELLI
D.O.R. of C

Members.

CAPT C.C.L. GAMMON.
M. SHORE. R

CAPT. A.I. MATHESON
H.Q. 8 CDN INF BDE.

Trial of* E. 10376 L/CPL EMOND, M. R de Chaud I, Judge Advocate.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ to ~~serve owing~~ to ~~is not available~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† LIEUT G.A. CODERE R de Chaud.

Counsel‡ or defending officer† CAPT L.J. DUGAL R de Chaud

At 1520 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.
Lieut Fleming
R. O. R. & C.

Capt. C. R. Labourdeux was sworn in as interpreter. The accused having agreed to his so acting.

Charge-Sheet

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 56 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to The 1st 2nd & 3rd charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

B2.

CHARGE SHEET

The accused -- R/10576 L/Cpl Emond, M., Le Regiment de la Chaudiere, a soldier of the Canadian Army Overseas -- is charged with:

First Charge
Army Act
Sec 11

NEGLECTING TO OBEY OVERSEAS ROUTINE ORDERS

in that he

First Charge
Army Act Sec 11

in the field on or about 15 Dec 42 transmitted private correspondence to Mme Azarie Emond, 2504 Frontenac St, Montreal, P.Q., in which he alluded to plans and forecasts for future operations of 3 Cdn Div, contrary to Overseas R.O. 1089, Sec 1, sub-sec 6.

Second Charge
Army Act
Sec 11

NEGLECTING TO OBEY OVERSEAS ROUTINE ORDERS

in that he

Second Charge
Army Act
Sec 11

in the field on or about 13 Dec 42 transmitted private correspondence to Mlle Rita Emond, 2504 Frontenac St, Montreal, P.Q., in which he alluded to plans and made forecasts for future operations of 3 Cdn Div and particularly the Regt de Chaud, contrary to Overseas R.O. 1089, Sec 1, sub-sec 6.

Third Charge
Army Act
Sec 11

NEGLECTING TO OBEY OVERSEAS ROUTINE ORDERS

in that he

Third Charge
Army Act
Sec 11

in the field on or about 13 Dec 42 sent photographs through the post to Mme Marie Emond, 2504 Frontenac St, Montreal, P.Q., without first obtaining proper authority, contrary to Overseas R.O's. 1089 (6) and 95.

Field
10 Jan 43

(P. Mathieu) Major
a/Officer Commanding
le Regiment de la Chaudiere

To be tried by Field General Court Martial.

Field
10 Jan 43

(... OLIVER) Lt-Col.,
... Offr C Cdn ... Bde

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having~~ been re-opened, the ~~accused is again brought before it and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused E 10376 L/CPL EMOND. A1.

is found guilty of The 1st, 2nd & 3rd Charges.

*The summary (or abstract) of evidence is read, marked I, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

MO

Answer. The accused in mitigation of punishment says:—

[*or* ~~hands in a written statement which is read, marked , signed by the President, and attached to the proceedings.~~]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? Question to the accused.

I WISH TO CALL WITNESSES. Answer.

E9127 R.Q.M.S. PURGE J.A. R de Chaud Evidence as to character.
I am duly sworn & state:
I am regimental quarter master Sergeant of the Regt de la Chaudière and have been since Oct 1939. I have known L/Cpl Emond since April 1941 and he has always proved to be honest and reliable and has never had any complaint about his duties.

K.R. 83(13) COMPLIED WITH.

SUMMARY OF EVIDENCE

Taken by Lieut. Louis Rousseau, Le Regiment de la Chaudiere, by order of the Commanding Officer, Le Regiment de la Chaudiere, in the case of E.10376 L/Cpl. Emond, M., Le Regiment de la Chaudiere.

1st Witness

Capt. J.B. Rousseau, Adjutant, Le Regiment de la Chaudiere, having been duly sworn states:

"I am the Adjutant of Le Regiment de la Chaudiere. I am the one that inspects incoming mail. On 26 Dec 42 a letter from the Eighth Brigade arrived at my office, in which there were two letters written by L/Cpl. Emond, M., Le Regiment de la Chaudiere. One of these letters was addressed to Mrs Azarie Emond and other one to Miss Rita Emond. In both letters snapshots were included and in both letters L/Cpl. Emond mentioned the type of training the unit underwent and also of preparations unit was making for movement. All this was contrary to security measures published in regimental orders 19 Dec 42, a translation of Overseas R.O. 1089. In the publication of these orders it was specified that it is forbidden to send snapshots without authorization, Overseas R.O. 95.

(Signed)
(J.B. Rousseau), Capt. Adjt.,
Le Regiment de la Chaudiere.

The accused does not cross-examine the witness.

Questions to the Accused

Do you wish to make a declaration or give evidence on oath. Youare not obliged to do so or give evidence unless you desire to do so but all you will say and all the evidence you will give will be taken down in writing by me and will be used as evidence.

Answer of the Accused

No, Sir.

(Signed)
E.10376 L/Cpl Emond, M.
Le Regiment de la Chaudiere.

The Rules of Procedure 4 (C) (D) & (E) have been complied with.

Taken by me in writing, in the presence of the accused, in the field, 5 Jan 43.

(Signed)
(L. Rousseau) Lieut.,
Le Regiment de la Chaudiere.

W.F.B. 239

I

R E S U M E de P R E U V E

Fait par le Lieut. Louis Rousseau, Le Regiment de la Chaudiere, A.F. par ordre du Commandant du Regiment de la Chaudiere, A.F. dan le cas de E 10376 L/Cpl EMOND, M., Le Regiment de la Chaudiere, AF

1er Temoin: Capt. J.B. Rousseau, Adjudant, Le Regiment de la Chaudiere, A.F. ayant ete dument assermente declare:

Je suis l'Adjudant du Regiment de la Chaudiere, A.F. C'est moi qui inspecte la malle arrivant. Le 26 Decembre, 1942, une lettre de la 8ieme Bde est arrivee au Bureau, dans laquelle etaient contenues deux lettres ayant ete ecrites par le L/Cpl Emond, M. Le Regiment de la Chaudiere, A.F. L'une de ces lettres etait adressee Mme Azarie Emond et l'autre a Malle Rita Emond. Dans les deux lettres etaient incluses des photographies et dans les deux lettres le L/Cpl Emond parlait de l'entrainement fait dernierement par l'unite ainsi que des preparations que l'unite fait pour les mouvements. Tout cela etait contraire aux mesures de securite publiees dans les ordres regimentaires du 10 dec 42 et qui etaient une traduction des Overseas R.O. 1069. Dans la publication de ces ordres on specifie qu'il etait defendu d'envoyer des photographies sans en avoir reu l'autorite necessaire Overseas R.O. 95.

J B Rousseau
(J.B. Rousseau) Capt.-Adjt.
Le Regiment de la Chaudiere, A.F.

L'accuse ne transquestionne pas le temoin.

QUESTION A L'ACCUSE: Desirez-vous faire une declaration ou rendre temoignage sous serment. Vous n'etes pas oblige de le faire ou de rendre temoignage a moins que vous ne le desiriez: mais tout ce que vous direz ou tout temoignage que vous rendrez sera pris par ecrit et servira de preuve.

REPONSE DE L'ACCUSE: Non, monsieur.

M Emond E/Cpl
E 10376 L/Cpl Emond, M.
Le Regiment de la Chaudiere, A.F.

Les regles de procedure 4 (C) (D) et (E) ont ete observees.

Pris par moi par ecrit, en presence de l'accuse, en campagne ce 8ieme jour de Janvier, 1943.

L Rousseau Lt
(L. Rousseau) Lieut.
Le Regiment de la Chaudiere, A.F.

I

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

LIEUT. G. A. CODERE is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked J. K., signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Observation.—If by reason of the nature of the service of the accused in a desert, remote parts or otherwise the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* My defence is in officer will read for me

The Court is closed for the consideration of the sentence.

(See Ex. "C")

F

Sentence

The Court sentence the accused

Sentence.

See A.F.A.B. Page 2

80 Wt 28518/7268 500m 8/41 Orch.St. 416

POSTAL & TELEGRAPH CENSORSHIP. SUBMISSION No.

P.C. 72

Terminal Mail AW Surface

HQR./20/194094/42.

Letter from B/10376 Cpl. EDMOND M.	To Madame Azarie EDMOND, 2504, Frontenac St., Montreal, P.Q., Canada. & Mlle. Rita EDMOND, 2504, Frontenac St., Montreal, P.Q., Canada.
Address or postmark. Le Regiment De La Chaudiere, Administration Coy. Plt. 3. C.A.O.S.	
Date of Letter or postmark. 13. 12. 42.	Language French.

ORIGINAL LETTER:

Submitted x Photographed

Retained Released

Returned to Sender

SUBMITTED TO: 21 DEC 1942

Orig. to F.C.(H).

J.E.K.

Seen by: Naval Adviser Air Advisor I.M.12

SUBJECT

(Include necessary references to Watch Lists with Authority requiring the Watch)

Writer states that the 3rd Division are undergoing special training and suggests that they may leave the United Kingdom early in 1943.

X Extract from letter to Mme. Azarie Edmond :-

"It won't be long before we go into action the way things are going just now. Not only our regiment is having all this training and moving about, but the whole 3rd Division. We are going to do some training in a week's time and have already done this 3 weeks ago.

On Monday 21st the General is coming to inspect the Quarter-master's Stores, and the books, that's why we are having an inventory. All surplus stock is to be returned, except the strict necessary. Even the soldiers must have no surplus, you can see something is afoot."

(This letter contains 2 photographs, one of which is marked: "Scotland, on PTO

Operating Unit	Section	Examiner	D.A.C.	Date
F.C.(H)/Mol.	3/9	1527	Deputy.	20.12.42.

on disembarkation")

Extract from letter to Mlle. Rita Edmond :-

"Lately we've been moving about quite a lot and all this movement is part of our training. Our battle days are fast approaching and I think we'll leave this country early in 1943"

"Our regiment has been here for a year and five months and the men have done nothing but training, especially for the past 3 months in offensive and invasion barge exercises . . . we had three for 3 days."

"We are going to have them 3 days every month until the real movement comes."

X

FOR MINISTRIES ONLY

Recommendation for Disposal of Letter and Reason

FOR CENSORSHIP INTERNAL ACTION

Letter Condemned _____ Returned to Sender _____ Released _____



C.A.A.F.



Mme. Azarie Emond.
2504 Frontenac St.
Montreal,
P.Q. CANADA

E/10376 Cpl. Emond M.
Le Regt.de la Chaudiere A.F.
Administration Coy, Plt.3
Canadian Army Overseas.

Angaturé, 13 Dec, 1942

Bonjour Maman,

Comment ça va, toujours bien je suppose; il y a quelques temps je n'ai pas pu vous écrire bien souvent, mais ne croie ce n'est pas par mauvaise volonté, et que je vous oublie.

Nous, mais bien sur ici il y a bien du remuement, ça fait trois jours que nous sommes rendus à notre nouveau camp.

Nous sommes très bien logé, dans de belles maisons fini avancées, nous sommes en plein dans le centre d'une très jolie ville sur le bord de la mer.

je vais vous envoyer quelques cartes postales de cette place ça vous ira.

Aujourd'hui dimanche tout le monde travail comme si c'était une journée de la semaine.

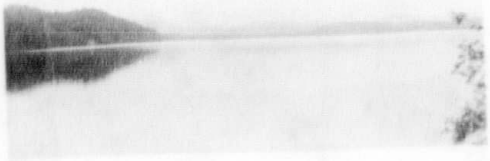
Hier samedi à 4½ heure, nous avons eu l'ordre qu'il fallait un inventaire complet de tout le stock qu'il y avait au quartier-maître, et il fallait qu'elle soit

finit pour lundi matin à 8 heures.
Au moment justement d'arriver ici les caisses n'étaient pas encore déballés, je vous dit que ce n'était pas encore le temps d'un inventaire, ça faisant seulement une fois qu'on nous étions arrivés.
Aut s'est mis à l'ouvrage de suite, et ont à fini à vingt heures ce soir.
Je vous dit que le dimanche ont l'a pas vu.
Je vous dit franchement que ça vaut pas bien long pour aller à l'action, de la manière que ça marche là.
Ce n'est pas seulement notre Régiment qui a fait de rapides aménagements, mais toute la division.
Nous avons été faire de l'entraînement sur des pages il y a trois semaines, nous allons y aller dans une semaine encore, tout aime bien cette manière, ça change les idées sur l'eau.
Ne fait pas de deux semaines que je n'ai pas reçu de lettre de vous, je crois que vous disiez que vous m'envoyez avec des cartes de vaudeville, n'est pas encore arrivé, c'est la première que je ne reçois pas, je lis sur les journaux

anglais que des centaines de sacs de malles avaient été détruits par le feu à dans le port de Halifax.
Ils se faisaient certainement, qu'il était dans ces sacs.
J'ai envoyé beaucoup de cartes de remboursement à tous les parents et amis.
J'espère que Rita a reçu le dix shillings ($2.25) que je lui ai envoyé il y a plus d'un mois.
Je ne vous ai pas dit cela, je crois, les trois jours que nous avons passés sur l'eau, à part les exercices d'évacuations sur des bateaux, avant de partir pour chaque exercice, ils nous donnaient une grosse ration de Rhum, je vous dit que c'est pas des forces fainéants là, c'est bien fait et sucré, et ont est obligés de le boire, ils y a des officiers qui voyant à ce qu'ont le choisi pas. Je crois que c'est pas de l'huile de castor. Je crois qu'il y a une sorte faite des grenouilles, mais ils y en a pas qui se dérobent les divers, et c'est bon lorsque on le donne à nos amis.
Ils nous donnent cela pour ne pas perdre de malades, quand ont sautent à l'eau.
Un soir ont a sauter dans quatre pieds d'eau.

Avec un coup de vent comme celà, ça fait juste pour nous rafraîchir quand l'on rentre à l'eau.
Ça m'a mis pas mal chaud, avec un vent j'aurais pas été capable marché je crois, une chance qu'il en a pas à tous les jours.
Et c'était un gros coup à moitié d'une grosse tasse, j'ai reçu il y a trois semaines une lettre de Blaise de Vallerysted, et de Marguerite, leurs lettres m'intéressent bien, mais c'est de saison que je n'ai pas eu le temps de leur répondre encore.
Je vais faire mon possible pour leur écrire dimanche. Lundi le 21 le Général vient inspecter le quartier monter et les hivers, c'est pour cela l'inventaire, et il faut que tout soit à l'ordre.
Et tout le stock qui est à de trop il faut le retourner. Il faut que la structe nécessaire.
Sont occupé bien quelques choses s'arrangent.
Même les soldats ils ne faut pas qu'ils aient chez eux.
Pour moi c'est cette fois mois de février ou mars que nous allons faire le gros mouvement, je attendre!
Un bonjour à tous Marie









Angleterre 15 Déc. 1942.

Bonjour Rita.

Tu recevras certainement cette lettre dans les nouvelle année, et en pleine hiver au Canada. Ici le 15 Déc. et il fait bien beau de ce temps ci, un beau soleil haut comme en été.

Comme tu sait ici l'hiver n'est pas bien fort.

Je commence à connaître les température de ce pays.

Voici le dernier Noël que je passe ici, mais on n'est pas encore sûr de rien, je me demande si je serais à Noël 1943, je serais certainement pas ici en Angleterre.

En France fait-il froid ?...

Mais je souhaiterais bien et à la maison; il me semble que c'est assez dure Noël à l'étranger.

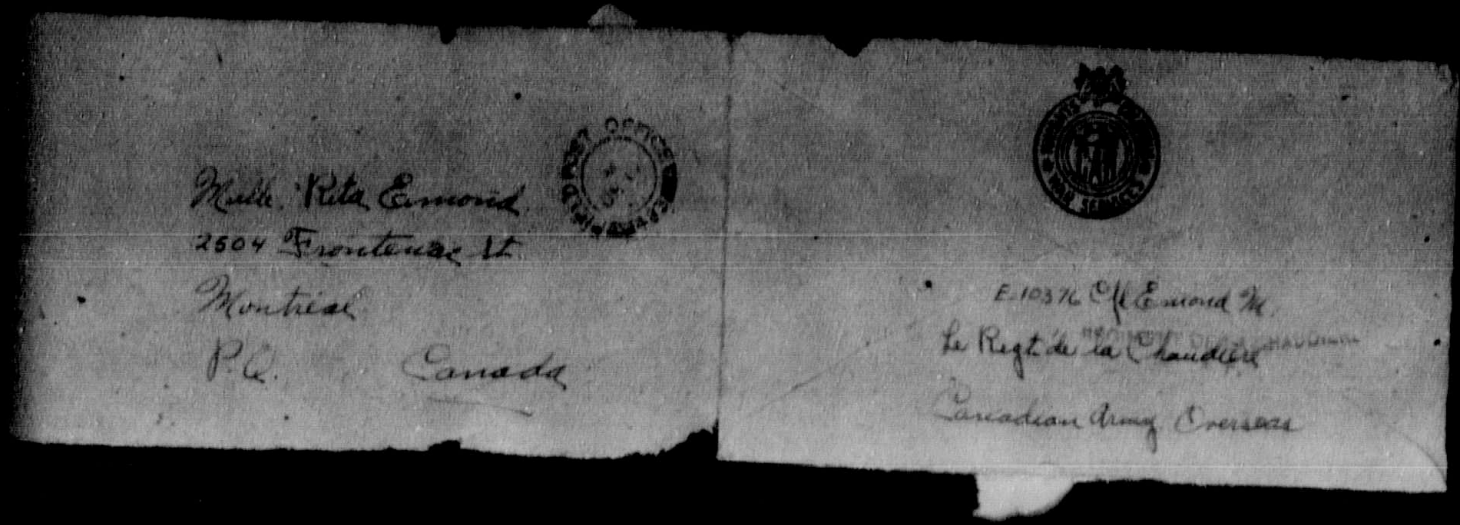
Dans le moment nous sommes dans une petite ville sur la côte sud de la mer, ici depuis cinq semaines. Comme tu peut avoir remarqué hier nous avons fait quelques tirs; et bien tout les commencements sont durs de l'entraînement, car tu sait que sur le champ de bataille, on s'habitue à toute les jours.

Et ces jours de Noël s'en vont à grands pas.
Pour moi ont guitteras ce pays sont les premiers mois de l'année 1943.
Et tout ont bien hâte, car tout nubont ce finir avec cette guerre, et retourné chez eux, la première division Canadienne est ici depuis 1939, tu peut comprendre que ces Canadiens sont bien fatigués de toute ces parades, comme notre Régiment est ici depuis une an et cinq mois, et toute ce que les hommes font c'est de l'entrainement, surtout depuis trois mois ces des exercices d'offenives et d'invasion sur les barges.
Tu doit avoir vu barges d'invasion sur les journaux, et c'est de l'entrainement bien différent aux autres, les hommes aiment bien cela ça change les idées, ils y en a que sautes à l'eau et en avait audessus de la ceinture.
Moi j'ai bien aimé cela; ont faisaient trois exercices par jours, une dans l'avant midi, une dans l'après midi, et une autre (les fois) dans la nuit vers à une heure ou deux heures.
Nous avons fait ces pendants trois jours.

Américains, Russes, et même les Canadiens.
Ils composent des chansons Françaises contre eux-ci.
C'est de rallier ceux qui étaient avec nous il y a quelques
temps; mais ça changeait certainement quand ils se-
ront dispersés des Allemands.
Maman doit être partie de la maison depuis quelques temps
Petit moi n'ai pas fait Noël à la maison; ça va me
faire un des plus à la maison pour ce Noël que l'on se-
rait, j'espère que ça serait mon tour l'an prochain.
Ça va être moins amusant que l'an dernier ici, cette
fois ci on est dans une ville, et non dans un bois
comme l'an dernier.
Nous allons avoir du football pour ce jour, l'un devant
aller aux ex de la dinde; et des tournées au lard
je voulais aller voir Daniel Cardinal avant Noël, mais
je vois que ça serait impossible avec tout ce remue-
ménage, et inoculation, et inspection des Général Lundi.
Ça fait plus de un mois et demi que je n'ai pas pu
avoir un week-end, ni même mon congé neuf jours
je vais te quitter en te souhaitant de bonnes et
heureuses années. Ton fils qui pense bien à toi

Marius

Nous sommes revenus fatigués et humides, mais bien contents de notre nouvelle aventure.
Nous allons faire ici, trois jours par mois jusqu'au vieux moment venus, et j'espère bien que ce moment arrivera très bientôt.
Je te dis que il n'y a pas beaucoup de bombardements ici depuis plus de un mois.
Ils ont reçu que la mission en a fait une visite à Lille.
Comme tu vois je reprends bien, j'espère que tu en continues.
Ici à notre nouvelle demeure, on est très bien logé. Je suis ma chambre dans une belle maison neuve. Nous sommes trois dans ma chambre, il y a un bon poêle et deux grands châssis, c'est une chambre bien claire, nous avons toujours notre radio, on fait de la très bonne musique et chantons françaises de Paris, mais ils font des mêlées dans discours et nouvelles de la guerre sont contre nous.
Tout reporte que c'est les Allemands qui commencent toutes les guerres, ils étaient contre les Anglais



Mlle. Rita Emond
2504 Frontenac St
Montreal
P.Q. Canada

E.10376 Cpl E Emond Mlle
Le Regt de la Chaudière
Canadian Army Overseas

LE REGIMENT DE LA CHAUDIERE A.F.

LIST OF EXHIBIT IN THE CASE OF E 10376 L/Cpl EMOND, M.

Two (2) letters and photos as per attached.

(P. Mathieu) Mjr.
A/O.C. Le Regiment de la Chaudiere A.F.

Attached to Pay Book

No. 2-10376 Name Edmond M. Sqn., Battery, or Company Hd. Wing Corps R. de Chasse Date of enlistment 20/1/41 G.C. Badges nil Service or Proficiency Pay nil

Discharged 20/7/41

Date of last entry in Company Conduct Sheet nil No. and date of last drunk nil Period not reckoning towards freedom from extra fine nil Sheet No. One Signature O.C. Company, etc. Character

M.F.M. 6
A.F.B. 199
175M—7-41 (1219-20)
H.Q. 1772 39-1652

Place	Date 1941	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Lussey	4 July	Pte		Proceeding on embarkation leave					

Certified True Copy
George Albert Codere Lieut
A/Adjutant
R. de Chasse

(P.T.O.)

M.F.H. 355
40/F & H/575

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number E 10376 Rank L/Cpl Name EMOND, M. Regiment (or unit)
LE REGIMENT DE LA CHAUDIERE, A.F.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and ~~Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	None times	None times
For	days	days
For	times	times
For	times	times
For	~~Number of instances of gallantry or distinguished conduct~~	

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted ~~by~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act, A.A. 76 Section 47 of the Army Act, and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 00 days in civil custody, and 00 days in military custody, making a total of N/A days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24 and 0

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 20 Jan 41

7. The service which the accused is allowed to reckon towards discharge is 715 days

8. The accused is entitled to reckon 715 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~medal~~ military reward (or is ~~in possession of or entitled to~~) ~~State any air force decoration or reward~~ military.

10. (~~If the accused holds a permanent commission~~ ~~the regimental rank of~~) ~~The accused holds the rank of~~

11. (~~In the case of an officer.~~) ~~The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit F.R.

~~dated~~ , and in his regiment (or corps) ~~the rank of~~

~~dated~~

12. ~~The accused has served as a Non-commissioned officer continuously, without reduction, to the present date:—~~ F.R.

Date of promotion.

~~In the rank of~~ ~~guard~~

~~In the rank of~~ ~~private~~ F.R.

~~In the rank of~~ ~~none~~.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Unit~~ F.R.

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank L/Cpl.

Name ENGND, H. of LE REGIMENT DE LA CHAUDIERE A.F. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL	NIL	NIL	NIL	NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of Jan. 43.

(J.E. Rousseau) Capt.-Adjt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked K signed by the president, and annexed to the proceedings.

George Albert Coferre. Lieut
Adjutant
R. 22e Chasseurs.

EXHIBIT L.

The Defending Officer addressed the Court:

He pointed out that the offences were more of a technical than a malicious nature. He mentioned that far greater detail is given in his daily press in many cases. He pointed out the excellent character of the accused.

COUNTER NUMBER 565739

HOUR 21.30

OPERATOR'S INITIALS E.M.

RELIEVING OPERATOR C.R.

55-92

Ple. Emond. Q

Imputation
to DND
by AG's A

HUU-12

Ste Emond. R.H

Certified True Copy

(D.M. [illegible]) Lieut

RECORDED AT CMHQ IN AB 168 HHH-12

FIELD GENERAL COURT-MARTIAL

CFAB6 (in lieu of AFA3) 40-1 A1 S-1808 (2804)

Convened by Order of Brig H.W. Haldenby Comd 1 C.S.B.R.Gp. dated 22 June 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt. A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt. A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 133077	Pte	Robert Herve	EMOND	1 Bn 1 CSRD

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Italy on (*date*) 26 June 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which users are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is cleared. The accused is (are) brought before the Court. At [illegible] hours trial commenced. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial (2). The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(3)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A4. [illegible]

A5. President to accused: Do you object to Lieut F. Delisle as interpreter? Ans. No

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans. No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.G. Longhurst	CID 2 Bn 1 CSRD
Member	Lieut	M. Devlin	CIC 1 Bn 1 CSRD
Member	Lieut	J.A. Milbrath	2 Cdn Re-All Centre
Judge-Advocate			
Prosecutor	Lieut	E.P. Lafleur	CIC 1 Bn 1 CSRD
Defending Offr	Lieut	Y. Beaulier	CIC 1 Bn 1 CSRD

Questions by President: Is the Prosecutor a lawyer? Ans. No Is the Defending Offr a lawyer? Ans. No (2)

(1. RP 26, 27, 109, 110. List of offrs under instr will be returned separately with proceedings for information of Govt Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See D1 p 3.)

A8. The accused B-133077 Pte EMOND, Robert Herve before arraignment make(s) (no) (a) plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 118), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and names of the accused making the plea.)

A9. The accused is (are) arraigned (severally) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-133077 Pte EMOND, Robert Herve, 1 CSR Bn 1 CSRD

Charge. (*Insert "alternative" where applicable.*)	Plea. (*See Instrs p 2.*)	Finding. (*See note below.*)	(*Space for use as required for further charges, accused charged jointly, special findings, etc.*)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence(s) for [illegible] beginning on (*date*) [illegible] "WOL" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 37 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of one year and to be put under stoppages of pay until he has made good the sum of $14.93, in respect of lost kit and necessaries.

(Sgd) [illegible] Judge-Advocate, if any. 26 June 44 Date awarded. (Sgd) "W.G. Longhurst" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 571. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed "WOL"

I direct that the accused be [illegible] (1) "WOL"

(1. AA 57A. Delete if not used.)

(Sgd) "H.W. Haldenby" Brig Commander

Date 26 June 44 Commanding 1 Cdn Base Rft Group Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-133077 Pte EMOND, R.H.	28 June 44	[illegible] E.P. Lafleur Lieut
B Coy 1 Bn 1 CSRD		A/OC B Coy 1 Bn 1 CSRD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*E*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) to Not Guilty(2). The accused elects to change his (their) plea(s) to Not Guilty and the Court grants permission for him (them) to change his (their) plea(s) to Not Guilty. The plea(s) of Guilty to the charge(s) is (are) changed to Not Guilty and the plea(s) of Not Guilty to the charge(s) is (are) changed to Guilty. Part I of the Schedule is amended accordingly.

"WGL"

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

"WGL"

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. ..... Do you intend to call witnesses on your behalf?

Ans. ..... Are they witnesses as to character only? Ans. .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CP 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

"WGL"

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)

Ans. No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements(1) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(2)

"WGL"

(1. *1998 355 or AFB 2916.* 2. *Delete fn.* 3. *RP 46. KR Con 538. If absent documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to pause on such anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 102. Give sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 88. As to sentences see AA 44, 138, 182, RP 46-50, 69, 158, 179(A), KR Con 308, 330, 343-344, Overseas RO 309, 2323, 2325, p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(10), 68(1), KR Con 344.* 2. *RP 30. As to release from arrest by Convening Offr see KR Con 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-133077 Pte Robert Merve EMOND, 1 Cdn Base Rft Bn., 1 CBRD, a soldier of the Canadian Army Overseas, is charged with :-

First Charge
A.A. Sec 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, absented himself without leave from 1800 hrs, 24 Dec 43, until 0001 Hrs, 29 Feb 44 (total time 66 days, 6 hrs and 1 min).

Second Charge
A.A. Sec 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, in Italy, absented himself without leave from 0830 hrs, 5 Mar 44 until 2130 hrs, 20 May 44. (total time 76 days, 13 hrs).

Third Charge
A.A. Sec 24 (2)

WHEN ON ACTIVE SERVICE, LOSING BY NEGLECT HIS EQUIPMENT, CLOTHING AND REGIMENTAL NECESSARIES,

in that he,

In the Field, in Italy, on 14 June 44, was deficient of articles of kit, as under :-

		100% Value	75 % Value
Anklets, Web,prs	1	$ .99	$ .75
Blouses, S.D.	1	5.25	3.94
Jersey, pullover	1	1.79	1.35
Shoes, canvas	1	.64	.48
Trousers, S.D.	1	5.39	4.05
Boots, ankle,prs	1	5.46	4.10
Cap comforter	1	.34	.26
		$ 19.87	$ 14.93

"R.D.Clendenning" Major
(R.D. Clendenning) Major
T/Commanding Officer,
1 Cdn Base Rft Bn., 1 CBRD

In the Field
16 June 44

To be tried by Field General Court Martial.

"W.W. Waldenby" Brig
(W.W. Waldenby) Brig
Commander
1 Cdn Base Rft Group

In the Field
22 June 44

"WGL"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&S/1497 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army C verseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B- 133077	Pte		Robert Herve	EMOND	1 Bn 1 CDRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 June 44 endorsed by me, (or by an officer whose name is known to me,) "To be tried by Field General Court-Martial". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for the purpose of a superior qualified offr.) "EWH"

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed "EWH" or detailed hereunder.

4. I am unable to appoint (a) this Offr to form the Court, (b) a PJ (iii) as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge Advocate (except the Offr nominated hereunder) "EWH"

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.G. Longhurst (CIC)	2 Bn 1 CDRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	M. Davlin (CIC)	1 Bn 1 CDRD
Lieut	J.S. Milbrath	2 Cdn Re-Alloc. Centre

WAITING MEMBER.

(Rank.)	(Named or detailed. If any. RP 106.)	(Unit.)
Capt or Lt.	to be detailed by OC 2 Cdn Reallocation centre	

JUDGE ADVOCATE. "EWH"

(Rank.)	(Must be named. If any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

"E.W. Haldenby"
(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 22 June 44

Commanding 1 Cdn Base Rft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

"W. G. Longhurst" Major

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE
(AA (can) 557

I certify that I have this morning examined No B-133077
Name EMOND J.M. of 1 Bn 1 CBRD and in my opinion he is
fit to undergo trial by Court Martial.

In the Field
Date 26 June 44

Sign undecifable
Medical Officer

"WGL"

"Exhibit A"
W.G. Strathearn
Brgde

SUMMARY OF EVIDENCE

In the case of B-133077 Pte R.[illegible] EMOND, 1 C.B.R. Bn, 1 CMHD, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken under oath.

First Witness For Pros.

Lieut D.B. Dickson, Assistant Adjutant, 1 CMHD, having been duly sworn, states :-

I am Lieut D.B. Dickson and I am employed as Assistant Adjutant for 1 CMH Bn, 1 CMHD. I submit a certified true copy of the Declaration of a Court of Inquiry assembled in the Field on 6 Feb 44, showing that the accused, B 133077, Pte Emond R.H. was absent from 1800 hrs 24 Dec 43 and that on 6 Feb 44, he was still absent. I, also, submit Royal 22 Part II Orders No 14 dated 31 Mar 44, para 5 (i) of which shows that the accused was TOS from desertion on admission to 16 Cdn F.D.S., 29 Jan 44.

I, further submit "X" List Royal 22 Regt Part II Orders No 61 dated 9 June 44 para 4 (a) shows that the accused was AWL from 0830 hrs 5 Mar 44 still absent 0830 hrs 27 Mar 44. para 4 (b) shows that the accused returned from AWL at 2150 hrs 20 May 44. These documents came to my possession through normal channels

pages

"D.B. Dickson" Lieut

The accused declines to cross examine the witness.

The "Declaration of a Court of Inquiry" "Royal 22 Regt Part II Orders No 14 dated 31 Mar 44" and "X List Royal 22 Regt Part II Orders No 61, dated 9 June 44" referred to by the witness, produced, identified over shown to the accused, marked Exhibits "A" "B" and "C" and attached to the Summary.

"C.G. Smethurst Lieut"
Officer Taking Summary

"WDL"
Second Witness
For Prosecution

Pte Belley A. A 57828, # 3 Coy, 1 CBR Bn, 1 CBRD having been duly sworn state;-

I am storeman for # 3 Coy and am acting ~~REGIMENTAL~~ CQMS for this Coy while the Coy CQMS is on leave. On 14 June 44, I kit inspected B-133077, Pte Emond, J.H., of # 3 Coy, 1 Bn, the accused, and I found him deficient of articles of kit to the value of $19.87, being 100% value or $14.93 being 75% value. I have a list of prices of clothing and equipment which I am familiar with and am familiar with its contents

"A. Belley" Storeman # Coy

The accused declines to cross examine the witness. The list of deficiencies referred to by the witness read over, shown to the accused, marked Exhibit "D" and attached to the Summary of Evidence.

'C.4 General Instr'
~~Signature~~ Title
Officer Taking Summary

Question to Accused

Do you wish to make any statement or to give evidence upon oath? You are not obliged to do so, but any statement you make or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused

I reserve my defence.

I certify that the foregoing Summary of Evidence was taken down by me, in the presence of the accused and that Rules of Procedure 4 (c)(d)(f) and (g) have been complied with.

'C.4 General Instr'
~~Signature~~ Title
Officer Taking Summary of Evidence

In the Field

15 June 44

No B 13307 Name EMOND , Herve Sqn, Battery, or Company Corps C.I.C. Date of enlistment 18- -42 GC Badges Service or Proficiency Pay MFM 6 (AFB 122) 40/PAS/13f (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Valcartier	19-2-43	Pte.	(1)	AA Sec 15(1) AWL 52 days 5 hrs 20 mins	Written testimony	28 days detn stoppage of pay of $21.14	26 Apr 43	Col PR Poirier.	forf 53 d p
			(2)	Losing by neglect eqpt $27.16 AA Sec 24 (2)	L/C. Emard				
			(3)	AA Sec 40 Cost of apprehension $21.40					
Field	26-9-43			AA Sec 24(2) def emergency rat.	CQMS G A Crochetiere	7 days C.B.	28-9-43	LtCol W.P. Bristowe	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24-10-43	Pte		(1) AA Sec 11 Neg of stdg orders (2)AA Sec 40 improperly dressed	Documentary	7 days F.P. 14 days pay	26-10-43	Lt-Col WP Bristowe	
Field	16-11-43	"		AA Sec 19 Drunkenness	Documentary	admonished	27 Nov43		
Field	16-11-43	"		AA Sec 40 Attempting to conceal when apprehended.	Documentary	14 days C.B.	27 Nov 43		
				CERTIFIED TO BE A TRUE COPY FROM THE REGT BOOKS IN MY CUSTODY "..J.Cannon" Capt Officer in custody of Regtl Books					

C Coy Dificiencies Kit 14 June 1944

B-133077 Pte Emond H.

Anklets Web	1		.99	.75
Blouses Battle Dress	1		5.25	3.94
Jersey Pullover	1		1.79	1.35
Shoes Canvas	1		.65	.48
Trousers Battle Dress	1		5.39	4.05
Boots Ankle prs	1		5.46	4.10
Cap Comforter	1		.34	.26
TOTAL			$19.87	$14.93

"A. Belley Storeman"

C-coy

This is Exhibit "D" referred to in the Summary of Evidence in the case of B133077 Pte. Emond, H., taken down by me this 15th day of June 1944.

"C.E. Senechal Lieut."
Officer taking the Summary.

"WOL"

Extract from ROYAL 22e REGIMENT PART II ORDER No. 14 dated 31 Mar 44.

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5. STRENGTH INCREASE

(i) T.O.S. from des on adm to 16 Cdn FDS 29 Feb 44
B133077 Pte Emond, H.

This is Exhibit "B" referred to in the Summary of Evidence in the case of B133077 Pte. Emond, H., taken down by me this 15th day of June 1944.

"C.E. Senechal Lieut."
Officer taking the Summary

Certified True Copy

"J.E.Campbell Lieut"
Officer i/c Regimental Records.

Extract from "X" LIST ROYAL 22e REGIMENT PART II ORDER No. 61
dated 9 Jun 44

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4. ABSENT WITHOUT LEAVE

(a) A.W.L. from 0830 hrs 5 Mar 44 Still absent 0830 hrs 27 Mar 44
B133077 Pte Emond, H. (22nd Day)

(b) A.W.L. from 0830 hrs 5 Mar 44 Ret from AWL 2130 hrs 20 May 44
B133077 Pte Emond, H.

This is Exhibit "C" referred to in the Summary of Evidence in the case of B,133077 Pte. Emond, H., taken down by me this 15th day of June 1944.

"C.E. Senechal Lieut."
Officer taking the Summary

"WGL"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 6 th day of February 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.133077 Pte. EMOND H. Royal 22e Regiment

DECLARATION.

The Court [redacted] The court having heard the evidence makes the following reports:

a) B.133077 Pte. EMOND H. is absent without leave since 1800 hrs the 24th December 1943 and that he is still absent.

b) B.133077 Pte. EMOND H. is deficient of articles of kit amounting to: £3.6.9½

"WGL"

PRESIDENT Capt. P.F. Potvin MC R22e R

MEMBERS Lieut. F. Brunet R 22e R
Lieut. J.M. Dusseault R 22e R

Names of President and Members

Signature of Commanding Officer J.V. Allard Lt.Col.

CERTIFIED TRUE COPY. Commanding Royal 22e Regt.

Capt. J.B. Rousseau Adjutant.

Signature of Officer having custody of the Original Record.

Certified true copy of Regimental Books in my possession.
"P.A. Tremblay Lieut"
Offr i/c Records R 22e R
6 Jun 44

This is Exhibit "A" referred to in the Summary of Evidence in the case of H.13907 Pte EMOND H. taken down by me this 15th day of June 1944. Lieut. Officer taking the Summary.

(21200) WL10085/791 150,000 4/42 A.& E.W.Ltd. Gp.698 Forms/S.115/38
(20449) WL29552/1800 100,000 10/42 " "

PLEA OF MITIGATION

B 133077 Pte Emond, H.

1. B 133077 Pte Emond, H. enlisted voluntarily on the 18 Sep 42. in Toronto. Proceeded overseas 16 Jul 43. Arrived in Italy Nov 43 and was sent immediately to the front line.

2. B 133077 Pte Emond H. served for about two and a half months as infantryman at the front line with the Royal 22e R[illegible]. During his service at the front line they have nothing to reproach to the accused.

3. If Pte Emond went A.W.L. it was on account of the fact that he was sick. He was suffering from scabies and the M.O. of the Unit told him that he didn't have time to take care of him, so Pte Emond went A.W.L. and got cured by an American M.O.

4. I wish to point out to the Court, that Pte Emond had a few minor charges, and that he had a good conduct sheet.

5. Furthermore I feel sure, if a chance is given to Pte Emond to go back in the front line, that he will do justice he has done in the past, a good soldier. Because I am certain, if Pte Emond enlisted voluntarily it was because he wished to serve his Country to the best of his ability, so, that is why I am asking the clemency of the Court in favour of the accused.

"Y.Beaulieu" Lt.
Defending Officer.

"F.S."
W.H. Sinclair
Sergeant

LIST OF EXHIBITS

In the Case of B 133077 Pte Emond, R.H., 1 C.B.R.Bn., 1 C.B.R.D.

Exhibit "A" -- Record of the Declaration of a Court of Inquiry.

Exhibit "B" -- Royal 22e Regt Part II Orders No. 14, dated 31 Mar 44.

Exhibit "C" -- "X" List Royal 22e Regt Part II Order No. 61, dated 9 June 44.

Exhibit "D" -- List of kit deficiencies.

LIST OF WITNESSES

In the Case of B 133077 Pte. Emond, R.H., 1 C.B.R.Bn., 1 CBRD.

WITNESSES FOR THE PROSECUTION

Lieut. D.B. Dickson	1 C.B.R.Bn., 1 C.B.R.D.
A.57828 Pte. Belley, A.	1 C.B.R.Bn., 1 C.B.R.D.

WITNESSES FOR THE DEFENCE

NIL

STATEMENT BY THE ACCUSED

I certify having received free of charge, a copy of the Summary of Evidence, list of Witnesses, list of Exhibits and Charge Sheet.

I desire the services of an Officer to represent me at the trial.

Date 16 June 44 "H Emond"

CHARGE SHEET

Y 11

GNR EMSLEY, A

B-92014 Gnr. Essley, Alfred
No. 2 C.A.R.U.

Y-11

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this SECOND day of FEBRUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "C" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint ~~(1. Three Officers to form the Court.) (2. A Field Officer as President.)~~ for the following reasons, namely :—]

* Omit if not applicable.

Notes.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
LIEUT.-COLONEL	D.L. DUDLEY	CAIO. SCOTS

Members.

Rank.	Name.	Regiment.
CAPTAIN	E.W. MacDONALD, R.C.A.	2 C.A.R.U.
LIEUT.	C.E.P. McKAY, R.C.A.	3 C.A.R.U.
LIEUT.	F.E. LYONS, R.C.A.	2 C.A.R.U.

*Signed (Full Name and Rank) [illegible] BRIGADIER

Commanding "C" GROUP, CDN.REINF. UNITS.

Convening Officer

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-92014 PTE. ENGLEY, Alfred (R.C.A.M.) 2 C.A.R.U.	CHARGE SHEET NO. 1			
	First Charge A.A. Sec. 15(1)	Not Guilty	Guilty	Confirmed [illegible]
	Second Charge A.A. 9(2)	Not Guilty	Guilty	
	CHARGE SHEET NO. 2			
	First Charge A.A. Sec. 9(2)	Not Guilty	Guilty	
	Second Charge A.A. Sec. 9(2)	Not Guilty	Guilty	
	Third Charge A.A. Sec. 22	Not Guilty	Guilty	
	CHARGE SHEET NO. 5			
	First Charge A.A. Sec. 15(4)	Not Guilty	not Guilty	
	Alternative Charge A.A. Sec. 40	Not Guilty	Guilty	

Sentence to undergo detention for a period of One Year

4th Feb. 1943

See Charge Sheets Attached.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to proceedings before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): answer—no

(Signed) J. Stewart Brigadier. (Signed) [illegible]
Commanding "C" Group, Can. Reinf. Units.
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of FEBRUARY, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ The shorthand writer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 4th day of February 1943.

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1939.

~~I certify that the terms of A.A. s. 179 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 9th day of February 1943.

J. G. STEWART, Brigadier,
Confirming Officer. Commanding "C" Group,
Can. Reinforcement Units.

Promulgated and extracts taken in the case of B-92014 Pte. Engley, A. 2 C.A.R.U.

(a) (Dated) 9 Feb. 43. (Signed) [illegible] 2 C.A.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET.

No. B 92014 Gunner Alfred Emsley, Royal Canadian Artillery, on the strength of "F" Battery, "Q" Wing, No. 2 Canadian Artillery Reinforcement Unit, a soldier in the Canadian Army (Overseas), is charged with

FIRST CHARGE.
ARMY ACT
SEC 15(1)

Absence without leave,

in that he,

While on Active Service, absented himself without leave from Superior Camp, Ludshott, Hants, from 1630 hours on the 15th day of December, 1942, until surrendering himself to the Metropolitan Police at Elephant Tube Station at [illegible] on the 21st day of January, 1943.

(Absent 37 days, 4 hours, 40 minutes).

SECOND CHARGE.
ARMY ACT
SEC 4(1)

Disobeying a lawful command given by a Superior Officer,

in that he,

While on Active Service, at Guildford at approximately 0620 hours on the 3rd day of January, 1943, did not return to his unit when ordered to do so by L/Cpl. J. Stewart, C.M.P.

C E de Pencier

(C.E.dePencier) Lt-Col. RCA.
Commanding Officer,
No 2 Cdn. Arty. Reinf. Unit.
Canadian Army (Overseas).

Signed at Superior Camp,
Ludshott, Hants, this
29th day of January, 1943.

To be tried by Field General Court Martial

[illegible] Brigadier,
Commanding [illegible] Group, Cdn. Reinf. Units.

Bordon, Hants.
2nd February 1943.

CHARGE SHEET.

No B 92014 Gunner Alfred Emsley, Royal Canadian Artillery, on the strength of "F" Battery, "Q" Wing, No 2 Canadian Artillery Reinforcement unit, a soldier in the Canadian Army (Overseas), is charged with

FIRST CHARGE.
ARMY ACT
SEC 8(1)

Offering violence to his Superior Officer,

in that he,

While on Active Service, at Superior Camp, Ludshott, Hants, on the 26th day of January, 1943, when challenged by D 10044 Bdr. Davies, C.J. and M 65691 L/Bdr. Amantea, J., "Q" Wing, No 2 Canadian Artillery Reinforcement Unit, attempted to strike the said Bombardiers.

SECOND CHARGE.
ARMY ACT
SEC 8(1)

Using threatening language to his Superior Officer,

in that he,

While on Active Service, at Superior Camp, Ludshott, Hants, on the 26th day of January, 1943, after having been overpowered by D 10044 Bdr. Davies, C.J. and M 65691 L/Bdr Amantea, J. said to these Bombardiers " I'll get you later for this" or words to that effect.

THIRD CHARGE.
ARMY ACT
SEC 22.

When in confinement escaping,

in that he,

While on Active Service, at Superior Camp, Ludshott, Hants, between 2359 hours on 25th day of January, 1943, and 0610 hours on 26th day of January, 1943, escaped when in confinement.

C.E. dePencier

(C.E. dePencier) Lt-Col. RCA.
Commanding Officer,
No 2 Cdn. Arty. Reinf. Unit.
Canadian Army (Overseas).

Signed at Superior Camp,
Ludshott, Hants, this
29th day of January, 1943.

To be tried by Field General Court Martial

J. Stewart Brigadier,
Commanding 4th Group, Cdn. Reinf. Units.
(Convening Officer)

Bordon, Hants.
2nd February 1943.

CHARGE SHEET.

No B 92014 Gunner Alfred Emsley, Royal Canadian Artillery, on the strength of "F" Battery, "Q" Wing, No 2 Canadian Artillery Reinforcement Unit, a soldier in the Canadian Army (Overseas), is charged with

FIRST CHARGE.
Army Act
Sec 18(4)

Stealing property belonging to persons subject to Military Law,

in that he,

While on Active Service, at Superior Camp, Ludshott, Hants, on the 8th day of January, 1943, stole four pairs of boots, the property of G 52908 Gnr. McCafferty, W..O. F 65475 Gnr. Pellerin, F., M 56545 Gnr. Cummins, L.T., G 19620 Gnr. McFadden, R.B. and a kit bag, the property of M 100836 Gnr Robertson, I.W., soldiers on the strenght of "P" Wing, No 2 Canadian Artillery Reinforcement Unit, Canadian Army (Overseas).

ALTERNATIVE CHARGE
Army Act
Sec 40

Conduct to the prejudice of good order and military discipline,

in that he,

While on Active Service, in the vicinity of the "Ford" at Waggoners Wells, on the 8th day of January, 1943, was improperly in possession of four pairs of boots, the property of G 52908 Gnr McCafferty, W.O., F 56545 Gnr Cummins, L.T., F 65475 Gnr. Pellerin, F., G 19620 Gnr McFadden, R.B. and a kit bag, the property of M 100836 Gnr. Robertson, I.W., soldiers on the strength of "P" Wing, No 2 Canadian Artillery Reinforcement Unit, Canadian Army (Overseas).

G.R. de Pencier

(C.R. dePencier) Lt-Col. RCA.
Commanding Officer,
No. 2 Cdn. Arty. Reinf. Unit,
Canadian Army (Overseas)

Signed at Superior Camp,
Ludshott, Hants, this
29th day of January, 1943.

To be tried by Field General Court Martial

J.S. Stevens Brigadier.
Commanding 4th Group, Can. Reinf. Units.
(Convening Officer)

Bordon, Hants.
2nd February 43.

4 FEB 1943

2CAHU Form #92

MEDICAL CERTIFICATE

I certify that I have this day examined No. B92014 EMSLEY R.

and find him free from infectious or contageous diseases, and

fit to undergo ~~detention~~ trial by F.G.C.M.

Dated at Superior Camp.

J.P. Nutton Capt

(Medical Officer)

No. 2 Cdn. Arty. Holding Unit

Canadian Army (Overseas)

Address by Prosecuting Officer in the case of -

B 92014 Gnr Alfred Emsley, RCA

on the strength of "F" Bty., "Q" Wing., No 2 Cdn Arty Reinf Unit., a soldier in the Cdn Army (Overseas).

Sir:- It is my intention to prove the charges laid against Gnr Emsley, viz-

1. Absence without Leave
2. Disobeying a lawful command given by a Superior Officer.
3. Stealing or being in improper possession.
4. Offering violence to a superior officer.
5. Using threatening language to a superior officer.
6. When in confinement, escaping.

I propose to do this by adducing evidence of witnesses I shall call and the production of documentary evidence. These charges will be proven in the following manner. In the case of the first charge, Absence without Leave, documentary evidence showing the accused to have been absent for 37 days 4 hours and 4 minutes. In the case of the second charge, Disobeying a lawful command given by a superior officer, by the verbal evidence of the person present when the order was issued. The third charge, Stealing or being in improper possession, will be proven by the evidence of witnesses, who are the soldiers from whom the property was stolen, found in the possession of the accused by witnesses who can unmistakably identify the accused. I shall show that property found in the accused's possession was subsequently identified by, and returned to, the aforementioned soldiers from whom it was stolen.
The last three charges, Offering violence to a superior officer, Using threatening language to a superior officer and, When in confinement, escaping, will be proven by the production of evidence from witnesses who were present at the time the events occurred from which the charges were laid.

J.D. Macdonald

(J.D. Macdonald) Capt., RCA
Prosecuting Officer

LIST OF EXHIBITS

Exhibit "A" - Certified Copy of Record of Declaration of Court of Inquiry.

Exhibit "B" - Certificate of Surrender.

Exhibit "C" - Charge Sheet 11-14-100 AFB 252 d/5 Jan 43.

Exhibit "D" - Receipt for return of stolen boots

OFFICERS UNDER INSTRUCTION

F.O.C.M. - 4th Feb 43

Lieut. J.M Dewis	2 C.A.R.U.
Lieut. J. Hutchinson	"
Lieut. W.R. Sangster	"
Lieut. W.D. Gray	"
Lieut. R.H Honeyford	"
Lieut. L.B Fuller	"
Lieut. H.D Hume	"
Lieut. J.E Cameron	"
Lieut. J.M Fielding	"
Lieut. W.C Hesler	"
Lieut.E. R Hoskinson	"
Lieut. J.D MacDonald	"
Lieut. L.W Glanville	"
Lieut. W.E Lee	"
Lieut. B.J Cossman	"
Lieut. W.E Green	"

TRANSCRIPT OF EVIDENCE

in the case of B 92014 GNR. EMSLEY, A., No. 2 C.A.R.U., held at Superior Camp, Ludshott, Hants., on the 4th day of February, 1943.

The order convening the court, the charge sheet, the summary of evidence and the medical certificate are laid before the court.
The court satisfy themselves as provided by Rs. P. 22 and 23.
The accused is brought before the court.
Prosecutor:- A/Capt. C.P. Black, 1 C.A.R.U.
Defending Officer:- Lieut. G.W. Nield 2 C.A.R.U.
At 1700 hours the trial commences.
The order convening the court is read, signed by the president, and attached to the proceedings..
The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.
Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?
A:- No, sir.
The President and Members are duly sworn.
PRESIDENT:- LT.-COL. D.L. REDMAN, V.D., H.Q., C.R.U.
MEMBERS :- CAPTAIN E.W. MACDONALD 2 C.A.R.U.
LIEUT. G.R.F. MCKAY 3 C.A.R.U.
The officers under instruction, as per attached list, are duly sworn.
Do you object to H 20133 Pte. Millard, R. acting as shorthand writer ?
A:- No, sir.
The shorthand writer is duly sworn.
The charge sheet is signed by the president, and annexed to the proceedings.
The accused is arraigned upon the charges in the above-mentioned charge sheets, and pleads NOT GUILTY to all the charges on the three charge sheets.
R.P. 39(A) complied with.
The trial proceeds with respect to the first charge sheet.

The Prosecutor, having been duly sworn, produced AFB 115 and AFO 1617, and stated that they both referred to the accused.
AFB 115 Record of the Declaration of a Court of Inquiry
marked exhibit 1.
AFO 1617 Certificate of Surrender to Civil Police
marked exhibit 2.

1ST WITNESS FOR THE PROSECUTION:- 535754 L/CPL. DUNSTEAD, C.M.P. Guildford, having been duly sworn, is examined by the Prosecutor:-
Q1:- On the 3rd day of January, did you have occasion to check the Playhouse Air-raid shelter at Guildford ?
A1:- Yes, sir. I saw the accused (pointing). I was in company with L/Cp. Stewart. This was a routine check-up. We checked everyone for passes. The accused did not have one. We took his particulars from his MBM 1, and told him to report back to his unit.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q2:- How many of the C.MP's were on patrol ?
A2:- Myself and L/Cpl. Stewart.
Q3:- Who spoke to the accused ?
A3:- L/Cpl. Stewart.
Q4:- What was said to the accused ?
A4:- He was asked for his pass. He did not have one. He got his particulars from his pay book and ordered him to return to his unit.
Q5:- You sent a statement to the unit to that effect ?
A5:- Yes, sir.
Q6:- You are clear in your mind what occurred that day ?
A6:- Yes, sir.
Q7:- From his MBM1 you got his particulars ?
A7:- Yes, sir.
Q8:- What words were used ?
A8:- Just asked for his pass, and he had none, then asked for his MBM 1 and took his particulars, and ordered him to return to his unit.
Q9:- What words did he use ?
A9:- I order you to go back to your unit at the nearest point of entraining.

The prosecutor stated that the other M.P., L/Cpl. Stewart, J., C.M.P. Guildford, was not available, by reason of his being in hospital.

R.P. 40(A) note 2 complied with in respect to the first charge sheet, and the defending officer stated that the accused would give evidence under oath, and also call one witness as to facts.

1ST WITNESS FOR THE DEFENSE:/The Accused, B 92014 Gnr. EMSLEY, A., 2 CARU, having been duly sworn, is examined by the defending officer:-
Q1:- You were at Guildford in the Playhouse air-raid shelter at 0020 hours, as mentioned by the witness ?
A1:- Yes, sir.
Q2:- You remember the witness coming in the shelter ?
A2:- Yes, sir, two of them.
Q3:- Which of them spoke to you ?
A3:- The other one. He asked me if I had a pass, and I said "No", and he asked me for my MBM 1, which I said I did not have with me. He said it was a military offense not to carry it, and I gave him my name and unit, and he told me to catch the train back to my unit.
Q4:- What did he say to you ?
A4:- He just told me to catch the morning train back to camp.
Q5:- This was at 0020 in the morning ?
A5:- Yes, sir.
Q6:- Did you have any money on you at that time ?
A6:- Yes, sir, I had a few shillings.
Q7:- Did you have sufficient to pay your train fare back from Guildford ?
A7:- No, sir, I did not.
Q8:- Did he enquire as to your financial position ?
A8:- No, sir.
Q9:- Did he suggest how you could get back ?
A9:- No, sir., I took it as a suggestion that I should go back, and that there would be a charge handed in.
Q10:- Did you hear L/Cpl. Steward say "I order you to return to your unit"?
A10:- No, sir, he did not give it as an order. He mentioned catching a train, but it was not given as an order.
Q11:- Where was your MBM 1 ?
A11:- I left it in camp with the rest of my kit, when I left camp.

CROSS-EXAMINED BY THE PROSECUTOR

Q12:- You say you gave your name, number, rank and unit voluntarily to the police, did he do anything with that name and number that you gave him?
A12:- Yes, he wrote it down.
Q13:- When he told you to return to your unit you understood it as an order.?
A13:- No, sir.
Q14:- How long were you absent then ?
A14:- 16 days.
Q15:- You knew you were absent ?
A15:- Yes, sir.
Q16:- You knew their duties are toapprehend deserters ?
A16:- Yes, sir.
Q17:- You do not go up to M.P's when you are A.W.L. ?
A17:- I don't go out of my way to meet them.
Q18:- What is the bus fare to Guildford ?
A18:- 2/6
Q19:- You had a few shillings in your possession ?
A19:- I cannot say exactly.
Q20:- You know the buses run between here and Guildford ?
A20:- Yes, sir.
Q21:- What do you consider an order ? Is not anything given by a superior officer an order ?
A21:- No, sir, it might be a suggestion.
Q22:- When you are absent without leave, and they say "return to your unit," it is an order ?
A22:- Yes, sir, it could be. He said that if I did not get back to camp, he said a sheet would be turned in to the camp.
Q23:- You cannot quote his exact words ?
A23:- No, sir.
Q24:- Do you know what is done when the provost take your name and number ?
A24:- I know what is supposed to be done, they are supposed to report it to your unit.

Q25:- Have you any reason to believe that that would not have been done in this case ?
A25:- I have been asked for my pass before, and I have told them that I missed the last train, and have been told to return to my unit, on the next train, and there has been no report.
Q26:- You admit you were given instructions to go back ?
A26:- Well, yes, sir, just a suggestion.

RE-EXAMINED BY THE DEFENDING OFFICER

Q27:- Did the provost suggest to you to take a bus ?
A27:- No, sir.

2ND WITNESS FOR THE DEFENSE:- L 6177 Gnr. HALIKOWSKI, A., 2 C.A.R.U., having been duly sworn, is examined by the defending officer:-
Q28:- What are your duties ?
A28:- I am employed in the Q.M. Stores, the kit stores.
Q29:- Is it part of your duty to inspect the kits of persons who are AWL?
A29:- Yes, sir.
Q30:- Do you know the accused ?
A30:- Yes, sir.
Q31:- Did you check the accused's kit recently ?
A31:- Yes, sir, I believe I did, I don't know the exact date, about December.
Q32:- Did you find his MBM 1 among his kit, his pay book ?
A32:- Yes, sir.
Q33:- What did you do with it ?
A33:- I had it on my desk until noon, then I turned it in to "Q" Wing office I have not seen it since.

THE PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS

CLOSING ADDRESS BY THE DEFENDING OFFICER:-
I have no evidence to offer in respect to the first charge of A.W.L. The second charge is as serious a charge as the first one, and should be proven on the very clearest evidence. The accused is entitled to any doubt in the court's mind. This L/Cpl. who gave evidence, did not speak to the accused, but stood by and listened to the conversation. The Provost said they got his particulars from his pay book, and we have a witness who says that his pay book was left with the rest of his kit. So their memory of the evidence has faded. The prosecution must show that he was able to comply with the order given. It has not been proven that it was an order, and the accused said he did not have the money to return to camp. I submit there is no evidence to warrant the accused being found guilty of disobeying a lawful command.

CLOSING ADDRESS BY THE PROSECUTOR:-
With respect to the order by the Provost corps, they carry out patrols and check up on deserters and absentees. It is granted that the witness in this case checked the accused in the air-raid shelter. He was told to return to his unit, and the accused was A.W.L. at the time. Any man in the army for two years would understand that as an order. Gnr. Emsley gave his name and number to the provost. I do not think it matters where they got that information from, whether from his pay book or from him. Guildford is well-known to the accused, and bus times are well known to the accused. The suggestion that he go by train means nothing, in view of the fact that he knew the bus service, and knew his way back to camp. Gnr. Emsley aggravated his absense by remaining away from his unit, as he was already A.W.L.

THE COURT IS CLOSED TO CONSIDER ITS FINDING.

It being 1800 hours, the court adjourned, and due to the exigencies of the service, and the general inconvenience that would be caused by a protracted adjournment, the president ruled that the court would re-convene at 1900 hours that same evening.

At 1900 hours the court re-opens, and the trial proceeds with respect to the third charge sheet.

2ND WITNESS FOR THE PROSECUTION:- H 3650 SJT. WATT, R.J., 2 C.A.R.U., having been duly sworn, is examined by the prosecutor:-

Q34:- Tell the court what you saw on the 6th of January at approximately 1600 hours.
A34:- I was in the vicinity of Waggoners' Wells in company with Miss Moriarity, and I saw Gnr. Emsley.
Q35:- Do you recognise him here ?
A35:- Yes, (pointing) He was with a Gnr. Spencer, walking up a path towards me. Gnr. Emsley had a kit bag on his shoulder. Knowing before that these men were illegally absent from the unit, I hollered at Gnr. Emsley, and he looked at me, and when he recognised me, he dropped the kit bag and started to run. Gnr. Spencer picked the kit bag up again, and carried it for some little distance, when he also dropped it. I considered it useless to give further chase, as I could not catch up tothem, so I picked up the kit bag, and returned to camp. I reported the incident to S/Sjt. Nicol, my superior officer. We then set out in a jeep to see if we could find Gnr. Spencer and Gnr. Emsley, but they were no where in the vicinity.
Q36:- Did you have a full view of them, how far away were they when you saw them ?
A36:- About 25 yards.
Q37:- Could it possibly have been anyone else ?
A 7:- No, sir. I know Gnr. Emsley quite well, he has been on defaulters' parade in this unit for a long time, and I have taken most of those parades.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q38:- How do you fix the time ?
A38:- About 15 mins. earlier I had asked the girl friend the time, and also while we were walking up the path, there were several fellows walking to catch the 20 to 5 train.
Q39:- It was between four and four-thirty ?
A38:- Yes, is.
Q40:- Waggoners' Wells is at the base of a hill near here, is it not ?
A40:- Yes, sir, but it was a clear day, just before sunset, it was not dark.

3RD WITNESS FOR THE PROSECUTION:- Miss MORIARITY, N.A.A.F.I., Superior Camp, Ludshott, having been duly sworn, is examined by the prosecutor:-
Q41:- Tell the court what took place on January 6th at approximately 1600 hours ?
A41:- I was down at Waggoners' Wells with Sjt. Watt. We were standing there and Gnr. Emsley and Gnr. Spencer came up, carrying a kit bag. They stopped when they saw us, and ran.
Q42:- Who was carrying the kit bag ?
A42:- I am not sure.
Q43:- How far were they when you saw them ?
A43:- Just a few feet.
Q44:- Have you seen Gnr. Emsley before ?
A44:- Yes.
Q45:- Where is he now ?
A45:- Over there (pointing).
Q46:- You know the accused by sight ?
A46:- Yes.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q47:- Previous to the time you saw him at Waggoners' Wells, did you know his name ?
A47:- No.
Q48:- You have seen him around camp ?
A48:- Yes.
Q49:- And Gnr. Spencer ?
A49:- I don't remember seeing him before.
Q50:- At what time was this ?
A50:- About 4 o'clock, on January 6th.

4TH WITNESS FOR THE PROSECUTION:- B 3605 S/SJT. NICOL, E.L., 2 C.A.R.U., having been duly sworn, is examined by the prosecutor:-
Q51:- Tell the court what events took place on the 6th of January.
A51:- At approximately 1630 hours and 1700 hours, I met L/Sjt. Watt on the main road of the camp of 2 C.A.R.U. He was carrying a kit bag over his shoulder. I took the kit bag from him, because he had carried it quite a distance, and I took it down tothe Quartermasters', at R.H.Q. From there I went to the adjutant, and procured a requisition for two motorcycles, to go in search of Gnr. Emsley and Gnr. Spencer.

Except for the fact that we had no success in this search, I have nothing to add. The kit bag was delivered by me to the Q.M. Stores, and put, I think, in the custody of Lieut. Johnson.
Q52:- The time, you say, was approximately 1630 hours ?
A52:- Yes, about that time.
Q53:- Could you identify the kit bag if you saw it again ?
A53:- I am quite sure. Yes, this is the kit bag.
KIT BAG MARKED EXHIBIT 3.
THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS
QUESTIONED BY THE PRESIDENT
Q54:- Was the bag empty ?
A54:- It appeared to be almost full, I did not know what was in it.

5TH WITNESS FOR THE PROSECUTION:- C9576 Bdr. AUSTIN, L.G., 2 C.A.R.U., having been duly sworn, is examined by the prosecutor:-
Q55:- You were in the regimental Q.M. Stores of 2 C.A.R.U.
A55:- Yes, sir. I was on the 8th of January in the Regimental Quartermaster's Stores, and L/Sjt. Watt and S/Sjt. Nicol brought a kit bag in with four pair of boots in it, and gave it to the R.S.M. The R.S.M. dumped them on the floor, and then put them back into the bag again.
Q56:- Do you recognise this bag ?
A56:- Yes, sir, that is the kit bag.

6TH WITNESS FOR THE PROSECUTION:- D 10748 Bdr. HEATHERINGTON, G.S., 2 CARU, having been duly sworn, is examined by the prosecutor:-
Q57:- What is your job with this unit ?
A57:- I am quartermaster clerk. On the 8th of January I was working on the ledgers. On the morning of the 11th that was. S/Sjt. Nicol brought in a kit bag, containing articles tobe identified by persons who lost boots, and delivered the bag to R.Q. Hosker, in my presence. R.Q. Hosker delivered one pair of boots for identification totne first person whose signature is on the packing note.
Q58:- Is this the packing note to to which you refer ?
A58:- Yes, sir, it is my handwriting.
PACKING NOTE MARKED EXHIBIT 4.
Q59:- What then ?
A59:- On the following noon and evening of the 12th, I delivered the last pair of boots and kit bag to the rightful owners.
Q60:- Could you recognise the kit bag ?
A60:- Yes, sir, I recognise it.
Q61:- To whom did you deliver this bag ?
A61:- Ian Robinson. He signed for it on the packing note.
THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

7TH WITNESS FOR THE PROSECUTION:- M 10053b GNR. ROBERTSON, I.W. 2 C.A.R.U., having been duly sworn, is examined by the prosecutor:-
Q62:- Tell me about the loss of kit, if any, in the month of January.
A62:- In the first part of January I was called off parade and told to check my kit. I found a kit bag missing. I got the kit bag back from the Q.M. Stores.
Q63:- How ?
A63:- I was told I could get it back from the stores.
Q64:- Is this what you signed to get it back ?
A64:- Yes, sir, that is my signature.
Q65:- Is this the kit bag that was returned to you ?
A65:- Yes, sir, this is the one.
Q66:- Where did you get that kit bag ?
A66:- I drew it from the Q.M. Stores, sir.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q67:- On what day were you called off parade ?
A67:- The first part of January is all I can remember.
Q68:- You gave evidence in the summary "about the first of January".
A68:- In the first part of January, the first few days.
Q69:- How long was it before you picked up your kit bag ?
A69:- About two weeks, sir.
Q70:- When did you pick up your kit bag ?
A70:- I don't remember.
Q71:- The day given on the slip is correct ?
A71:- Yes, sir. I missed the kit bag in the first part of January.
Q72:- When were you called off parade ?
A72:- That was about the same time.

Q73:- It was about the first day of January ?
A73:- Yes, sir, about that.

8TH WITNESS FOR THE PROSECUTION:- F 65475 Gnr. Pellerin, F., 2 C.A.H.U., having been duly sworn, is examined by the prosecutor:-
Q74:- Tell the court about any kit you had missing in January ?
A74:- I lost a pair of boots.
Q75:- Did you get them back again ?
A75:- Yes, sir.
Q76:- Were they issue boots ?
A76:- Yes, sir.
Q77:- Where did you go to get them ?
A77:- Q.M. Stores, sir. I identified them and signed for them.
Q78:- Is this your signature ?
A78:- Yes, sir.
Q79:- You say these boots were missing, did you give them away ?
A79:- No, sir. They were taken without my knowledge.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q80:- On what day were your boots missing ?
A80:- I do not remember the day, it was in January, one afternoon. I reported to the Bdr. in charge of the hut.
Q81:- You say sometime in the second week in January, can you be more definite ?
A81:- No, sir.
Q82:- How do you identify your boots ?
A82:- They were half-soled, and I Had the top turned inside.
Q83:- It is customary to turn the tops in in your hut ?
A83:- Yes, sir.
Q84:- Then you identified them only because they were half-soled ?
A84:- I had them shined up.
Q85:- No other way you could identify them ?
A85:- No, sir.
QUESTIONED BY THE PRESIDENT
Q86:- Did the boots fit you when you tried them on ?
A86:- Yes, sir.

9TH WITNESS FOR THE PROSECUTION:- M 58545 GNR. CUMMINS, L.T. 2 C.A.H.U., having been duly sworn, is examined by the prosecutor:-
Q87:- Tell the court about the loss of some of your kit in January ?
A87:- My boots were gone, and I reported it to the Bdr. in charge of the hut, and they were taken without my consent.
Q88:- Did you get them back ?
A88:- Yes, sir. The Bdr. in charge of the hut told us they were at the Q.M. Sotres. I went and identified them, I had my number stamped on the upper. I signed for them.
Q89:- Is this your signature ?
A89:- Yes, sir.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q90:- On what day did you miss your boots ?
A90:- I cannot remember. It was about three or four days until I get them back.

10TH WITNESS FOR THE PROSECUTION:- G 19620 GNR. MCFADDEN, L.B., 2 C.A.H.U., having been duly sworn, is examined by the prosecutor:-
Q91:- Tell the court if you missed any kit in the month of January ?
A91:- I missed a pair of boots about the second week in January.
Q92:- Did you give these boots away ?
A92:- No, they were taken away.
Q93:- Were they boots which had been issued to you by the army ?
A93:- Yes, sir. I got the boots back from the N.C.O. in the Q.M. Stores. I went there and asked him if someone had brought the boots in, and he said "Yes", and I told him I had a pair that should be there. I identified my boots, and I signed for them.
Q94:- Is this your signature ?
A94:- Yes, sir, that is my handwriting.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q95:- What day did you miss your boots ?
A95:- Sometime in the second week of January. They were taken during

the day. When I came in in the afternoon, they were gone.
Q96:- You cannot fix the day ?
A96:- No, sir.
Q97:- How long was it before you got them back ?
A97:- Between four and six days, I think, sir.
Q98:- What day was it that you got them from the Q.M. ?
A98:- I don't know.
Q99:- How did you identify your boots ?
A99:- They were well shined, newly half-soled, and no laces in the boots.

11TH WITNESS FOR THE PROSECUTION:- G 52908 GNR. MCCAFFERTY, W.C. , 2 C.A.M.U., having been duly sworn, is examined by the prosecutor:-
Q100:- Tell the court is you missed any kit in the month of January ?
A100:- I don't know when it was, but I missed my boots.
Q101:- Did you give them away ?
A101:- No, sir.
Q102:- They were taken away ?
A102:- Yes, sir. I got them back from the Q.M. Stores. I signed for them when I got them.
Q103:- Is this your signature ?
A103:- Yes, sir.
Q104:- Where did you get these boots in the first place ?
A104:- Army issue in Canada sir.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q105:- Can you tell us the date when you first missed your boots ?
A105:- No, sir. I got them back about three or four days after I lost them.
Q106:- How did you identify them ?
A106:- I had a little cut on the tongue, sir.

12TH WITNESS FOR THE PROSECUTION:- G 4035 BSM BURTT, L.M., 2 C.A.M.U., having been duly sworn, is examined by the prosecutor:-
Q107:- Tell the court is there was any loss of kit reported in your battery in January ?
A107:- Yes, on January,8th, three pair of boots were reported missing from hut 3.
Q108:- Was that reported to you the same day they were stolen ?
A108:- I cannot be sure of that. I made a note of it, and the following day it was reported to me that boots had been found and turned in to the M.Q. Stores. They were to identify their boots, and they could have them.
THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

13TH WITNESS FOR THE PROSECUTION:- G 4001 BQMS WILLIAMS, W.J., 2 C.A.M.U., having been duly sworn, is examined by the prosecutor:-
Q109:- Tell the court anything that you know about boots that were brought to the Q.M. Stores by S/SJt. Nicol in a kit bag.
A109:- I was in the stores on the 11th of January. At approximately 1400 hours two soldiers came in and asked the Q.M. if there were some boots there belonging to them, and also a kit bag. The Q.M. asked them if they could identify their boots. Cummins identified his boots by the number stamped on them. Robertson identified his kit bag by either his name or number, which was written on the bag.
Q110:- Would you recognise the bag again ?
A110:- I think I would, I am not sure if this is it. If the Q.M. was assured that they were the rightful owners, and they signed for them on the packing note.
Q111:- Is this the packing note ?
A111:- It is sir.
THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

1ST WITNESS FOR THE DEFENSE:- The accused, B 92014 Gnr. EMSLEY, A. 2 CARU, having been duly sworn, is examined by the defending officer:-
Q112:- Where were you on the 8th day of January, 1943 ?
A112:- On the 8th of January, I was in Guildford ?
Q113:- Can you recall where you were at noon on that day ?
A113:- A few of the fellows and I went to the show that day.
Q114:- Why did you go to a show in the afternoon ?
A114:- Because there are quite a few M.P's on the street.
Q115:- Was there any particular reason for going to the show on that day ?

A115:- Some of the boys said it was being to be a clean up at Guildford on the A.W.L's, so we went to the show.
Q116:- Why do you recall that day ?
A116:- Because one of the fellows was chased by the M.P's.
Q117:- How do you recall that that day particularly was the 8th ?
A117:- The paper I was reading was the 8th. I had lunch at the YMCA. We went right from there to the show. Gnr. Tickner, and Gnr. Balharry were there.
Q118:- What show did you go to ?
A118:- I think it is the Plaza, down by the Church Army.
Q119:- What time did you leave the show ?
A119:- About 5,30, and had supper at the YMCA.
Q120:- Were you with anyone in the show ?
A120:- I went with Balharry, but sat with an ATS in the show. I also spoke to Gnr. Tickner down at the front.
Q121:- What day was the 8th of January ?
A121:- It was a vehicle holiday, a Friday. I was going to take a trip to London, but the thumbing was poor on the road, that's how I knew it was a vehicle holiday.

CROSS-EXAMINED BY THE PROSECUTOR

Q122:- You remember it was the 8th because one of the fellows was chased ?
A122:- Yes, Gnr. Balharry.
Q123:- Who by ?
A123:- I don't think he said, just the M.Ps
Q124:- What time of day was that ?
A124:- I don't remember.
Q125:- What time did you meet Gnr. Balharry ?
A125:- After 11.30 sir, we had dinner and went to the show.
Q126:- Was it a good show ?
A126:- I don't remember what it was.
Q127:- What was the name of the show ?
A127:- I don't remember.
Q128:- It was the Odeon ?
A128:- No, I think it was the Plaza, it was the one outside the Church Army.
Q129:- What time did you go in ?
A129:- About 1.30 sir.
Q130:- Was the show started when you went in ?
A130:- I don't remember.
Q131:- Did you stay in once or twice, to see it over again ?
A131:- I don't remember.
Q132:- Was it a single bill or double bill ?
A132:- Two pictures, sir.
Q133:- What time did you get out ?
A133:- After five O'clock, sir.
Q134:- Who was with you ?
A134:- Gnr. Tickner and Gnr. Balharry.
Q135:- Who starred in the picture ?
A135:- I don't know sir.
Q136:- You walked out with Gnr. Balharry ?
A136:- As far as the door, i walked with the ATS to the Y.
Q137:- What time was that ?
A137:- Around five.
Q138:- What makes you think it was the 8th ?
A138:- By the paper I was reading, Balharry gave me a paper.
Q139:- Is there a library in the Y's?
A139:- Yes. The old papers are cleaned up.
Q140:- You are not sure that you were reading that paper, dated the 8th, the 8th ?
A140:- Gnr. Balharry handed it to me, and it was supposed tohave been on that day.
Q141:- It could have been an old paper ?
A141:- No, sir. He said he bought the paper, and handed it to me.
Q142:- You just realized it was a vehicle holiday ?
A142:- I found that out when we were taking the summary of evidence, I knew it at the time it happened.

RE-EXAMINED BY THE DEFENDING OFFICER

Q143:- That morning you made up your mind to go to London, that is the same day you went to the show with Balharry ?
A143:- Yes, sir.

3RD WITNESS FOR THE DEFENSE:- H 59625 GNR. BALHARRY, D.H., 2 C.A.R.U., having been duly sworn, is examined by the defending officer:-

Q144:- You were till recently absent from this unit ?
A144:- Yes, sir.
Q145:- During your absence where were you ?
A145:- Guildford, sir.
Q146:- Were you ever chased by the military police while in Guildford ?
A146:- Yes, quite a few times, sir.
Q147:- What did you do on the 8th day of January, were you chased by the M.P's on that day ?
A147:- Yes , sir.
OBJECTION BY THE PROSECUTOR
Q148:- How did you fix that date in your mind ?
A148:- On January 8th, around 1030, was chased and went to the park. I came back to the "Y", and I asked one of the guys for a paper, and he gave me one, and the date was January 8th.
Q149:- On that particular day you went to the "Y" and read a paper ?
A149:- Yes, sir. After I asked Gnr. Emsley to go and get something to eat, and then we went to the show. We left at 5.30 and we went to the [illegible] and then I saw him [illegible]
Q150:- Did you see him in the show at all ?
A150:- Yes.
Q151:- Did he leave the theatre at any time ?
A151:- No, sir, We went there around 1.30.
Q152:- Then between 1.30 and 5.30 the accused was in the show ?
A152:- Yes, sir.
Q153:- Why did you go to the show ?
A153:- So we would not be chased by the M.P's.

CROSS-EXAMINED BY THE PROSECUTOR

Q154:- Why do you say it was the 8th ?
A154:- Because I was chased by the provost around 10.30, and besides I read a paper from the YMCA.
Q155:- Who gave it to you ?
A155:- One of the guys.
Q156:- A file of papers ?
A156:- No, sir, they bring a paper in every day. I sat down in the waiting room and they brought the paper in and put it on the table. The guy works there in the kitchen.
Q157:- How do you know that it was printed on the 8th ?
A157:- I read it it was dated the 8th.
Q158:- What kind of a day was it ?
A158:- A nice day.
Q159:- Who else did you go to the show with ?
A159:- Gnr. Tickner.
Q160:- Were Gnr. Tickner and Gnr. Emsley with you all the time ?
A160:- Yes, sir.
Q161:- What was on ?
A161:- I forget, it was a double bill.
Q162:- Did you stay for more than one show of the double bill ?
A162:- Yes, I stayed till the provost went away.
Q163:- How many pictures did you see ?
A163:- About once and a half.
Q164:- Did you sit with Gnr. Emsley ?
A164:- No, sir, he was one seat back of me. I had my eye on him. I kept looking behind to see if he was there.
Q165:- Who were the stars ?
A165:- I don't remember.
Q166:- What was the name of the show ?
A166:- By the Church Army Canteen, I forget the name.
A167:- What was the show about ?
A167:- I forget sir.
Q168:- You remember it was the 8th ?
A168:- Yes, sir.
Q169:- Did you walk out with Gnr. Emsley ?
A169:- Yes, sir, and Tickner and the ATS, around 5.30.
Q170:- Where did you get the money ?
A170:- Off a friend one of the Engineers in Guildford.

4TH WITNESS FOR THE DEFENSE:- A 4365 Pte. TICKNER,G.L., R.C.R., having been duly sworn, is examined by the defending officer:-

Q171:- Were you in Guildfore ?
A171:- Yes, sir, from the 28th of December until the 19th of January.
Q172:- Do you know the accused ?
A172:- Yes, sir. I met him in Guildford. I did not know him before that.
Q173:- You were AWL in Guildford ?
A173:- Yes, sir.
Q174:- What was the first day you met the accused ?
A174:- It was the 8th of January.
Q175:- How did you fix that date in your mind ?
A175:- It could not be the 9th, because on Saturday we did not have to get off the street, and we went to the show this afternoon.
Q176:- Is there any other way you can fix that date ?
A176:- I stated that it was the 8th or 8th in my statement, and after you saw me yesterday, I looked at a calendar.
Q177:- How did you fix it as being the 8th or 9th ?
A177:- I was supposed to meet a young lady on the 7th, and she did not show up, so I know it was not that day.
Q178:- Is that date quite firmly fixed in your mind ?
A178:- Definitely. She was going on leave that day, and I was supposed to get some money from her.
Q179:- On what day did you meet Gnr. Emsely ?
A179:- The following day, the 8th.
Q180:- What did you do on that day ?
A180:- I met Gnr. Emsley in the morning just before dinner, and in the afternoon I met him in the same show I was in. I had lunch with him. I told him I was going to the show that afternoon. He did not go with me, but he was there in the show. After the first show was over he [illegible]. It usually startes at one or one-thirty.
Q181:- You saw him about 5.30 ?
A181:- Yes,sir.
Q182:- Did you see him between one-thirty and five ?
A182:- No, sir.

CROSS-EXAMINED BY THE PROSECUTOR

Q183:- You say it was the 8th of 9th because you had a date the day before, and it did not pan out ?
A183:- Yes, sir.
Q184:- What day was your date ?
A184:- On the 7th. The 8th was Friday, when I met Gnr. Emsley.
Q185:- Was it a good show ?
A185:- It wasn't bad.
Q186:- Was it a single or double bill ?
A186:- Double.
Q187:- What show was it ?
A187:- The Cinema.
Q188:- What street is it on ?
A188:- I don't know.
Q189:- What was the name of the picture ?
A189:- I don't remember.
Q190:- Where did you get the money ?
A190:- I had friends from camp.
Q191:- Who starred in the picture ?
A191:- I don't know.
Q192:- What kind of day was it ?
A192:- I don't remember.
Q193:- Did you walk out with Emsley ?
A193:- No, sir. At the end of the first show I saw Emsley.
Q194:- Did you stay for more than one show ?
A194:- No, sir.
Q195:- Positive ?
A195:- Yes, sir.
Q196:- What day of the week was the 16th ?
A196:- I don't know.
Q197:- The 15th, the 15th ?
A197:- I don't know.
Q198:- You met Gnr. Emsley at the end of the show ?
A198:- Yes, sir. I was sitting in the from, he was in the back.
Q199:- For four hours you did not see him ?
A199:- Yes, sir.

THE COURT IS CLOSED TO CONSIDER ITS FINDING ON THE THIRD CHARGE SHEET

The court re-opens, and the trial proceeds with respect to the second charge sheet.

14TH WITNESS FOR THE PROSECUTION:-B 21093 L/SJT. RUTSEY, H.J.F., 2 CARU, having been duly sworn, is examined by the prosecutor:-
Q200:- Tell the court what happened on the night of the 25th of January ?
A200:- At approximately 1750 hours I entered the guard room to take over the regimental guard of 2 C.A.R.U., as guard commander. I inspected the cells. There were 10 prisoners, and they were all accounted for. The Guard was handed over to me by the R.P's. There was only one key, and it remained in my possession. At least twice I had occasion to talk to Gnr. Emsley, whom I now recognise in court. On one occasion I released him from his cell to relieve himself and have a wash. At about 2200 hours He asked me for a cigarette, and I refused to give him one. That is the last time I saw him. During the tour of duty I inspected the cells two or three times, looking through the peep-holes in the doors and turning the lights on, and I was satisfied that there were two men in each cell. At 0600 hours in the morning I turned the key over to the 2 i/c and told him to waken the prisoners at 0630 hours and turn them over to the R.P's. I proceeded to my own quarters, and returned to the guard room at 0720 hours, and was informed that Gnr. Emsley was missing. I informed the Orderly Officer.
THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

15TH WITNESS FOR THE PROSECUTION:-LIEUT. A.T. HOLLAND, 2 C.A.R.U., having been duly sworn, is examined by the prosecutor:-
Q201:- You were orderly officer on the night of the 25th -26th of Jan ?
A201:- Yes. At 0725 hours on the morning of the 26th the guard commander informed me that Gnr. Emsley was missing.. I phoned a description of the accused to the provost. I checked the cells, and the accused, whom I now recognise, was not there.
THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

16TH WITNESS FOR THE PROSECUTION:- D 10044 A/BDR. DAVIES, G.J. 2 C.A.R.U., having been duly sworn, is examined by the prosecutor:-
Q202:- Tell the court what occurred on the morning of the 26th of January at approximately 1130 hours.
A202:- At approximately 11.30 hours on the 26th of January I went to Hut No. 5, and opened the door, and found the accused whom I recognise, standing in the door way, and I stated to him that he was wanted, and endeavoured to escort him to the guard room. He swung at Bdr. Amantes. When we got him on the ground he said " I'll get you later" or words to that effect.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q203:- You endeavoured to escort him to the guard room ?
A203:- Yes. I took hold of his left arm, and at the same time stated he was wanted, and right there he struck at Bdr. Amantes, and tried to get away. Bdr. Amantes was on my left. The prisoner was standing in the door-way of hut 5.
Q204:- Did you make a grab for his arm ?
A204:- No, sir, I just politely took his arm , and that is as far as I got.

17TH WITNESS FOR THE PROSECUTION:- M 65691 L/BDR. AMANTES, J., 2 C.A.R.U., having been duly sworn, is examined by the prosecutor:-
Q205:- Tell the court what happened on the morning of the 26th of January, about 11.30.
A205:- About 11.30 that morning we went around looking for a missing bike, in company with Bdr. Davies. We proceeded to hut 5 and Davies opened the door, and I saw the accused, Gnr. Emsley, whom I recognise here, in the door-way. Davies said " you are wanted" and he lifted up his hand and made a fling at him, and we started to roll around on the ground, and he said "I'll get you for this later" Then the R.P's took over.
Q206:- You saw the accused swing as if to strike you or Davies ?
A206:- Yes, sir.
Q207:- And he said to you both "I'll get you for this later " ?
A207:- Yes, sir.

X-Xam. By D.O.
Q208:- What do you mean by "Swing" ?
A208:- He swung out, and Davies grabbed him by the arm.
Q209:- Whom was he swinging at ?
A209:- I am not sure on the direction. He was aiming for Bdr. Davies, who grabbed his hand.
Q210:- With which hand did he swing ?
A210:- Right hand, sir.

18TH WITNESS FOR THE PROSECUTION:- D 6763 SJT. POUNDEN W.J., 2 C.A.A.M.U., having been duly sworn, is examined by the prosecutor:-
Q211:- Tell the court what happened on the 26th of January, at approximately 11.30 hours.
A211:- The accused, whom I now recognise here, on the morning of January 26th, 1943, made the statement that "I'LL get you after for this".
Q212:- What were the accused's words ?
A212:- I'll get you for this after.

QUESTIONED BY THE PRESIDENT

Q213:- Where were you ?
A213:- Justcoming out when I heard this hollering about 20 yards away.

1ST WITNESS FOR THE DEFENSE:- The accused, B 92014 Gnr. EMSLEY, A., 2 CAAU, remaining under oath, is examined by the defending officer:-
Q214:- On the morning of the 26th of January, tell the court what occurred.
A214:- I was standing in the porch of hut 5, and Bdr. Amantea and Bdr. Davies opened the door, and Davies said tome that I was wanted. With that I made a break for the road, and Bdr. Amantea grabbed me around the legs, and Davies grabbed me around the stomach and we rolled on the ground, and a few minutes later the R.P's came to get me.
Q215:- Did you swing with your arms ?
A215:- No, sir, just when starting out to run I raised my arms, when I started to run.

CROSS-EXAMINED BY THE PROSECUTOR

Q216:- Did you recognise Bdr. Davies when he opened the door ?
A216:- Yes, sir, he said I was wanted.
Q217:- Is that all he did ?
A217:- He reached over totake my arm.
Q218:- Did you see Bdr. Amantea duck ?
A218:- No, sir.
Q219:- How many blows were struck in that fight ?
A219:- None that I can recall. I was pretty mad when we rolled on the ground.
Q220:- Do you remember anyone striking ?
A220:- No,sir, I had no intentions of hitting out.
Q221:- If you cannot remember anything else, how can you remember not striking out ?
A221:- Because I had no intentions of striking, I was going to run.

CLOSING ADDRESS BY THE DEFENDING OFFICER:-
The three men were surprised to see each other in the door-way. The two Bdrs. each thought the blow was struck at the other. The accused, no doubt, did make a break. He made his break, and for the sudden run raised his arms. Each thought the other was threatened, but did not feel that he himself was threatened. As to the threatening language, the accused say he remembers little of what happened.

CLOSING ADDRESS BY THE PROSECUTOR:-
It would be difficult for them to tell whom the blows were swung at. I think the blow would probably be struck at Amantea, from their position in the door way. However, I think the evidence bears out the fact that the accused offered to both Bombardiers.

THE COURT IS CLOSED TO CONSIDER ITS FINDING.

A/CAPT. C.F. BLACK, 1 C.A.A.M.U., having been duly sworn, produced AFB 365 and AFM 6, stating that they both related to the accused, and that they had been compared with the originals, and were true extracts therefrom.
R.P. 80(B) complied with.

Pursuant to R.P. 37(C) , the Defending officer stated that he would make a plea in Mitigation of Punishment:-

" I would point out that the main charge in the first sheet is the AWL, and the other is ancilliary to that, and is a very minor thing in connection with his absence. On the second charge sheet, the main offence is the escape from the guard room. Out of the incident the following morning, arose the incident forming the other charge. He hardly offered violence to the Bdrs. It was annoyance at his frustration in his attempt to escape. The other charges are ancilliary to the main charge, and are minor offenses. The third charge sheet, I would point out that his record shows only a record of AWL, and no other offenses. This is a charge of stealing boots, and I would ask the court to consider that it is a first offense of that nature. The rest are military offenses. We must admit that he is in the habit of going AWL, but none of them for a very long period. This is the longest spell.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

SUMMARY of EVIDENCE

Summary of Evidence in the case of B 92014 Gunner EMSLEY, Alfred, on the strength of "F" Battery, "Q" Wing, No 2 Cdn Arty Reinf Unit, a soldier in the Canadian Army (Overseas).

BY DIRECTION OF THE COMMANDING OFFICER, THIS SUMMARY OF EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS For the Prosecution

Capt. R.R. Allely, R.C.A., Records Officer, No 2 Cdn Arty Reinf Unit, an officer in the Canadian Army, Overseas.

A typewritten statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this Summary of Evidence, marked "Exhibit A" .

[illegible] to the exigencies of the Service, attendance of this witness cannot, in my opinion, be readily procured.

J.D. Macdonald Capt R.C.A.
J.D. MacDonald, Capt., R.C.A.
Officer detailed to take the Summary of Evidence

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS-EXAMINATION.

SECOND WITNESS For the Prosecution

M 3315 Bdr. Simpson J., a member of the Regimental Police, Administration Wing, No 2 Cdn Arty Reinf Unit, a soldier in the Canadian Army, Overseas, being duly sworn, states:

"I am M 3315 Bdr. Simpson J., of the Regimental Police, No 2 Cdn Arty Reinf Unit. While in charge of the Guard-room on the 22 Jan 43, at approx 1600 hrs, the accused, B 92014 Gnr. Emsley A., whom I now see and recognize, was brought in under escort by the Cdn Provost Coy, with documents which purport to relate to the accused and show him to have surrendered to the Metropolitan Police, Southwark, London, at 2110 hrs on the 21st day of January 43. He was sober and properly dressed. (Documents attached, marked "Exhibit B.") "

Bdr. Simpson J.
M 3315 Bdr. Simpson J.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

THIRD WITNESS For the Prosecution

L/Cpl Stewart J., a member of the Corps Military Police, Guilford.

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this Summary of Evidence (Statement attached, marked "Exhibit C.") Having regard to the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

J.D. Macdonald Capt R.C.A.
Capt. J.D. MacDonald R.C.A.
Officer detailed to take the Summary of Evidence

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS-EXAMINATION.

FOURTH WITNESS
For the
Prosecution

L/Cpl Dunsdon H., a member of the Corps Military Police, Guilford.

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this Summary of Evidence. (Statement attached, marked "Exhibit C.")

Having regard to the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

J.D. Mac Donald Capt R.C.A.
J.D. Mac Donald, Capt., R.C.A.
Officer detailed to take the Summary of Evidence

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS FOR CROSS-EXAMINATION.

FIFTH WITNESS
For the
Prosecution

H 3656 Sgt Watt H.J., a member of the Regimental Police, on the strength of Administration Wing, No 2 Cdn Arty Reinf Unit, a soldier in the Canadian Army (Overseas), being duly sworn, states:

"At approximately 1600 hours on the 8th of January 43, I was in the vicinity of Waggoners Wells, near the ford, in company with Miss M. Morriarity. At that time I saw Gunner Emsley, whom I now see and recognize, and Gunner Spencer. Gunner Emsley was carrying a kit bag. I recognized them as absentees from this Unit and when I yelled to Emsley, they ran. Gunner Emsley dropped the kit bag. Gunner Spencer hesitated long enough to pick it up again and carried it with him some distance and then he also dropped it.
It appeared to be useless to give chase so I picked up the kit bag and returned to Camp. It contained four pairs of boots. The incident was reported to S/Sgt Nichol, the Regimental Police N.C.O., and to the Administrative Officer. I delivered the kit bag and its contents to R.S.M. Gunter ."

QUESTION BY THE ACCUSED- "Can you definitely prove it was me you saw ?"

ANSWER- "I will call another witness to substantiate my statement."

QUESTION- "What day was this supposed to have occured?"

ANSWER- "It did occur on the 8th of January 1943."

QUESTION- "And Gunner Spencer was with me at that time?"

ANSWER- "Yes."

THE ACCUSED DECLINES TO FURTHER QUESTION THE WITNESS

Hwatt
H.3656 Sgt. Watt H.J.

SIXTH WITNESS
For the
Prosecution

Miss M. Morriarty, a member of the N.A.A.F. Institute #3618, Superior Camp, Ludshott, Hants, makes the following Solemn Declaration:

"On Friday, the eighth of January 1943, between 1530 and 1600 hours, I was sitting down at Waggoners Wells, not far from the foot bridge, with Sgt. Watt. I heard some one coming and I saw Gunner Emsley, whom I now see and recognize, approaching with Gunner Spence. I saw one of them was carrying a kit bag. They stopped when they saw us, and started running, and Sgt. Watt started running after them. That was the last I saw of them. Sgt. Watt returned in a few minutes with the kit bag on his shoulder. We then came straight back to Camp.

QUESTION BY THE ACCUSED- "Have you seen Sgt. Watt since I have been locked up ?"

ANSWER- "Yes, I saw him this morning."

QUESTION- "Did you discuss this case at all ?"

ANSWER- "Not at all."

QUESTION- "Did Sgt. Watt not tell you you were to be a witness ?"

ANSWER- "I heard about mid-day."

QUESTION- "He didn't discuss any other part of the case at all ?"

ANSWER- "He asked me if I thought I would recognize you again, and said I would probably see Capt. MacDonald."

QUESTION- "Did he mention anything else in the case at all ?"

ANSWER- "No."

THE ACCUSED DECLINES TO FURTHER CROSS-EXAMINE THIS WITNESS

(Signed) Miss M. Morriarty

SEVENTH WITNESS
For the
Prosecution

M 100836 Gunner Robertson I.W., on the strength of "C" Battery, "P" Wing, No 2 Cdn Reinf Unit, a soldier in the Canadian Army (Overseas), being duly sworn, states:

"About the first of January, I was called off parade and told to check my kit by R.S.M. Gunter. I did so and found my kit bag was missing and the contents spilled on the floor. I reported the loss of the kit bag to the R.S.M. of "D" Battery. About two weeks ago I heard that other people who lost equipment at the same time as I did, were getting it back from the R.Q.M. stores. The following day I called at the Quartermaster's and identified the bag and, after signing for it, it was given to me.

QUESTION BY THE ACCUSED- "Is there anything in that bag you use every day ?"

ANSWER- "You mean at that time, or right now ?"

QUESTION- "At that time."

SEVENTH WITNESS
For the
Prosecution
(Cont)

ANSWER- "A blue bag with my polishing things."

QUESTION- "Is it not possible your bag was missing before you were told to check your kit ?"

ANSWER- "There is no chance at all, it was missing on that day."

THE ACCUSED DECLINES TO FURTHER QUESTION THIS WITNESS

. . . Gnr Robertson I.W. . . .
(Signed) M 100836 Gnr Robertson I.W.

EIGHTH WITNESS
For the
Prosecution

G 52908 Gnr McCafferty W.O. on the strength of "C" Battery, "P" Wing, a soldier in the Canadian Army being duly sworn states :

"I was in Hut No 3, while taking an M.T. Course. At approximately 1730 hrs one day I heard some one say their boots were missing. I looked for mine and found they were missing. I told Bdr Hamilton my boots were missing. I later heard they were at the Q.M. Stores and I went and got them on my way to supper, after identifying them as being mine.

QUESTION BY THE ACCUSED- "You would not have missed the boots if that fellow had not have mentioned it, would you ?"

ANSWER- "I would have missed them at sometime because I wear my P.T. shoes at night and they are right along side my boots."

QUESTION- "Were you in the habit of looking for those boots every time you put on your P.T. shoes?"

ANSWER- " No I was not."

QUESTION- "Couldn't have those boots been missing two or three weeks before that fellow mentioned it ?"

ANSWER- "They could have."

. . . W.S. McCafferty . . . .
(Signed) G 52908 Gnr McCafferty W.O.

WITNESS
ution

P 65475 Gnr Pellerin F., on the strength of "A" Bty., "P" Wing, a soldier in the Cdn Army Overseas, being duly sworn, states:

"Sometime in the second week of January 1943, I noticed my pair of boots were gone from the rack. I reported the loss to the Bdr in charge of the Hut. Two or three days after the Bdr told me to go to the Q.M. Stores and get my boots. I went and got my boots and signed for them."

QUESTION BY THE ACCUSED- "Are you in the habit of looking for your boots ?"

ANSWER - "Yes."

QUESTION - "Is it not possible that they are some one else's boots ?"

ANSWER- "No, I always polish my boots every morning."

NINTH WITNESS
For the
Prosecution
(Cont)

QUESTION - "There was no other mark that you could identify it on except being polished ?"

ANSWER- "Yes! They were half-soled and turned inside."

THE ACCUSED DECLINES TO FURTHER QUESTION THIS WITNESS

. . . F. . Pellerin. . . . . .
(Signed) Gnr Pellerin F

TENTH WITNESS
For the
Prosecution

M 56545 Gnr Cummins L.T. on the strength of "C" Bty., "P" Wing, a soldier in the Canadian Army Overseas, being duly sworn, states:

"About two weeks ago, Gnr Pellerin said he lost a pair of boots and wanted to know if I missed a pair. I said I was not sure and went and looked and found my boots were gone. I reported the loss to Bdr Hamilton, NCO in charge of the hut. Two or three days later Bdr Hamilton told me they were in the QM Stores. I went over the next night and identified my boots by my regimental number stamped on the inside of the upper. I signed for them and took them back to my hut.

QUESTION BY THE ACCUSED - "Would you have missed your boots if that fellow hadn't mentioned it ?"

ANSWER- "Yes"

QUESTION- "Are you in the habit of looking for your boots?"

ANSWER- "Yes"

QUESTION- "For what reasons ?"

ANSWER- "Some time they might be mislaid ?"

QUESTION "Is it possible that your boots were missing before that time ?"

ANSWER - "No"

THE ACCUSED DECLINES TO FURTHER QUESTION THIS WITNESS

. L.T. Cummins. . . . . .
(Signed) M 56545 Gnr Cummins L.T.

ELEVENTH WITNESS
For the
Prosecution

G 19620 Gnr McFadden L.B. on the strength of "C" Bty "P" Wing, a soldier in the Cdn Army Overseas, being duly sworn, states:

"Around two weeks ago, I missed my boots from the rack when I came in from the afternoon parade. They were there when I left the hut that morning. As soon as I found they were missing, I reported it to the Bdr in charge of the hut. About a week afterwards the Bdr told me some boots were at the Q.M's. office. I went to the Q.M's. office and identified my boots and he took my name and made me sign for them.

QUESTIONS BY THE ACCUSED - "Was it a Bdr who took your name in the Q.M. Stores."

ANSWER - "I don't know but he was an NCO."

QUESTION - "Can you identify that NCO if you saw him ?"

ANSWER - "I couldn't say - I might and I might not."

THE ACCUSED DECLINES TO FURTHER QUESTION THIS WITNESS

. L.B. McFadden. . . . . .
(Signed) G 19620 Gnr McFadden L.B.

TWELFTH WITNESS For the Prosecution

G 4035 BSM Burtt L.M., on the strength of "C" Bty., "P" Wing, a soldier in the Cdn Army Overseas, being duly sworn, states :

"It was reported to me by L/Bdr Sudicky, NCO in charge of Hut No 3, on the 8 Jan 43 at approximately 1700 hrs, that three pairs of boots were missing from Hut No 3. This fact was noted by me, and a search of Hut Nos 3 & 6 was made

QUESTION BY THE ACCUSED - "Bdr Sudicky was Bdr in charge of the Hut ?"

ANSWER - "He was at that time."

QUESTION - "And only three pairs of boots was reported ?"

ANSWER - "Yes, only three pair of boots."

QUESTION - "Nothing else reported ?"

ANSWER - "Nothing else reported to me at that time."

QUESTION - "Was anything reported missing after that ?"

ANSWER - "No"

THE ACCUSED DECLINES TO FURTHER QUESTION THIS WITNESS

(Signed) G 4035 B.S.M. Burtt L.M.

THIRTEENTH WITNESS For the Prosecution

G 4001 B.Q.M.S. Williams W.J. on the strength of Adm Wing, 2 CARU., a soldier in the Cdn Army Overseas, being duly sworn, states :

"On the 11 Jan 1943 at approximately 1600 hrs, some men came in the Q.M's Office inquiring about boots, ankle, that had been left there. After two of the men had identified their boots, in the presence of RQMS Hosker and myself, the boots were delivered to them. At that time Gnr Robertson asked the RQMS if there was a kit bag left there with boots in it belonging to him. The RQMS asked him to identify the kit bag, which he did by repeating the number or the name written on the bag, and being satisfied, the RQMS handed the bag over to him. I produce here with the original receipt signed by the owners of the stolen property when it was returned to them (Attached, marked "EXHIBIT D")

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

(Signed) G 4001 RQMS Williams W.J.

FOURTEENTH WITNESS For the Prosecution

B 21093 L/Sgt Rutsey H.J.F. on the strength of "P" Bty., "Q" Wing, a soldier in the Cdn Army (Overseas) being duly sworn, states:

"At approximately 2100 hrs on 25 Jan 43, Gnr Emsley asked me to release him from his cell to enable him to have a wash and go to the lavatory. I complied with this request, accompanying him and duly returning him to his cell. The door was bolted and locked. Later in the night a request was made for a cigarette by Gnr Emsley. I did not give him the cigarette and this was the last time I held conversation with him. At least twice during the early hours of the 26th Jan I looked in all the cells and it appeared to me that all ten prisoners, Gne Emsley included, were asleep. The first intimation I had that Gnr Emsley was missing was when I returned to the Guard Room at 0715 hrs. Previous to this, at approx 0610 hrs I turned the cells keys over to Bdr Cuddiford, asking him to arouse the prisoners and have them washed and turned over to the R.P's.

FOURTEENTH WITNESS
For the
Prosecution
(Cont)

over to the R.P's/
It was about this time that the Bdr, on opening the cell doors, discovered that Gnr Emsley was missing. I duly informed the R.O.O. Lieut. Holland, that a prisoner had escaped, and a search was instigated. I was present in the Guard Room during my entire tour of duty, with the exceptions of 2330 hrs and 0330 hrs when I posted the Guards. At 0610 hrs I left the Guard Room, turning the keys of cells over to Bdr Cuddiford. I went to my hut to wash and shave, returning to the Guard Room at approximately 0715 hrs.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

H.J.F. Rutsey

(Signed) B 21093 L/Sgt Rutsey H.J.F.

FIFTEENTH WITNESS
For the
Prosecution

Lieut. A.T. Holland, R.C.A., on the strength of "F" Bty., "Q" Wing, an Officer in the Cdn Army, Overseas, being duly sworn, states :

"At 0725 hrs on the 26th of Jan 43, I was awakened by the Sjt Cmds of the Guard who informed me that Gnr Emsley had escaped. I obtained a description of the missing prisoner and sent it to the Cdn Provost Corp., No 7 Coy. I visited the guard house to ascertain that the missing man was not there, and placed the Guard Commander under Open Arrest.

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS

A.T. Holland Lieut.

(Signed) A.T. Holland, Lieut., R.C.A.

SIXTEENTH WITNESS
For the
Prosecution

D 10044 Bdr Davies, C.J., on the strength of "F" Bty., "Q" Wing, a soldier in the Cdn Army Overseas, being duly sworn, states :

"At approx 1130 hrs on the 26th of Jan 43, I opened the door of hut No 5 and saw Gnr Emsley standing there. I stated to him that he was wanted and endeavoured to escort him to the Guard Room, and right then he made a break to get past us. He swung at Bdr Amantea and when we had him on the ground, he threatened both Bdr Amantea and myself, stating that he would get us later. The R.P's. then arrived and took him over.

QUESTIONS BY THE ACCUSED - "Did you actually see my fist coming in contact with Bdr Amantea's face ?"

ANSWER- "I did not state that it came in contact with anything. I said you took a swing at Bdr Amantea."

THE ACCUSED DECLINES TO FURTHER CROSS-EXAMINE THIS THIS WITNESS

C.J. Davies

(Signed) D 10044 Bdr Davies, C.J.

SEVENTEENTH WITNESS
For the
Prosecution

M 65691 L/Bdr Amantea J., on the strength of "F" Bty "Q" Wing, a soldier in the Cdn Army Overseas, being suly sworn, states :

"About 1130 hrs the 26th Jan 43, I was with Bdr Davies looking for a pick. We opened the door of Hut No 5 and was surprised to see Gnr Emsley there. Bdr Davies said "You are wanted". The next thing I knew he brought up both his hands, took a swing, I ducked and grabbed him around the waist withboth my hands

SEVENTEENTH WITNESS
For the
Prosecution
(Cont)

with both my hands/
and we fell to the ground. He must have gotten his hand away from Bdr Davies because he scratched my eye. He also had a hold of my hair, and gave it a little pull - it didn't hurt much. When he was under our control he said, "I'll get you for this later." The R.P. then took charge of Gnr Emsley."

QUESTION BY THE ACCUSED - "Did I swing at Bdr Davies ?"

ANSWER - "Yes, you did."

QUESTION - "Did you have your head down when you grabbed me ."

ANSWER - "Yes, I had my head down."

QUESTION - "Would you explain how you saw me swing at Bdr Davies with your head down."

ANSWER - "When you brought up both your hands, I saw them flash by."

QUESTION - "Why did you duck when I swung at Bdr Davies."

ANSWER - "Because I thought you were going to swing at me."

QUESTION - "Did I swing at you."

ANSWER - "I am not sure on that point for I ducked."

THE ACCUSED DECLINES TO FURTHER CROSS-EXAMINE THIS WITNESS.

L/Bdr Amantea J.

(Signed) M 65691 L/Bdr Amantea J.

EIGHTEENTH WITNESS
For the
Prosecution

D 6763 Sjt Pounden W.J. on the strength of "g" Bty., "Q" Wing, a soldier in the Cdn Army (Overseas), being duly sworn, states ;

"The accused, Gnr Emsley, on the morning of 26 Jan 43, made the statement - "I'll get you for this after", when L/Bdr Amantea and another Bdr were rolling on the ground with Gnr Emsley, trying to apprehend him.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

D.6763 Sgt W.J. Pounden

(Signed) D 6763 Sjt Pounden W.J.

H 3656 Sjt Watt H.J., a member of the Regimental Police, a soldier in the Cdn Army, Overseas, being recalled to hear the evidence of F 89272 Gnr Campbell J.A., and being duly sworn makes the following answers to questions asked by Capt. J.D. Macdonald, R.C.A., officer detailed to take this Summary of Evidence :

QUESTION - "What mornings were you in the NAAFI Hut ?"

ANSWER - "I have been in the NAAFI Hut every morning for the last three months."

QUESTION- "Do you recall seeing Gnr Campbell in the NAAFI Hut any morning this week ?"

ANSWER- "I can't recall seeing him there"

QUESTION- "Do men undergoing F.P. work in the kitchen of the NAAFI"

ANSWER- "If he is being confined to the Guard Room, he does not, Sir ."

QUESTION- "Is Gnr Campbell being confined to the Guard Room."

ANSWER - "Yes, Sir."

QUESTION - "Did you make the statement to Miss Morriarty, Gnr Campbell says he overheard ?"

ANSWER - "No, Sir, I did not. I did ask Miss Morriarty if she saw Gnr Emsley again, would she recognize him."

J.D. Macdonald Capt RCA

(Signed) (J.D. Macdonald)(Capt) R.C.A.
OFFICER DETAILED TO TAKE THE SUMMARY OF EVIDENCE

H 3656 Sjt Watt H.J. is permitted to put the following questions to F 89272 Gnr Campbell J.A.

QUESTION - "Who was your escort on the morning in question?"

ANSWER - "My escort ? I just can't think who it was."

QUESTION - "Can you recall who the remainder of the fatigue party were?"

ANSWER - "Gnr Tanner is the only one I can name."

QUESTION - "How many were on the fatigue party."

ANSWER - "Four"

QUESTION - "Can you tell me what it was you were doing in the NAAFI Kitchen ?"

ANSWER - "I was sweeping and I helped bring in the coke"

QUESTION - "You were sweeping the kitchen floor in the NAAFI ?"

ANSWER - "I was sweeping the floor of the place where they eat."

FIRST WITNESS
For the
Defense

H 59625 Gnr Balharry D.R., on the strength of "C" Bty "P" Wing, a soldier in the Cdn Army (Overseas) being duly sworn, states:

"On 25th Dec 1942, I went AWL. During the time I was away, I saw Gnr Emsley at infrequent times, but I was not with him all the time."

QUESTION BY THE ACCUSED - "You went to the Cinema once or twice with a couple of other fellows and me during the time you were absent ?"

ANSWER - "Yes"

QUESTION -"Can you remember if it was the first week of January we went to the show ?"

ANSWER - "I think it was around the first week in January we went to the show."

QUESTION- "Can you remember the date ?"

ANSWER -"Yes, it was the 8th January."

THE ACCUSED DECLINES TO FURTHER CROSS-EXAMINE THE WITNESS.

D.R. Balharry

(Signed) H 59625 Gnr Balharry D.R.

SECOND WITNESS
For the
Defense

A 4365, Pte Tickner G.L., Royal Cdn Regt., attached to Mechanical Transport Vehicle Reception Depot, a soldier in the Cdn Army (Overseas) being duly sworn, states :

"On 8th or 9th of Jan 43, I met Gnr Emsley in Guildford and I was with him until we were picked up by the Civilian Police on the 21st Jan 43, in London."

QUESTIONS BY THE ACCUSED -

QUESTION -"Can you give me any idea of the time you met me on the 8th or 9th"

ANSWER -"It was just before dinner."

QUESTION - "What were we in the habit of doing every afternoon."

ANSWER - "We went to the show every afternoon."

QUESTION - "Did we go to the show the first day you met me."

ANSWER - "No"

QUESTION - "What did we do ?"

ANSWER - "I don't know what you did, but I went to the show myself."

QUESTION - "Did you meet me in the show ?"

ANSWER - "Yes"

QUESTION - "Was I with any of the other fellows ?"

ANSWER - "No"

QUESTION - "Who was I with ?"

ANSWER - "Some A.T.S. Girl."

QUESTION - "Was there any of the other ANL boys in the show besides us ?"

ANSWER - "Yes"

THE ACCUSED DECLINES TO FURTHER CROSS-EXAMINE THE WITNESS

A 4365 Pte Tickner G.L.

(Signed) A 4365 Pte Tickner, G.L.

THIRD WITNESS
For the
Defense

F 89272 Gnr Campbell J.A., on the strength of "F" Bty., "Q" Wing, a soldier in the Cdn Army, Overseas, being duly sworn, states:

"Three or four days ago, I was working in the NAAFI, working around the kitchen stove and I heard Sjt Watt, whom I now see and recognize, talking with this lady, about Gnr Emsley's case. I heard him say to this lady "You don't have to worry about this Court of Inquiry, as I will tell you what to say on it."

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

F 89272 Gnr Campbell J.A.

(Signed) F 89272 Gnr Campbell, J.A.

where they eat/
QUESTION - "You stated you were working around the stove ? Just what were you doing around the stove ?"

ANSWER - "Hauling coke to the kitchen range."

QUESTION - "Who helped you to do this ?"

ANSWER - "Gnr. Gossling."

Miss M. Morriarty, a member of the NAAFI, Superior Camp, being recalled to hear the evidence of F 89272 Gnr Campbell J.A., and having made a Solemn Declaration, makes the following answers to questions asked by Capt J.D. Macdonald, RCA., officer detailed to take this Summary of Evidence.

QUESTION - "Do you recall hearing Sjt Watt make the statement to you which Gnr Campbell has said he did."

ANSWER - "No"

QUESTION -"Do you recall seeing Gnr Campbell working within earshot during the past week when Sjt Watt was present ?"

ANSWER - "No"

J.D. Macdonald Capt RCA

(Signed) J.D. Macdonald (Capt) R.C.A.
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE

Questions asked by Gnr Eesley, the accused, of Miss Morriarty -
QUESTION - "Do you recall seeing me in the kitchen during the past week?"

ANSWER - "I remember seeing you Monday morning."

QUESTION - "From where I was standing, do you think I could have heard any conversation from where you were sitting ?"

ANSWER - "No, I don't think so."

QUESTION - "Where were you sitting ?"

ANSWER - "At the breakfast table."

QUESTION - "Can you explain what I was doing in the kitchen ?"

ANSWER - "Filling the coke bins."

QUESTION - "How far was that coke bin from where you were sitting ?"

ANSWER - "A few yards."

THE ACCUSED DECLINES TO FURTHER CROSS-EXAMINE THIS WITNESS

J.D. Macdonald Capt RCA

(Signed) J.D. Macdonald (Capt) R.C.A.
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE

HAVING BEEN DULY CAUTIONED IN ACCORDANCE WITH RULES OF PROCEDURE 4E , THE ACCUSED RESERVES HIS DEFENSE.
CERTIFIED THAT RULES OF PROCEDURE 4(c),(d),(e), (f) (g) HAVE BEEN COMPLIED WITH.

J.D. Macdonald Capt RCA

Signed(J.D. Macdonald (Capt) R.C.A.,
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE

TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED THIS TWENTY-EIGHTH DAY OF JANUARY 1943 AT SUPERIOR CAMP, LUDSHOTT, HANTS.

(Sgd) J.D. Macdonald
(J.D. Macdonald) Capt., R.C.A.
OFFICER DETAILED TO TAKE THIS SUMMARY OF EVIDENCE

EXHIBIT "A".

Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

EXI

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Superior Camp (2 C.A.R.U.)
on the 12 day of January 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-92014 Gnr Emsley A.

DECLARATION.

The Court declare that B-92014 Gnr Emsley A., has been absent without leave from 1630 hrs 15 Dec 1942 and is still so absent on the 12th day of January 1943 and has a deficiency of equipment and clothing as shown:

N.A.

Names of President and Members

President: Lieut J.C. Hazelwood, R.C.A.
Members: Lieut E.C. Roberts, R.C.A.
Lieut J.P. Aitken, R.C.A.

Signature of Commanding Officer

CERTIFIED TRUE COPY.

Signature of Officer having charge of the Original Record.

EXHIBIT "D".

Receipt for four pairs of boots and one kit bag signed by five O.R. of No 2 C.A.R.U.

EX 4

EXHIBIT "D".

Receipt for four pairs of boots and one kit bag signed by five O.R. of No 2 C.A.R.U.

EX 4

EXHIBIT "D".

Receipt for four pairs of boots and one kit bag signed by five O.R. of No 2 C.A.R.U.

EX 4

EXHIBIT "B".

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

EX 2

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART I.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

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* Names of Units and Depots are shown in Go Monthly Army List.

† Army Special instructions apply in war for the disposal of absentees and deserters from the Army who surrender to the civil police; e.g., such personnel will be taken under military escort to the O.C. the nearest military unit or the O.C. Troops of the nearest military station. (A.C.I. 480/1940).

20/39. W1.44432/423. 25,000. 3/42. A.S.S.W.Ltd. Gp.698. Forms O.1617/18.

Army Form O.1617
R.A.F. Form 1617

I CERTIFY that the man whose personal description is given below surrendered himself to Insp. 1st. Young at Clapham Ld. Sta. at (hour) 9.10 p.m. on the 21st day of January, being No. B92014 (Rank and Name) Gnr. EMSLEY Alfred a deserter (or absentee without leave) from No 2 Base R.A.O.

and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 20 Height 6 Feet Inches Hair dk brown

Eyes Large Marks Tattoo right forearm

In uniform or plain clothes

Probable Date and Place of Attestation: June 1939. London

Probable Date of Desertion or beginning of absence, and from what place: 15/12/42 Hadenham Mark

Signature of Officer of Police in charge of Southend Station: J. Young Insp.

Date of Signature: 30/1/43

[illegible] Police Station
A Division

PART 2

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No. on who surrendered to the Police at

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature

TO BE PLACED IN A READILY ACCESSIBLE POSITION

N.D. Form No. 7
3M Blks. of 250—6-39
H.Q. 1775-101-7

DEPARTMENT OF NATIONAL DEFENCE

PACKING NOTE

Description

No.

No.

Consigned to "P" WING.

Indent or Issue Order No.

Date 11-1-43

Weight of Package: Filled lbs. / Empty lbs.

Address

Via

Issue Voucher No.

Date

Reference or Part Number	DESCRIPTION OF ARTICLE	Demom.	Quantity
	WE THE UNDERSIGNED CERTIFY THAT WE HAVE RECEIVED FROM Q.M. STORES ARTICLES LISTED OPPOSITE OUR NAMES WHICH WERE TAKEN FROM HUT 3		
	BOOTS ANKLE PRS - 1 - F66475 GNR PELLERIN F. J. Pellerin		
	Boots Ankle Prs - 1 - [illegible]		
	Boots Ankle Prs - 1 - [illegible]		
	Boots Ankle Prs - 1 - [illegible]		
	Bags Kit Universal - 1 - [illegible]		

Station

Date

NOTE—If any difference be found between number charged and number received, or in description or condition of articles, the receiving officer should report WITHOUT DELAY to this station returning this packing note with report.

Unpacked by

Checked by

Date

M.F.M. 6
A.F.B. 1797
(HQ. 1775-39-1662)

Old sheet destroyed 26 Aug 42 (R.S. Cockburn) Major, R.C.A.

No. B92014 Name EMSLEY A. Sqn., Battery, or Company N11 Corps RCA Date of enlistment 7 Jun 41 Badges Service or Proficiency Pay N.A. Signature O.C. Company, etc. L.F.Swann Capt.

Date of last entry in Company Conduct Sheet 29 Oct 41 and date of last drunk Period not reckoning towards freedom from extra fine N.A. Sheet No. 1

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert	23 Feb 42	Gnr		A.A.15(1) AWL from 0630 hrs 23 Feb 42 to 1700 hrs 26 Feb 42 (Absent 3 dys 11 hrs 30 mins)	No 16 Prov Coy Documentary	8 days pay	27 Feb42	Lt.Col. H.W.Rick	4 days pay PR&I 149(1)(a)
Field	15Apr 42	Gnr		A.A.Sec 15(1) AWL from 1330 hrs 15 Apr to 0630 hrs 16 Apr 42 (Absent 17 hrs)	Sgt Miller Bdr Watson	7 days C.B.	16 Apr42	Lt.Col. F. Lloyd	1 days pay PR&I 149(1)(a)
Field	27Jun 42	Gnr		A.A.15(1) AWL from 2350 hrs 27 Jun to 2300 hrs 7 Jul 42 (Absent 9 days 23 hrs 1 min)	Bdr Johnson L/BdrHollands	21 days F.P.	10 Jul 42	Lt.Col.G. M. Carrie	10 days pay PR&I 149(1)(a)
Field	26Aug 42	Gnr		(1) AA Sec 15(1) AWL from 2359 hrs 26 Aug 42 until 2359 hrs 27 Aug 42 (Absent 1 day)	BSM McDermott-14 days CB Sgt Munroe 10 days forfeiture of pay (PR&I 149(2)		28Aug42	Lt.Col. F.F.Lloyd	Forfeits 1 day pay PR&I 149 (1)(a)
Field	28Aug 42			(2)AA Sec 9(2) Disobeying a superior Offr-did not clean his teeth once a day when ordered by D.O.	Documentary				

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Aug42	Gnr		WOAS AWL, while a defaulter, from 1800 hrs 28 Aug 42, until 2150 hrs 1 Sep 42. Absent 4 days 3 hrs 50 mins - A.A.Sec 15 (1)	Bdr Watt BSM McDermott Documentary	28 days F.P. 28 days forfeiture of pay FR&I 149(2)	2 Sep 42	Lt.Col.F.P.Lloyd	Forfeits 5 days pay FR&I 149(1)(a)

CERTIFIED TRUE COPY

J.D. Macdonald

(J.D. Macdonald) Capt., RCA
Adj., "Q" Wing, No 2 C.A.R.U.

M.F.P. 355
40/P & R/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 92014	Gunner	Alfred EMSLEY,	No. 2 C.A.R.U.

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets / Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.A. Sec 15(1)	5 times	5 times
For A.A. Sec 9(2)	1 time	1 time
For	times	times
For	times	times

~~2. Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

~~Note: If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

~~2. The accused has not been previously convicted.~~

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / Section 47 of the Army Act and dispensations with trial under A.A. 76 are set out in the schedule annexed to this statement.~~ A.F.A. 76

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ... beginning on the ... day of ...~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~a total of~~ 14 days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 years, 306 days.

~~6. The date of his commission specified in his record of service is~~ attestation paper

7. The service which the accused is allowed to reckon towards discharge is 1 year, 236 days.

8. The accused is entitled to reckon ... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air ~~force decoration~~, or ~~air force~~ military reward (or is in possession of or entitled to). State any air force decoration or reward. military

~~10. If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

117

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number.....Rank.....

Name.....of.....Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4 for 4 day of February 1943 R.H.Alley Capt RCA

W.M. Archibald Capt RCAF Reserve no Pay with Rank (and Acting Army Rank)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....signed by the president, and annexed to the proceedings.

FF-85 (case #2)

GNR EMSLEY A

See Y-11 for 1st case

B-92014 Gnr Emsley, A.
2 CARU

FF-85

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this TWENTY-NINTH day of MARCH, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "C" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted] JCS

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

* Omit if not applicable

*[redacted] JCS

President.

Rank.	Name.	Regiment.
LT-COL.	D.L.REDMAN, E.D.	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	J.C. McDIARMID, RCA	1 CARU
LIEUT	D.G. McCORY, RCA	2 CARU
LIEUT	E. SHOREY, RCA(Waiting Member)	1 CARU

*Signed J.C. Stewart. Brigadier,
Commanding "C" Group, Cdn. Rft. Units.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

D.L.Redman, Lt. Col.

Certified true copy of original proceedings herein.
J.A.G. Rep. 4
11 Dec 43

Proceedings Reviewed.
A.E.Hall, Major.
for Reviewing Officer (JAG)
12 Jun. 43.
CMHQ.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-92014 Gnr. Emsley, A. (R.C.A.) 2 C.A.R.U.	FIRST CHARGE A.A.Sec 40	Guilty	Guilty	Confirmed JCS
	SECOND CHARGE A.A.Sec 15(1)	Guilty	Guilty	
			Sentence to undergo Detention for a period of Two (2) years. 1st. April 1943 DLR	
	and to be put under of pay until he has £3-5-10 the expense apprehension and return. 1st. April 1943 DLR.		stoppages made good of his	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) J.C. Stewart, Brigadier (Signed) D.L. Redman, Lt. Col.
Commanding "C" Group, Cdn. Rft Units. *President.*
Convening Officer (e)

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 1st. day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
DLR ~~2.—The sentences~~
*(3.—~~The accused~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 1st day of April 1943.

D.L.Redman, Lt. Col.
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 760 M.M.L. 1939.

~~I certify that the terms of Rule 130 (b) have been~~ complied with
DLR
~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the sentence passed on the accused be carried into effect~~
JCS

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 1st day of April 1943.

J.C. Stewart
Confirming Officer.
J.C. Stewart, Brigadier
Commanding "C" Group.
Cdn. Reinforcement Units.

Promulgated and extracts taken in the case of B.92014 Gnr. Emsley A.

(a) (Dated) 1 April 43 (Signed) Mackenzie Waters Col.
C.O. 2 CARU.

Promulgated and extracts taken in the case of
29 C M.L. C.A.H.A.U. 26 May 43
(Dated) 4 JUN 1943. (Signed) A. Munday ?? Capt. Major.
Commandant.
Canadian
Military Prison & Detention Barrack.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] 1941—[illegible] [illegible] P.D. C. [illegible]

The Deputy Judge Advocate General, Canadian Military Headquarters, having advised that the sentence in these proceedings is invalid, I hereby direct that the sentence be and the same is hereby removed and the accused relieved of all consequences of such sentence, and I do hereby sentence the accused B.92104 Gnr. Emsley, A. 2 C.A.R.U. to undergo detention for 2 years less 15 days.

P.J. Montague

(P.J. Montague) Major General
Senior Officer
Canadian Military Headquarters.

26 May 43.

(P.J. Montague) Major General
Senior Officer
Canadian Military Headquarters.
26 May 1943.

CHARGE SHEET

The accused, No.B-92014 Gnr. EMSLEY, A., "Q" Trg Wing No.2. Cdn. Arty Rft. Unit, a soldier in the Canadian Army, Overseas, is charged with:-

FIRST CHARGE
A.A.Sec. 40 While on Active Service, Conduct to the prejudice of good order and Military Discipline,

in that he,

At Glasgow, on the 17th. day of March 1943 was improperly in possession of discharge papers and Army Pay Book 64, Part 1, which did not belong to him.

SECOND CHARGE
A.A. Sec.15(1) While on Active Service, Absenting himself without leave

in that he,

At Superior Camp, Ludshott, Hants, while in custody under sentence of Detention, absented himself without leave from 2000 hrs 15 Feb 43 until apprehended at 2315 hrs on 17 Mar 43. (Total time absent 31 days 3 hours and 15 minutes), thereby incurring cost of apprehension of £3-5-10.

Dated this 26th.
day of March 1943
at Jasper Camp,
Witley.

Mackenzie Waters
(Mackenzie Waters) Colonel, RCA
Commanding Officer
No.2. Cdn. Arty Rft. Unit.
Cdn. Army (Overseas)

To be tried by Field General Court martial.

J.C. Stewart Brigadier
Commanding "C" Group, Cdn. Reinforcement Units.
(Convening Officer)

Bordon, Hants.
29 Mar 43.

D.L.Redman, Lt. Col.

2 CARU form No.92

MEDICAL CERTIFICATE

I certify that I have this day examined No.B.92014 Gnr. Emsley A. and find him fit to undergo F.G.C.M.

Dated at Jasper Camp. 31 MAR 43 1350 Hrs.

J.P. Neilson, Capt.
Medical Officer
No.2. Cdn. Arty Rft. Unit.
Cdn. Army (Overseas)

D.L. Redman, Lt. Col.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT QUEBEC BARRACKS, BORDON HANTS
ON THE 1 DAY OF APRIL. 1943.

The accused B 9214 Gnr. EMSLEY A. Unit. 2 C.A.R.U.

The Order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22 & 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The Order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any member of the Court.
The Court is duly sworn, Lt. McCorey not being present the Waiting Member, Lt. E. Shorey sat.

The following constitute the Court:-

President	Lt. Col. D.L. Redman, VD.	Unit H.Q. C.R.U.
Members	Capt. J.C. McDiarmid	Unit 1 C.A.R.U.
	Lt. E. Shorey	Unit 1 C.A.R.U.

The officers under instruction are duly sworn:-

Lt. Miller J.L.	Unit 2 C.A.R.U.
Lt. Whatley B.J.P.	Unit 2 C.A.R.U.

Prosecutor Lt. G.C. Harris Unit 2 C.A.R.U.

Defending Officer Lt. W.H. Farley Unit 2 C.A.R.U.

The Charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the Charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P.37(B)
Summary of Evidence is read.
DLR The Prosecutor ~~is sworn and~~ produces MFB 355 and MFM 6.
The Court complies with R.P.46(B) ~~APP-298~~

Pursuant to R.P.37 THE ACCUSED:-

DLR. (a) ~~makes a statement in mitigation of punishment.~~
(b) ~~calls witnesses as to character~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation is attached.

D.L.Redman, Lt. Col.

DEFENCE FOR GNR. EMSLEY, A. 1 APRIL 43.

Gnr. Emsley B.92014 joined the army in Canada in June 1941 at the age of nineteen. He came overseas in March 1942.
There are two charges against this man -

1 Charge
(1) Absent without leave. He has pleaded guilty to this charge so there is no more to be said about the charge except the reason which I will go into later.
(2) Breaking custody, again there is not much to say.
(3) Having in his possession papers which did not rightly belong to him or words to that effect.

Gnr. Emsley has pleaded guilty to having these papers in his possession but I would like to point out that these papers were found in his possession. He did not produce them of his own accord and he did not attempt to take advantage of the use of them. Lots of peole have on their person papers which do not belong to them and are not arrested nor brought up for a Court martial.
While I cannot prove that he did not intend to use them at a future date, neither can the Prosecution prove that he did intend to use them. I think that that charge should be dismissed or ignored.

To get back to the first charge of absence without leave - Up until a few months ago Gnr. Emsley did not have a bad crime sheet. True there were entries on it but nothing serious. All at once he seemed to go wrong. I think the reason for this was due to a a very unfortunate incident. Early last Summer, About May I believe, Gnr. Emsley asked the C.O. for permission to marry a girl in Witley. This permission was refused by the M.O. who said he thought he had Congenitēd Syphillis. The M.O. gave him many blood tests, he lost track of the number after the thirteenth, and to the best of Gnr. Emsley's knowledge, corroborated by Capt. Russell, the Padre, the results were all negative. But in the meantime time dragged on. Eventually in December, eight or nine months after he had applied for it, he got his necessary permission to marry. In the meantime some of Gnr. Emsley's so-called friends had very obligingly told the young lady in question that Gnr. Emsley had syphillis, so that when he approached her with his hard won permission she rejected him absolutely and would have nothing more to do with him. Emsley tore up his permit and proceeded to get drunk and went loose. Since that time he has brooded on his troubles a great deal and has blamed everything on the army with the result that he has refused to soldier and has broken loose or gone AWL at every opportunity.
I imagine that he will continue to do so in spite of any sentence he might be given.
I would like to suggest that he be given a dishonourable discharge from the Canadian Army so that he might get into some other service or line of work where he would be of more use to himself and to the country as a whole.

W.H. Fargey, Lt. R.C.A.

D.L.Redman Lt. Col.

Extract & advise
C.C. C.A.R.U.
to take action to
advise Mr. Fargey
a very improper statement
for an officer to make.

JCS.

Army Form B.115.

RECORD of the Declaration of a Court of Inquiry on the illegal Absence of a soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Superior Camp (2 CARU) on the 10th. day of MARCH 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or clothing of No.B.92014 Gnr. Emsley, A.E.

D E C L A R A T I O N.

The Court declare THAT B-92014 Gnr EMSLEY, A.E. has been absent without leave from 2000 hours. 15 Feb 43 and is still so absent on the 10th. day of March and has a deficiency of clothing and equipment as shown:-

Vocab Price	Worn Price
£9 - 11 - 1	£7 - 3 - 10

Names of President and Members

President:	Lieut. D.G. McCrory.	R.C.A.
Member:	Lieut. R.G. Lalonde	R.C.A.
Member:	Lieut. J.B. McCausland.	R.C.A.

Signature of Commanding Officer.....
(G.W.F. Johnston) Col. R.C.A.

DLR.

CERTIFIED TRUE COPY

R.L. Alleby Capt.
Signature of Officer having custody of the original record.

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr 42.

I CERTIFY that No.B.92014 Rank Gnr. Name Emsley A.

Unit #2 C.A.R.U. was arrested at Overseas League Club Glasgow.

at 2315 (Hour) on 17th. Mar 43 (Date) and that at the time of his arrest he was wearing (Military Uniform) or(~~Civilian Clothes~~)

Signature of Provost Marshall, Assistant Provost Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, warrant officer, or non- commissioned officer in charge of the etachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable)

DLR.

W. Fern Capt.
(W. Fern) D.A.P.M.
London Area.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B92014 Rank Gnr. Name Emsley, A. Unit 2 C A R U

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London from Glasgow.

Date	Particulars	Amount		
19 Mar 43	Escorts return fare from LONDON To Glasgow (½ Portion	1	10	10
	Prisoners single fare to LONDON From Glasgow	1	10	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, ~~Sleeping~~ (½ portion		4	2
	Total £	3	5	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W.Fern, Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

DLR.

C.M.H.Q. 1000-43
40/P & S/480

Exhibit "D"
Exhibit "E"

The a/m exhibits have been retained by the Canadian Provost Corps for use in uncovering the source of such documents.

These will be produced when witnesses - Sgt. Winn, C.D. and Cpl. Dyler, J.S. - attend the trial.

E.A. Christie, Lieut R.C.A.
A/Adj. #2 C.A.R.U.

LIST OF EXHIBITS

Appendix "A" - Statement of B-76252 Sgt. Winn, C.D. and M.11659 Cpl. Dyler, J.S.

Exhibit "A" - Declaration of Court of Inquiry.

Exhibit B - Certificate of arrest.

Exhibit C - Expense voucher

Exhibit D - A.B.64 Part 1 as found in possession of accused.

Exhibit E - Discharge Papers.

I request Lieut. W.H. Fargey, to Defend me in my forthcoming trial by Court martial.

Gnr. A. Emsley.
B.92014 Gnr. Emsley A.

APPENDIX "A" Army Form B. 252

CHARGE

No.2. C.A.R.U. Regiment.

Charge against No.S.92014 Rank Gnr.

Name Emsley A.

Place Glasgow Date of offence 17 Mar 43

Offence W.C.A.S. had in his possession Army book 64, Part 1, and discharge papers which did not belong to him.

W Form Copy. (W.Form DAPM) London Area.

Names of Witnesses

Sgt. Winn C.D. Cdn. Provost Cps.
Cpl. Dyler J,S. Cdn. Provost Cps.

DLR.

Statement of EVIDENCE. in the case of

B.92014 Cnr. Emsley A.
No.2 C.A.R.U.

Sir, At Glasgow on the 17 March at about 2315 hrs., I was on Patrol duty at the Overseas League Club in company with Cpl. Dyler J.S. when I saw the a/m soldier. When searching him I found in his possession Army [redacted] Book 64 Part 1 and discharge papers(which are attached hereto) belonging to Mr. McDonald of 10 Beith Street Glasgow. Upon questioning the a/m soldier he admitted being an absentee from the Cdn. Army.

I escorted him to Maryhill Police Stn. to await escort.

Glasgow,
17 Mar 43

C.D. Winn, Sgt.
(B-76252 Winn C.D.)

Sir,

I have read over the above statement and corroborate the same.

Glasgow
17 Mar 43

J.S. Dyler Cpl.
M.11659 Dyler J.S.

Remarks.

W, Fern Capt.
(W. Fern) D.A.P.M.
LONDON AREA.

SUMMARY OF EVIDENCE

in the case of

B92014 Gnr. Emsley, A., "Q" Wing, No.2 Cdn. Arty Reinf. Unit, a soldier in the Canadian Army, placed on Active Service.

BY DIRECTION OF THE COMMANDING OFFICER, EVIDENCE IS TAKEN ON OATH.

FIRST WITNESS G.52777 Gnr. McGuire, J.E. "B" Bty., "p" Trng. wing No.2. Cdn. Arty. Reinf. Unit being duly sworn states:

"I am G-52777 Gnr. McGuire J.E. I was a member of the Regimental Guard on the night of 15 Feb 43. The Sergeant of the Guard ordered me to go down to Hut 11 to Guard Gnr. Emsley. I was at one of the hut while he was taking a shower. When he was finished he came out and started for the other end of the hut.* When I was about half way up the hut, he turned and ran back past me. We, the escort, started after him, but when we got outside he was not around.

J.E. McGuire.
G.52777 Gnr. McGuire, J.E.

* I STARTED UP THE HUT

THE ACCUSED DECLINES TO CROSS EXAMINE THIS WITNESS.

SECOND WITNESS G.49854 Gnr. Watson, R.M. "B" Bty., "p" Wing, No. 2 Cdn. Arty Reinf Unit being duly sworn, states:

"I am G-49854 Gnr. Watson, R.M. I was a member of the regimental Guard on the night of the 15 Feb. 43. I was ordered to take Gnr. Emsley, A., a prisoner to the showers. We took him into Hut 11 I waited in the shower room while he had his shower. When he finished his shower, he went into the main part of the hut again, turned and asked a chap for a magazine. Then he turned and started to the other end of the hut. Then he started to run [redacted] and I could not catch him. He ran outside and I followed him, but I could not see him.

R.M. Watson
G-49854 Gnr. Watson, R.M.

THE ACCUSED DECLINES TO CROSS/EXAMINE THIS WITNESS.

DLR.

THIRD WITNESS B76252, Sgt. Winn C.D. Canadian Provost Corps, stationed at Glasgow.

Having due regard to the exigencies of the service, I declare that the attendance of the above witness is in my opinion not readily procured. I therefore submit as evidence in this case a written statement (Marked "Appendix" A) purporting to be signed by him, and read this evidence to the accused.

G.C. Harris Lieut. RCA.
Lieut. G.C. Harris, R.C.A.
Officer detailed to take
down Summary of Evidence.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS

FOURTH WITNESS: M 11659 Cpl. Dyler, J.S. Canadian Provost Corps, stationed at Glasgow.

Having due regard to the exigencies of the service, I declare that the attendance of the above witness is in my opinion not readily procured. I therefore submit as evidence in this case a written statement (also shown in Appendix A) purporting to be signed by him, and read this evidence to the accused.

G.C. Harris Lieut. RCA.
Lieut. G.C. Harris, R.C.A.
Officer detailed to take
down Summary of Evidence.

THE ACCUSED DOES NOT DEMAND THE ATTENDANCE OF THIS WITNESS

I further submit as evidence in this case the following:
Exhibit "A" - Declaration of Court of Inquiry, establishing absence and Deficiencies.
Exhibit "B" - Certificate of Arrest.
Exhibit "C" - Expense voucher.
Exhibit "D" - A.B.64 Pt. 1. as found in possession of accused
Exhibit "E" - Discharge papers.

I certify that this Summary of Evidence has been taken down by me in the presence of the accused, and that rules of Procedure 4 (c)(d)(e)(f) and (g) have been complied with.

G.C. Harris, Lieut. RCA
Lieut. G.C. Harris, RCA
Officer detailed to take
down Summary of Evidence.

Jasper Camp,
Witley, Surrey,
23 Mar 43

D.L. Redman. Lt. Col.

M.F.B. 385
12M—5-41 (572-d)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 92014	Gnr	EMSLEY, A.	No.2. C.A.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and Casual~~ Regimental and Squadron, Battery EAC
~~Conduct~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, EAC
of summary awards under Section 47 of the ~~Army~~ Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec 15(1)	6	times	11	times
For A.A. 46 (2)(d)	1	times	1	times
For A.A. 9(2)	1	times	1	times
For A.A. 8(2)	2	times	2	times
A.A. 40	1		1	times
~~XXXX

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— EAC

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number B92014 Rank Gnr. Unit Name EMSLEY, A. of No.2 C.A.R.U. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	4 Feb 43 Superior Camp, Ludshott	A.A.Sec.18(4) A.A.Sec.40	1 year's Detention	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26 day of Mar 43 1st. G.C.Harris Lt. April G.C.Harris Lt. P.R.Alleby Cap I.C. Records 2 C.A.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

D.L. Redman, Lt. Col.

Old sheet destroyed 26 Aug 42 R.S. Cockburn, Major R.C.A.

No. B92014 Name Emsley A. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment | 7 Jun 41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 A.F.B. 122 12SM—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet | 29 Oct 41 | No. and date of last drunk | Nil | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | signed L.F.Swannel | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert	23 Feb 42	Gnr		A.A.15(1) AWL from 0630 hrs 23 Feb to 1700 hrs 26 Feb 42 (Absent 3 days 11 hrs 30 mins)	No.16 Prov Coy Documentary	8 days pay	27 Feb42 XXXXXXX	Lt.Col. Rick.H.W.	4 days pay FRI 149(1)(a)
Field	15Apr 42	Gnr		A.A.15(1) AWL from 1330 hrs 15 Apr to 0630 hrs 16 Apr 42(Absent 17 hrs)	Sgt. Watson Sgt.Miller	7 days C.B.	16 Apr 42	Lt.Col F.P. Lloyd	1days pay FRI 149(1)(a)
Field	27Jun42	Gnr		A.A.15(1)AWL from 2359 hrs 27 Jun 42 to 2300 hrs 7 Jul 42 (Absent 9 days 23 hrs 1 min)	Bdr Johnson Bdr.Holland	21 days F.P.	10 Jul42	Lt.Col.G.R. Carrie	10 days pay FRI 149
Field	26Aug42	Gnr		(1)A.A.15(1)AWL from 2359 hrs 26 Aug 42 until 2359 hrs 27 Aug 42 Absent 1 day.	BSM McDermott Sgt.Munroe	14 days C.B. 10 days forf pay FRI 149(2)	28 Aug42	Lt.ColF.P. Lloyd	1 days pay FRI 149(1)
Field	28Aug42	Gnr		(2)AA 9(2) Disobeying a superior officer - did not obey an order given by a superior officer when ordered to do so by competent officer.	Documentary Evidence				

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28Aug 42	Gnr		AA 15(1) AWL while a defaulter from 1800 hrs 28 Aug 42 until 2150 hrs 1 Sep 42 Absent 4 days 3 hrs 50 mins.	Bdr Watt H. BSM McDermott Documentary	28 days F.P.2 28 days forf Pay FRI 149(2)	2 Sep	Lt Col.F.P. Lloyd	Forf 5 days Pay FRI 149 (1)(a)
Field	15Dec 42	Gnr		(1) AA 15(1) AWL from 1630 hrs 15 Dec 42 until surrendering himself to Metropolitan Police at Elephant Tube Station at 2110 hrs 21Jan43 Absent 37 days 4 hrs, 40 mins (2) A.A.Sec9(2) Disobeying a lawful command given by a Superior Officer (3) AA Sec 8(2) Offering violence to his superior Officer. (4) AA Sec.8(2) Using threatening language to his superior Officer. (5) AA Sec.22 while in confinement, escaping. Continued Page 2					

No. B29014 Name Emsley A. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment | G.C. Badges | Service or Proficiency Pay

M.F.M. 6
(A.F.B. 122)
125M—7-41 (1213-20)
H.Q. 1772-35-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15Dec	Gnr		(6) AA Sec 18(4) Stealing property belonging to persons subject to Military law.		FGCM	4 Feb 43		38 days pay PR&I 149(1) (a)
				(7) AA Sec 40 being in improper possession of four apir of boots.		Detention 1 year			365 days pay PR&I 149(1) (b)
									13 days pay PR&I 149(1) (c)

CERTIFIED TRUE COPY
E.A. Christie, Lieut. RCA
A/Adj. #2 C.A.R.U.

5 V - 78

Ste. Emelie, J. C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F50460 Pte James Clarke EMSLIE - 1 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~All present under sentence~~ for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety (90) days.

(Sgd) ..... 23 Oct/45 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders~~. (1)
(1. AA 57A. Delete if not used.)

Date 24 Nov 45 (Sgd) ..... Brigadier,
Commanding ..... Commanding "C" Group,
Con. Reinforcement Unit.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F50460 Pte ~~Clarke~~ Emslie James Clarke	26 Oct 45	J. Illingworth Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AE 150 5V-78

RECEIVED 22 Nov 45 JAG BRANCH

FIELD GENERAL COURT-MARTIAL

CFAAG (In lieu of AFAS) 40/P & S/1698 (C144) 4/38B

Convened by Order of Brig E.C. PLOW, CBE DSO Comd "C" Gp CRU dated 19 Oct 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F50460	Pte		James Clarke	EMSLIE	1 CGRU

PROCEEDINGS REVIEWED 22 NOV 45 L/Y Brody

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 23 OCT 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 69-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to ~~MAJOR PTE HUMPHREYS~~ the shorthand writer? Ans NIL
The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. REDMAN VD	HQ CRU
Member	MAJOR	G.W. THOMPSON	1 CGRU
Member	CAPT.	V. MORIN	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LIEUT.	R.F. MILLER	1 CGRU
Defending Offr	LIEUT.	E. MILLER	1 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans N/C Is the Defending Offr a lawyer? Ans N/C (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See Qc p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(does)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 112; when several accused to be tried separately see RP 71(C), and use separate copies of CF 495 to record proceedings. 2. RP 52, RP 53. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is cleared and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. NO STMT.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO - STMT
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. NOTE MIT(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F), fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-564, Overseas RO 309, 1213, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assemble and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F.50460, Pte. James Clarke EMSLIE, CIC, on strength of No. 1 Cdn. Gen. Reinf. Unit, a soldier of the Cdn. Army Overseas, is charged with:-

FIRST CHARGE

SECTION 15(1)

ARMY ACT.

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITH-
OUT LEAVE

in that he

In the Field, did absent himself without leave from 0815 hrs. 18 Aug 45 until he surrendered himself to 1 C.G.R.U. Guard Room at 1410 hrs. 30 Sept 45.

(Total time absent:- 43 days, 5 hrs. 55 min.)

In the Field.

11 Oct 45.

E Partington Lt Col

A/Comd.
No. 1 C.G.R.U.

To be tried by Field General Court Martial

J E Phair Brigadier

Commanding 4th Group, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants
19 Oct 45

107

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F50460	Pte		James Clarke	EMSLIE	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [have] committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* this date endorsed by me, ~~or as soon as offr of my staff for me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached thereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint the Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, VD	HQ CMU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	to be detailed by OC	1 CGRU
Captain	to be detailed by OC	1 CGRU
~~(Rank.)~~	~~(Named or detailed, if any. RP 106.)~~	~~(Unit.)~~

~~WAITING MEMBER.~~

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
~~(Rank.)~~	~~(Must be named, if any. RP 106.)~~	~~(Unit.)~~

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) E.L. Pla, Brigadier (Rank.)

Dat 19 Oct 45

Commanding "C" Group, Cdn Rft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 86 (On item of AFA 2) 4c/F de G/1497 (6142))

(See overleaf for oaths and notes for use on trial.)

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 28, 29, 111.)*
I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 27, 111.)*
I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.
POUR LES TEMOINS. *(RO (Can) 2491.)*
Je jure, par Dieu Tout-Puissant, que le temoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 29, 82, 111, MML p. 762.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 91 as "Notes".)

1. RECORDING PROCEEDINGS. Where no shorthand writer is employed the addresses of Prosecutor and Defending Offr (RP 80(C)), any objection (RP 80(E)), and any statements by accused, may be summarized and, the evidence, subject to RP 80(A) (RP 114(1)), may be recorded in narrative form. (RP 82(B)) should be completed with: "If taken
Plea to charge by Prosecutor. (RP 82(C)) (Dr.)
A copy of the plea, with the finding, sworn, stated
A copy or particulars. He refused and did not go on the parade.
Sworn. None. He did not say in his evidence.
Sworn for Court. He said—"I've had enough parades".
(RP 82(C)) (RP 82 Ja 1.) If the evidence is taken by him in narrative form, RP 82(B) should be completed with:
A shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 80(A), be taken
(RP 82(C)) (RP 82 Ja 1.) If the evidence is taken by him in narrative form, RP 82(B) should be completed with: "If taken
Record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the
SAFE PROCEDURE. (RP 82(C)) (Dr.)
Public service. (RP 116 provides that for prosecutions on indictment RP 40-43 will apply so far as practicable, having
Judgment by [defending Offr], a statement as to [his] character or both. (See RP 81 Ja 3, 82 Ja 1.)
Statement by accused [not sworn, or] entered as [his] plea to this amendment.
Statement by accused [not sworn, or] entered as [his] plea to this amendment.
Statement by accused [not sworn, or] entered as [his] plea to this amendment.

OATHS FOR USE IN COURTS-MARTIAL.

1. PRESIDENT AND MEMBERS. *(AA 52, KR Can 562, RP 26, 29, 111.)*

I swear by Almighty God that I will well and truly try the accused (or accused persons) before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the Government of the Militia of Canada, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Minister for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

2. JUDGE-ADVOCATE. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

3. OFFR UNDER INSTRUCTION. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law.

4. SHORTHAND WRITER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

5. INTERPRETER. *(AA 52, MML 762, RP 27, 111.)*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

6. WITNESS. *(AA 52, MML 762, RP 82, 111.)*

I swear by Almighty God that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

POUR LES TEMOINS. *(RO (Can) 2693.)*

Je jure, par Dieu Tout-Puissant, que le témoignage que je rendrai devant cette Cour sera la vérité, toute la vérité, et rien que la vérité.

7. As to other forms for swearing see AA 52(4), RP 28, 30, 82, 111, MML p 763.

NOTES ON RECORDING PROCEEDINGS AND ON DEFENCE PROCEDURE.

(Referred to throughout CF A 96 as "Notes".)

1. RECORDING PROCEEDINGS: When no shorthand writer is employed the addresses of Prosecutor and Defending Offr (*RP* 93(C)), any objections (*RP* 95(E)), and any statements by accused, may be summarized and, the evidence, subject to RP 85(A) and 114(B), may be recorded in narrative form as follows:

First Witness for Prosecution.

A 12345 Cpl H. Jones, RWR, sworn, states:

I am a cpl of the pl to which Pte Smith belongs. The accsd in Court is Pte Smith. About 1400 hrs on 15 Jan 45 I ordered the accsd to go on parade. He refused and did not go on parade.

Cross-exam: He did not say he was sick. (or, None.)

Re-exam: None.

Exam by Court: He said—" I've had enough parades ".

RP 85(H) complied with.

2. When a shorthand writer is employed, addresses, statements, evidence and objections need not, subject to RP 85(A), be taken by him verbatim. (*RP* 95 *fn* 1.) If the evidence is taken by him in narrative form, RP 82(B) should be complied with. If taken verbatim, RP 82(C) will be complied with.

3. The record of addresses, statements and evidence will be given a marginal number which corresponds with the number of the para in CF A 96, under which it is taken. Both sides of paper should be used.

4. DEFENCE PROCEDURE: RP 116 provides that for procedure on defence RP 40-42 will apply so far as practicable, having due regard to the public service. (*RP* 122.) If the Court consider such compliance not practicable, the following order of procedure (whether all items are used or not) is suggested as being fair to the accused:

(i) Opening address by Defending Offr. (*RP* 40(C), 87(C), 92(C) (*D*).)

(ii) At option of accused, statement by accused (*not sworn or subject to cross-exam by Prosecutor, Court or J.A.* (*RP* 40 *fn* 10).), or evidence by accused, as to facts or his character or both. (*See RP* 41 *fn* 2, 46 *fn* 1, 80.)

(iii) Evidence of witnesses for accused as to facts or his character or both. (*See RP* 46 *fn* 1.)

(iv) Evidence for prosecution in rebuttal or on new matter, if allowed by Court (*RP* 86(B)), or to prove previous convictions when accused has called witnesses as to character. (*RP* 86(C).)

(v) Closing address (on *matters other than in mitigation of punishment*) by Defending Offr or accused. (*See RP* 40 *fns* 8-12, 87(C), 92(C) (*D*).) But Defending Offr or accused will make his address after the Prosecutor, if there has been no statement by accused or any evidence given as to facts, or if accused alone has given evidence on oath as to facts, whether any evidence as to his character has been given or not. (*When accused charged jointly see RP* 81.)

(vi) Closing address by Prosecutor. (*See RP* 40 *fn* 7, 87(C), 92(C) (*D*). *Prosecutor has no right to address Court on subject of sentence except as provided by RP* 40(E), *KR Can* 562(*a*).)

(vii) Summing up by J.A., *if any*. (*RP* 42.)

ASSEMBLY AND DISPOSAL OF RECORD AFTER TRIAL.

1. All deletions and alterations in printed and written record MUST BE INITIALLED by President or J.A., *if any*. RECORD FORMS B, C OR D NOT USED MUST BE DELETED BY A DIAGONAL LINE AND INITIALLED.

2. All loose sheets of record and exhibits comprising the proceedings of the trial MUST BE INITIALLED by President or J.A., *if any*, and then pinned by top left corner to p 3 of CF A 96 in following order:

(i) Charge Sheet. (On top.)

(ii) Convening Order with any declarations made by Convening Offr under RP 104, 106, 107, 114.

(iii) Medical Certificate(s). (*KR Can* 567.)

(iv) Addresses, statements and evidence in order taken during trial, pages being numbered and on both sides when both sides used.

(v) Exhibits numbered Ex A, Ex B, etc. (*As to admitting an exhibit in certified copy in lieu of original see KR Can* 566. *As to certified copies of regimental books see AA* 185 (1) (*g*) (*ii*).)

(vi) Summary of Evidence, if not already so exhibit.

3. Any report or remarks by President or Court for attention of Confirming Offr will be attached to p 4 of CF A 96 and not form part of record of proceedings. (*RP* 95(*D*).) A recommendation for mercy will be inserted in Part I of Schedule on p 4 after minute of sentence awarded. (*AA* 52(3), *RP* 118(C), *MML* p 759.)

4. The President or J.A., *if any*, will secure proceedings promptly with covering letter and in an envelope marked " Confidential ", or as otherwise directed.

MEDICAL OFFICER'S REPORT

I certify that I have this morning examined .....

.....F.50460, Pte. Emslie, J.C.....

of...1 CGRU..... and in my opinion he is fit to undergo trial by Court-Martial.

.....

Medical Officer
No 1 Cdn Gen Hft Unit
Canadian Army Overseas

In the field

23 Oct 45.

Plea of Mitigation

Accused:- F50460 Pte Ernshe J.C.

Charge:- A.W.L.

E-3

pm

In regards to the charge against Pte Emslie, a plea of mitigation is advanced due to the circumstances which led the accused to go A.W.L.

In November 1944 he was wounded in Holland, and evacuated to a hospital in England. After his discharge in January 1945, he commenced keeping company with

a married woman in Brighton.

After several months she became pregnant, and arrangements were made to have the baby adopted through a nursing home in London. The woman did not expect her husband home for over a year.

However on August 14th she received a letter

from her husband, informing her that he would be coming in England in a few months.

Pte Emslie visited her on his VJ leave and was informed of this fact. She threatened to notify Legal Aid in Canada and Pte Emslie's parents, unless the accused agreed to support her; as she intended leaving her

husband.

On August 16th the accused returned to his unit, #4 C.I.T.R. There he applied to his Sergeant Major for leave to return to Brighton and straighten out his difficulties. This he was refused on the grounds that he had to await cross posting to a holding unit for men who enlisted at M.D.6. He had been awaiting said

cross posting since Jan. 15th

In January 1942 Pte Emslie in Canada heard that his wife had been carrying on an affair with another man, and as a result was pregnant since then he has been negotiating for a divorce, which he expects to obtain in the near future

Being very alarmed lest he loose his divorce, should Legal Aid in Canada

be informed of his affair in England, the accused went A.W.L. in an attempt to straighten matters out with the woman in Brighton.

This he was able to do she agreed to stay with her husband if he would have her. In the event that he would not, a settlement

was made by which Pte Enslie agreed to support the woman for three months prior to her giving birth.

After these arrangements were completed, he returned to I.C.G.R.U and surrendered himself at the guard-room.

As to the accused's military record — he joined the C.I.C. on 17 Feb 1941, and in June of the

same year came overseas
with the Nova Scotia
Highlanders. After serving
in several different
in England,
regiments, he went over
to France in September
1944. There he
~~and~~ served in
with the Algonquin Regiment
action & fell wounded in
Holland in November. He
was then evacuated to
England.

J. Miller Lt.

SUMMARY OF EVIDENCE

in the case of

F.50460, Pte. James Clarke EMSLIE, CIC, on strength of No. 1 Cdn. Gen. Reinf. Unit, a soldier of the Cdn. Army Overseas.

"I produce the following documents pursuant to Overseas Routine Order 5352, which have been read over and shown to the accused, and which are attached hereto as exhibits:

(1) Certified True Extract of 4 C.I.T.R. Pt. II D.O. No. 197 of 30 Aug 45, Para 13-C, showing F.50460 Pte. Emslie, J.C. AWL from 0815 hrs. 18 Aug 45 and still A.W.L. at 0815 hrs. 26 Aug 45 (8th day). (Marked Exhibit "A")

(2) Certified True Extract from Daily Guard Room Report of 1 CGRU showing F.50460, Pte Emslie, J.C. surrendered himself at 1410 hrs. 30-9-45. (Marked Ex. "B")

J.F. Hodgins
---------- Capt.
(J.F. Hodgins)
Officer detailed to take the
Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

The accused does not call any witnesses.

"I certify that the above Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

J.F. Hodgins
---------- Capt.
(J.F. Hodgins)
Officer detailed to take the
Summary of Evidence.

Field

11 Oct. 45.

Exhibit "A"

Last Order
196
29 Aug 45.

4 CANADIAN INFANTRY TRNG REGT.
DAILY ORDERS Pt II
Issued by
COLONEL R C CLARK DSO OFFICER COMMANDING

THIS ORDER
197
30 Aug 45.

13 ABSENT WITHOUT LEAVE

13-C A.W.L. from 0815 hrs. 18 Aug 45. Still A.W.L. at 0815 hrs. 26 Aug 45 (8th day)

P.50460, Pte. EMBLIE, J.C. (Alg. Regt)

(Sgd) (K.J.C.Ridley) Captain.
for Major i/c Administration
4 Cdn Inf Trg Regt

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSSESSION.

J.J. Mathieu Lieut.
(J.J. Mathieu)
Officer having custody of original document.

197

Exhibit "B".

DAILY GUARD ROOM REPORT

No. 1 CGRU 5 Oct 45.

		Date of Admission	
12.	F.50460, Pte. Emslie, J.C.	1410 hrs. 30-9-45	AWL
			Voluntary Surrender.

(Sgd) Bdr. WENDLAND, G.E.

SGT i/c R.P.s.

Certified True Extract from Original Document held in my possession.

10 Oct 45.

(J.F. Hodgins) Capt.
Legal Officer,
Officer having custody of
original document.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.50460	Pte.	Emslie, J.C.	1 CGRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered in the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, precautions being given to the usual serious errors in each entry. If the charge is for disappearance or absence without leave, the entries for lost hours or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Sec.15(1) AWL — 6 times.

For Sec. 40 — 1 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 8-11-41

Date of last entry in Field Conduct Sheet 9 Jul 45.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

[redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 22 23 days in military custody, *i.e.*, nil days in open arrest, 22 23 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is (D.O.B.--20-6-21)

6. The date of his attestation / calling up [illegible] military service is 17 Feb 41.

7. The service which the accused is allowed to reckon is [illegible]

8. The accused is in possession of 1 CVSM & Clasp.

Enter the military qualification if any held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of [illegible]	
In the war substantive rank of	
In the acting rank of [illegible]	

EX W

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*[illegible]) W5.20721/5701. 80,000. 9/44. A & E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 13 Nov 43	Sec.15(1) AWL 10 dys 9 hrs.30 min	6 months Det'n.	56 days remission.
FGCM	Field 21 Dec 44	Sec.15(1) (2 charges) Sec. 40 (1 charge)	60 days Det'n.	20 days remission.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 23rd day of Oct 1945

J F Thompson Capt
Regt Offr

3/17 MFM 6
(AFB 129)
40/P&S/136 (7010)

No. F.50460 Name Emslie, J.C. | Sqn, Battery, or Company | Corps | Date of enlistment 17 Feb 41 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra line | Sheet No. One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				(First destroyed 17-8-41)					
Field	8-11 41	Pte.		Sec.15(1) A.A. AWL 2200 hrs. 8-11-41 to 2300 hrs. 8-11-41.	Cpl. Young	4 days CB	11-11-41	Maj. Lewis.	
Field	28-11 41	Pte.		Sec.40 Improperly dressed while on leave.	L/Cpl Faucher L/Cpl Moore	3 days CB	12-12-41	Maj. Lewis	
Field	1-3-42	"		Sec.15(1) A.A. AWL from 0915 hrs. to 1130 hrs. 8-3-42	Sgt. Grant	7 days C.B.	9-3-42	Capt. G.S. Smith	
Field	16 Apr 43	"		MCAS AWL from 1000 hrs 16 Apr 43 till 1930 hrs. 17 Apr 43 (1 day, 9 hrs. 30 min.)	Doct'y	Cost of apprs £0-9-10	20 Apr 43	Lt-Col. W.C. Lawson.	

(over)

Place	Date of offence	Rank	Case of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order directing trial	By whom awarded	Remarks
Field	2 Oct 43	P te.		A.W.L. 4 days, 22 hrs. Sec.15(1)	Doct'y. 7	dys Det'n 7	Oct 43		5 dys pay
Field	17 Oct 43	Pte.	✓	A.W.L. from 1200 hrs. 17 Oct to 2130 hrs. 27 Oct 43 (10 dys. 9 hrs. 30 min.) (56 days remission)	Doct'y	6 mon. Det'n	13 Nov 43	FGCM	
Field	18 Nov 44	Pte.	✓	Sec.15(1) AWL 15 hrs. 45 min. Sec.15(1) AWL 21 days, 9 hrs. Sec.40 Conduct to prej. -- making false statements. (Remission of 20 days)	Doct'y.	60 days Det'n	21 Dec 44	FGCM	
Field	10 Mar 45.	L/Cpl.		Sec.15(1(AWL 17 hrs. 45 min.	[illegible]	Admonished .	12 Mar 45	Col. CM McMillan	

(Cont'ed on ~~page~~ sheet 2)

No. F50400 Name [redacted] J.C.

Date of last entry in Company Conduct Sheet

Sqn, Battery, or Company

Corps

Date of enlistment

GC Badges

Service or Proficiency Pay

3/17 MFM 6 (AFB 122) 40/PAS/136 (7010)

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. Two

Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	9 Jul 45	Pte.		Sec.15(1) AWL 18 days, 6 hrs. 30 min.	Sgt.Lalande. L.J.	14 dys F.P. Forf 20 dys pay FR&I 149 (2)	30 Jul 45	Maj.J.A. Simpson.	Forf 18 dys pay FR&I 149(1)(a). 38 days total

Certified true copy consisting of two sheets,

[redacted] Capt.

10 Oct 45.

(J.F.Hodgins)
Officer having custody of original document.

(PTO)

CASE OF F.50460, Pte. Emslie, J.C.

(i) LIST OF WITNESSES FOR PROSECUTION.
NIL

(ii) LIST OF WITNESSES FOR DEFENCE
NIL

(iii) LIST OF EXHIBITS FOR PROSECUTION

(a) Certif. True Extract 4 CITR Pt. II D.O. 197 of 30 Aug 45, showing accused AWL from 0815 hrs. 18 Aug 45 and still AWL at 0815 hrs. 26 Aug 45.

(b) Certified True extract from Daily Guard Room Report of 1 CGRU showing accused surrendered himself at 1410 hrs. 30-9-45.

(iv) LIST OF EXHIBITS FOR DEFENCE
NIL.

(v) Receipt by Accused for Copy of Charge Sheet and Summary of Evidence.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Field, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charges under which I am being brought to Court-Martial.

J.C. Emslie -Pte.
(J.C. Emslie) F.50460

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFR.

I hereby request that the Convening Officer appoint an officer to represent me at my trial.

I desire the services of.....NIL.....
if he is available.

J.C. Emslie -Pte.
(J.C. Emslie) F.50460.

Field.

12 October 45.

4J 113

PRE EMSLIE JC

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F50460 Pte James Clarke EMSLIE, 2 CITR(Att 4 Cdn Conv Depot)

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 15(1)AA	GUILTY	GUILTY	
2nd	Sec 15(2)AA	GUILTY	GUILTY	
3rd	Sec 40 AA	GUILTY	GUILTY	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Sixty (60) days.

(Sgd) ..... 21 Dec/44 (Sgd) [signature] Lt-Col

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1)

(1. AA 57A. Delete if not used.)

Date 23 Dec 44 (Sgd) J.H. Roberts Major General

Commanding Cdn Rft Units

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F50460 Pte EMSLIE J.C.	22 Dec 44	[signature] Lt-Col

Published in Pt II Orders #35 para 7 (M) dated 28 Dec 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1 JAN 1945 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160, 4J-113.

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of APA81) 40/P & R/1698 (H144) 4/38B

Convened by Order of Lt-Gen JH Roberts, DSO MC Comd Cdn Rft Units dated 19 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183 fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F50460	Pte	James Clarke	EMSLIE	2CITR(Att 4 Cdn Conv Depot)

PROCEEDINGS REVIEWED for Adviser Limit 2 Jan 45

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 21 DEC 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The interpreter is sworn.~~(1) Do you object to P23126 as shorthand writer? Ans NO

The shorthand writer is sworn.(1) SGT A.H. SINCLAIR

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO, I DO NOT

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L.	REDMAN	HQ, CAD
Member	CAPT	J.S.	MERCER	1 CSAU
Member	LT	R.G.	MARKS	1 CSAU
~~Judge-Advocate~~				
Prosecutor	LT	A.B.	O'KEEFE	51ST HIGH DIV. A.U.
Defending Offr	LT	A.V.L.	MILLS	3 C.I.T.A.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 31(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO, SIR (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement if~~ ~~The Court decides (not) to advise accused to change his~~ ~~(their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they)~~ ~~charge(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~was~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 17(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form* D *on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*L*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under* B5 *such parts only of the Summary of Evidence are read as relate to the charges dealt with under* C2. *If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form* D *on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 95, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* B *or* C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO, SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFB* 355 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, by way of Un Sworn STATEMENT
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything Note or previously stated which would affect the question of punishment. See RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*b*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to subsentences see AA* 44, 138, 182, *RP* 46-50, 98, 118, 119(*A*), *KR Can* 308, 332, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*B*), 58(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 547. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, NO. F50460, Private James Clarke EMBLIE, a soldier on the strength of NO. 2 CANADIAN INFANTRY TRAINING REGIMENT, attached to NO. 4 CANADIAN CONVALESCENT DEPOT, RCAMC, CANADIAN ARMY OVERSEAS, while on active service, is charged with:

FIRST CHARGE
AA 15 (1)

ABSENCE WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2200 hrs 13 NOV 44, until surrendering himself at 1345 hrs 14 NOV 44.
Absent 15 hours, 45 minutes.

SECOND CHARGE
AA 15 (1)

ABSENCE WITHOUT LEAVE

in that he

in the field, while in lawful custody, absented himself without leave from 1100 hrs 16 NOV 44, until surrendering himself at GUILDFORD (Surrey) at 1715 hrs 9 DEC 44.
Absent 21 days, 9 hours.

THIRD CHARGE
AA 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on 16 NOV 44, made false and misleading statements at the Commanding Officer's Orderly Room, to his Commanding Officer in the investigation of the first charge of this Charge Sheet, in that he made the following false and misleading statement:

"I was late returning to barracks because I had to look after my wife and mother-in-law in LONDON who had been bombed out due to a blitz on the day that I was to return to camp"

W T Ibbott

(W T Ibbott) Lt col
Commanding Officer
4 Canadian Convalescent Depot, RCAMC

"In the Field"
16 DEC 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

J.H. Roberts

(J.H.Roberts) Maj-Gen
Comd
Cdn Rft Units

In the Field,
19 Dec 44.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
F50460	Pte		James Clarke	EMSLIE	2CITR(Att 4 Cdn Conv Depot)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 19 Dec 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed ~~or detailed hereunder~~.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	D.L. REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	from	1 CSRU
A Lieut	from	1 CSRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 19 Dec 44

(Signed personally. RP 105 fn 2.)
(J.W. Roberts) Maj-Gen
Commanding Cdn Rft Units
Convening Officer.

Maj-Gen
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (Tp Secs) (AFAS) 40-7-8-5/1497 6000

(*See overleaf for oaths and notes for use at trial.*)

MEDICAL OFFICER'S REPORT

I certify that No. F 50460 PTE EMSLIE J.C.

of _____ is in a 5 and 1 state of health,

and adsle to undergo Trial by Court martial.

W Medical Officer

Station _____

Date 21 Jun 44.

M. F. B. 246

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

PLEA IN MITIGATION

Pte Emslie

I am urging the utmost leniency for the acc I would first of all draw the Court's attention to Pte Emslie's He was on active service in the Alg Regt in W. Europe when [illegible] Normandy. Before being wounded and returned to this he was a good soldier. The acc has had no leave country. The acc has had a very good conduct sheet during his service with the Regt. He was awarded the France and Germany Star, the Defence Medal and the 1939-45 War Medal. He was also awarded a good conduct badge. He was wounded in action in Normandy on 8 July 44 and was evacuated to hospital in England where he remained until SINCE returning here at the end of [illegible]. He has a permanent disability as a result of his wounds, namely the loss of the first joint of the middle finger of his left hand. He was faced with the prospect of a further period of 5-6 months convalescence before he could return to duty with his unit overseas. He is desirous of returning overseas as soon as possible to rejoin his unit and to complete his service with the Regt. He has a wife and two children in England whom he has not seen for over two years. He has been married for 5 years. He has been in the Army for 5 years. He has been overseas for 3 years. He has been in action for 2 years. He has been wounded once. He has been awarded a good conduct badge. He has been awarded the France and Germany Star, the Defence Medal and the 1939-45 War Medal. He has been awarded a good conduct badge. He has been awarded the France and Germany Star, the Defence Medal and the 1939-45 War Medal.

4/71 CFA 175 PLEASE WRITE ON BOTH SIDES

CANADIAN LEGION WAR SERVICES Inc.

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THE SALVATION ARMY CANADIAN WAR SERVICES

(2)

It is not unreasonable for a man who has not been away from military surroundings for 15 months, interspersed with a period in action, to be anxious to get away for a short time. It will be noted that the accused returned of his own volition.

I respectfully ask the court to take these factors into consideration in determining punishment.

A.L. Mills (Lt)
Defending Officer

TELEPHONE No. 2351.

REFERENCE No. 47/44/WK/JH

SURREY JOINT POLICE FORCE.

Guildford Boro' Division.

16th December, 1944.

Dear Sir,

No.F.50460 Pte. J.C. EMSLIE.

I beg to inform you at 5 p.m. on Saturday the 9th instant, the above named called at North Street Police Station and asked what the Police wanted of him, as he understood from some friends, that enquiries had been made concerning him.

He was questioned, and when he admitted being absent from his Unit since 18th November, 1944, was detained by P.C.20 A. Truelove and later handed to the 9th Provost Corps.

Yours faithfully,

T/Superintendent.

The Officer Commanding,
No: 4 Canadian Convalescent Depot.,
Canadian Army Overseas,
England.

SUMMARY OF EVIDENCE

in the case of

F50460, Private James Clarke EMSLIE, on the strength of NO. 2 Canadian Infantry Training Regiment, attached to NO. 4 Canadian Convalescent Depot, RCAMC, a soldier of the Canadian Army Overseas.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS: Prosecution

B46036, Sjt. FARRALL, W. S., a soldier on the strength of NO. 3 Canadian Infantry Training Regiment, attached to NO. 4 Canadian Convalescent Depot RCAMC, having been duly sworn states:

"I am an NCO of "F" Company, "B" Division, of NO. 4 Canadian Convalescent Depot RCAMC. On 14 NOV 44, I was employed as Company Orderly Sjt of said Coy, of which the accused, F50460, Pte EMSLIE, J. C., is a member. When the Tattoo Report of 13 NOV 44 was made up by me on the evening of said date, I noted that the accused was absent from 2200 hrs 13 NOV 44. At 1345 hrs 14 NOV 44 the accused reported to me at my quarters, and told me that he was reporting in, and stated that he had been absent from the night before. I placed him under open arrest."

B46036 Sgt W S Farrall
B46036, Sjt. FARRALL, W S.

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

SECOND WITNESS: Prosecution

K48037, Sjt. HOWE, R. R., a soldier on the strength of NO. 4 Canadian Convalescent Depot RCAMC, having been duly sworn states:

"I am an NCO employed as Provost Serjeant, NO. 4 Canadian Convalescent Depot RCAMC. On 18 NOV 44, the accused, F50460, Pte. EMSLIE, J.C., was under open arrest at NO. 4 Canadian Convalescent Depot, and was employed by me on said date performing certain duties in the Guard Room up until 0900 hrs 18 NOV 44. I warned him that he was to appear before the Commanding Officer at 1130 hrs on said date. At 1100 hrs I went in search of said accused, but I could not find him although I diligently searched the entire barracks area. I did not see him again until he was returned to my Guard Room by one of my unit R.P's at [redacted] hrs 11 DEC 44. When I discovered the accused's absence on 18 NOV 44, I immediately reported same to the Acting Unit RSM, K18001, RSM SCOTT, J. G."

R. R. Howe
K48037, Sjt. HOWE, R R

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

THIRD WITNESS: Prosecution B105070, Sjt. MIDDLETON, T. R., a soldier on the strength of NO. 2 Canadian Armoured Corps Reinforcement Unit, attached to NO. 4 Canadian Convalescent Depot, RCAMC, having been duly sworn states:

"I am an NCO attached to "P" Company, "B" Division, NO. 4 Canadian Convalescent Depot, RCAMC, From 18 NOV 44 to 22 NOV 44 inclusive, I was platoon Sjt of No. 2 Platoon, "P" Company, of which the accused, F50460, Pte EMSLIE, J.C., is a member. I called the roll of NO. 2 Platoon each day at 0845 hrs, and at 1345 hrs, on the dates stated above, and on no occasion did the accused answer his name."

T R Middleton

B105070, Sjt. MIDDLETON, T R

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

FOURTH WITNESS: Prosecution Captain A. E. LOCK, an officer on the strength of NO. 4 Canadian Convalescent Depot, RCAMC, having been duly sworn states:

"I am the Adjutant of NO. 4 Canadian Convalescent Depot, RCAMC, Canadian Army Overseas. As such I am the custodian of the official documents of NO. 4 Canadian Convalescent Depot, RCAMC, and also supervise the publication of Parts I and II Orders of said Depot. I hereby identify and offer as Exhibits "A" and "B" respectively, Part II Orders of NO. 4 Canadian Convalescent Depot, RCAMC, dated 5 DEC 44, and a certificate of surrender of the accused on the 9 DEC 44."

"On 15 NOV 44, the accused, F50460, Pte. EMSLIE, J. C., was brought before the Commanding Officer at the Commanding Officer's Orderly Room. I was present in the capacity as Adjutant. He stated that he had been absent because he had to look after his wife and mother-in-law who had been blitzed out of their home in LONDON on the day he was to return to barracks. The Commanding Officer directed me to investigate the truth of these statements. My investigation revealed that the statements which he made to the Commanding Officer were false in entirety."

THE ACCUSED DECLINES TO CROSS-EXAMINE THE WITNESS

A E Lock Capt

(A E Lock) Captain

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"DO YOU WISH TO MAKE ANY STATEMENT OR TO GIVE EVIDENCE ON OATH. YOU ARE NOT OBLIGED TO SAY ANYTHING OR GIVE EVIDENCE UNLESS YOU WISH TO DO SO, BUT WHATEVER YOU SAY OR ANY EVIDENCE YOU GIVE WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN IN EVIDENCE"

THE ACCUSED RESERVES HIS DEFENCE.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF THREE (3) PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE OF THE ACCUSED AND THAT R.P. 4 (c), (d), (e), (f), and (g) HAVE BEEN COMPLIED WITH.

A.B. O'K

(A B O'KEEFE) Lieut
The Black Watch RHR.
Officer Detailed to
Take Summary of
Evidence

In The Field
18th December 1944

EXA

Certified
A. F. Lockhart Capt. A.G.

4 CANADIAN CONVALESCENT DEPOT ROAMC
Part II Orders Issued by
LT-COL W T INSCOT RM ED

LAST ORDER
NO 31
27 NOV 44

THIS ORDER
NO 32
5 DEC 44

= = = =

A

Certified
A. P. Lt. Col. Capt. Asst.

LAST ORDER NO 31 27 NOV 44 — 4 CANADIAN CONVALESCENT DEPOT RCAMC — Part II Orders Issued By LT-COL W T ISBOTT RCAMC ED — THIS ORDER NO 32 5 DEC 44

"A" OFFICERS

ATTACHED

(a) AMENDMENT: Part II Order NO 31 para 1(a) d/27 NOV 44 insofar as it refers to the u/M is amended to read Lieut MAXWELL WINSTON JESSUP
Lieut MAXWELL KINSTON JESSUP

COMMAND

(a) On command to CMHQ wef 0800 hrs 5 DEC 44 Auth- Overseas R O 1864 & 3436
Lieut NATHANIEL KINGSTON LAMONT

LEAVE OF ABSENCE

(a) Granted 7 days P L plus 48 hrs pass(total 9 days) with money allces in lieu of rations under FR&I 789 wef 1 DEC 44 to 10 DEC 44
Capt R E BRAYLEY — 17 CDN BASE DENTAL COY CDO

(b) Granted 7 days P L plus 48 hrs pass (total 9 days) with money allces in lieu of rations under FR&I 789 wef 4 DEC 44 to 13 DEC 44
Lieut D V COTTON — 1 CITR

(c) Granted 14 days P L with money allces in lieu of rations under FR&I 789 wef dates shown
Lieut J V KOESTER — 2 DEC 44 to 16 DEC 44 — 3 CITR
Lieut W THORP — 5 DEC 44 to 19 DEC 44 — 3 CITR

(d) Granted 7 days P L plus 48 hrs pass (total 9 days) with money allces in lieu of rations under FR&I 789 wef 4 DEC 44 to 13 DEC 44
Lieut H E PORTER — 3 CAORU

(e) Granted 7 days P L plus 48 hrs pass(total 9 days) with money allces in lieu of rations under FR&I 789 wef 2 DEC 44 to 11 DEC 44
Lieut N A SHACKLETON — 1 CAORU

"B" OTHER RANKS

STRENGTH INCREASE

(a) AMENDMENT: Part II Order NO 20 para 6(c) d/5 OCT 44 insofar as it refers to the u/m is amended by DELETING wef 17 SEP 44 and ADDING wef 18 SEP 44 Auth - CMHQ Obs NO O R 4671 d/16 NOV 44
M59158 Spr COLEMAN E L

LEAVE OF ABSENCE

(a) Granted 14 days P L with money allces in lieu of rations under FR&I 789 wef 27 NOV 44 to 11 DEC 44
B36808 Pte KING E G — 2 CITR

(b) Granted 7 days P L plus 48 hrs pass (total 9 days) with money allces in lieu of rations under FR&I 789 wef 27 NOV 44 to 6 DEC 44
B25569 Spr HILTON H — 1 CERU

5. LEAVE OF ABSENCE (Cont'd)

(c) Granted 7 days P L plus 48 hrs pass (total 9 days) with money allces in lieu of rations under FR&I 789 wef dates shown

L104820	Gnr	COGHILL	G W	1 DEC 44	to 10 DEC 44
L12616	Pte	ESTOK	J R	1 DEC 44	to 10 DEC 44
A116110	A/Sgt	GUYITT	A R	1 DEC 44	to 10 DEC 44
H17379	Pte	KLASSEN	J H	1 DEC 44	to 10 DEC 44
M50684	Pte	LARIVIERE	D	30 NOV 44	to 9 DEC 44
K48037	Sgt	HOWE	R R	1 DEC 44	to 10 DEC 44
B1612	A/Sgt	MacDONALD	H B	1 DEC 44	to 10 DEC 44
F77798	Cpl	MacINNIS	C L	4 DEC 44	to 13 DEC 44
M103764	Pte	TANNE	L	4 DEC 44	to 13 DEC 44

(d) Granted 7 days P L plus 48 hrs pass (total 9 days) with money allces in lieu of rations under FR&I 789 wef 30 NOV 44 to 9 DEC 44

B38066 Sgt DEARDEN E 2 CITR

(e) Granted 7 days P L plus 48 hrs pass (total 9 days)with money allces in lieu of rations under FR&I 789 wef 1 DEC 44 to 10 DEC 44

M20641 Sgt LEVESCONTE D 17 CDN BASE DENTAL
G43054 Sgt THOMAS H L 17 CDN BASE DENTAL

(f) Granted 7 days P L plus 48 hrs pass(total 9 days)with money allces in lieu of rations under FR&I 789 wef 1 DEC 44 to 10 DEC 44

D117037 S/Sgt CROSLAND M K 1 COMERU

(g) Granted 14 days P L with money allces in lieu of rations under FR&I 789 wef 30 NOV 44 to 14 DEC 44

D125469 Pte NEIL D A 3 CITR

(h) Granted 7 days P L plus 48 hrs pass(total 9 days)with money allces in lieu of rations under FR&I 789 wef 1 DEC 44 to 10 DEC 44

H60534 L/Sgt LAPPAGE F H 1 CARU

(i) Granted 14 days P L with money allces in lieu of rations under FR&I 789 wef 1 DEC 44 to 15 DEC 44

F95111 Spr MORRIS L F 1 CERU

(j) Granted 7 days P L plus 48 hrs pass(total 9 days)with money allces in lieu of rations under FR&I 789 wef 4 DEC 44 to 13 DEC 44

A58062 Tpr GORDON C D 2 CACRU

(k) Granted 7 days P L plus 48 hrs pass(total 9 days)with money allces in lieu of rations under FR&I 789 wef 2 DEC 44 to 11 DEC 44

G4289 Gnr FITZGERALD H A 2 CARU

/pass

(l) Granted 7 days P L plus 48 hrs (total 9 days)with money allces in lieu of rations under FR&I 789 wef 4 DEC 44 to 13 DEC 44

A257 L/Cpl STEWART B R 1 CCRU

(m)

6. ABSENT WITHOUT LEAVE

(a) AWL from 2359 hrs 11 NOV 44 Still absent 2359 hrs 3 DEC 44
B43012 Pte ROBERTS R 4 CITR (22 days)

(b) AWL from 2200 hrs 15 NOV 44 Still absent 2200 hrs 23 NOV 44
M31295 Pte TURNER J (8 days)

(c) AWL from 1100 hrs 18 NOV 44 Still absent 1100 hrs 26 NOV 44
F50460 Pte EMSLIE J C (8 days)

(d) AWL from 0920 hrs 20 NOV 44 Still absent 0920 Hrs 28 NOV 44
M55277 Pte McFARLANE N J (8 days)

7. APPOINTMENTS & PROMOTIONS

(a) To be RSM (WOI) wef 27 OCT 44 Auth - Overseas R O 5262 d/24 NOV 44
M62065 S M (WOI) STOTHARD J

(b) To be A/Sgt wef 1 DEC 44
B28314 Cpl BLANKENSHIP W

(c) To be Cpl wef 20 NOV 44
B27144 A/Cpl HANSON H

(d) AMENDMENT: Part II Order No 20 para 10(a) d/5 OCT 44 insofar as it refers to the u/m is amended by DELETING wef 17 SEP 44 and ADDING wef 18 SEP 44 Auth - CMHQ Obs OR 4671 d/16 NOV 44
M59168 Spr COLEMAN E L

8. TRADESMENS RATES OF PAY

(a) Ceases to draw tradesmens rates of pay COOK "C" wef 15 JUN 44 and is granted tradesmens rates of pay COOK "B" wef 16 JUN 44 Auth Pay Obs NO 13922 d/17 NOV 44
E14158 Pte GADOURY M A COOK "C"

(b) AMENDMENT: Part II Order No 3 para 6(b) d/24 JUN 44 insofar as it refers to the u/m is CANCELLED Auth - Pay Obs No 13922 d/17 NOV 44
E14158 Pte GADOURY M A

(c) AMENDMENT: Part II Order No 6 para 11(a) d/14 JUL 44 insofar as it refers to the u/m is CANCELLED Auth - Pay Obs No 13922
E14158 Pte GADOURY M A

9. PUNISHMENTS

(a) On 27 NOV 44 awarded forf of 3 days pay for an offence under AA 15(1) AWL from 2359 hrs 26 NOV 44 to 0715 hrs 27 NOV 44 (absent 7 hrs 15 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 3 days pay FR&I 149(2) Total forf of 4 days pay
B136801 Pte TYRELL C K 3 CITR

(b) On 27 NOV 44 awarded forf of 3 days pay for an offence under AA 15(1) AWL from 0930 hrs 26 NOV 44 to 2200 hrs 26 NOV 44 (absent 13 hrs 30 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 3 days pay FR&I 149(2) Total forf of 4 days pay
B46179 Pte TAYLOR O O 3 CITR

10 PUNISHMENTS(Cont'd)

(c) On 27 NOV 44 awarded forf of 3 days pay for an offence under AA 15(1) AWL from2359 hrs 26 NOV 44 to 0630 hrs 27 NOV 44 (absent 6 hrs 31 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 3 days pay FR&I 149(2) Total forf of 4 days pay
B114707 Rfm DeBLOIS A 3 CITR

(d) On 27 NOV 44 awarded forf of 3 days pay for an offence under AA15(1) AWL from 0930 hrs 26 NOV 44 to 2200 hrs 26 NOV 44 (absent 12 hrs 20 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 3 days pay FR&I 149(2) Total forf of 4 days pay
B63937 Rfm WHITE K 2 CITR

(e) On 27 NOV 44 awarded 27 days det and to pay cost of app for (1)an offence under AA 15(1) AWL from 2359 hrs 14 NOV 44 to 0900 hrs 15 NOV 44 (absent 9 hrs 1 min) (2) An offence under AA 15(1) AWL from 1500 hrs 18 NOV 44 to 2145 hrs 24 NOV 44 (absent 6 days 6 hrs 45 mins) (3) An offence under AA 22(4) and (4) An offence under AA 10(3) Forfs 1 days pay FR&I 149(1)(a) Forfs 7 days pay FR&I 149(1)(a) Forfs 27 days pay FR&I 149(1)(b) Total forf of 35 days pay and $40-8-0 FR&I 172(8)
D62664 Pte LAMONT W 4 CITR

(f) On 28 NOV 44 awarded forf of 3 days pay for an offence under AA15(1) AWL from 2359 hrs 26 NOV 44 to 2315 hrs 27 NOV 44 (absent 23 hrs 16 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 3 days pay FR&I 149(2) Total forf of 4 days pay
D46778 Tpr MELROSE E J 2 CARU

(g) On 28 NOV 44 awarded forf of 2 days pay for an offence under AA 15(1) AWL from 2359 hrs 26 NOV 44 to 0830 hrs 27 NOV 44 (absent 8 hrs 31 mins) Forfs 1 days pay FR&I 149(1)(a) Forfs 2 days pay FR&I 149(2) Total forf of 3 days pay
A37676 Pte HAWKINS A 2 CITR

(h) On 28 NOV 44 awarded forf of 1 days pay for an offence under AA 11 Forfs 1 days pay FR&I 149(2) Total forf of 1 days pay
A102997 Gdsm COHERE F S 3 CACRU

(i) On 5 SEP 44 awarded forf of 7 days pay for an offence under AA 15(1) AWL from 1600 hrs 1 SEP 44 to 1450 hrs 3 SEP 44 (absent 1 day 22 hrs) Forfs 2 days pay FR&I 149(1)(a) Forfs 7 days pay FR&I 149(2) Total forf of 9 days pay Auth- Pay Obs 14586 d/ 22 NOV 44
L19043 Spr BISSONNETTE V 1 CERU

(j) AMENDMENT: Part II Order No 16 para 11(k) d/13 SEP 44 insofar as it refers to the u/m is CANCELLED Auth - Pay Obs 14586 d/22 NOV 44
L19043 Spr BISSONNETTE V 1 CERU

10 PUNISHMENTS(Cont'd)

(k) AMENDMENT: Part II Order No 24 para 6(f) d/25 OCT 44 insofar as it refers to the u/m is CANCELLED Auth - Pay Obs 14340 d/16 NOV 44
A22510 Pte FOX J T 2 CIRU

(l) AMENDMENT: Part II Order No 17 para 11(h) d/21 SEP 44 insofar as it refers to the u/m is amended to read Forfs 4 days pay FR&I 149(1)(a) 1 day to run concurrent with award of 2 CIRU Part II Order No 214 d/6 SEP 44 NET forf of 13 days pay Auth - Pay Obs 14340 d/16 NOV 44
A22510 Pte FOX J T 2 CITR

(m) AMENDMENT: Part II Order No 25 para 8(e) d/27 OCT 44 insofar as it refers to the u/m is amended to read Forfs 3 days pay FR&I 149(2) 1 day concurrent with award of 21 OCT 44 vide Part II Order No 87 para 8(d) d/24 OCT 44 of No 18 CDN GEN HOSP RCAMC Total forf of 2 days pay Auth - Pay Obs 14465 d/21 NOV 44
A32097 Gnr UTTER J W 2 CARU

11 MARRIAGES BIRTHS & DEATHS

(a) Daughter LILLIAN born at CHICHESTER SUSSEX ENGLAND on 7 SEP 44 Wife ELIZABETH HILDA LAMONT
D62664 Pte LAMONT W 3 CITR

(b) On 26 NOV 44 granted permission to marry Miss DORIS EMMA MOGER on or after 24 JAN 45
P28123 Pte PROCTOR C W 12 CDN AUX SERV SECTION

(c) On 30 NOV 44 granted permission to marry Miss IRIS JOYCE HUTT on or after 29 JAN 45
A705 Cpl RAESIDE T C 2 CACRU

(d) On 29 NOV 44 granted permission to marry Miss MARY MORRISON CRUICKSHANK on or after 29 JAN 45
M44961 Pte COOPER R W W 1 CITR

(e) AMENDMENT: Part II Order No 31 para 8(a) d/27 NOV 44 insofar as it refers to the u/m is amended to read by DELETING IRISH ELIZABETH THOMAS and ADDING IRIS ELIZABETH THOMAS
043054 Sgt THOMAS H L 17 CDN BASE DENTAL COY CDC

12 NEXT -OF-KIN

(a) The name and address of N-of-K is now verified as shown
G49394 Pte URQUHART A M GWYNETH URQUHART (Wife)
1 CASCRU 6 NAVIGATION STREET TRE THOMAS
Nr NEWPORT MON SOUTH WALES

(b) The name and address of N-of-K is now verified as shown
B143075 Pte WILSON C T FLOSSIE SOPHRONE WILSON(Mother)
2 CITR 62 WARDEN STREET MIMICO
ONTARIO CANADA

12 NEXT-OF-KIN(Cont'd)

(c) The name and address of N-of-K is now verified as shown
A114014 Pte GRIFFIN J M LAURA GRIFFIN (Mother)
2 CITR 18 ARGYLE STREET LONDON
ONTARIO CANADA

(d) AMENDMENT: Part II Order No 29 para 9(c) d/16 NOV 44 insofar as it refers to the u/m is amended by DELETING (WIFE) and ADDING (MOTHER)
H200011 Sgt SUTHERLAND F J 1 CITR

"G" INCREMENT

OFFICERS

N I L

OTHER RANKS

13 LEAVE OF ABSENCE

(a) Granted 7 days P L plus 48 hrs pass (total 9 days) with money allces in lieu of rations under PR&I 789 wef 1 DEC 44 to 10 DEC 44
D110259 Pte CRAWFORD W E

(W T IBBOTT) LT-COL
COMMANDING OFFICER
4 CANADIAN CONVALESCENT DEPOT RCAMC

/CdeVR

B

SCHEDULE "F"

Certificate in Accordance with P.C. 2797 of 10 Apr.42.

I CERTIFY that No. ...Rank...Pte...Name.....

Unit.....No. 4 C.C.P. .....Was arrested at ..Guildford, Surrey (Place)

at 2000 hours on.....9 Dec 44 (date) and that at the time of his arrest he was wearing (military uniform) ~~or (civilian clothes)~~

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Cdn. Army, into whose custody the above named person was taken on arrest.

.....

.....

ORDERLY ROOM PROVOST CORPS

CDN. CONV. DEPOT ORDERLY ROOM DEC 16 1944

Certified a true copy

A. [illegible] Capt. C.A.P.C.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
P50460	Pte	EMSLIE, J. C.	2 CITR att 4 Con Conv Depot RCAMC.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Absence without leave ... four times.

For ... times.

For ... times.

For ... times.

Date of first entry in Field Conduct Sheet 13 June 1941

Date of last entry in Field Conduct Sheet 13 Nov 1943

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused is to the present time unconvicted.~~

~~Remarks:~~ ~~none~~

4. The accused has been awaiting trial on the present charges for ~~------~~ days in civil custody; and for nine days in military custody, i.e., no days in open arrest, nine days in close arrest; of which none days were spent in hospital.

5. The present age of the accused is twenty-three years

6. The date of his ~~enlistment~~ attestation is 17 Feb 41

7. ~~The service to which the accused is attached is Infantry.~~

(State the military decorations (if any) held by accused.)

8. ~~The accused was promoted ---~~

9. ~~If the accused has served with the C.E.F. The accused has served continuously since the present period began.~~

Date of Promotion.

~~---to be substantive~~ ...

~~---to be temporary~~ of ...

~~---to be substantive~~ ...

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/2867 M.300 5/44 J.J.431 T.Ltd. Form B.296(War)2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Civil Court	UK 14-4-42	UNLAWFUL POSSESSION OF BICYCLE	Fine £5-3-6	None
Court Martial	UK 13-11-43	ABSENCE WITHOUT LEAVE	6 months det Forf of 209 days Pay	None

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of December, 1944

A E Lock

(A E Lock) Capt & Adjt
4 Cdn Conv Depot RCAMC

C.16
15-12-44

MFM. 6.

Regimental No. F. 50460 Rank Pte

Sheet No. I

Name Emslie James Clark

MFM 1 & 2b
M.F.P. & S. (15) (9618)

Record of Promotions, Reductions, Transfers, Casualties, Reports, etc.	Rank Shown	Effective Date	Unit	Place	Authority: DO Number	Authority: Dated
(1) AWL. Award 14 dys CB: forf: 13 dys Pay & allow	Pte	13.6.41	NNSH	Debert	133	18 June 41
(2) AWL. Award 14 dys CB: forf: 2 dys Pay	Pte	2.7.41	NNSH	Debert	142	2 July 41
(3) AWL. Award 7 dys CB: forf: 1 dys Pay	Pte	9.7.41	NNSH	Debert	147	9 July 41
(4) Appeared in Civil Court: Fined £5.3.6 - Unlawful possession of a bicycle (fine paid) £5.0.0 fine	Pte	14.4.42	NNSH	UK	26	21 May 42
(5) AWL (16 Apr to 17 Apr 42) Admonished. Forf 2 dys Pay Stoppage of Pay 9/10 (apprehended by Provost)	Pte	20.4.42	7 CIRU	UK	69	27 Apr 42
(6) AA 15(1) (25 Oct 43) Award 168 hs Detn forf 11 dys Pay	Pte	9.10.43	Algonquin Rgt	UK	14	17 Nov 43
(7) CAA 15(1) (AWL from 17 to 27 Oct 43) Award 6 wks Detn total forf 20 dys Pay	Pte	13.11.43	Algonquin Rgt	UK	16	1 Dec 43

FOC'M

AGE 19 years (June 20th 1921)

Date of Enlistment 17 February 1941

Certified true Extract from MFM 2.

/s/ E. E. Lee Capt

/s/ (R. A. C. Johnson) Major
for Colonel
O I C Records
Canadian Military Headquarters

LIST OF WITNESSES

in the case of

F50460, Pte James Clarke EMSLIE

PROSECUTION

Capt A E Lock	4 Cdn Conv Depot RCAMC
B46036 Sjt FARRALL, W.S.	3 CITR att 4 Cdn Conv Depot RCAMC
K48037 Sjt HOWE, R R	4 Cdn Conv Depot RCAMC
B105070 Sjt MIDDLETON, T R	2 CACRU - att 4 Cdn Conv Depot RCAMC

0130.

LIST OF EXHIBITS

in the case of

P50460, Pte. James Clarke EMSLIE

EXHIBIT "A"	4 Cdn Conv Depot Part II Order No. 32 dated 5 Dec 44
EXHIBIT "B"	SCHEDULE "P" - Certificate of Surrender

W30

I, F50460, Pte James Clarke EMSLIE, desire
to have an officer assigned to r epresent
me at my trial by Field General Court Martial.

J C Emslie

F50460, Pte EMSLIE, J C.

Officers Undergoing

Lt.	D. L.	Mumby	1 C I T R
Lt.	H. A.	McCarthy	"
Lt.	P.	Matiz	"
Lt.	J. W.	McGowan	"

VV·14

PTE EMSLIE J.C.

VV-14

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused F50460 Pte James Clark Emslie

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs ¶ 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 paras 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

~~As present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six months

(Sgd) W Heron Wozar — Judge-Advocate, if any. 13 Nov 43 — Date Awarded. (Sgd) G M Warfield Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

AT — NIL — JAK

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attested before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed.

JAK ~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

Date 15 Nov 43 (Sgd) J E Rodgers Brig, 10 Can Inf Bde, Confirming Officer. Commanding

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 570, 577.)

Accused.	Date.	Signature of Offr.
F50460 Pte Emslie J.C.	17 Nov 43	M L Trog Maj for Adc Hdq R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

CF A96 (In lieu of AFA3) (C.F.A. R. (1939) (2064))

Convened by Order of J D Stewart Lt Col Comd 10 Cdn Inf Bde dated 10 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F50460	Pte	James Clark	Emslie	Alg Regt

Proceedings Reviewed

Eglin mar
10 nov 43

Reviewing Officer (J.A.G.) / A.H.Q.

VV14

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 13 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 758. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the C.O.(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~Maj~~ ~~as interpreter? Ans~~

~~The Interpreter is sworn.(1)~~ Do you object to Pte Emslie J.C. as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 53, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G M Warfield A I S H of C
Member	Capt	W A S McPherson Alg Regt
Member	Capt	J I ~~M~~ Swayze Lond & Wilts R.
Judge-Advocate	Major	W A D Lyon HQ 4 Cdn Armd Div
Prosecutor	Capt	J S McLeod Alg Regt
Defending Offr	Lt	R C McNairn Alg Regt

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 26 (2) and fn 2 were not followed. See Di p 3.)

A8. The accused Pte James Clark Emslie before arraignment makes(s) (not) the plea (3)

(3. If a special plea is made for separate trial on one or more charges (RP 62(E), (2)), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 70), such plea, the evidences made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (re-assembles and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; see of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s). (Will / Will) call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 25(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his ~~record~~ plea(s) of Guilty to Not Guilty on the ..... charge(s). The accused is (not) so informed, ~~and the charge~~ ~~Court to be advised of plea(s) etc.~~ ~~Proceedings in respect of remainder~~ (Will / Will)
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of (Will / Will) Guilty in Part I of the Schedule.(1)
(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(1. *If "Yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 86(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below. (Will / Will)

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for (Will / Will) examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "X" and Ex "Y" respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 7.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes Statement made Depending Offr (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) (Will / Will)
(1. *When several accused tried separately see RP 116. Give sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. See also RP 46, As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Con 320, 330, 563-566, Overseas HO 309, 2323, RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Con 320, 330, 563-566, Overseas HO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 160(7), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE-SHEET

The accused, No. F-50460 Pte James Clark Emslie, The Algonquin Regiment C.A.(A.F.), a soldier of the Canadian Army, placed on Active Service is charged with

absenting himself without leave

First Charge
Army Act
Sec 15 (1)

in that he in the field on 17 October 1943, absented himself without leave from 1200 hrs 17 October 1943 until 2130 hrs 27 October 1943.
(Total absence 10 days 9 hrs 30 mins)

W. C. Troy Major.
A/CO Algonquin Regiment

To be tried by Field General Court Martial

.....
A/Comd 10 Cdn Inf Bde

In the Field
10 November 1943

Granted
Troy
President
Lieut Gunn
Judge Advocate

MEDICAL OFFICER'S REPORT

I certify that No. F50460 Pte Emslie, J.C.
of Algonquin Regt is in a fit state of health,
and fit to undergo Trial by Court martial.

W.F. MacRae Capt RCAMC
Medical Officer
(M.F. Parliamentary) Capt.
att'd Algonquin Regt.

Station In the Field

Date 18 Nov 43

M. F. B. 246
MM—9-43 (7126-1)
H.Q. 1772-39-680

President
Judge Advocate

FIELD GENERAL COURT-MARTIAL

CFAAO (In lieu of AFA3)
40(CAS/1097 (D662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy; AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F-50460	Fte		James Clark	EMSLIE	Alq R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Nov 43 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that the exigencies of the service do not permit of my assembling a General Court-Martial for the trial of the said offence(s))~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I appoint the officers named hereunder to be members of the said Court, and I detail the officer named hereunder to be Waiting Member thereof.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	G M Winfield	A & S H of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	~~W A McPherson~~ W.S. MACPHERSON	
Capt	~~E~~ J.F. Swayze	Alq R
		Linc & Welld R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	L G Dirasser	Linc & Welld R

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	~~W A~~ W.A.D Gunn	HQ 4 Cdn Armd Div

On Active Service in the Fd

England
(Country.)

10 Nov 43

(Signed personally. RP 105 fn 2.)

Lt.-Col.
(Rank.)

A/Commanding 10 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Major
President

Judge Advocate

The accused has a statement he wishes to make but the statement is of such an intimate nature he requests the court orderly and the escort leave the room during this statement.

Statement by the accused in Mitigation of Punishment

Sir, I have reasons for going away, there is serious trouble at home and I have been trying at CMHQ to get it straightened out. I have been up to CMHQ several times about it and it has cost me quite a bit of money. I did not have sufficient money to cover my case but I was waiting to get some over here enough to cover my case and made several trips to London which have cost me around $250.00. I have two letters from CMHQ which will certify my statement which I am making now. (The letters are submitted to the court) They are doing all they possibly could and I will have to make several trips yet and I have to have the money before the trial comes off.

Statement by the Defending Officer

First of all with regard to the summary of evidence the accused has made no effort to deny the facts as set out in the summary, he admits being absent without leave and gave himself up was not apprehended. I also wish to direct the attention of the court to the fact that the accused was unable to find his unit at that time. With regard to the statement just made by the accused his army record is shown in the exhibits before the court was clear until the end of 1941 at which time the accused became aware of an unfortunate condition existing in his home. The accused heard at first indirectly and later from authentic sources that his wife was carrying on with other men in his absence overseas. As is shown in the letters before the court the accused has been trying to obtain a divorce to which he is certainly entitled. The legal aid dept of the Cdn army has been looking into the matter and the accused has been under the necessity of obtaining $200.00 to pay for his divorce and while he was definitely absent without leave I would ask that the court consider the pressure and the personall troubles under which this soldier has been serving and crave your lenience when you come to deliberate the sentence.

~~Questions by the court~~

Appendix B
Grand Jury
President
Crown Counsel
Judge Correct

JAG/LA2/1911.

Legal Aid Section J.A.G. Branch

E.C. Hicks, Esq.,
Barrister.
Amherst, N.S.
Canada.

29th July 1943.

Dear Sir,

re: F-50460 Fusilier Emslie, James Clarke.
Princess Louise Fusiliers - Cdn Army Overseas.

The above-named Nova Scotia soldier has consulted the Legal Aid Section of this Branch and he is desirous of securing a divorce from his wife Mrs Dorothy May (nee Fowler) Emslie. We are forwarding his case to you to institute divorce proceedings for him.

We are enclosing herewith Questionnaire made out by the soldier setting forth material facts concerning his marriage, also copy of a letter written to the soldier by his wife, which speaks for itself.

From our interview with this man it appears that he married his wife on 17th May 1941 at Amherst, N.S. As a result of the marriage one child (Dionna Sharon) was born on 7th July 1941 and although this child was conceived before marriage, the above soldier claims he is the father. Everything went more or less smoothly until the soldier came overseas when his wife wrote to him regularly until around 10th December 1941 when all letters stopped. He heard rumours and word from home that his wife was carrying on with another man, and on writing her numerous letters asking why she was not writing, etc., she finally replied in the latter part of March 1942 simply stating that she was having a good time and did not care if she never saw her husband again or not. On writing to his father concerning the matter, the father caused a Dependents' Allowance Board investigation to be made into the conduct of this soldier's wife and as a result of the investigation her allowances were stopped as from 1st July 1942 and the child Dionna Sharon was taken into the custody of the Children's Aid Society at Amherst. The soldier states that the Reverend J.W. Bent of Amherst has all facts pertaining to this investigation and reasons for the allowances being stopped.

Later, the above soldier was notified that his wife had given birth to an illegitimate child around June 1943 and he discovered that the child belonged to a Mr Hinks who took it away. The soldier also received letters from Mr Hinks's wife asking him if he could do anything to stop her husband going with his wife. The soldier states that he answered these letters telling Mrs Hinks that there was little he could do due to being overseas. The soldier is now desirous of obtaining a divorce and from evidence contained herein and from interviews with the soldier's parents and the Reverend J.W. Bent and Mrs Bernice Blacket of 53 Spring Street, Amherst, N.S. there should be sufficient evidence obtainable to secure the said divorce.

In regard to financing, as you no doubt are aware, solicitors in Nova Scotia are taking these soldier divorce cases at reduced fees, which normally run around $200.00 including disbursements. In this case, on hearing from you that you are proceeding with the matter and your costs, the above soldier will arrange to have the money sent to you direct as he has sufficient deferred pay to pay for the case. It must be clearly understood, however, that neither the Crown nor this Branch can be held in any way responsible for payment of costs.

Any documents to be signed by the soldier may be sent direct to this office for necessary attention.

Yours faithfully,

for: (W.A.I. Anglin) Colonel - D.J.A.G.
Canadian Military Headquarters

Enclosures.

Appendix C
Grounds for Petition for Divorce
Pte Emslie J.C. R-50460
Support Coy, The Algonquin Regt,
Canadian Army, England

O.M.M.A.
JAG/1A2/1911

28 Oct 43

1. The following letter, dated 21st September 1943, has been received from your solicitor Mr E. Clair Hicks :-

" This is to acknowledge your letters of 29th " July, 19th and 26th of August. The first dated " letter was late in arriving, hence the delay in " looking into the matter.
"
" I see no reason why a divorce cannot be " obtained and shortly I shall forward a petition " to be signed by the soldier. Meanwhile I have " written Mrs Emslie requesting her to come to my " office so that I may obtain further information."

2. It is noted that petition for divorce is being forwarded and we will again communicate with you in this respect.

for (W. J. Gallin) Colonel
D.J.A.G.
Canadian Military Headquarters.

Exhibit A
Found guilty by President
with sworn
Judge Advocate

SUMMARY OF EVIDENCE

in the case of

F50460, Pte James Clarke EMSLIE, a soldier of The Algonquin Regiment on active service in the Canadian Army Overseas, charged with absence without leave from 17 Oct 43 to 27 Oct 43.

The Commanding Officer directs that the evidence be taken on oath.

First Witness (Prosecution)

A56683, Sjt Lintick, R G, The Alq R, sworn, states:

"I was Coy Orderly Sjt for Support Coy, The Alq R on 17 Oct 43 when F50460, Pte James Clarke EMSLIE was due to return at 1200 hrs on 17 Oct 43. I checked the Coy huts and Coy area and found F50460 Pte James Clarke EMSLIE had not returned. On checking the Coy huts again at 1200 hrs 17 Oct 43 I found F50460 Pte James Clarke EMSLIE was still absent from 1200 hrs 17 Oct 43 so I marked him absent on the Tattoo Report."

The accused declines to cross-examine this witness.

R. G. Lintick Sgt
(R G Lintick) Sjt

Second Witness (Prosecution).

B54736, L cpl Gilfoil, W, The Alq R, sworn, states:

"I was detailed by my CSM to escort F50460, Pte James Clarke EMSLIE at Lincoln & Welland Guard House, back to my unit which I did and have receipt for same. I was only concerned with delivering Pte EMSLIE, therefore I asked no questions and received no documents."

The accused declines to cross-examine this witness.

W Gilfoil
(W Gilfoil) L cpl

Third Witness
(Prosecution)

In the field
30 Oct 43.

B 40801 Pte Taylor, R. V. sworn states,

~~S.W.~~:

I B 40801 Pte Taylor R. V. was on duty 2200 hrs. 27-10-43 when F 50460 pte Emslie J. C. was turned over properly dressed to me by Canadian Provost Cpl. I gave the Cpl. a receipt and reported to matter to Sgt. Anderson N. B 40555 in charge.

The accused declined to cross-examine this witness.

Pte Taylor R.V.

B 40801 Pte Taylor R. V.

In the field
30th Oct. 43.

Fourth Witness
(Prosecution)

B 40555 Sgt. Anderson N, Lincoln and Welland sworn ~~S.W.~~: states,

I B 40555 Sgt. Anderson N. madexx enquiries the morning of 28/10/43. regarding escort for F 50460 Pte Emslie J. C. return to his unit and was informed that escort was on its way. I surrendered F50460 Pte Emslie J. C. to the escort and obtained receipt for him.

The accused declined to cross-examine this witness.

N Anderson Sgt

B 40555 Sgt. Anderson N.

D E M

Fifth Witness
(Prosecution)

In The Field
30 Oct 43

~~Cdr~~, A 68195 Cpl Piroski N. 8 Cdn Pro Coy sworn states,

1 I am A 68195 Cpl Piroski N, 8 Cdn Pro Coy. I was accompanied by F97965 Pte Roberts on Thetford Town Patrol.

2 At approx 2130 hrs 27 Oct 43, F 50460 Pte Emslie JC approached me and informed me that he had been A.W.L. and was surrendering himself to me. He had been trying for sometime to locate ~~XXXXX~~ his unit, but was unable to do so. I escorted the a/m soldier to the Linc & Well Regt Guard Room and turned him over to the IC of the Guards.

3 For your infm, please, Sir.

The accused declined to cross-examine this witness.

N. Piroski

A68195 Cpl Piroski N
8 Cdn Pro Coy

I corroborate the above statement.

The accused declined to cross-examine this witness.

J.B. Roberts

F 97965 Pte Roberts TB
8 Cdn Pro Coy

87 B

The accused was warned as follows.

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY ACCUSED/

I have nothing to say.

J.C. Enslie

J.C. Enslie, Pte.

I certify that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

Taken down by me in the presence of the accused in the field, this 30th day October, 1943.

D.W. McDonald Lieut

D.W. McDonald, Lieut.
Algonquin Regiment.
C.A.A.F.

D W M

First destroyed 17-8-41

MFM 6 (AFB 122) 40/F&S/156 (3486)

No. F-50460 Name Emslie, J.C. Sqn, Battery, or Company sp Corps Alq R Date of enlistment 17-2-41 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet n/l No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No I Signature OC Company, etc AR Barrett Mc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8-11-41	Pte		AA Sec 15(I) AWL 2200hrs 8-11-41 to 2300hrs 8-11-41	Cpl Young	4 days C B	11-11-41	Maj Lewis	
Field	28-11-41	Pte		Improperly dressed on leave	L/C Faucher L/C Moore	3 days CB	12-12-41	Maj Lewis	
Field	1-3-42	Pte		AA Sec 15(I) AWL from 0915 to 1130 8-3-42	Sgt Grant	7 days C B	9-3-42	Capt Smith	
Field	16-4-43	Pte		WOAS AWL from 1000 16-4-43 till 1930 17-4-43(I day 9½hrs) Sec15(I)	Documentary cost of appre 0.9.10		20-4-43	LtCol Lawson	2 days pay FRI 149(I)a
Field	2-10-43	Pte		AWL 4 days 22 hrs	Documentary furfs 5 days pay	7 days detent	7-Oct-43	LtCol Megill	

Exhibit Y

Certified True Copy 30 Oct 43

Capt D. Ostchak (RA)

for (C B Robertson) Capt OC sp Coy Alq R

(PTO)

Exhibit X
Found in Pte Mayor W.R. Sherwood's Orderly Office

M.F.B. 355
22/M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F 50460	Pte	James Clark EMSLIE	Alq R

1. The following is a fair and true summary of the entries in the ~~Service and General Conduct sheets~~ Regimental and ~~Squadron, Battery or~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	AWL	2 times	AWL	4 times
For		times	Conduct to Prejudice	1 time
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act~~ ~~Air Force Act~~ and dispensations with trial under ~~A.A. 73~~ A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for ... beginning on the ... day of ...~~

4. The accused has been in confinement awaiting trial on the present charges, for 17 days in civil custody, and N/k days in ~~Air Force~~ military custody, making a total of 17 days in custody, of which N/k days were spent in hospital.

5. The present age of the accused according to his record of service is ~~attestation paper is~~ 22 yrs 4 mos

6. The date of his ~~enrolment~~ attestation specified in his record of service is ~~attestation paper is~~ 17-2-41

7. ~~The service which the accused is allowed to reckon towards discharge is ...~~

8. ~~The accused is entitled to reckon ... service for the purpose of determining his position, etc.~~

9. The accused is in possession of or entitled to no ~~war time~~ military decoration, or ~~war time~~ military reward (~~or is in possession of or entitled~~ to). State any ~~war time~~ military decoration or reward.

~~(c. If the accused is a warrant officer.) The accused before he was made a warrant officer was held the regimental rank of~~ Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

Note.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit

Name of Regiment

Note.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of Nov. 43 at Halifax

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

1741 D. A/Bde. Enclie. W.F.

24 Nov 41. Journey to Fife given clear
182 Pieces O. Comm

Correspondence to be PINNED here.

3 OCT 1941

K.E. Smith major
Pres. F.G.C.M.

Army Form A.3. 1740

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this twenty sixth day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Military Headquarters, on active service, that the person named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

~~*I am unable to appoint~~
~~*(a) Three Officers to form the Court;~~
~~*(a) A Field Officer as President;~~
~~*(a) Three Officers having more than one year~~
~~service;~~
~~persons, hereinafter named.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

* Omit if not applicable.

PROCEEDINGS APPROVED

Lieut. Judge Advocate — J.R.A.Beullac — J.A.G.Branch,C.M.H.Q.

President.

Rank.	Name.	Regiment.
Major	K.E.Smith	5 Lt A.A.Regt R.C.A.

Members.

Rank.	Name.	Regiment.
A Captain	To be detailed by O.C. 5 Lt.A.A.Regt R.C.A.	
A Lieut.	To be detailed by O.C. 5 Lt.A.A.Regt R.C.A.	

Waiting Members

A Lieut.	To be detailed by O.C. 4 Lt.A.A.Regt. R.C.A.	
A Lieut.	To be detailed by O.C. 4 Lt.A.A.Regt. R.C.A.	

Approved 26 SEP 1941

P Montague

(P.J.Montague) Major-General
Commanding Canadian Military Headquarters.
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.13615 A/Bdr. ENGLIS, W.J. 69 Lt.A.A.Bty. 1 Lt.A.A.Regt. R.C.A.	First Charge A.A.Sec 40	Not Guilty	Not Guilty	
	Second Charge A.A.Sec 40	Not Guilty	Not Guilty	
	Third Charge A.A.Sec 40	Not Guilty	Guilty, save that he did not fail to effort the accidental that he did not fail to render first aid.	
	(See Charge Sheet attached)		To undergo 14 days detention. 20 Oct 41 K.E.S.	Confirmed P. J. Montague (P. J. Montague, Major-General) Senior Officer Canadian Military Headquarters 25 OCT 1941

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (4)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and if so, have you been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on the Charge Sheet if necessary):— No.

(Signed) P. J. Montague Major-General (Signed) K.E. Smith Major
Confirming Officer (d) Canadian Military Headquarters. President
J.R.A. Beullac Lieut. Judge Advocate

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three entries are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twentieth day of October 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) K.E.S.
*(4. ~~The officers under instruction~~) The Judge Advocate K.E.S.

were duly sworn.

* Omit if not applicable.

Signed this 20th day of October 19 .

K.E. Smith Major
President of the Court Martial.
J.R.A. Beullac Lieut
Judge Advocate

C. Certificate in case of death sentence.

* See footnote on page 761 M.L. 1939

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be ~~not~~ committed to prison until further orders.)

Signed this 25th day of October 1941.

P. J. Montague Major-General
Senior Officer Canadian Military Headquarters
Confirming Officer.

25 OCT 1941

Promulgated and extracts taken in the case of 13615 A/Bdr. English W.J.

(Dated) 5 Nov. 41 (Signed) W.S. Kenchington Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

When several cases are promulgated in one unit on the same day the Officer need only sign once.

A.E. Smith Major
Pers. P.A.C.M.

CHARGE SHEET

D.13615 A/Bdr. EMSLIE, Wilbur John, 89 Lt. A.A. Bty.,
1 Ly. A.A. Regiment, R.C.A., is charged with:-

FIRST CHARGE

Sec 40 Conduct to the prejudice of good order and military discipline,
ARMY ACT

in that he

at Colchester, Essex, on 5 Aug 41, improperly took and used a government vehicle, No. CZ.4205934, for his own private purposes, and caused damage to the vehicle amounting to £1.14.0.

SECOND CHARGE

Sec 40 Conduct to the prejudice of good order and military discipline,
ARMY ACT

in that he

at Colchester, Essex, on 5 Aug 41, negligently drove a W.D. vehicle, CZ.4205934, thereby causing damage to a civilian vehicle driven by S.S. Allderidge of Abberton, Essex.

THIRD CHARGE

Sec 40 Conduct to the prejudice of good order and military discipline,
ARMY ACT

in that he

at Colchester, Essex, on 5 Aug 41, when ~~him~~ involved in an accident between W.D. vehicle CZ.4205934, driven by the accused, and a civilian vehicle driven by S.S. Allderidge of Abberton, Essex, failed to report the said accident, abandoning the vehicle he was driving, and failed to render aid to the parties injured in said accident.

J. Keller

(J.J. Keller) Major
A/Commanding Officer
1 Lt. A.A. Regiment, R.C.A.

Colchester, Essex.
19 Sep 41.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

P.J. Montague Major-Gen
Senior Officer
Canadian Military Headquarters
26 SEP 1941

P J Montague Major-General
Commanding
Canadian Military Headquarters.

London
26 Sep 41.

89th BTY (Squadron / Battery / Company / Detachment) 1 st L.A.A.Regt., R.C.A. (Unit or Battalion)

20 OCTOBER 1941 19....

MORNING SICK REPORT

Regtl No.	RANK AND NAMES (Christian Name in full)	Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
D - 13615							
	BDR EMSLIE W.J.	30	C/E				

This is to certify that the above named BDR was today examined by me and is " FIT " to undergo TRIAL by COURTMARTIAL.

(C.H.MacNeill) Capt., RCAMC
M.O. 5th L.A.A.Regt., R.C.A.

Medical Officer

Orderly N.C.O.

(OVER)

M. F. H. 292
4-500 M-5-41 (39688-D-99)
M.M. 1772-39-248

K.E. Smithmyer
Pres.

During the course of these proceeding it will be the intent of the prosecution to establish the following points:—

1. That D/13615 Bdr. Emslie W. J. did take possession of & drive a government vehicle without due authority.
2. That Bdr. Emslie did cause damage to said vehicle to the value of £1-14-0.
3. That Bdr. Emslie did through negligent driving cause damage to a civilian vehicle.
4. That Bdr. Emslie failed to report said accident, abandoned said government vehicle, and failed to render first aid to the parties injured in said accident.

H.W. Rawlings Lt.
Prosecuting Officer.

20 Oct 41

Evidence taken down at the trial by F.G.C.M. of
no D 13615 Gunner (A/Bdr.) Wilbur John Emolie,
89 L.A.A. Bty. 1 Lt. A.A. Regt R.C.A. Canadian
Army on active service overseas held on 20th October
1941 at Sobraon Barracks, Colchester, Essex.
The Court complied with Rs. P. 22 & 23.
At 0915 hrs. the court opened.
The accused was brought in.
Lieut. H. M. Rawlings, 1st Lt. A.A. Regt.
Prosecutor.
Lieut D. D. Harper, 1st Lt. A.A. Regt. : Defending
Officer.
Medical certificate is tendered by the Prosecutor
signed by the President and annexed hereto.
The convening order was read in the presence
and hearing of the accused.
The accused was asked if he objected to the
President or any of the members. He made
no objection.
Capt. E. S. Fairman, 1st Lt. A.A. Regt. } members
Lieut. W. A. Platt, 1st Lt. " " }
The President and the members were sworn in
by the Judge Advocate, who was sworn in by
the President.
The accused was arraigned and pleaded
as per Schedule on Form A.F.B. 3.
The Prosecutor handed in a written address
which was signed by the President and
annexed to the proceedings.
1st witness for the Prosecution:-
Lieut. J. J. Dinnick, 2nd (Yorkton) Bty., 2nd
Regt. R.C.A. duly sworn.
I was Regt. orderly officer 5th Aug. 1941.
At about 2300 hrs. on information received
I saw the accused in his sleeping quarters.
I questioned him and he denied knowing
anything about an accident which had
occurred at Layer de la Haye Cross roads
earlier that evening involving a W.D. vehicle
and a civilian vehicle.
The next morning Capt. Dann and I went
to Bdr. Emolie's quarters and his first
remarks were: I wish to make a statement
about the accident last night. I was

J.R.A.B.
J.A.

the driver of the vehicle which was in the accident last night. I did not have a proper work ticket, nor did I have authority to take the vehicle out." The witness then identified the accused.

Cross-examined

Identifies a Work Ticket dated 5.8.41. time from 2158 hrs. - and signed by Bdr. Tomalin.

Questioned by the Court:

It was approx. 2330 hrs. when the witness found the accused asleep in his quarters.

Cross-examined continued:

Witness did not feel that the accused had authority to take the truck.

Witness was shown a slip of paper purportedly signed by Major S. J. Campbell. but could not identify the signature.

Questioned by the Court:

The distance from Robroan barracks to Layer de la Haye is 4 mi.

2nd witness for the Prosecution:-

Capt. D.A.M. Mackaren, 89th Bty., 1st Lt. A.A. Regt. duly sworn.

On 5th Aug. 1941. at about 2330 hrs. I found the vehicle a W.D. vehicle, in a damaged condition - it had been pulled over to the S.E. side of the intersection. the front of the vehicle facing west.

W.D. vehicle was a 8 cwt. - right front was damaged. fender damaged. radiator set back. also the right front light was damaged.

There was a civilian vehicle the front of which was headed into a brick wall - at the same time its left side had been badly dented in - that is its left side behind the front door. The civilian vehicle was on the S.W. corner. From the marks on the road it appeared to have been moved.

When witness arrived on the scene of the accident the accused were not present. After ~~to~~ Having returned to Robroan Brks. I saw the accused accompanied by Mrs. Dinnick. The accused denied having been out of barracks that night.

The next morning I with Mr. Dinnick saw the accused when he made a statement to the effect that he had been driving the W.D. vehicle the previous night.

J.R.A.B.
J.A.

I asked him if he had the authority to direct the vehicle the prisoners might journey and if he had a proper work ticket. The accused answered that he had no permission to take the vehicle out and no signed work ticket. J.H.A.B. J.A.

The witness was shown a work ticket already in evidence. denied that same was the one he had been shown the prisoners might by the civilian police. The one he were shown them. The other work ticket I saw the next morning in Bdr. Emelie's room. Both were made out for the same vehicle. The accused when he made a statement to me admitted that he was the driver of the 8 cwt. at the time of the accident.

Witness identifies a list "Summary of Repairs to W.D. vehicle no C.2 as 20/7/39." also identifies signature of Capt. Hunter on the exhibit.

The exhibit was tendered signed by the President and annexed the proceedings.

Witness continued: no vehicle could leave the barracks of the accused without a work ticket signed by an officer. The regimental Headquarters of the accused had not left. It were only the battery which had left.

Cross-examined by the Defending Officer Gnr. Had never been accused before night of accident.

I saw one soldier at the scene of the accident. That soldier was not the driver of the W.D. vehicle

Mr. Dimmick saw the accused. I am told. before I did in the evening.

It is not authorized. but it does happen that there are more than one work ticket at the same time for a W.D. vehicle.

The witness identified having seen before the work-ticket already in evidence.

I do not know anything about the state of the W.D. vehicle before the accident.

I think the accused's mind was clear the morning after the accident when he made a statement.

It had been raining. a light rain. the night of the accident. roads were more slippery than usual.

My understanding of the orders was that the no W.D. vehicle could leave barracks without a proper work-ticket.

Sometimes an O.C. delegates his power to sign work-tickets to say a B.S.M. when there

J.H.A.B.
J.A.

there is a shortage of officers. but only
The accused were in charge of
his battery. I identified the signature of
on exhibit already tendered.
Questioned by the Court:-
By the light of the accident, on my way back
to the scene of the accident - this permission
the constable. I looked more than to the
the W.D. vehicle. A civilian car and vehicle
time called a Mr. Aldridge.
The civilian car appeared to
driven through the brick wall.
I saw skid marks at the scene
the accident. The W.D. vehicles
were in a westerly direction.
3rd witness for the Prosecution:-
Mr. Stanley Scott Alldridge, civil engi-
Abberton, Colchester, duly sworn.
On 5 Aug. I was involved in an accident
with a W.D. vehicle at Layer de la Haye
X roads. This was about 10 o'clock p.m.
I was returning from Colchester to
Layer pumping Station. The accident
occurred when I was passing through
Layers X roads
I produce a plan of the accident.
I was travelling from North to South
in a Ford 8. when my car was
struck by a W.D. vehicle travelling
East to West. My car was in the X
road when struck. The next thing I
knew was that my car had careered
a brick wall.
It was a small army lorry which
struck my car.
There was only one person for some
moments and that was the driver. Identified
the accused Smalls as the driver.
My car was an entire wreck the
wind and people have decided to do nothing
with it. except to sell it for scrap. and
I have sold it for scrap.
The W.D. vehicle was in my opinion tra-
velling 40 to 50 miles per hour. My car
was pushed sideways about 53'. The
lorry did not push my car all the way
I find a passenger who requires first aid.
The R.A.M.C. officer and corporal from
j.RAB waiting driver rendered first aid.
We dressed and sent for them & did not
F.K.A.B.H.

there is a shortage of officers. but only occasionally.
The accused was in charge of the M.T. of
his battery.
I identified the signature of Major Campbell
on exhibit already rendered.
Questioned by the Court:-
I left right of the accident, on my second visit
to the scene of the accident - this time with
the constable. I looked more thoroughly at
the W.D. vehicle. A civilian car arrived some
time later, a Mr. Aldridge.
The civilian car appeared to have been
driven through the brick wall.
I saw skid marks at the scene of
the accident. The W.D. vehicles marks
were in a westerley direction.
3rd witness for the Prosecution:-
Mr. Stanley Scott Aldridge, civil engineer,
Abberton, Colchester, duly sworn.
On 5 Aug. I was involved in an accident
with a W.D. vehicle at Layer de la Haye
X roads. This was about 10 o'clock p.m.
I was returning from Colchester to
Layer pumping station. The accident
occured when I was passing through
Layers X roads.
Produce a plan of the accident.
I was travelling from north to South
in a Ford 8. when my car was
struck by a W.D. vehicle travelling
East to West. My car was in the X
roads when struck. The next thing I
knew was that my car had entered
a brick wall.
It was a small army lorry which
struck my car.
There was only one person for some
moments and that was the driver. Identifies
the accused Omalis as the driver.
The car was an entire wreck. The
military people have decided to do nothing
with it, except to sell it for scrap. and
have sold it for scrap.
The W.D. vehicle was in my opinion tra-
velling 40 to 50 miles per hour. My car
was pushed sideways about 53' by the
lorry did not push my car all the way.
I find a passenger who required first aid.
The R.A.M.C. Officer etc and corporal from
[illegible] rendered first aid. I believe
the driver sent for them & did not
F.R.A.M.C.

3rd witness for the Pros. (cont'd)
Cross-examined by the Defending Officer. The X of my car was an English Ford 8. The X roads are level.
I don't know if the W.D. vehicle had its lights on or not. I am not sure if it should have or not.
It is a fairly blind corner that is where the accident happened. The road had only been rained the day before. The state of the road added to the momentum
4th witness for the Prosecution:
Frederick James George ~~Goff~~ Gough, R.C. Stationed at Layer de la Haye duly sworn.
About 2235 hrs. on Tues. 16th Sept. 1941 in consequence of information received I proceeded to the junction of High Road and Malting Green Road, Layer de la Haye where I saw that an accident had occurred between an Army vehicle No CZ 4205934 and a private motor car reg. No HTW 428. At the scene of the accident I made inquiries to ascertain who the driver of the Army vehicle was standing with no one in attendance in the centre of the junction was. He could not be found anywhere although I personally made a search in the vicinity of the accident. To the best of my knowledge this accident was not reported to the Police.
About twelve midday 6th August in consequence of further information I visited Lobroan B.R.C. Colchester where I saw Bdr. Emslie W.J. No 13615. I said to him "were you driving an army truck No CZ 4205934 which was concerned in an accident at the junction of High Road and Malting Green Road Layer de la Haye at about 1005 p.m. last night?" He replied yes. That is my evidence. Identities agreed.
Cross-examined by the Defence. First heard of the accident when spoken to by witnesses wife. Believe it was a soldier who spoke of accident.
Cannot recall if W.D. vehicles had its lights on.

J.F.G.B. 14

There is a delay of 24 hrs. to report an accident when a person is injured in an accident. Otherwise an accident does not have to be reported. Cannot say when a person is considered to be injured.
I saw the accused at a public house. only five or six yards from the accident. A lydney lady who had been in the accident was at this public house & the lady was lying on a couch. She was conscious. This accident had to be reported because the drivers did not exchange names and addresses. In such a case they should report to the police within 24 hrs.
At 1210 hrs. the Court adjourned until 1300 hrs.
At 1300 hrs. the Court reopened. The accused was brought in.
The Prosecution was closed.
The Accused was told by the President that he could evidence on oath or make a statement. He was not obliged to say either. R.P. 40(A) and Pte. 2 were complied with.
Accused elected to give evidence.
1st witness for the Defence:- no D13615 Gunner (A/Bdr) Wilcox John Ernest. 89 H Bty. 1st LL.A.D. Regt. duly sworn.
On 5th Aug. 41 at approximately 1730 hrs. one of my drivers brought in a 3 cwt. and stated to me that the motor was not running and also stated that there was certain things belonging to the Quarter stores that had to be unloaded later. After I finished my supper I took the truck. unloaded the field kitchen containers. then I took the truck to the garage that the 89th had allotted for our use and then I worked on the motor finding the carburetor was dirty, cleaning and replacing, adjusting the timing, then after all this I was 1930 and 2000 hrs. Gunner Harlee came in the yard along with Gunner Munroe E. I. stayed a few minutes and then left. Then I finished my work on the truck. then taking the truck out for testing somewhere about 2115 hrs on the way I stopped. road tested spark.
J.R.W.jr.

spark, also adjusted carburetor at the second stop. Then continued on until I came to the X roads at Lacey de Calaye. On approaching the X roads I suddenly see a car flashing in front of me. I put on the brakes immediately but could not avoid collision. I was travelling at about 25 m.p.h. at top speed. After the accident I rushed to the car - the civilian car that had gone in to the brick wall, grabbing the door on the passenger side of the car. I was told by the driver not to open that door for fear of glass flying. Then I rushed to the other side and helped the driver of the car out. Then later telling a lad or soldier to run for a M.O. also notify the police. Then I went back to the car helped the driver get the lady out. and by that time others had come. and then shook up my mind was not clear of how to notify Headquarters of the accident. Coming back to the Barracks I tried to find Captain Palmer and not being able to find him at the moment I decided I would wait until I found him before giving any information as to the accident before seeing him. In the morning I went over to the Officers mess found Captain Palmer, told him what had happened and then on my way to the Colonel I met Captain Mackaren and Lieut. Berwick. told them my story and then continued on to the Colonel. and stated what had happened to me. figuring that I was N.C.O. i/c of the rear party which was authorized by Major Campbell of the 89 before leaving for Fleurbaix Camp. as to myself would be in charge of the rear party and considered as the authorization that I already had and had been doing could sign my own work ticket for the occasion.

J.A.S.B.
J.A.

I worked on the vehicle after supper. because we had been moving to new quarters all day and because the truck was required by the Quartermaster. I stopped twice to make adjustments to the car. It had been raining that night, even while I was making my last adjustment. I chose that road because I had used it before. Because there was a hill. I could slow down so as to tell if my spark was right adjusted. When I drew it on making a circle! meant going one way. I can't explain exactly. By the 89th Bty. with there were no officers the rear party. I might state that Lieut. Boyer came on day but left the other.

I think I had approximately thirty-five men all told. The Quartermaster Sergeant was the senior. The Q.M. Sgt. had nothing to do with detailing the guards etc. There was a sign "major road ahead" when approaching the Xroads. The civilian vehicle had no lights on. as far I can remember. I had mine on. You could see the road perfectly with mine lights. The reason I had mine on was to draw attention.

Cross-examined. There was a Sgt Ronan in the rear party He was in the hospital when the battery left. I am not quite sure when he left the hospital. I was authorized by major Campbell to take charge.

I did not personally report the accident to the police.

I don't know why I left the vehicle. I was shaken up. I didn't know how to go about it. When I said I did not have a proper work ticket I meant I did not have one signed by an officer. In the months of July I did sometimes sign a work ticket when there were no officers. It was clearly understood I could sign work tickets for trips to London. Etc. etc. that I could for testing and things like that.

2nd witness for the Defence.
20 G 40 38 Gunner Raymond Herbert Larlee
J.L.A.B. J.A.

84th Lt A A Bty. 1st Lt A A Regt., duly sworn.
On 5 Aug. 41 I was driving army truck
CZ 4205934. The motor was not running
properly it was sluggish I reported the
trouble to Bdr Emalie the accused at 1700 hrs.
when I turned in the truck. About 1730 hrs.
when I turned in the truck in
I saw the accused working on the
Cross-examined by the Prosecutor Capt.
I know who a Sgt Ronan in the rear party.
To my knowledge he was in charge of the
rear party.
When I took my truck I got my work ticket
signed at R.H.Q. Bdr. Emalie never signed
any work-ticket for me.
Re-examined
When the battery went to Fergy Camp
Sgt Ronan was in charge of the rearparty.
Q. How do you explain why you said at the
summary of Evidence that the accused was
in charge of the rear party. When you now say
that Lt Ronan was?
A. I meant the accused was i/c of m.t.
Sgt. Ronan was on duty in the barracks
the day of the accident.
The Defence closed.
Re-Examined by the Defending Officer.
When the Adjutant could not be found,
I did sign work tickets for other drivers.
but not to go outside the town.
The Defence closed.
The Defending Officer:
I feel that the Prosecution failed to prove
that the accused took the vehicle without
proper authority and for his private purposes.
We already have a signed document or
affidavit which states that the accused
was permitted to sign work tickets for
himself and his drivers. The Prosecution
did not prove that this said document
had been cancelled at a later date.
The Prosecutor failed to prove that the
said Bombardier responsible for the
said vehicle. I would like to call Lt. Col. Baldwin's
testimony. My own experience if the accused
was travelling at the speed the witness
the car would have rolled over and
not travelled over 50 feet further.

J.R.A.B
2/Lt

The Prosecution did not prove that the accused failed to report the accident. I refer the Court again to the Aldridges and the policemans testimony not that he failed to render first aid.

The Prosecutor made a final address.
The Judge Advocate did not sum up as agreed with the President.

The Court closed to consider the finding
The Court reopened.

Lieutenant H. M. Rawlings, 89th Bty., 121st L.A.A. Regt. R.C.A. duly sworn.
Form A.F.B. 296. submitted.
Witness had compared the entries in the form with the regimental books they are true and fair copies thereof the accused & the person named therein.
The accused was in open arrest from 6 Aug. 41 until he went to Hospital at Birmingham where has four days. He has been in close custody since 7th October 41.

The Defence tenders two written testimonials from Majors Greefles and Campbell which are signed by the President and annexed to the proceedings.

The accused and the Defending Officer decline to address the Court.
The Court closed to consider the finding.

J.R.A.B.
J.A.

SUMMARY OF EVIDENCE

in the case of

D.13615 A/Bdr. EMSLIE, W.J., 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment, R.C.A.

FIRST WITNESS

185559 Driver GROOM, L.A.G., 45 Petrol Coy., R.A.S.C., having been duly sworn, states:

"I am 185559 Driver GROOM, L.A.G., of the 45 Petrol Coy., R.A.S.C., attached to 191 Fd. Amb., R.A.M.C. On 5 Aug 41 I was walking along the road from Layer Cress to Malting Green with Pte. Lawson, A.V., 191 Fd. Amb., R.A.M.C., between 2130 and 2200 hours, when I saw a small W.D. truck approaching us at a fair speed. I judged that the W.D. vehicle was travelling between 30 m.p.h. and 40 m.p.h. when it passed us, about 400 to 500 yards from Layer Cross. I did not see the collision, but I heard the crash. Pte. Lawson and I went back to the scene of the accident, arriving 4 or 5 minutes later. I saw the bombardier and spoke to him."

The accused declines to cross-examine this witness.

Leslie A Groom
(L.A.G. Groom) Driver.

SECOND WITNESS

Mr. Stanley Scott ALLDERIDGE, having been duly sworn, states:-

"I am Stanley Scott ALLDERIDGE, resident engineer, South Essex Waterworks, Abberton, Essex. Just after 2200 hours on 5 Aug 41 I was returning from Colchester to Layer de la Haye. I was approaching Layer crossroads. I slowed up before the crossroads and was just accelarating over the crossing, when I saw the lorry coming out from the Malting Green road and I was unable to get out of his way. The two vehicles collided. I didn't see the driver at the time, and after a few moments, when I inquired for him he wasn't present. I could find no-one with the lorry, after I attended to the passenger in my car."

Q.1 Do you remember me coming to the door of your car and opening it?

A.1 I do not definitely remember you as coming to the car, I was under the impression that the R.A.M.C. corporal was the first man to come.

Q.2 Do you remember asking anybody for a drop of whisky or brandy for the passenger?

A.2 No, I don't remember, but it is highly probable, as I was under the impression that my passenger had fainted, instead of being unconcious which proved to be the case.

Q.3 Do you remember me trying to open the passenger side door?

A.3 I do remember someone trying to open that door.

Q.4 Do you remember me asking a soldier on a push-bike coming along the road whom I asked "where an M.O. could be found"?

A.4 No, I don't remember.

The accused declines to further cross-examine this witness.

S S Allderidge

(S.S. Allderidge)

SUMMARY OF EVIDENCE

in the case of

D.13615 A/Bdr. EMSLIE, W.J., 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment, R.C.A.

THIRD WITNESS

Frederick James George GOUGH, Police Constable, Essex County Constabulary, having been duly sworn, states:-

"I am Frederick James George Gough, P.C., Essex County Constabulary stationed at Layer de la Haye. At about 1035 p.m. on Tuesday 5 Aug 41, in consequence of information received, I proceeded to the junction of High Road and Malting Green Road, Layer de la Haye, where I saw that an accident had occurred between an army vehicle, No. CZ.4205934 and a civilian motor car, HTW.428. At the scene of the accident I made inquiries to ascertain who the driver of the army vehicle, which was standing with no one in attendance in the centre of the junction, was. He could not be found anywhere, although I personally made a search in the vicinity of the accident. To the best of my knowledge the driver of the army vehicle did not report this accident to the police. In consequence of further information, at 12 midday Wednesday 6 Aug 41, I went to Sobraon Barracks, Colchester, where I saw Bdr. EMSLIE, W.J., D.13615. I said to him, "Were you driving an army truck, CZ.4205934, which was concerned in an accident at the junction of High Road and Malting Green Road, Layer de la Haye, at about 1005 p.m. Tuesday night?" He replied "Yes".

The accused decline to cross-examine this witness.

F. Gough P.C. 542

(F.J.G. GOUGH, Police Constable)

SUMMARY OF EVIDENCE

in the case of

D.13615 A/Bdr. EMSLIE, W.J., 89 Lt. A.A. Bty., 1 LT. A.A. Regiment, R.C.A.

FOURTH WITNESS

Lieut. J.S. DINNICK, 2 (Yorkton) Bty., having been duly sworn, states:-

"I am Lieut. J.S. DINNICK, 2 (Yorkton) Bty., R.C.A. On the night of 5/6 Aug. 41., I was Regimental Orderly Officer, 1 Lt. A.A. Regiment, R.C.A. At approximately 2300 hours 5 Aug 41 a Major BEVIR of "B" Coy., 191 Field Ambulance, R.A.M.C., called me as Orderly Officer. Next morning at about 0900 hours I learned from Bdr. Emslie that he had been the driver of the 8-cwt which was involved in the accident. He stated "I did not have a proper work ticket when I was in possession of the vehicle last night."

The accused declines to cross-examine this witness.

J.S. Dinnick

(J.S. Dinnick) Lieutenant

FIFTH WITNESS

Capt. D.A.M. MacLAREN, 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment, R.C.A., having been duly sworn, states:-

"I am Capt. D.A.M. MacLAREN, of 89 Lt. A.A. Bty., R.C.A. On the 5 Aug 41 at approximately 2300 hours I was informed by the Regimental Orderly Officer that an accident had occurred at the crossroads in Layer de la Haye. I proceeded to the scene of the accident and found W.D. vehicle No. Cz.4205934 in a damaged condition. On questioning Bdr. Emslie next morning I said, "Did you take the 8-cwt out last night, and were you the driver at the time of the accident?" He replied, as nearly as I can remember, with the following words, "Yes, sir, I took the 8-cwt out and I was driving it when the accident happened." Later I asked, "Did you have a signed work ticket to go out?" Bdr. Emslie replied, "No, sir, I did not." After the vehicle was repaired by the 3 Lt. A.A. Workshop Section, R.C.O.C., I received this statement which I produce, showing the summary of repairs and costs for same, amounting to £1.14.0., signed by Capt. G.M. Hunter, R.C.O.C."

The accused declines to cross-examine this witness.

D.A.M. MacLaren

(D.A.M. MacLaren) Captain.

The accused was warned as follows:-

Do you wish to make any statement, or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given as evidence.

THE ACCUSED, having been duly sworn, states:-

"On the 5 Aug 41, at about 1900 hours, I decided to check up on the report of Gnr. Larlee that the engine of the 8-cwt. truck was not running properly. I examined the motor and worked on the carburretor and timing. I finished at about 2100 hours and then I decided to try out the truck by running it for a few miles to check any adjustments. I considered that as I was the N.C.O. in charge of the rear party of the 89 Lt. A.A. Bty. I could sign a work ticket for myself for this run. When I was approaching the cross-road at Layer de la Haye, I was not travelling more than 30 miles per hour. I slowed down when I saw the cross-roads to about 20 miles per hour. When I saw the civilian car approaching at a speed of at least 35 miles per hour, proceeding South, I immediately applied my brakes but as I was too close to the intersection I could not slow down the truck to stop before it collided with the civilian car. I deny leaving the scene of the accident without taking any steps to assist the driver and passenger in Mr. Allderidge's car. I tried to assist them by helping them out of the car, and I sent a soldier on a bicycle to try to get medical assistance, and I asked him to report the accident to the police. In about 2 or 3 minutes about 10 people arrived at the scene of the accident, and some of them assisted in carrying the passenger to the inn. Due to the fact that I was mentally shaken by the fact of the accident and could not think properly, I suddenly had an impulse to get back to barracks before the police arrived. I fully intended to report the accident to my Battery Commander first thing the following morning. At about 0900 hours on 6 Aug 41 I verbally reported the accident to Capt. MacLaren and Lieut. Dinnick."

W. J. Emslie Bdr.

(W. J. Emslie) Bdr.

WITNESS FOR THE DEFENCE

C.4038 Gnr. LARLEE, R.H., 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment, R.C.A., having been duly sworn, states:-

"I am C.4038 Gnr. Larlee, R.H., 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment, R.C.A. On the 5 Aug 41 I was the driver of the 8-cwt truck during the day. At about 1700 hours I reported to Bdr. Emslie, who was the Battery Motor Mechanic, and also the N.C.O. in charge of the rear party of the 89 Lt. A.A. Bty., that the engine of this vehicle was not running properly. Later, betwee 1930 and 2000 hours, Gnr. Munro, E.T., and I came to the garage to speak to Bdr. Emslie. At that time I saw that he was working on the carburretor of the engine in the 8-cwt. truck."

The accused declines to examine this witness.

R H Larlee
(R.H. Larlee) Gnr.

Rules of Procedure No. 4 (C), (D) and (E) have been complied with.

Taken down by me in the presence of the accused person at Sebraon Barracks, Colchester, Essex, this 19th day of September, 1941.

R H Jorgensen
(R.H. Jorgensen) Capt.
Adjutant
1 Lt. A.A. Regiment, R.C.A.

1 LIGHT ANTI-AIRCRAFT REGIMENT R.C.A.

LIST OF WITNESSES FOR THE PROSECUTION

1. 185559 Driver GROOM, L.A.G. - 45 Petrol Coy., R.A.S.C.

2. Mr. Stanley Scott ALLDERIDGE - South Essex Waterworks, Abberton, Essex.

3. P.C. F.J.G. GOUGH, - Essex County Constabulary Layer de la Haye.

4. Lieut. J.S. DINNICK - 2 (Yprkton) Bty., 2 Lt. A.A. Regiment R.C.A.

5. Capt. D.A.M. MacLAREN - 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment R.C.A.

LIST OF WITNESSES FOR THE DEFENCE

1. C.40338, Gnr. LARLEE, R.H. - 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment, R.C.A.

1 LIGHT ANTI-AIRCRAFT REGIMENT R.C.A.

LIST OF EXHIBITS

in the case of

D.31615 A/Bdr. EMSLIE, W.J. , 89 Lt. A.A. Bty., 1 Lt. A.A. Regiment, R.C.A.

1. Summary of Repairs and Costs to W.D. Vehicle No. CZ. 4205934.

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8

S T A T E M E N T

I, D.13615 A/Bdr. EMSLIE, Wilbur John wish to have an Officer assigned by the Convening Officer to represent me at the trial.

W.J. Emslie

(D.13615 Bdr. Emslie, W.J.)

K.B. Smith Major 3
Pres. F.G.C.M

1 LIGHT ANTI-AIRCRAFT REGIMENT R.C.A.

21 Aug 41

SUMMARY OF REPAIRS TO W.D. VEHICLE No. CZ.4205934

1 Radiator repaired
1 Hose connection
1 Fender straightened
1 Headlight upraised
1 Bumper straightened
1 Windshield broken
Checking front axle and steering
1 Rear view mirror broken

SUMMARY OF COSTS

Direct labour	...	£1. 13. 0.
Materials	...	1. 0.
Total Cost	...	£1. 14. 0.

G.M. Hunter

(G.M. Hunter) Captain
3 L.A.A. Workshop Section R.C.A. C.

89th LIGHT A.A. BATTERY R.C.A. H.E. Smith Major Pres.

TO WHOM IT MAY CONCERN

This is to certify that D-13619 Bdr. Emslie of this Battery is authorized to sign R.C.A. Work Tickets for all vehicles allotted to this Battery.

25/5/41. D/Campbell

(S.F. Campbell) Major
Commanding 89th L.A.A. Bty.
1st L.A.A. Regt. R.C.A.

y Form G 3518

TRANSPORT WORK TICKET.

NO. KES Hqrs

ke of Vehicle Chev. Class 8 Cwt. W.D. No. 5934. Date 4-8-41.

t 1 S.L. 4th A.A. Division Driver's Name Bdr Cowles A.S. Hour of Parade 0830

13331.

For whom journey is performed (1)	Full Details of load and service (2)	ROUTE. From (3)	To (4)	Via (5)	Signature of person authorising journey.	TIME. From (7)	To (8)	Miles run (9)
4-8-41. 8 9th Lt.	Rec. officers.	St Omer Bks	Coastal area. Rte		A	0700	0215	41.
4-8-41 8 9th Lt	to Camp Visits.	Dolmen Bks	Coastal area Rte		B			
			Layon Abbeys Road.		C			
					D			
					E			
					F			
					G			
					H			
					K			

SPEEDOMETER READINGS. Miles

(10) In

(11) Out 13331

Mileage

FUEL. Gells.

(12) Held at Start

(13) *Add*—Amount drawn

(14) *Deduct*—Remains on completion

(15) Quantity Consumed

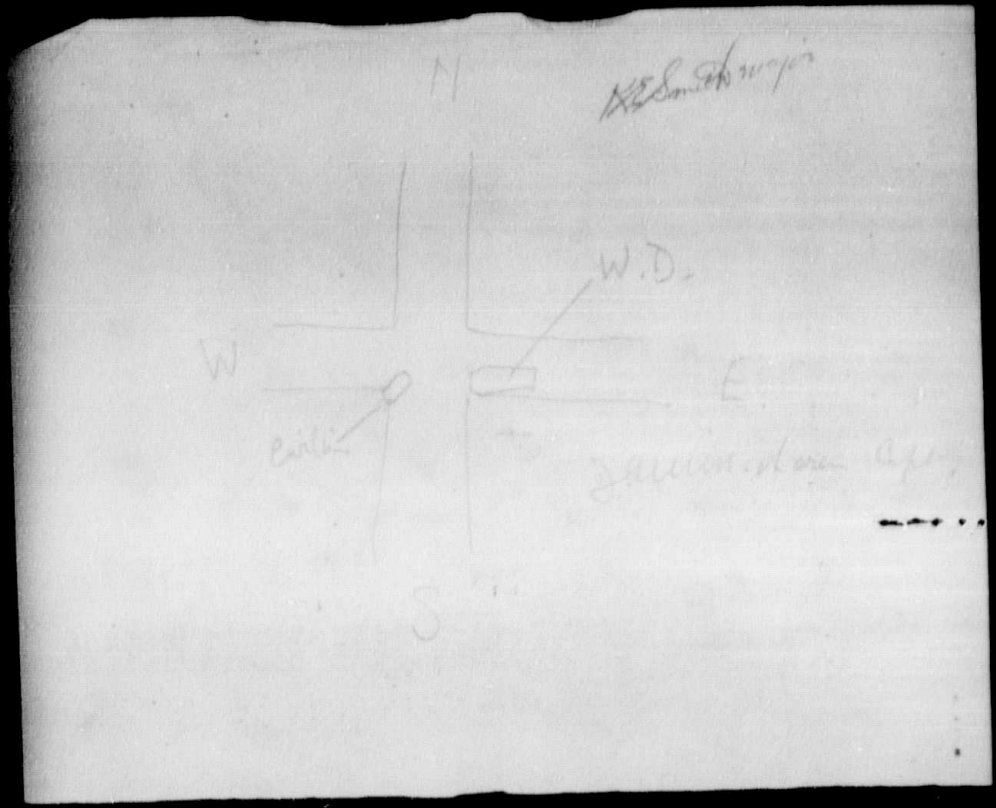
(16) TOTAL hours out on duty

TOTAL

(17) Signature of Driver B Cowles

(18) Countersigned

Rank


N
W.D.
W
E
S

K.R. Army 1928	K.R. Can. 1939	K.F. Army 1928	K.R. Can. 1939
734	629	1630	1518
735	631	1631	1519
736	632	1632	1520
737	633-637	1634	1523
738	634	1637	1527
739	-		
740	638		
741	-		
742	-		
743	644		
875	1365		
878	1367		
1091	-		
1099	-		
1100	-		
1238)			
1239)	848		
1240)	to		
1241)	867		
1242)			
1243	-		
1244	-		
1245	-		
1246	848		
to	to		
1257	867		
1350	973		
1518	1133		
1519	-		
1598	1488		
Ap.XXV	1488		
1602	1491		
1615	1508		
1618	1509		
1620	1513		
1621	1514		
1629	1517		

COPY

K.E. Smith, Major
Pres. F.C.C.M.

OVERSEAS SERVICE

Knights of Columbus
War Services Stamp

17 Sept 41.

O.C. 89 L.A.A. Bty, R.C.A.
Can. troops P.O.
Colchester, Essex.

D/13615 Bdr Emalie W.J.
89 L.A.A. Bty, R.C.A.
1 L.A.A. Regt. R.C.A.

1. Re m/n Bdr, this, a personal recommendation is forwarded for your information and file.

2. Bdr. Emalie came to the 89 L.A.A. Bty on its organization by me. He took over the control and maintainance of the M/T of the Battery from its beginning and, during the time that I had the honour to command this Battery proved himself a capable, hard working and conscientious N.C.O. Steady and reliable in his work untiring in his efforts to carry out the manifold duties that M/T calls for. He was found to be a real treasure.

3. I trust that Bdr. Emalie may be permitted to carry on in his chosen task the work he did so well for me.

(Sgd) S.J. CAMPBELL, Major

Certified a true copy
J. J. Carrick Lt
Jag Office A

K.E. Smith, Major
Pres. F.G.C.M.

COPY

ROYAL CANADIAN ARTILLERY

School of Artillery

Larkhill,

28 Aug 41

D.13615 Bdr Emslie W.J. was under my command from approximately March 1940 until transferred to 89 L.A.A. Bty. During this time he was employed as a driver and, from memory, he never had an accident. He was a capable and dependable driver and I remember him as a good soldier. I would be glad to have him under my command again.

(Sgd) A.MACD. HEEFLER, Major R.C.A.

Certified a true copy
A. A. Carrick Lt
Jag Ohre A

No. D13615 Name EMSLIE, W.J. Sqn., Battery or Company 89 Bty Corps 1 LAA Regt RCA Date of enlistment 3.4.40 G.C. Badges: Service or Proficiency Pay: .25 MFM & (A.F.B. 1331)

Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				No entries from previous sheet destroyed 16 Aug 41 on completion of 6 months service in accordance with R.O. 71 C.A.S.F. (Overseas).					

CERTIFIED TRUE COPY

(R.H. Jorgensen) Capt.
Adjutant
1 Lt. A.A. Regt. R.C.A.

Number of Case	Date and place of Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted
		N I L		

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of September 1941

for Capt.—
Adjutant
1 Lt. A.A. Regiment R.C.A.

H.E. Smith Major
Pres. F.G.C.M.

7

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D.13615 A/Bdr. EMSLIE, W. of the 1 Lt. A.A. Regiment R.C.A.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For	times	times
For	times	times
	N I L	N I L
For	times	times
For	times	times

[redacted]

xx

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

xx

[redacted]

3 The accused is not under sentence at the present time,

[redacted]

4. The accused has been in confinement, awaiting trial on the present charges for Nil days in Civil Custody, and 14 days in Military Custody.

Total 14 days.

Of which Nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 30 years

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 3 Apr 40

[redacted]

10 The accused is in possession of, or entitled to, no military decoration or military reward [redacted]

[redacted]

[redacted]

[redacted]

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	A/L/Bdr.	3/12 years. 3 Apr 41
In the rank of	A/Bdr.	1 year. 15 May 41
[redacted]		

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

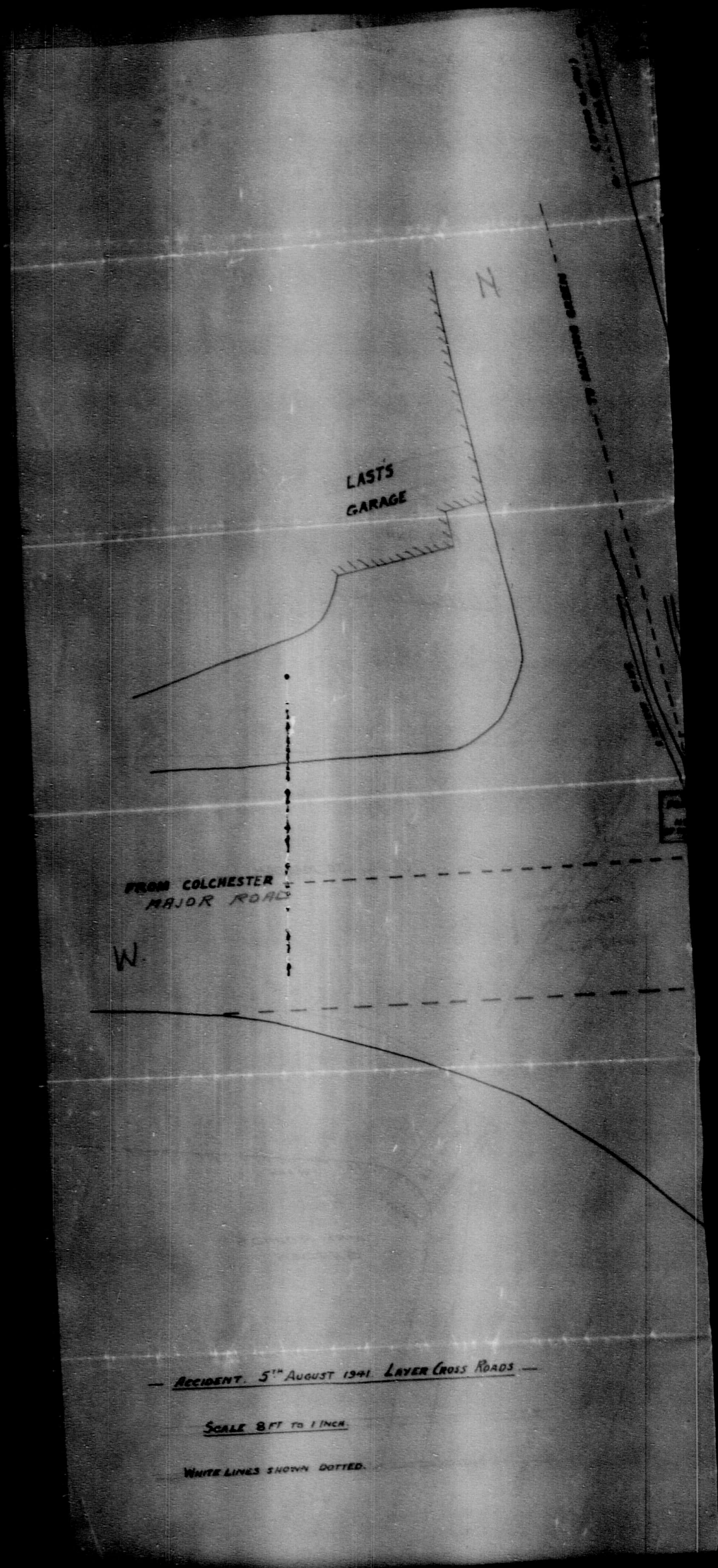
Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name D.13615 A/Bdr. EMSLIE, Wilbur John of the 1 Lt. A.A. Regiment R.C.A.

NOTE.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
		N I L		

(Continued overleaf.



— ACCIDENT. 5TH AUGUST 1941 LAYER CROSS ROADS —

SCALE 8 FT TO 1 INCH.

WHITE LINES SHOWN DOTTED.

K. E. Whitehead Major
President F.B.C.M.

FOX INN

TO MALDON

E.

FRONT

HTW 428

METER COLLISION

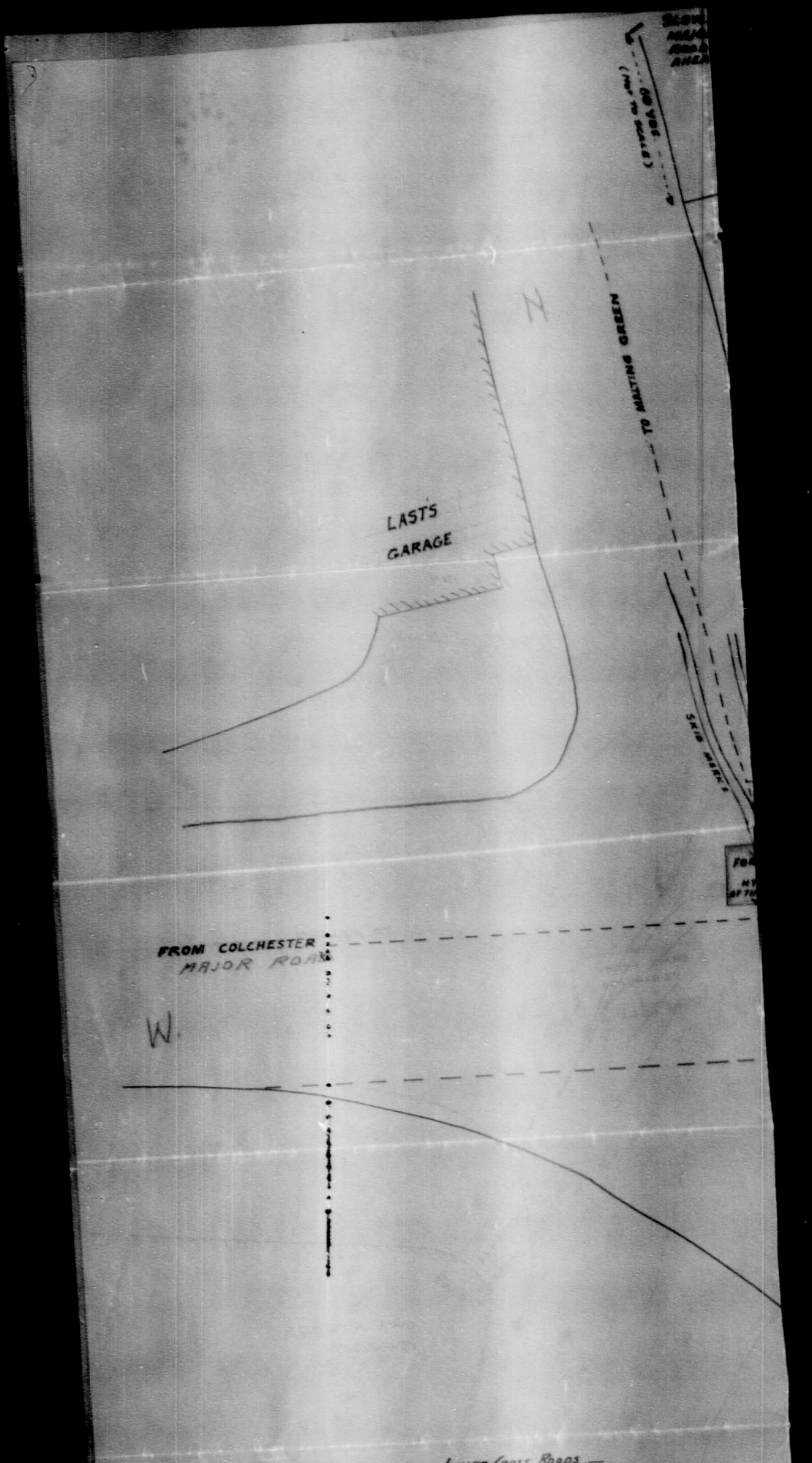
WALL

FRONT

MRS ROUND'S
GARDEN.

FROM BIRCH.

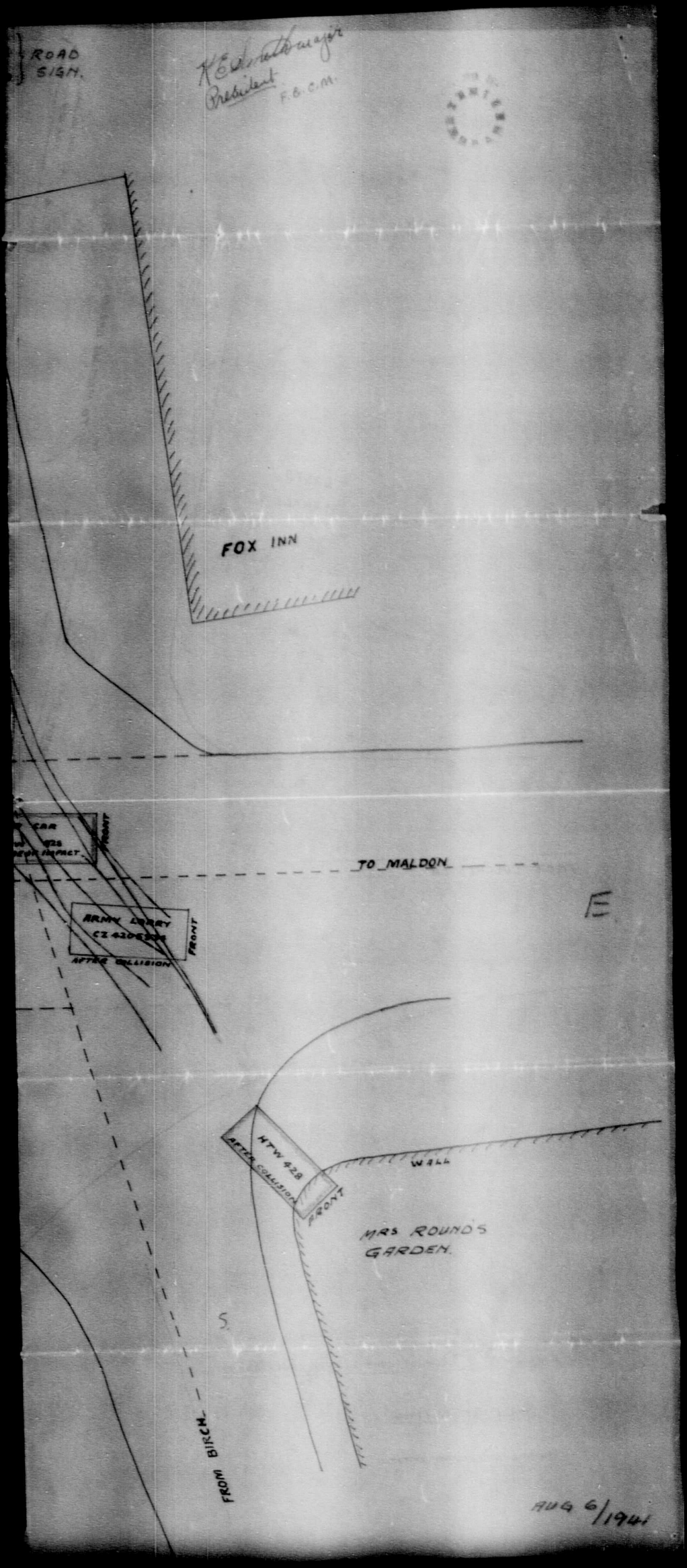
AUG 6/1934

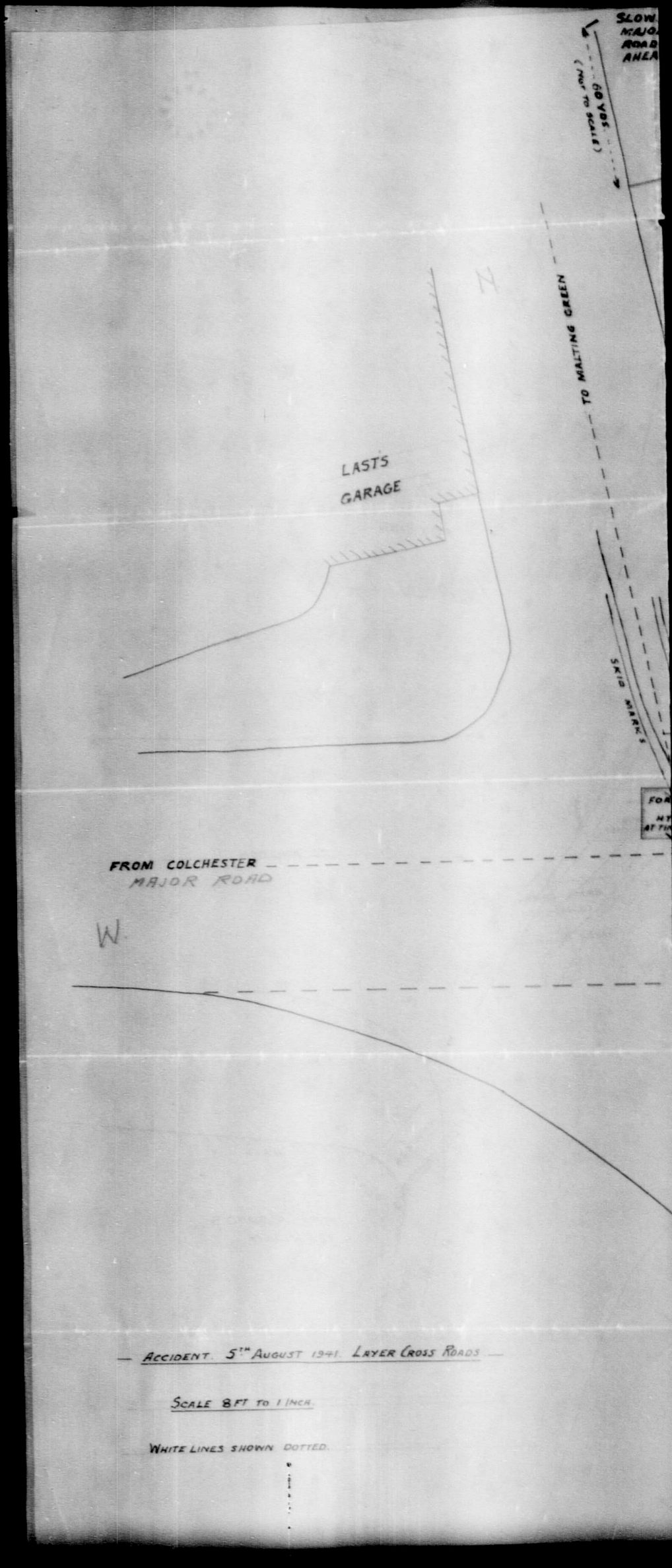


— ACCIDENT 5TH AUGUST 1941 LAYER CROSS ROADS —

SCALE 8 FT TO 1 INCH.

WHITE LINES SHOWN DOTTED.

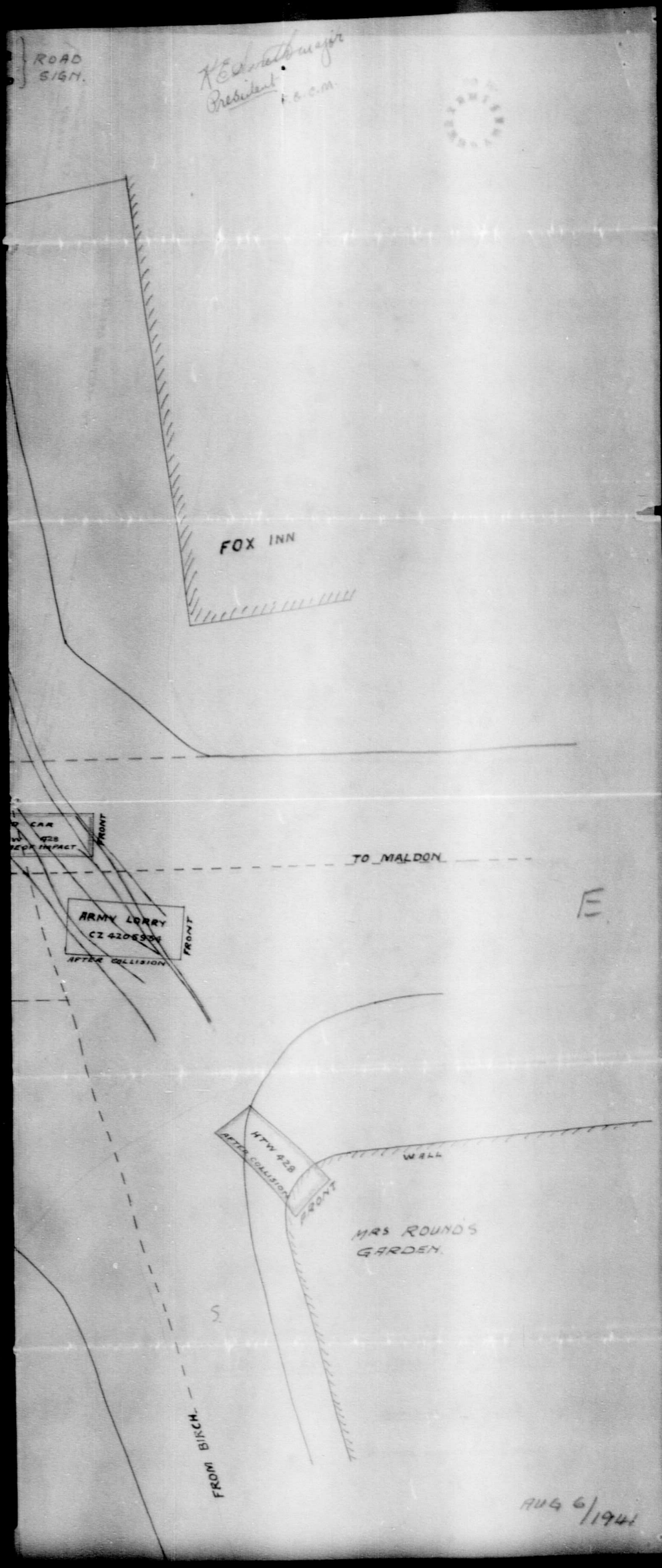

ROAD SIGN.
Kt Col Stallard major
President
F.B.C.M.
FOX INN
CAR
FRONT
TO MALDON
E
ARMY LORRY
CZ 4206208
FRONT
AFTER COLLISION
HTW 428
AFTER COLLISION
FRONT
WALL
MRS ROUND'S
GARDEN.
S.
FROM BIRCH
AUG 6/1941



ACCIDENT. 5TH AUGUST 1941. LAYER CROSS ROADS

SCALE 8 FT TO 1 INCH.

WHITE LINES SHOWN DOTTED.


ROAD SIGN.
FOX INN
CAR
FRONT
TO MALDON
E
ARMY LORRY
CZ 4206934
FRONT
AFTER COLLISION
HTW 428
AFTER COLLISION
FRONT
WALL
MRS ROUND'S GARDEN.
S.
FROM BIRCH
AUG 6/1941

HHH 44

SPR ENG BLOOM E-L

ENTERED IN RECORDS OF C.M. HHH-49

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 61/P.S.C.1898 (3005)

Convened by Order of Colonel H.R. Tyler A/ Comd "HR" Sp C R U dated 26 Mar 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/apppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-102306	Spr	Earl, Ludwick	ENGBLOOM	1 CERU

PROCEEDINGS REVIEWED

R. Beaudoin Capt. 1E Sp. HH

PROCEEDINGS OF TRIAL.

Held at the HQ in (country) REVIEWING OFFICER, JAG BRANCH, C.M.H.Q. on (date(s)) 27 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 13-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 12.00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused should be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ the interpreter ? Ans.

~~The Interpreter is sworn.~~ Do you object to 28126 Sgt. Smeltzer as shorthand writer ? Ans. No

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans. No Sir

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, (B, MML p 742.)

A7. The President, Members, ~~Judge-Advocate~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	D.L. Redman	HQ CRU
Member	Capt	W.G. Robinson ICS, R.J.	1 CERU
Member	Capt	G.D. White	1 CERU
~~Judge-Advocate~~			
Prosecutor	Capt	R. Beaudoin	1 CERU
Defending Offr	Capt	M. Denning	1 CERU

Questions by President: Is the Prosecutor a lawyer ? Ans. No. Is the Defending Offr a lawyer ? Ans. No. (2)

(1. RP 26, 27, 109, 161. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes/(has no) (no.) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of insstrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is adjourned~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H-102306 Spr, ENGBLOOM, Earl, Ludwick

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~(commencing on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

10 reduction to the rank of Private for a period of sixty (60) days

28 Mar/44 [signature] Lt Col
(Sgd) Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is

Confirmed

~~I direct that the accused be kept committed to prison or detention barracks, and further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 30 Mar 44 Commanding 6 Inf Gp. 6 Q 10 Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused H 102 306 Spr. Engbloom E.L. Date 1 Apr. 44 Signature of Offr [signature] Lt

ENTERED PART II ORDERS OF CER 1 C RECORDS

DATE 4-4-44 AUTH 80

No. 1 Cdn. Engineer Training Unit, C.A.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without asthy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and priveleges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA~~, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NU - SIR .....(5)
(1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 39(F). 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF B5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and them to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 215 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Bring Any Officer - NOTE - HIM .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7:(0)
(1. Where several accused tried separately see RP 24(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 108, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

First Charge.
A. A. 15(1)

The accused H-102306 Spr ENGBLOOM, Earl, Ludwick. Royal Canadian Engineers on the strength of No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:-

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 1745 hrs 25 Feb 44 until apprehended at 1840 hrs 18 Mar 44.

(Absent 22 days 55 mins)

(G.H. WHYTE) COLONEL
Commanding Officer,
No. 1 Cdn Engr Rft Unit,
Canadian Army (overseas)

In the field
22 Mar 44

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(H.R. Tyner) Colonel
A/Comd "B" Gp
Cdn Rft Units

25 Mar 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/PA&N/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H-102306		Spr	Earl, Ludwick,	ENGLISH	1 CMHU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Mar 64 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the officers named or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.I. Nelson	1 CMHU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by	1 CMHU
A Lieutenant	to be detailed by	1 CMHU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 (C).) D.R. Turner Col
(Rank.)

Date 26 Mar 64

A/Commanding (D.R. Turner) Colonel
"B" Sp C R U
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Mily Track Off. I. & M's. Stn. I. ID. 52.

Lab. (Q.M.) Forms 187

I certify that I have this morning examined

No. H.102.Sct. ...Pte. ...E.Yorks.Regt. ...Et. .....

of. ....Nat. C.E.R.V. ....and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station. ....Cork. .....

Date. .....28/3/44. .....

P. C. Berjonsley. Capt
Medical Officer.

Plea in mitigation

This Sapper is only 20 years old. He has been in the army for about 18 months but has not been able to become accustomed to its routine. When he was about six his father beat his mother to such an extent that she had to go to hospital where she remained for about three years. He and a younger brother were sent to an orphanage but he soon left there and became a wanderer.

He tried mining, lumberjacking, farming and various other jobs but could not settle to any of them. He has held as many as three jobs in one week.

He was rejected from the army on medical grounds but later lost his papers and as he could not obtain a job without them he went to the Military Authorities for duplicate papers. He was told he would have to have another medical. This time he was accepted and was sent to a training center. After his life of freedom and irresponsibility he found the army life very hard and unpleasant. He then started to go A W L for short periods but finally after being sentenced fairly heavy for 48 hrs awl. He made up his mind that the next time he would stay away much longer. That is the reason that he is here now.

He is very unsettled in his mind, has no interest in the army, has no trade and does not wish to learn one, in short it is felt that it would be to the best interest of the service if this man was given a sentance and then sent to re-allocation center for discharge.

F-7

I Certify that [illegible] Rank Pte. Name Eychlorn

Unit R.C.E.M.U. was arrested at London (Place)

at 1840 hrs (hour) on 18 Mar.44 (date) and that at the time of his arrest he was wearing (Military Uniform) or [illegible]

(Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable).

London
18 Mar.44.

[signature] Capt.
D.A.P.M.
Canadian Military Headquarters

23 Mar 44

I, H-102306 Spr ENGBLOOM, E.L., acknowledge receipt of one copy of the Summary of Evidence, and one copy of the Charge Sheet on my forthcomming trial.

E. L. Engbloom

H-102306 Spr ENGBLOOM, E.L.

24 March 1944

APPLICATION FOR DEFENDING OFFICER

I, H-102306 Spr. Engbloom, E.L. wish to have an officer assigned to represent me at my forthcoming Court Martial.

H-102306 Spr. ENGBLOOM, E.L.

Defending Officer: Lieut. R. Dunning

LIST OF WITNESSES

List of Witnesses in the case of H-102306 Spr ENGBLOOM, E.L., Royal Canadian Engineers, on strength of No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (overseas)

FOR THE PROSECUTION

(1) G-19628 L/Sgt VANTOUR, V.J., No. 1 C.E.R.U.

(2) B-29423 L/Cpl FOSTER, G. No. 1 C.E.R.U.

FOR THE DEFENCE

Nil

LIST OF EXHIBITS

(A) Certificate in accordance with P.C. 2797 of 10 Apr 42 in the case of H-102306 Spr ENGBLOOM, E.L.

EXA

Summary of Evidence in the case of H102306 Sapper Engbloom Earl Ludwick of 1 Canadian Engineer Reinforcement Unit a soldier of the Canadian Army (Overseas)

By direction of the commanding officer the Summary of Evidence is taken on oath

Documentary Evidence for the Prosecution

(1) Certificate in accordance with P.C. 2797 of 10 April 1942 in the case of H102306 Sapper Engbloom Earl Ludwick. Marked Exhibit 'A'

First Witness for the Prosecution

G19628 4/Sgt Vautour V.S. of No 1 Canadian Engineer Reinforcement Unit having been duly sworn states. I am G19628 4/Sgt. Vautour V.S. and I recognize the accused. As i/c of the inlying picquet I called the roll at 1745 hours 24 Feb 1944 and found H102306 Sapper Engbloom to be absent. He having been warned for the inlying picquet ~~and~~ failed to ~~be~~ appear

~~G~~ 19628 4/Sgt. Vautour V.S.
G19628 4/Sgt. Vautour V.S.

The accused declines to cross-examine the witness

Second Witness for the Prosecution

B29423 L/Cpl Foster G of No1 Canadian Engineer Reinforcement Unit having been duly sworn states. I am B29423 L/Cpl Foster G of 219 section B Company and I recognize the accused. I was present in room 4 spider 5 in which section 219 is billeted. On the 25 Feb 1944 between

1000 hours and 1100 hours when G19628 2/Sgt. Vautour, V.S., in charge of that section, warned the men who were to be on the outlying picquet at 1745 hours the 25 Feb 1944. Sapper Engbloom was present and acknowledged the warning.

Lt. Foster.
B29423.
B29423 H/Lt Foster

The accused declines to cross examine the witness.

The accused was cautioned as follows. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 14 (c) (d) (e) (f) and (g) have been complied with.

22 Mar 1944
on the field

S/L Baudoux
Signature of officer taking summary.

No. H102306 Name ENGBLOOM, E.L. Sqn., Battery, or Company N/A Corps R.C.E. Date of enlistment 15 Sep 42 Badges E & C Service or Proficiency Pay N/A MFM 6. (A.F. B.127) 40/P &c./9138 (2965)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1. Signature O.C. Company, etc. W. Hemley Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	6 Aug 43	Spr		Old sheet destroyed in accordance with C.A.R.O. 2084 Last entry dated 17 Feb 43 Cases of Drunkeness - Nil	D.Douglas Capt D.C. Douglas Capt				
Chilliwack B.C.				A.A.15 (1) AWL fr 2 days	Cpl Paton, TD	Forf 5 dys pay A.A. 46(2)d	5 June 43	Lt. Col S.F. Davies	Forf 2 dys pa FR&I 149(1) (a)
Prince George B.C.	20 Jun 43	Spr		(1) A.A. 9(2) Disobeying a lawfull command. (2) A.A. 15(2) Failing to appear at a place of parade. (3) A.A.15(1) AWL for 8 hrs.	Sgt Marshall E.J. Cpl Simpson	14 days C.B.	2 Jun 43	Major H.R. Cleveland	Forf 1 dys pa FR&I 149 (1)(a)
Field	15 Aug 43	Spr		A.A. 15(1) WOAS AWL 3 days 13 hrs 1 min.	Cpl Brunet CSM Metayer	8 dys Summ Forf FR&I 149 (2)	23 Aug 43	Lt. Col. Gerow Smith	4 dys Aut forf of pay FR&I 149 (1) (a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 Nov 43	Spr		(1)A.A.15(1) AWL from 2200 hrs 21 Nov 43 to 0600 hrs 22 Nov 43 (Absent 8 hrs)	Doc.	F'fts 2 dayspay FR&I 149 (2)	23 Nov 43	H.M. McLachlin,	F'fts 1 days pay FR&I 149 (1)(a)
Field	22 Nov 43			(2) A.A. 11 Failing to obey DO 235 did not report to the Guard Room as an Absentee	Doc.				
Field	5 Nov 43	Spr		A.A. 15(1) WOAS AWL from 0645 hrs 5 Nov 43 until appreh. by C.M.P. at 0245 hrs 6 Nov 43. Totoal Absence 19 hrs.	Doc.	Admonished	6 Nov 43	RAF Montamuro Major RCE.	Forfiets 1 days pay FR&I 149 (1)(a)
Field	30 Dec	Spr		A.A. 24(2) Losing by neglect his MBm 1 Pts 1 and 111	Doc.	6 days C.B.	31 Dec 43	Lt. Col.AS Rutherford	

No. H102306 Name ENGELOOM, E.L. Sqn., Battery, or Company — Corps R.C.E. — Date of enlistment 15 Sep 42 — R.C. Badges — Service or Proficiency Pay — M.F.M. 6. (A.F. B.122) 40/P & /8136 (2963)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2. — Signature O.C. Company, etc. W. Hemley Capt — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Jan 44	Spr		A.A. 15(1) AWL from 0900 hrs 2 Jan 44 until 2340 hrs 2 Jan. 44 (Absent 16 hrs 40 mins)	Doc.	F'fts 7 dys pay FR&I 149 (2)	3 Jan 44	Lt. Col. Rutherford	ASF'fts 1 dys pay FR&I 149 (1) (a)
Field	9 Jan 44	Spr		(1)AA 15(1) AWL from 2359 hrs 9 Jan 44 to 2255 hrs 10 Jan 44 (Absent 22 hrs 56 mins) (2) DRUNKENESS was found drunk and incapable by Civil Police (3) AA 40 Cond. to the prej. etc., was in possession of a false leave, well knowing it to be false	Doc.	14 Dys Detn 14 Dys pay FR&I 149(1) F'fts 1 day pay FR&I 149 (1)(c)	12 Jan 44	Lt. Col. Rutherford	ASF'fts 1 dys pay FR&I 149 (1) (a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Jan 44	Spr		A.A. 15(1) AWL from 2200 hrs 28 Jan 44 to 2015 hrs 29,Jan 44 (Absent 22 hrs 45 mins)	Doc.	21 dys Detn F'fts 21 dy s pay FR&I 149 (1)(b)	1 Feb 44	Maj. H.F. McLachlin	Forf 1 days pay FR&I 149 (1)(a)

Certified true copy of the original document in my custody.....Maj.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H-102306	Spr.	ENGBLOOM, Earl, Ludwick.	No. 1 C.E.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be attached to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.A. 15 (1)	8 times.
For	A.A. 9 (2)	1 times.
For	A.A. 11	1 times.
For	~~A.A. 15~~ A.A. 40 (2)	1 1 times.

Date of first entry in Field Conduct Sheet 18 Feb 43

Date of last entry in Field Conduct Sheet 1 Feb 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for ----------

beginning on the ---------- day of ----------

4. The accused has been awaiting trial on the present charges for 0

days in civil custody; and for 4 11 AM days in military custody, *i.e.*,

0 days in open arrest, 4 11 AM days in close arrest; of

which 0 days were spent in hospital.

5. The present age of the accused is 20

6. The date of his attestation is 15 Sept 42

7. The service which the accused is allowed to reckon is 1 year 6 months

8. The accused is in possession of No decorations

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

Ex B

(21154) W.L.8670/668 250,000 4/42 A. & E. W. Ltd. Gp.698 Forms/B.296(War)/2
(22456) W.L.22926/1872 60,000 2/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books of the [illegible] are true to the best of my knowledge and belief.

[illegible] Major
1 C. Engr. R.U.

Signed this 28 day of 28 Mar 1944

4T68

SGT. ENGEL C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-93673 Sgt Carl ENGEL 1 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.15(1)	Guilty	Guilty	
2nd A.A.15(1)	Guilty	Guilty	
3rd A.A.40	Guilty	Guilty	
4th A.A.41	Guilty	Guilty	
5th A.A.41	Guilty	Guilty	
6th A.A.41	Guilty	Guilty	
7th A.A.41	Guilty	Guilty	
[illegible] A.A.41	Guilty	Guilty	
[illegible] A.A.41	Guilty	Guilty	

(1. See RP 46(A) fn 2. Information should be found on the back of RP 67(B) attached to evidence under CA.)

Sentence Awarded by the Court

(Sgd) ..... (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Remarks of Comd "B" Gp are as follows :-

"I confirm the Findings but reserve the Sentence for confirmation by super ior authority."

Dated 25 Oct 44. (Sgd) ..... Commanding

(A.B. Connelly) Brig,
Comd "B" Gp, Cdn Rft Units.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTE[illegible]

(and powers see AA 54, 57, RP 37(D) fn 6,46(A), 56-56, 120, MML pp 739-741, KR Con 567-577. Acquittal or non-conviction cannot be revised: AA 54(7). Sending back Finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to penal or detention barracks for such sentence.

(1. AA 57A. Delete if not used.)

Dated 27 Oct 44. (Sgd) J.H. Roberts, Maj-Gen.,
Commanding Comd. Cdn. Rft. Units.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.	Adjutant.
B93673 ~~Pte~~ Sgt. Carl ENGEL 1CGRU	30 Oct 44	[signature] Capt.	No. 1 Can. Gen. Rein. Unit. C.A. (o.s.)

To appear on D.O. 264 d/ 4 Nov 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED 5 NOV 44 BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 p. 483 4J-68

CPA96 (in lieu of AFA2) 40/P & S/1698 (2964)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig A.B. Connelly Comd "B" Gp, CRU dated 13 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 482, 483, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-93673	Sgt	Carl	ENGEL	1 CGRU

PROCEEDINGS REVIEWED [illegible] Lieut 5 Jan 45 [illegible], JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at Aldershot in (country) England on (date(s)) 16 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, ~~if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~no interpreter ? Ans~~ P 35776 ~~The Interpreter is sworn.~~ (1) Do you object to SGT SHORT J.C. as shorthand writer ? Ans NO SIR The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. Redman, V.D.	HQ CRU
Member	CAPT	M.B. BELL	1 CASCRU
Member	LT	R.G. BRYSON	1 CSRU
~~Judge-Advocate~~			
Prosecutor	LT	G.E. MARIN	1 CGRU
Defending Offr	CAPT	F.C. MUNROE	1 CIRU

Questions by President: Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans YES(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 3.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. The necessities on each charge sheet (DP 69) after arraignment will be complied with in the respective below. (RP 37(A).)

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C* [illegible] *some charges are GUILTY and to other charges are NOT GUILTY and,*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60, 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 17(E) fn 6; calling or re-calling of witnesses by Court etc see RP 76-79, 86, 116; use of Summary of Evidence at Trial; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and your statement by sworn testimony, if you so desire,(4) will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(5)

President to accused: Do you wish to make a statement? Ans ~~N O~~ S I R

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement(s) (if any). The Court decides (not) to inform accused of charge his plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) ~~plead~~ his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty as in Part I of the Schedule.(1)

(1. RP 37(B). If any plea(s) is (are) changed, use Record Forms C or D as appropriate.)

The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1) The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea of Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 of Record Form D on p 3 before proceeding with C 2.(1)

C1. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making or obtaining thereof, on a separate sheet.)

C2. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete para not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

..... Do you intend to call witnesses on your behalf? Ans .....

..... Are they witnesses as to character only? Ans .....

(1. RP 155. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans GIVE EVIDENCE NOTE ATT

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy Conduct Sheets purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents purport to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier as having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)

(1. MFB 355 or MFB 296. 2. MIM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statements and Conduct Sheets, and in mitigation of punishment?(1) Ans BY DEFE OFFR NOTE ATT (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2) J I D

(1. When several accused tried separately see RP 26(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RD 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to pleas when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 6(2)) after arraignment will be recorded ... in the respective ... below.*

If some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C on p 3.

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as below. (RP 37(A).)

Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 102; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 1.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)

(1. *RP 37(D).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114. KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, prosec and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....

(1. *RP 155.* 2. *RP 40(A), see 80(3).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, B5(C). Note the further opportunity in paras E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court in the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.(2)

and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(3)

(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans GIVE EVIDENCE NOTE AT I.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 44 fns 1, 2. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and ~~certified~~ true copy ~~[illegible]~~ Conduct Sheet ~~[illegible]~~ purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents after to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) ~~they~~ purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)

(1. *MFB 255 or AFB 296.* 2. *MFM 8.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46, fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans BY DEFENCE NOTE AT I.(2)

(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to disprove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence ~~to be~~ awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(1. *When several accused tried separately see RP 25(B). One sentence only, comprised of the punishment or punishments laid down in AA 42, 44 and its proviso, is to be awarded to convict on charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69E, 118, 149(A). KR Can 308, 330, 343-346. Overseas MO 2029, 2032, 2033. As to sentences see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 69E(1). KR Can 564. 2. RP 50. As to release from sentence by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

[illegible] Record Form D on p 3.

[illegible] respective below. (*RP 37(A).*)

(b) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 91, 92; swearing see RP 83-85; calling or re-calling of witnesses by Court rde see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 60(C), 87(C), 91, 92; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C); duty of*

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 32 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. N o S t R

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty as ~~charges(s)~~ charge(s). The accused is (are) so informed, and the (they) ~~changes~~ his (their) plea(s) on ~~charges~~ charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(*1. RP 33(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ~~A~~, initialled and read aloud by the President.(1) If there is no Summary, or if it is inadequate, comply with *RP 37(B)*. If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of *paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

[illegible] to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 [illegible] Record Form D on p 3 before proceeding with C 2.(1)

[illegible] charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued [illegible] B1 to B6 of Record Form B above.(1) Under A5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is altered to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an record thereof on a separate sheet.)

[illegible] having been found Guilty on one or more of the charges, the proceedings are concluded by using [illegible] p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A), (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete para if not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. ..... Do you intend to call witnesses on your behalf?

Ans. ..... Are they witnesses as to character only? Ans. .....

(*1. RP 155. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. G I V E E V I D E N C E N O T E A T T

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)

(*1. MFB 355 or MFB 294. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. B Y D E F O F F K N O T E A T T

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2) N I L

(*1. When several accused tried separately see RP 34(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas 807 309, 2323, MML p 80, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete para not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....

Do you intend to call witnesses on your behalf? Ans.....

Are they witnesses as to character only? Ans.....

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(2)? Ans. GIVE EVIDENCE NOTE AT1

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(~~s~~) purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(2) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. MFB 255 or MFB 296. 2. M/M 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(2)? Ans. BY DEF OFF R NOTE AT1 (3)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also JA, if any~~.(2) 7/10

(1. When several accused tried separately see RP 37(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N O (5)

(1. RP 35(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E7 of Record Form E. 5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

~~*(1. Court may be closed to consider the statement. Delete whole or part not used.)*~~

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex 1, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ CDN RFT UNITS

17 Oct 44

Comd "B" Gp,
CRU

F.G.C.M. - 16 Oct 44
B 93673 Sgt ENGEL, C., 1 CGRU

1 You will note the stoppages to which the Accused has been subjected in the sentence. You will also note, from the evidence of the Accused in mitigation, that he says he has approximately $1200.00 in deferred pay. I respectfully submit that this is a proper case for superior authority to release, from the deferred pay of the Accused, sufficient moneys to pay the respective amounts of the stoppages to the civilians named in the sentence.

2 I compute that if the statement of the Accused regarding the $1200.00 is correct that would amount to some £266. The stoppages in the sentence total £194-9/-. This would leave a balance of deferred pay of approximately £72. According to the evidence of Mrs Lasbrey, contained in the Summary, she has loaned to the Accused in addition £135 which she has not recovered. According to the evidence of A.H. Taylor there is owing to him £4-10/- which he loaned the Accused on the security of the saving certificates. I heard indirectly that Sgt Engel sold the silverware, etc, valued at £73-19/- to some civilian for £3. Engel says the SIS are attempting to recover this property. If they do, it might be returned to Mrs Lasbrey and the extent of the recovery will automatically reduce the stoppage of £73-19/-. Little sympathy need be extended to the civilian who attempted to buy property of this value for £3-0-0 to which, of course, he acquired no title.

3 The £72, the residue of the deferred pay, plus the recovery of this silverware, thus freeing more deferred pay would leave a balance in deferred pay sufficient to re-pay to Mrs Lasbrey the £135 and W.H. Taylor £4-10/-, but to effect this, it would be necessary for superior authority to release that balance and it would also be necessary for Engel to sign an authorization and/or acquittance roll therefor.

4 In view of the possibilities of the recovery of the silverware the actual payment to Mrs Lasbrey of the £73-19/- should not be made until the final report is received from the SIS of the Cdn Provost respecting the recovery of the silverware when appropriate action might be taken, having regard to the nature of that report.

(C. Redman) Lt Col
President, F.G.C.M.

COPY TO: Col IC Adm

CHARGE SHEET

The accused, No B 93673 Sergeant Carl ENGEL, RCAMC, No 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Section 15 (1)
Army Act

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field at 2359 hours on 9 December, 1943 did absent himself without leave from No 1 Canadian General Reinforcement Unit until surrendering himself at No 1 Canadian General Reinforcement Unit at approximately 1145 hours 8 June, 1944.

(Total time absent - 181 days 11 hours 46 mins)

SECOND CHARGE
Section 15 (1)
Army Act

WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, when under open arrest, at 0800 hours 13 June, 1944 did absent himself without leave from No 1 Canadian General Reinforcement Unit until apprehended by the Military Police at 1800 hours 14 September, 1944, dressed in civilian clothes.

(Total time absent - 94 days 10 hrs 0 mins)

THIRD CHARGE
Section 40
Army Act

WHILE ON ACTIVE SERVICE AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At GRAVESHOTT on or about September, 1944, did improperly wear rank badges to which he was not entitled, that is to say, badges of rank of Captain.

FOURTH CHARGE
Section 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, OBTAINING MONEY BY FALSE PRETENCES CONTRARY TO SEC 32(1) OF THE LARCENY ACT, 1916

in that he

at GRAVESHOTT, Hants, on or about 11 July, 1942 with intent to defraud obtained from Mrs Phyllis LASHLEY, residing at Gorsemont, GRAVESHOTT, Hants, the sum of seventy pounds (£70/0/0) by falsely pretending that he required said money for the purpose of obtaining hail insurance on his crops in Canada.

/2

FIFTH CHARGE
Section 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, OBTAINING MONEY BY FALSE PRETENCES CONTRARY TO SEC 32(1) OF THE LARCENY ACT, 1916

in that he

At GRAYSHOTT, Hants, on or about 19 January, 1944 with intent to defraud obtained from Mrs Phyllis LASBREY, residing at Gorsemont, GRAYSHOTT, Hants, the sum of forty-five pounds (£45/0/0) by falsely pretending that he was involved in a vehicle accident in which a woman was killed and that he required that money to pay the widower of the deceased part compensation.

SIXTH CHARGE
Section 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, OBTAINING MONEY BY FALSE PRETENCES CONTRARY TO SEC 32(1) OF THE LARCENY ACT, 1916

in that he

On or about 21 July, 1944 with intent to defraud obtained from Mr A H TAYLOR, residing at GRAYSHOTT, Hants, the sum of four pounds (£4/0/0) by falsely pretending that he would purchase for the said Mr TAYLOR six fountain pens with the said money.

SEVENTH CHARGE
Section 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, LARCENY, CONTRARY TO SEC 2 OF THE LARCENY ACT, 1916

in that he

At GRAYSHOTT, Hants, between January, 1944 and May, 1944 did steal Saving Certificates valued at forty-nine pounds ten shillings (£49/10/0) the property of Mrs Phyllis LASBREY of GRAYSHOTT, Hants.

EIGHTH CHARGE
Section 41
Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, LARCENY, CONTRARY TO SEC 2 OF THE LARCENY ACT, 1916

in that he

At PETERSHAM, Surrey, between January, 1944 and September, 1944 did steal the following articles, namely:

1 Pair Sheffield Plated Candlesticks	£ 8-0-0
½ Doz Silver Teaspoons	6-6-0
Salt Cellars and Spoons (Silver)	3-3-0
Cut Glass Specimen Vase with Silver Case	1-5-0
Silver Sugar Bowl and Cream Jug with tongs	15-0-0
Silver Napkin Ring (Chinese-carved)	1-0-0
Gold Cuff Links with Crest (Clenched Fist)	10-10-0
Gold Dress Studs	2-10-0
Gold Tie Pin	1-5-0
Peridot Necklace	25-0-0

valued at Seventy Three Pounds, Nineteen Shillings (£73-19-0) the property of Mrs Phyllis LASBREY, GRAYSHOTT, Hants.

NINTH CHARGE
Section 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field between January, 1944 and October, 1944, did improperly pledge as security for a loan of two pounds ten shillings (£2-10-0) his MFM 1 Part II with Mr S W JOHNSON, GRAYSHOTT, Hants.

(B R Ker) Colonel
COMMANDER
No 1 Canadian General Reinforcement Unit

In the Field
7 October, 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units

13 Oct 44

Approved on behalf of A G pursuant to KR(Army) 540 the 13-10-44
Authenticated Capt
ADJA
HQ CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MMI. Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-93673		Sgt	Carl	ENGEL	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-col	D.L. Redman, V.D.		HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by	1 CASCRU
Lieutenant	to be detailed by	1 CSRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

A.R. Connelly (Signed personally. RP 105 fn 2.) (Rank.)

Date 13 Oct 44

Commanding
(A.R. Connelly) Brig Convening Officer.
Cond Bde Gp CRU

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/JBA (FORM 1 (To Sheet 1 of AFAA) AC. F. & S. CMPT. 1601)

NO 1 CANADIAN GENERAL REINFORCEMENT UNIT
CANADIAN ARMY OVERSEAS

Medical Officer's Certificate
K.R.(Can) para.557.

I certify that I have this day examined,

No. C93673 Rank Sgt. Name ENGEL C.

and in my opinion is ~~Unfit~~ Fit to undergo trial by Court Martial.

WHR

Medical Officer.

Field
Date: 16 Oct. 44.

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F.G.C.M. IN THE CASE OF

B 93673 Sgt ENGEL, C., No 1 CGRU

16 Oct 44

STATEMENT BY THE ACCUSED (UNDER OATH) IN MITIGATION E-1

Sir,

I am B 93673 Sgt Carl Engel, I am 39 years of age. In school I got through high school with a senior matriculation. I enlisted in Sep 39 with the 15 Cdn Gen Hosp. Since then I have been doing clerical work, I was NCO in charge out patients department until I was sent abroad for observation and to learn how it was done in the field, I was attached to the First Brit Army. I came back to England in Sep 43 and stayed at 1 CGRU until I went AWL. I am not married. I have pleaded guilty to the charges against me, my original reason for going AWL was because I was quite a bit in debt with Mrs Lasbrey, I hoped that I would be able to make enough money to pay her back, then I expected to return to 1 CGRU, take my punishment and start all over again. However I kept getting in deeper and deeper, I had to have some reasonable explanation for being up there where I was known and that is the reason for the disgaise as an Int Offr. My idea then was to pay back the money that I owed and it still is, my debts were about £55 above what is charged against me here, I have about $1200.00 deferred pay and I would like to be allowed to use it to pay these debts. I realize that I have done a despicable thing, I am sorry for it as I realize it does not do the Canadian Army any good, but if I could get a release for my deferred pay I wish to pay these debts.

In civil life I worked for a firm of mushroom growers in Toronto. I am very anxious to undergo stoppages for the amounts involved in the charge sheet and to get the remainder of my debts cleared up. As far as I know the SIS are trying to recover the silverware, I gave them the address of the party I had sold it to.

PLEA IN MITIGATION WAS READ BY DEF OFFR AND IS ATTACHED

COURT IS CLOSED TO CONSIDER THE SENTENCE

PLEA IN MITIGATION OF SENTENCE
SGT CARL ENGEL (RCAMC) 1 CGHU

1 The accused has pleaded GUILTY to the nine charges laid against him. Ever since he was apprehended on 14 Sep 44 he has cooperated in every possible way with the authorities with a view to having the case against him proceed to trial with a minimum loss of time and expense.

2 He has done a foolish thing and he regrets it. His principle concern at the moment is to reimburse Mrs Lasbrey in full as soon as possible. He states that he intends to apply for release of some of his deferred pay for that purpose.

3 Although there are nine charges against the accused, it will be noted that they are [redacted] seven together and all relate to the fact that he lived at GRAYSHOTT under false pretences.

4 Sgt Engel enlisted on active service on 11 Sep 39 and arrived overseas on 8 Feb 40. He served with honor in the armed forces of our country until the time of these offences. Part of that time was spent in TUNISIA . He is 33 years of age and is NOT married.

5 At his request I have tried to contact Capts Dominie and Northwood at CMHQ (AMD brch) and RSM Surrage who until recently was on the str of 1 CGHU . I was NOT able to contact any of them and so was unable to obtain a statement from them as to the character of the accused. He has worked under each of them. I urge the court to take cognizance of the fact that prior to the offences on which this court has accepted the GUILTY plea of the accused, he has had an excellent mil character and reputation, as indicated by his conduct sheet and rank.

6 In view of the evident desire of the accused to make amends to those who have suffered most by his folly, and xfxhix in view of his age and previous good character, it is respectfully submitted that justice will be served by a minimum punishment.

(FC MUNROE) Capt
1 CHU
Defending Offr

E-3

SUMMARY OF EVIDENCE

in the case of

B 93673 Sergeant Carl ENGEL, Medical Wing, No.1 Canadian General Reinforcement Unit , a soldier of the Canadian Army Overseas.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS FOR THE PROSECUTION

Lieutenant William MURRAY, Assistant Adjutant, No.1 Canadian General Reinforcement Unit, having been duly sworn, states:

I am Lieutenant William MURRAY, Assistant Adjutant, No.1 Canadian General Reinforcement Unit, and I produce the following evidence pertaining to the accused;

(1) Army Form B 115, Certified True Copy of Record of the Declaration of a Court of Inquiry marked Exhibit "A".

The accused declines to cross examine the witness.

Wm Murray
.....Lieutenant,
No.1 Canadain General Reinforcement Unit.

SECOND WITNESS FOR THE PROSECUTION

H 35705 Company Sergeant Major HE NICHOLAS, Medical Wing, No.1 Canadian General Reinforcement Unit, having been duly sworn, states:-

I am Company Serjeant Major HE NICHOLAS, Company Serjeant Major of Medical Wing, No.1 Canadian General Reinforcement Unit. At the time of Sergeant Engel's absence, I was Company Sergeant Major of Medical Wing. He reported to me at approximately 1145 hrs on the 8th of June, 1944. At that time, he was properly dressed and sober. I warned him that he would be up for charge for being absent without leave. I had permission from the Commanding Officer to keep the accused whom I recognize under open arrest. At approximately 1700 hrs on the 12th of June 1944, I warned Sergeant Engel to to report to me at the Medical Wing Orderly Room at 0800 hours the 13th June, 1944. Sergeant Engel failed to appear at the appointed time and place. I then made a check of his quarters and in the lines of No.1 Canadian General Reinforcement Unit and failed to find his whereabouts. I then had his name placed on the Absentee Report as absent without leave from 0800 hours, 13th June, 1944. His name has been called on all parades since the day of his absence and from that day I have not seen the accused until he was brought up for orders at approximately 0900 hrs on the 15th September, 1944.

The accused declines to cross examine the witness.

HE Nicholas
..... Company Sergeant Maj.
No.1 Canadian General Reinforcement Unit.

...../2

THIRD WITNESS FOR THE PROSECUTION

No. C 31010 Corporal MORRISON, A. Special Investigation Section, Canadian Military Headquarters, having been duly sworn, states:-

I am No. C 31010 Corporal Morrison, A. a member of the Special Investigation Section, Canadian Military Headquarters.

I was instructed by Major Creasy, APM, HQ CRU to proceed to Grayshott as it was believed a soldier was going around in civilian clothes. On making inquiries in the Grayshott area I interviewed Mrs Hammond, Gorsemount, Grayshott. From her I learned that a Sergeant Engel was boarded at her place. At that time he was down near Tonbridge. Accompanied by Sjt Hancock, Special Investigation Section, I proceeded to Tonbridge, and on inquiries there I found out that Sjt Engel was living at Homewood Farm, 5 Oak Green, near Tonbridge. Sjt Engel whom I recognize as the accused was found at Homewood Farm. I placed him under arrest and took him to the Guard Room at No.1 Canadian General Reinforcement Unit. He was arrested at 1600 hours, 14 September, 1944.

After having been cautioned, Sjt Engel voluntarily gave and signed the following statements:-

"Since breaking arrest some time in May, I have been staying with Mrs Hammond at Grayshott with the exception of the weekend at 5 Oak Green, where I was arrested.

My story to the landlady was that I was allowed to be in a billet and she never questioned that fact. My means of support was borrowed monies from Mrs J.A. Lasbrey, who also thought I was a billeted soldier and that I would eventually pay her back. Mrs Lasbrey also lived with Mrs Hammond.

Civilian clothes were purchased with coupons stolen while I was on a rear party at Caythorne near Three Bridges. These coupons were Army coupons and were taken by me from a pile of documents left for packing in the Orderly Room. The number of coupons were two books.

During my absence I have committed no civil offence.

With reference to my last statement given to a member of the SIS. I hereby state that it was a false statement and the true statement is that I have been at Grayshott ever since my original absence on Dec 8th posing as an Intelligence Officer."

"Regarding the statement about the clothing coupons I now wish to say that they were given me by an officer whose name I do not wish to give, and was the reason for making the original statement of having stolen them."

"My reason for borrowing the money from Mrs Lasbrey was to keep myself while A.W.O.L. All stories I have told Mrs Lasbrey were fictitious, this includes the statement I made to her regarding an accident with a Military Vehicle and insuring of a crop. I have no account in any bank.

With reference to Savings Certificates, I left them with Mr Taylor of Grayshott as security for a £4-10-0 loan. These Certificates were the property of Mrs Lasbrey, Grayshott."

I produce the above statements signed by Sjt Engel and marked exhibits "B" and "C" respectively.

The accused declines to cross examine the witness.

.....Corporal,
Special Investigation Section CMHQ

THIRD WITNESS FOR THE PROSECUTION

No. C 31010 Corporal MORRISON, A. Special Investigation Section, Canadian Military Headquarters, having been duly sworn, states:-

I am No. C 31010 Corporal Morrison, A. a member of the Special Investigation Section, Canadian Military Headquarters.

I was instructed by Major Creasy, APM, HQ CRU to proceed to Grayshott as it was believed a soldier was going around in civilian clothes. On making inquiries in the Grayshott area I interviewed Mrs Hammond, Gorsemount, Grayshott. From her I learned that a Sergeant Engel was boarded at her place. At that time he was down near Tonbridge. Accompanied by Sjt Hancock, Special Investigation Section, I proceeded to Tonbridge, and on inquiries there I found out that Sjt Engel was living at Homewood Farm, 5 Oak Green, near Tonbridge. Sjt Engel whom I recognize as the accused was found at Homewood Farm. I placed him under arrest and took him to the Guard Room at No.1 Canadian General Reinforcement Unit. He was arrested at 1500 hours, 14 September, 1944.

After having been cautioned, Sjt Engel voluntarily gave and signed the following statements:-

"Since breaking arrest some time in May, I have been staying with Mrs Hammond at Grayshott with the exception of the weekend at 5 Oak Green, where I was arrested.

My story to the landlady was that I was allowed to be in a billet and she never questioned that fact. My means of support was borrowed monies from Mrs J.A. Lasbrey, who also thought I was a billeted soldier and that I would eventually pay her back. Mrs Lasbrey also lived with Mrs Hammond.

Civilian clothes were purchased with coupons stolen while I was on a rear party at Capthorne near Three Bridges. These coupons were Army coupons and were taken by me from a pile of documents left for packing in the Orderly Room. The number of coupons were two books.

During my absence I have committed no civil offence. With reference to my last statement given to a member of the SIS. I hereby state that it was a false statement and the true statement is that I have been at Grayshott ever since my original absence on Dec 8th posing as an Intelligence Officer."

"Regarding the statement about the clothing coupons I now wish to say that they were given me by an officer whose name I do not wish to give, and was the reason for making the original statement of having stolen them."

"My reason for borrowing the money from Mrs Lasbrey was to keep myself while A.W.O.L. All stories I have told Mrs Lasbrey were fictitious, this includes the statement I made to her regarding an accident with a Military Vehicle and insuring of a crop. I have no account in any bank.

With reference to Savings Certificates, I left them with Mr Taylor of Grayshott as security for a LA-10-0 loan. These Certificates were the property of Mrs Lasbrey, Grayshott."

I produce the above statements signed by Sjt Engel and marked exhibits "B" and "C" respectively.

The accused declines to cross examine the witness.

A. M. .....Corporal,
Special Investigation Section CMHQ

13

FOURTH WITNESS FOR THE PROSECUTION

Mrs MB Hammond, residing at Gorsemount, Grayshott, will state as follows:-

"The latter part of Dec 1943, I saw Sjt Engel in Grayshott. On Jan 11th 1944 he booked a room in my house and has occupied it almost continually until Fri Sept 8th.

Up until May 2nd he paid weekly for his room and board but from that date until June 18th he made no payment owing L17-7-6. After June 18th he made arrangements for me to keep a room for him and he would have his meals out. This room he occupied until Sept 8th.

During his stay here he led me to believe that he was an Intelligence Officer."

I certify that in my opinion the attendance of this witness is, owing to expence and loss of time involved, not readily procurable.

G.E. Marin

(G.E. Marin) Lieutenant
(Officer detailed to take Summary)

I do not require the attendance of this witness for the purpose of cross-examination

C. Engel

(C. Engel) Sergeant

FIFTH WITNESS FOR THE PROSECUTION

Mrs Phyllis Lasbrey, residing at Gorsemount, Grayshott, will state:-

"I Phyllis Lasbrey, have known Carl Engel for approximately four years. When I first met him he was a private in the R.C.A.M.C., of the 15th General Hospital, Bramshott.

Since last December I have seen Carl Engel practically every day in the Grayshott district. In January or February 1944 he made arrangements with Mrs Hammond, of Gorsemount, Grayshott, to rent a room which he occupied until about the 2nd Sept 1944

On or about September 1943, he Carl informed me he had been transferred to the Intelligence Corps with a commission. On three occasions I saw him wearing a uniform bearing three pips denoting the rank of Captain in the Canadian Army.

During the time I have known him he has on some pretext or other borrowed sums of money amounting in all to L250-0-0.

Several months ago I wanted to collect some silver belonging to me from Church House, Petersham, Surrey, and Carl Engel offered to fetch it for me when he was passing in an Army Vehicle. I agreed to this arrangement and a few days afterwards he collected the silver and informed me it had been taken to Cobham, Surrey, as he had to go away on another commission with a Colonel Thompson. It was to be brought from Cobham to my address at the first opportunity.

On May 21st, 1944, Carl Engel told me the Military Police had found him in possession of my silver in an Army Vehicle and had confiscated it pending investigation. As far as I know the Army is still holding it."

/4

"On July 11th 1942, Carl Engel approched me for the loan of L70-0-0 to cover hail insurance on his crops in Canada.

On Jan 19th 1944, he again approched me for the loan of L45-0-0 as he had been involved in an accident. Engel told me he had knocked down by car and killed a woman, and this money was paid to the widower as part compensation, as ordered by a Court. I understand, Engel was driving an Army Vehicle in Leicester Square, London, when this accident occured. I am unable to furnish the names of the parties concerned.

Exclusive to the above, between 1942 and 1944, I have given on loan to Engel, sums amounting approximately to L135-0-0. These range from L1-0-0 to L15-0-0."

The articles of silver stolen and their value is as follows:-

	L	S	D
1 Pair Sheffield Plated Candlesticks	8	0	0
4 Doz Silver Teaspoons	6	6	0
Salt Cellars and Spoons (Silver)	3	3	0
Cut Glass specimen Vase with silver base	1	5	0
Silver sugar bowl and cream jug with tongs	15	0	0
Silver napkin ring (Chinese-Carved)	1	0	0
Gold Cuff-links with breast (Clenched fist)	10	10	0
Gold dress studs	2	10	0
Gold tie pin	1	5	0
Peridot necklace	25	0	0

Without authority from me an envelope containing Savings Certificates in the amount of forty nine pounds ten shillings (L49-10-0) were taken by Sjt Engel. On 28th September 1944 I received a letter from Sjt Engel stating what disposition he had made of the Savings Certificates. On the same date, I visited Mr A.H. Taylor at Grayshott and collected from him Savings Certificates, same having been pledged by Sjt Engel as security for a loan of four pounds ten shillings (L4-10-0). Said Certificates will be produced by me at the trial of Sjt Engel.

I certify that in my opinion the attendance of this witness is, owing to expence and loss of time involved, not readily procurable.

S.E. Marin

(S.E. Marin) Lieutenant
(Officer detailed to take Summary)

I do not require the attendance of this witness for the purpose of cross-examination.

C. Engel

(C. Engel) Sergeant

SIXTH WITNESS FOR THE PROSECUTION

Mr A.H. Taylor, residing at Grayshott, will state as follows:-

"I A.H. Taylor, residing at Grayshott, state that I know Sjt Engel a member of the Canadian Army. Engel has borrowed money from me on two occasions. The first time he borrowed L6-0-0 that was around the beginning of July, 1944. He returned the L6-0-0 three weeks after. The second time he borrowed L4-0-0, this was on 21 July, 1944, and stated he would purchase Fountain Pens for me with the money. He stated he would be able to buy six

(6) pens for that amount.

Engel gave me a receipt for the L4-10-0, and also deposited an envelope with me and led me to believe that Mrs Lasbrey would reimburse me if he was unable to do so. I do not know what the envelope contained, although Engel stated the contents were valued at around L40-0-0. This envelope I returned to Mrs Lasbrey."

I certify that in my opinion the attendance of this witness is, owing to expense and loss of time involved, not readily procurable.

G.E. Marin

(G.E. Marin) Lieutenant
(Officer detailed to take Summary)

I do not require the attendance of this witness for the purpose of cross-examination.

C. Engel

(C. Engel) Sergeant

SEVENTH WITNESS FOR THE PROSECUTION. Mr. S.W. Johnson, residing at Grayshot, will state:

Between January, 1944 and October, 1944 Sgt Engel borrowed two pounds and ten shillings (L2-10-0). He pledged his Pay Book and his watch as security for the said amount. I gave Sgt Engel's Pay Book to a member of the Provost Corps who visited me and made certain enquiries.

I certify that in my opinion the attendance of this witness is, owing to expense and loss of time involved, not readily procurable.

G.E. Marin

(G.E. Marin) Lieutenant
(Officer detailed to take Summary)

I do not require the attendance of this witness for the purpose of cross-examination.

C. Engel

(C. Engel) Sergeant.

QUESTION TO THE ACCUSED

"Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence."

After the above caution the accused makes the following statement:

"I plead guilty to all charges mentioned above and wish to repay all monies owed by me to the above mentioned peoples."

The accused does not call any witnesses for the defence at this time.

I certify that the above Summary of Evidence was taken down by me in the hearing and presence of the accused and that Rules of Procedure 4(c)(d)(e), [illegible] (e) have been complied with.

G.E. Marin

(G.E. Marin) Lieutenant,
No. 1 Canadian General Reinforcement Unit
In the Field Officer detailed to take Summary
6th day of October, 1944

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Aldershot, Hants on the 4th day of January 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.93673, Sgt. Engel, C., No.1 Cdn Gen Reinf Unit (Medical Coy)

DECLARATION.

The Court declare that B.93673, Sgt. Engel, C. of RCAMC Wing, 1 CGRU, illegally absented himself without leave at Aldershot on the 9th day of Dec 43; that he is still absent, and that on the 31st day of Dec 43 he was deficient, and that he is still deficient of articles of kit and equipment shown in the list given in the evidence. The value of said deficiencies being vocabulary value £7-3-7½, 75% value £4-17-6½.

Names of President and Members

PRESIDENT:	Capt. F.R. Pember	RCAMC
MEMBER:	Capt. I.S. Mobb	RCAMC
MEMBER.	Capt. B. Laski	RCAMC

Signature of Commanding Officer R.R. Frost, Lt.Col.

CERTIFIED TRUE COPY, W. Murray Capt. Adjutant.

No. 1 Cdn. Gen. Rein. Unit C.A. (M.C.)

Signature of Officer having custody of the Original Record.

(12281) Wt.24318/1622 75,000 10/39 A.& E.W.Ltd. Gp.698 Forms/B115/16

Exhibit "B"

CANADIAN PROVOST CORPS

DATE:- 15 Sept 1944

SUBJECT:-

STATEMENT of Rank. No. B.93673 Sgt Engel. C.

of Taken at:-

'I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.

'To show that I understand the above warning, I make this statement voluntarily and sign my name herewith.'

SIGNED:- Carl Engel

STATES:- Since breaking arrest some time in May. I have been staying with Mrs. HAMMOND at Grayshott with the exception of the six week end at Liverdale Green where I was arrested. My story to the landlady was that I was allowed to be in a hiding and she never questioned that fact. My means of support were borrowed monies from Mrs. J.A. Lesley who also thought I was a Wanted soldier and that I would eventually pay her back. Mrs. LASSERRY also lived with Mrs. Hammond. Civilian clothes were purchased with coupons ~~pay~~ stolen while I was on a road party at Capthorne near Three Bridges. These Coupons were Army coupons and were taken by me from a file of documents left for packing in the orderly room. The number of coupons were two (2) hundred. During my absence I have committed

page 2

no civil offence — With reference to my last statement given a member of the S.I.S. I hereby state that it was a false statement and the true statement is that I have been at Graythwaite ever since my original absence on Dec. 8th posing as an Intelligence Officer.

Witness
Angus Morrison

Carl Engel

16th Sept. 1944

Regarding the statement about the clothing coupons I wish to say that they were given me by an officer whose name I do not wish to give, and was the reason for making the original statement giving false claim.

Carl Engel.

Exhibit "C"

CANADIAN PROVOST CORPS

SUBJECT:

DATE: 28 Sept 44

STATEMENT of Rect No:

of

Taken at:-

"I have been warned that I am not obliged to say anything unless I wish to do so, but anything I now say will be taken down in writing and may be given in evidence".

"To show that I understand the above warning, I make this statement voluntarily and sign my name herewith".

SIGNED: Clark Engel

STATEMENT:

My reasons for borrowing the money was to help myself in his A.W.O.L. All statements I have told Mrs Lashley were fictitious, this includes the statement I made to her regarding an accident with a military vehicle and the insuring of a crop. I have no account in any Bank. With reference to Savings Certificates, I left them with Mrs Taylor & Drayshott as security for a £4/10 loan. These certificates were the property of Mrs. Lashley, Geo

Witness
A Morrison

Clare Engel

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
B-95675	Sgt	ENGEL, C.	No. 1 C.C.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, preference being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ..... times.
For ..... times.
For NIL times.
For ..... times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for ~~25~~ 31 days in military custody, i.e., Nil days in open arrest, ~~25~~ 31 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 32 32 ?

6. The date of his attestation is 11 SEP 39

7. The service which the accused is allowed to reckon is ----------

†State the military qualifications (if any) held by accused.

8. The accused is in possession of †

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Sgt	1 JUN 42
In the war substantive rank of	
In the acting rank of	

ET ✓ PMY

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/3867 35,000 5/44 H-422 T.&A. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this ~~8th~~ 16th day of OCTOBER 1944

W. Murray, Lt

(W. Murray), Lieut & Asst Adjt
No. 1 CGRU, Cdn Army Overseas.

No. B-93673 Name Engel, C. | Sqn, Battery, or Company | Corps R.C.A.M.C. | Date of enlistment 11Sep39 | CC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/196 (3415)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
				No Entries.					

Cetified true copy of original document in my possession.

(W. Murray) Lieut.
Asst. Adjt. No 1 Cdn Gen Rft Unit
Canadian Army Overseas.
16 Oct 41

(PTO)

OFFICERS UNDER INSTRUCTION

F.G.C.M. - 16 Oct 44

Capt	J. E.	Powell,	1 Sub Wksp
Capt	D	Dobbin,	1 Sub Wksp
Lt	J. A.	Newson	1 Sub Wksp
Lt	G. M.	Watts	1 CSRU
Lt	R.	Cruickshank,	1 CASCRU
Lt	J.D.	Allan	1 CERU

...ntence awarded by the Court:

... To be put under stoppages of pay until he has made good the ... amou... of the losses occasioned by the commission of the offences as follows, to:

(1) Mrs Phyllis LASBREY, Corsemont, Grayshott, Hants, £70 (4th Charge) £45(5th Charge) and £73-19/ (8th Charge):

(2) A.H. TAYLOR, Grayshott, Hants £4(6th Charge):

(3) S.W. Johnson of Grayshott, Hants, £2-10/ (9th Charge),

And to undergo imprisonment for a period of two years and to be discharged with ignominy from His Majesty's Service.

16 Oct 44
(date awarded)

President

FFF-78

PTE ENGLAND A.B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.216 Pte ENGLAND, Allen Bruce - IGL - 4 CIRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instr'n p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	not guilty	guilty	except that he was not apprehended by Can Prov Offrs and except that his cost of arrest and return were 7/11 only.
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence~~ for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention per a period of Seventy (90) days and to be put under stoppage of pay until he has made good $10-7-11$ the expenses of his arrest and return

9 Mar/44 (Sgd) [illegible] President. (RP 45, 92.)
(Date) Judge-Advocate, if any. Date awarded

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 54. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) [illegible] Brigadier

Date 10 Mar 44

Commanding "D" Group, Cdn. Rft. Units
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. Date. Signature of Offr.

B 216 Pte ENGLAND, A.B. 11 March 44 [illegible] Capt.
Captain Adjutant, 4 Cdn Inf Rein Unit.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.H. FFF 78

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA3) 40/P & S/1608 (2864)

Convened by Order of Brigadier G. Francoeur Comd "D" Gp., CRU dated 8 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.216	Pte	Allen Bruce	ENGLAND	IGL, 4 CIRU

PROCEEDINGS REVIEWED

[illegible] Lt-Col
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held at the IGL (county) on (date) 9 Mar 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, J.A. if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc, which Justrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 61-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2)

The Court is satisfied that it is properly convened and constituted(3), accused is [illegible] amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At ~~[illegible]~~ hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [illegible] fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ~~[illegible]~~ as interpreter? Ans~~

~~The interpreter is sworn.(1) Do you object to ~~[illegible]~~ as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 71. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~J.A. if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D. F. Hodgman, V.D.	H.Q. C.M.V.
Member	Capt.	W. J. Proctor	2 C.I.R.U.
Member	Lieut.	W. J. Healey	7 C.I.R.U.
~~Judge-Advocate~~			
Prosecutor	Lieut.	J. T. Ward.	4 C.I.R.U.
Defending Offr	Lieut.	C. W. Fullerton	4 C.I.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused ~~[illegible]~~ before arraignment makes(s) (no) ~~[illegible]~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), each plea, the addressers made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~[illegible]~~ arraigned ~~[illegible]~~ on all charges in the charge sheet.(1) The accused does ~~[illegible]~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of insers p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF 85s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~the accused and/or~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NIL (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the pleas of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO - SIR (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE ATI
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does~~ not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the Sutton charge(s).~~(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. Want to give evidence Do you intend to call witnesses on your behalf ?
Ans. NO - SIR Are they witnesses as to character only ? Ans. NO
(*1. RP 41. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOT ATI
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF ABCA. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA.* ~~*See RP 42, 103(e).*~~)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court as (to) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

~~D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)~~
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.~~
~~and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)~~
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Any thing to further - NOTE - ATI (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP* [redacted]. *One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 114, 119(A), KR Can 309, 330, 343-344, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 44(5), 96(6), p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. B 216 Pte. ALLEN BRUCE ENGLAND, of Infantry General List, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
A A Sec 15(1)

WHILE ON ACTIVE SERVICE, Absenting himself without leave,
in that he
In the Field, absented himself without leave from 2200 hours, 30 January, 1944, until apprehended by the Canadian Provost Corps, at Brighton, at 1030 hours, 5 March, 1944; (Total absence:- 32 days, 12 hours, 30 minutes); (thereby incurring expenses to the value of 21 shillings, 11 pence.)

(J.H. Christie) Col.
Officer Commanding
4 Cdn Inf Rft Unit, C.A.O.

IN THE FIELD
6 MARCH 1944.

To be tried by Field General Court Martial.

(G. Francoeur) Brigadier
Commander
"D" Group, Cdn. Rft. Units

In the Field
6 Mar 44

B17

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E.216	Pte		Allen Bruce	ENGLAND	IGL 4 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and dated (date) 5 Mar 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D.L. Redman	No. CBU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by CO	3 CIRU
A Lieutenant	to be detailed by CO	7 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 5 Mar 44

(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Commanding "D" Group, Cdn. Hft. Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Para 1(b) (iv) of AFA2: 40-P & S/1807 (4401))

(See overleaf for oaths and notes for use on trial.)

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Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B.216.....
Pte. England A.B..... of W.4. C.I.C.R.C.....
and in my opinion, he is F.U..... to undergo trial by Court Martial.

Station....Field.....
Date.....March 9-44..... (Sgd.)..... (Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

Trial of B.216, Pte. A.B. ENGLAND, 4 CIRU

The accused when arraigned plead not guilty. The Prosecutor produced (1) M.F.B. 375, (2) Certificate of Apprehension A.A. 163 (JJ), (3) Expense Voucher. NOTE D-3

The Prosecution is closed.

Note D-5 Evidence for the Defence

The accused being duly sworn, states:-

I am guilty of the A.W.L. as charged, but I wish to say this respecting the expenses of my return. I had a return ticket from Brighton to Aldershot. The Provosts did not buy me a ticket from Brighton to London. They took my ticket. They used my ticket from Brighton to London, and I should not be charged the four shillings which was never expended in my behalf. I produce herewith my return ticket from Brighton to London. You will note where it had been punched by the railway officials in London on my arrival there.

(In the opinion of the Court, it is unnecessary to comply with RP 83(B).)

The Defence is closed.

The Prosecutor and Defending Officer each stated they had no addresses to make to the Court.

(Railway ticket marked Exhibit 1 by the Court.)

Plea of Mitigation in the case of B. 216 Pte England. A.B.

In mitigation of the punishment to be awarded to the accused I would like to point out to the court that this man joined the Army of his own volition and is very anxious to see action. He has no service record in this M.F. so that he can be in that action [illegible]. To impose a severe sentence upon him would result in the army being deprived of the services of a man who really wants to fight for his country and who is not a confirmed offender. I respectfully submit that in view of the early period of greater offensive action and of the status of the accused that he be given a lenient sentence and recommended for early draft.

W. Ambleton Lt.
Defending Officer.

NOTE E-3

RECORD of the Declaration of a Court of Inquiry assembled at **In the Field** on the **23rd** day of **February** 19 **44** for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. **B 216 Pte. England, A.B. (IGL) 4 C.I.R.U.**

DECLARATION

The Court declare, that **B 216 Pte England, A.B. illegally absented himself without leave from 2200 hrs 30 Jan 44 and is still so absent and that he is deficient of kit to the Appraised Value of £3-12-10. as shown below:-**

ARTICLES		VOCAB PRICE	APP PRICE
Anklets, prs	1	4 5	3 4
Blouses, B.D.	1	1 3 6	17 7½
Boots, ankle, prs	1	1 4 5	18 3½
Drawers, Woollen prs	2	10 9	6 0
Trousers, B.D. prs	1	1 4 1½	18 1
Vests, Woollen prs	1	5 4½	4 0
Braces, prs	1	1 4	1 0
Brush Button Brass	1	1 2	10½
Brush, Clothes	1	2 2	1 7½
		£ 4 17 3	£ 3 12 10

Names of President and Members: PRESIDENT:- Capt S.R. Smith 2 CDSB (TSR) 4 CIRU
MEMBERS:- Lt. C.P. Redston 2 CDSB (TSR) 4 CIRU
Lt. J.W. Mitchell 2 CDSB (TSR)

Signature of Commanding Officer (J.H. Christie) Col., 4 Cdn Inf Rft Unit, C.A.E.

Certified true copy Captain Adjutant

Signature of Officer taking custody of original record.

In re R.316 England
This is exhibit "E"
to Summary of Evidence
Jellicoe A.P.M.

Certificate in accordance with Army Act, Section 163 (11).

I certify that No. [illegible] Rank [illegible] Name [illegible] was arrested at [illegible] at about [illegible] and that at the time of his arrest he was wearing military uniform.

Signature of Provost Marshal, A.P.M., or other Officer into whose custody the above named person was taken into arrest

.....

.....
A.P.M. 181 H.Q.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B216 Rank Pte. Name England R.B. Unit 4 C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit From London from Brighton

Date	Particulars	Amount £	s	d
4 Mar. 44	Escorts return fare from LONDON To Brighton		7	11
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	11.

Re B216 England R.B.
Bill is split for 2
Journey to London
Brighton to

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S.-480

EX 1

Trial of B. 216 Pte J. B. England
of C.I.R.U.

O.H.M.S.

#4 CANADIAN INFANTRY REINFORCEMENT UNIT, C.A.(O). 4C/24

.....6 Mar.....194.4..

I, No. B 216 Pte. England, A.B., wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of.....Capt. Shaw.....
if he is available.

(Sgd.) ...A.B. England.....

6 Mar 44.

This is to certify that I have received the following documents, free of charge.

1 Copy of Summary of Evidence
1 Copy of List of Witnesses
1 Copy of Charge Sheet
1 Copy of List of Exhibits.

.....J.B. England.....
Pte. England, A.S.

LIST OF WITNESSES

in the case of B 216 Pte. England, A.B., 4 C.I.H.U.

FOR THE PROSECUTION

1. A/Capt. R.J. McLaughlin, A/Admin. Officer, 4 C.I.H.U.

FOR THE DEFENCE

N I L

LIST OF EXHIBITS

in the case of B 216 Pte. England, A.B., 4 C.I.H.U.

Exhibit "A" - MPS 575 - Certificate of the Record of a Court of Inquiry

Exhibit "B" - Certificate in accordance with A.A. 183 (JJ)

Exhibit "C" - CMHQ 1000:55 Cost of Apprehension

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 216 Pte. England, A.B., of Infantry General List, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is not taken on oath.

FIRST WITNESS

For the Prosecution

A/Capt. R.J. McLaughlin, of 2 Canadian Division Support Battalion, on the strength of No. 4 Canadian Infantry Reinforcement Unit, an Officer of the Canadian Army Overseas, states as follows:

I am A/Admin. Officer of No. 4 C.I.R.U. and as such have custody of documents which relates to the accused, whom I know recognize.

I produce M.F.R. 375, Certified true copy of a Record of the Declaration of a Court of Inquiry, which relates to the accused. M.F.R. 375 marked as Exhibit "A".

I produce Certificate in accordance with Army Act Section 163 (jj), purporting to be signed by A.P.M., 191 M.A. Provost Coy., which relates to the accused. Certificate marked Exhibit "B".

I produce C.M.F.A. 1000:55, Certificate of the Cost of apprehension of the accused, purporting to be signed by Capt. A.R. Holmes. Cost of Apprehension Certificate marked Exhibit "C".

The accused declines to cross-examine this witness.

R.J. McLaughlin
(R.J. McLaughlin) Capt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement.

I certify that the foregoing Summary of Evidence, consisting of One page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d) and (e) have been complied with.

(A.L. Wolf) Lt.,
Officer detailed to take Summary.

IN THE FIELD
6 MARCH 1944.

Exh A

M.F.M. 6
(A.F. B.122)
40/F & /8136 (2968)

No. B 216 Name England A B | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 11-4-41 | G.C. Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet 28-6-41 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. C.P. Harrison Lt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet No. 1 Destroyed 11-10-41				C P Harrison Lt.	
Camp Borden Field	31-10-42	Tpr.		A.A.15(1) AWL from 2200 hrs 31 Oct 42 to 2315 hrs 31 Oct 42	L/Sgt.McKay L/Cpl.Balsdon	14 days C.B.	2 Nov42	J F Bingham Lt. Col	
Field	12-11-42	Tpr.		A.A.10(4) Broke out of Bks. while under open arrest.	Tpr.Houghton S gt.Hayes F L/Cpl.Boyd G (DCC)	14 Days F.P.	20 Nov42	Major J A Roberts	Forf 14 days pay(PR&I 149)
Field	12-11-42	Tpr.	(1)	A.A.19 WOAB Drunkenness		Admonished	20 Nov42	J F Bingham Lt. Col.	
Field	18-1-43	Tpr		A.A.15(1) AWL from 2230 hrs 18 Jan 43 until 0600 hrs 19 Jan 43 (7 hrs 30 mins)	Cpl. Lewis Cpl.McQuarrie Cpl.Knights Cpl.Fleming S gt.Snape	7 days C.B. Forf 4 days pay PR&I 149(1)b Admonished	20 Jan43 15 Feb43	J F Bingham Lt.Col. P.C.R. Black Major	Forf 1 days pay PR&I 149 (1)a
Field	13-2-43	Tpr.		A.A.15(1)AWL from 1800 hrs 13 Feb 43 until 2230 hrs 13 Feb 43 (4 hrs 30 min)					

(P.T.O.)

Theatre	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25Mar 43	Tpr	(2)	A.A.19 WOAS Drunkenness	(DOC) Sgt.	7 days C.B.	3 Apr 43	F A Roberts Capt	
Field	1 May 43	Tpr	(1)	A.A.9(2) WOAS disobeying a lawfull comd; when ordered to report to guard room, failed to do so	Zaberganietz L/Cpl. MacBride	24 days F.P.	4 May 43	J.F.Bingham Lt.Col.	Forf 24 days pay PRAI 149(1)b
			(2)	A.A.40 Conduct etc: appeared in a public place improperlydressed					
Field	22Jun 43	Tpr		A.A.15(1) AWL from 1330 hrs 21 Jun 43 uhtil 1340 hrs 22 Jun 43 (10 min)	Cpl.Walker J Sgt.German J	14 daus C.B	23 Jun43	Lt. Col. Bingham	
Field	30Nov 43	Pte.		A.A.15(1) WOAS AWL from 2000 hrs 30 Nov 43 until 2200 hrs 30 Nov 43 (Total Ausence 2 Hrs.)	Sgt.Beaumier Cpl.Jones H (DOC)	3 days loss of pay	1 Dec 43	Lt. Col.R J MacPherson	
Field	6 Jan 44	Pte.		A.A.15(1) WOAS AWL from 2359 hrs 5 Jan 44 until 2200 hrs 6 Jan 44 (21 hrs 59 min)	Cpl. Hughes L	3 days loss of pay	7 Jan 44	Lt. Col.R J MacPherson	Forf 1 days' pay PRAI 149(1)d

Certified True Copy dated 24 Feb 44 — L.R. Smith Capt

M.F.P. 255
22M—5-41 (272-3)
H.Q. 1772-39-620
A.F.P. 256

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 816	Pte.	England, A.B.	4 C.I.R.U.

1. The following is a fair and true summary of the entries in the ~~Service and Casualty~~ RJM Regimental and ~~Squadron~~ RJM ~~Conduct sheets~~ RJM RJM Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ RJM Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. 10 (1)	3	times	A.A. 10 (1)	8 times
For A.A. 10	1	times	A.A. 10	2 times
For A.A. 10 (4)	1	times	A.A. 10 (4)	1 times
For A.A. 40 (2)	Nil	times	A.A. 40 (2)	1 times

~~Number of instances of gallantry or distinguished conduct~~ RJM

~~nil~~ RJM

~~There are no entries in the conduct sheets of the accused~~ RJM

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately~~ RJM

~~2. The accused has not been previously convicted~~ RJM

~~nil~~ RJM

~~Previous convictions of the accused by a court-martial or a civil court (summary awards under~~ RJM ~~Air Force Act~~ RJM ~~A.F.A. 78~~ RJM ~~section 47 of the Army Act and dispensations with trial under A.A. 78 are not to be entered~~ RJM ~~in this column) are~~ RJM ~~entered in this statement~~ RJM

3. The accused is not under sentence at the present time.

~~nil~~ RJM

~~The accused at the present time is under sentence for ——— beginning on the~~ RJM ~~day of~~ RJM

4. The accused has been in confinement awaiting trial on the present charges, for ~~nil~~ days in civil custody, and ~~56~~ RJM days in ~~Air Force~~ military custody, making a total of ~~56~~ days in custody, of which ~~nil~~ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ RJM attestation paper is 22

6. The date of his ~~enlistment~~ RJM specified in his ~~record of service~~ RJM attestation paper 11 Apr 41

~~7. The service which the accused is allowed to reckon towards discharge~~ RJM

~~8. The accused is entitled to reckon ——— service for the purpose of increasing his pension~~ RJM

~~9. The accused is in possession of or entitled to an air force decoration or an~~ RJM ~~air force~~ RJM ~~military~~ RJM ~~decoration~~ RJM ~~military~~ RJM ~~possession of or entitled to). State any air force decoration or~~ RJM ~~military~~ RJM

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer was~~ RJM ~~Air Force~~ RJM ~~the regimental rank of~~ RJM

EXB

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ R J M
~~Permanent Force~~ R J M
~~unit~~ R J M
~~dated~~ R J M , ~~and in his regiment (or corps) the rank of~~ R J M
~~dated~~ R J M .

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:~~ R J M

~~Date of promotion~~ R J M

~~In the rank of~~ R J M ~~years~~ R J M
~~In the rank of~~ R J M ~~years~~ R J M
~~In the rank of~~ R J M ~~years~~ R J M

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~ R J M

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank Pte.
Unit
Name England, A.B. of A.C.I.R.U. ~~Regiment~~ R J M

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

R J M Laughlin Capt.

Signed this 4 M day of March 194 .

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

SSS-137

PTE ENGLAND A/B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.216 Pte Allen, Bruce ENGLAND - CIC - 3 CIRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 14 days F.P. beginning on (date) 22 May HH (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which 2 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for one year and to be put under stoppages of pay until there made good the sum of £2-0-1 being cost of apprehension

(Sgd) ..... Judge-Advocate, if any. 28 Jul HH Date awarded. (Sgd) J.M. Bowman Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding of the Court but commute the sentence awarded to undergo detention for 175 days and to be put under stoppages of pay until there be made good the sum of £2-0-1 being cost of apprehension and I confirm the sentence as so commuted

(1. AA 57A. Delete if not used.)

(Sgd) R Stewart Brigadier
Commander "D" Group
Date 28 July 44 Commanding Base Reinforcement Units C.A.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-216 Pte. ENGLAND, A.B.	28 July 1944 (3 CIRU Pt II D.O. no. 177 dated 28 Jul 44)	(W.G. Moore) Lieut. A/Adjt. 3 Cdo Inf Rft Unit.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT C.H.Q. IN AA (60) SSS-137

CPA80 (To face of AFA3) 40/P&S/1608 (2004)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Col A.S. Pearson, OBE, ED Comd "D" Gp, CRU dated 28 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 216	Pte	Allen, Bruce	ENGLAND	CIC 3 CIRU

PROCEEDINGS REVIEWED 8 Aug 44 R Middleton Capt. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) 3 C.I.R.U. on (date(s)) 28 Jul HH

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns' Refs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 11(A). 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily for the CO(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NA as interpreter? Ans NA
The Interpreter is sworn.(1) Do you object to NA as shorthand writer? Ans NA
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.M. Bowman	HQ 8th Hqrs 3 CIRU
Member	Capt	R.J. Taggart	C.I.C. 3 CIRU
Member	Lieut	W.F. Lee	R.H.L.I. 3 CIRU
Judge-Advocate	—	—	—
Prosecutor	Lieut	G.H. Jones	R.Regt.C. 3 CIRU
Defending Offr	Lieut	J.G. Hayes	Q.O.R. 3 CI.RU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (1)

(1. RP 26, 27, 109, 111. Use of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Vol p 3.)

A8. The accused B 216 Pte Allen Bruce England before arraignment makes(s) (no) (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused chose (did) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Band E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 80, 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p.* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO .(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on NH charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on NA charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read out to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Argument on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E3 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 7. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex J and Ex K respectively.(3)
(1. *AFB* 255 *or AFB* 296. 2. *AFB* 6. 3. *RP* 46, *KR Can* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans In mitigation .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 360. *One sentence only, comprised of the punishment or punishments said down in AA* 47, 48 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Queensas* 807 809, 2323, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 68(7), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ex. "A"

CHARGE SHEET

The accused Number B.216 Private Allen Bruce ENGLAND, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Army Act
Sec 15(c)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

while undergoing field punishment did absent himself without leave from 3 Canadian Infantry Reinforcement Unit from 1745 hours on the 31st day of May, 1944, until arrested at High Wycombe at 2100 hours on the 22nd day of July 1944, thereby incurring cost of return to Unit in the amount of $2.0.1.

Total time absent: 52 days, 3 hours and 15 minutes.

A.B. Noble,
(A.B. Noble) Lt.-Col
Comdr
3 Cdn Inf Rft Unit

In the Field
27th day of July
1944.

To be tried by Field General Court Martial.

A.S. Pearson
(A.S. Pearson) Colonel
Commander
"D" Group, Cdn. Rft. Units
Convening Officer

In the Field
28 Jul 44

JMB

Ex. 'B'

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3)
13/FAS/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B.216	Pte		Allen, Bruce	ENGLAND	CIC 3 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 Jul 44 endorsed by me, "~~or by an offr of my staff for me~~," To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J.M. Bowman (Must be named. RP 106.)	(48 Highrs)3 CIRU (Unit.)

MEMBERS.

A Captain	to be detailed by C.O.	3 CIRU
A Lieutenant (Rank.)	to be detailed by C.O. (Named or detailed. RP 106.)	3 CIRU (Unit.)

WAITING MEMBER.

A Lieutenant (Rank.)	to be detailed by C.O. (Named or detailed, if any. RP 106.)	3 CIRU (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Date 28 Jul 44

(Signed personally. RP 105 fn 2.)

Colonel
(Rank.)

Commanding "D" Group, Cdn. Rft. Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ex. C.

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Medical Officers Certificate
K.R. (Can) ars 557.

I certify that I have this morning examined No. B.216 Pte. England, A.B.
Name & Rank
of # 3 C.I.R.U. and in my opinion he is fit to undergo trial
~~unfit~~
by Court Martial.

Station # 3 C.I.R.U.

Date 28 July 44

Medical Officer
3 Cdn. Inf. Reinf. Unit.

"Ex. L"

Field General Court-Martial

B 216 - Pte. England, A.B.

Defending Officer's Plea of Mitigation

Sir:- This is a plea for leniency in the case of the accused, Pte. England.

He is 22 years of age, and has over 3 years service with the Active Army. He enlisted with the 2nd/10th Dragoons, (R.C.) in July 1940, and in April 1941, he joined the Royal Canadian Dragoons (R.C.). He came overseas with this regiment in Nov. 1941., and in July 1943, he asked for a transfer to the Manitoba Dragoons, another armoured regt. Instead, England was sent to #4 C.I.R.U., where he asked repeatedly to be sent on draft to a field regt, or returned to his armoured corps. However, he was a qualified Driver Mechanic in receipt of trades pay, and was not accepted for draft, though he offered to relinquish his trade.

In May 1944, his category was lowered and he is now B 2 S 3. In the same month, he was sent to #3 C.I.R.U., where he saw the D.P.D. in an effort to either get back to the R.C.D. or to have his category raised so he might be put on a draft for C.M.F. or any field regt. here.

Finally, last month, the accused went absent without leave.

In view of England's service, sir, I ask leniency in his case.

Thank you.

J. Haynes, Lt.,
3 C.I.R.U.

JHB

Ex. 'D'

SUMMARY OF EVIDENCE

In the case of Number B216 Private Allen Bruce ENGLAND, Canadian Infantry Corps on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath

---

FIRST WITNESS for the Prosecution

Lieut J. H. Galloway, Canadian Infantry Corps, Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am Lieut J. H. Galloway, Canadian Infantry Corps, employed as Assistant Records Officer, 3 Cdn Inf Rft Unit. I produce a certified true extract of 3 Cdn Inf Rft Unit Daily Order Part II Number 126 dated 2 Jun 44, showing the accused, whom I now recognize, as being absent without leave from 1745 hours the 31st day of May 1944. This document purporting to be signed by Capt W. E. Thorne for Capt Thomas E Rogers, Adjt 3 Cdn Inf Rft Unit, is marked Exhibit "A". I also produce certificate in accordance with the Army Act, Section 163 (1) (m) showing the accused, whom I now recognize, as being arrested at High Wycombe at 2100 hours on the 22nd day of July 1944. This document purporting to be signed by Inspector C.A. Smith, Offr i/c High Wycombe Borough Police Station, is marked Exhibit "B". I also produce two Expense Vouchers relating to the accused, whom I now recognize, one dated 24 Jul 44 in the amount of £0.6.3, and one dated 27 Jul 44 in the amount of £1.13.10. Total cost of return to Unit £2.0.1. These documents purporting to be signed by Lieut R.E. Birch, Admn Offr, DPMs Br CMHQ are marked Exhibit "C" and "D" respectively. I also produce certified true extract of 3 Cdn Inf Rft Unit Daily Order Part II Number 123 dated the 27th May 1944 showing the accused, whom I now recognize, as having been awarded fourteen days field punishment on the 22nd day of May 1944. This document purporting to be signed by Capt W. E. Thorne for Capt Thomas E Rogers, Adjt 3 Cdn Inf Rft Unit is marked Exhibit "E"..

(J. H. Galloway) Lieut.

The accused declines to cross-examine this witness.

The accused having been warned according to Rules of Procedure 4(E) reserves his defence.

I certify that the foregoing Summary of Evidence consisting of One Page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

(Thomas E Rogers) Capt.
Officer detailed to take Summary of Evidence.

In the Field
27th day of July
1944.

KHB

Ex. "D" (1)

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence together with list of names and addresses of witnesses taken at Nawton, Yorks, on the 27th day of July 1944, preliminary to my Field General Court Martial.

I further acknowledge that I have been served with a true copy of the Charge under which I am being brought to Court Martial.

B216 Pte England A.B
(B.216 Pte A. B. ENGLAND)

Dated at Nawton, Yorks,
this 27th day of July 1944

I hereby request that the Convening Officer appoint an Officer to represent me at my Trial.

I desire the services of Lt g g w Haynes - A.O.R.H.C 3 C I R U
if he is available.

B216 Pte England A.B
(Pte A. B. ENGLAND)

Dated at Nawton, Yorks,
27th day of July 1944.

JAB

Ex. 'E'

Last Order #127
1/1 Jun 44

3 CANADIAN INFANTRY REINFORCEMENT UNIT
D A I L Y O R D E R S P A R T II
ISSUED BY
COLONEL A.B. PEARSON, O.B.E., E.D.
COMMANDER

No. 128
2 Jun 44

Exhibit "A"

13. ABSENCE WITHOUT LEAVE

(a) The u/m are absent without leave from times shown:

D.216 Pte England, A.B. 1745 hours 31 May 1944

(sgd) Capt W. E. Thorne
for Thomas E Rogers, Capt & Adjt
3 Cdn Inf Rft Unit

CERTIFIED TRUE EXTRACT OF ORIGINAL DOCUMENT IN MY POSSESSION.

(Thomas E Rogers) Capt & Adjt
Officer detailed to take Summary of Evidence

27 Jul 1944.

JHB

Ex. F.

Last Order #122
d/26 May 44

3 CANADIAN INFANTRY REINFORCEMENT UNIT
D A I L Y O R D E R S P A R T II
issued by
Colonel A.S. Pearson, O.B.E., E.D.
COMMANDER

No. 123
27 May 44

Exhibit E

8. PUNISHMENTS

(a) B.216 Pte England, A.B. (CIC)

AA 15(1) AWL from 0800 hrs 16 May 44 to 2000 hrs 17 May 44 (Absent 1 day 12 hours)
Awarded 14 days Field Punishment on 22 May 44.
Forfeits 2 days pay FR&I 149 (1)(a).
Forfeits 14 days pay FR&I 149(1)(b).
TOTAL FORFEITURE 16 days pay.

(sgd) Capt W. E. Thorne
for Thomas E Rogers, Capt & Adjt
3 Cdn Inf Rft Unit.

CERTIFIED TRUE EXTRACT OF ORIGINAL DOCUMENT IN MY POSSESSION.

(Thomas E Rogers) Capt.
Offr detailed to take Summary of Evidence.

27 Jul 44.

Ex 'G'.

Exhibit "B"

ARMY ACT Section 163(1) (m)

I CERTIFY THAT THE PERSON WHOSE DESCRIPTION IS GIVEN BELOW WAS ARRESTED AT HIGH WYCOMBE AT 21.00 hrs. ON THE 22nd JULY 1944, HE DID NOT SURRENDER HIMSELF BUT STATED THAT HE HAD ARRANGED TO TRAVEL TO LONDON TO SURRENDER TO THE CANADIAN PROVOST COMMAND.

Registered Particulars of SOLDIER.

No..... B.216.
Rank..... Pte.
Name..... ENGLAND. A.B.
Unit..... No.3., Canadian Infantry Reinforcement Unit.

Description.

Age..... 22 years.
Height..... 5ft. 11in.
Complexion... Freckled.
Hair..... Ginger.
Eyes..... Blue.
Marks..... Cut scar base right palm.

21 JUL 1944 HIGH WYCOMBE

Signature of Officer in Charge of Police Station where above-named was taken or placed in custody or arrest or surrender.

W S Smith Inspector.

Officer in charge of High Wycombe Borough Police Station.

Ex. H

Exhibit "C"

Expense Voucher Re—: Ref: KR & O (Can) 539

Reg No. B-216 Rank Pte Name England, A.B. Unit 3 C I R U

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from High Wycombe

Date	Particulars	Amount		
24 July 44	Escorts return fare from LONDON To High Wycombe		4	2
	Prisoners single fare to LONDON From High Wycombe		2	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		6	3

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

J.H.B.

J.E. Birch LIEUT.

Officer Issuing Railway Warrant and Expense money

R. E. BIRCH,
ADMIN. OFFICER—D.P.M's BR.
C. M. H. Q.

No. 6 Area Provost Company, Canadian Provost Corps

CMHQ 1000/55
40-P-55/4963/5207

Ex. 1.

Exhibit "D"

Expense Voucher Re—: Ref: KR & O (Can) 539

Reg No. B216 Rank Pte Name England, A. B Unit 3 C I R U

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (2 persons)	Amount £	s	d
27 July, 14	Escorts return fare from LONDON To Helmsley		16	11
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Helmsley		16	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	1	13	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W. E. Birch 2-0-1

LIEUT.

R. E. BIRCH.
ADMIN. OFFICER—D.P.M's BR.
C. M. H. Q.

Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

CMHQ 100/55
40 PADS/6530/55

Ex. 'J'

M.F.B. 388
22M—5-41 (372-S)
H.Q. 1772-30-626
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B 216	PRIVATE	ENGLAND A.B.	C.I.C. 3 C.I.R.U.

1. The following is a fair and true summary of the entries in the Field Service and ~~Regimental and Squadron, Halgary~~ General Conduct sheets ~~or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Appr.~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(1)	4 times	A.A. 9(2)	1 times
For		times	A.A. 10(4)	1 times
For		times	A.A. 15(1)	7 times
For		times	A.A. 19	2 times
~~Number of instances of gallantry or distinguished conduct~~			A.A. 40	1

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted.~~

Previous convictions of the accused by a court-martial ~~or a civil court~~ ~~Air Force Act.~~ of summary awards under Section 47 of the Army Act ~~A.F. Act 96~~ and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ... beginning on the ... day of ...~~

4. The accused has been in confinement awaiting trial on the present charges, for —— days in civil custody, and 6 days in ~~Air Force~~ military custody, making a total of 6 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service as ~~attestation paper is~~ 22 yrs., 7 months,

6. The date of his ~~commission~~ specified in his record of service as attestation ~~attestation paper~~ 11 Apr 41

7. The service which the accused is allowed to reckon towards discharge is 3 years,

8. The accused is entitled to reckon ... service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to an air force decoration, or air force pension~~ (or is in ~~military~~ ~~military~~ possession of or entitled to). State any ~~additional~~ decoration or reward. C.V.S.M. and Clasp.

~~10. If the accused is a warrant officer.—The accused before he was made a warrant officer held~~ ~~Air Force~~ ~~the regimental rank of ...~~

JHD

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit dated ..... and in his regiment (or corps), the rank of ..... dated .....

~~12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.~~

~~Date of promotion.~~

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number B 216 Rank PRIVATE Unit Name ENGLAND A.B. of 3 Cdn. Inf. Rft Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	9 Mar 44 Field U.K.	AA 15(1) AWL from 2200 hrs 30 Jan 44 to 1030 hrs 3 Mar 44 (32 days 12 hrs 30 mins)	Awarded 90 days Det'n and placed under Stoppages of pay to the amount of £0/7/11 to recover the cost of Apprehension Finding and Sentence conf'd by Brig. G. Grancoeur, Commander, D.G.H.Q., C.R.U. on 10 Mar 44.	Released from the Det'n Bks., H. Downs, on 9 May 44 sentence having expired. Remission earned under rules for Det'n Bks. and Military Prisons 28 days. Commands Initials W.O.D.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

E. L. Galloway Lieut.
Asst Judge Advocate
3 Can Inf Bde Gp

Ex. 'K'

No. B 216 Name ENGLAND A.B. Sqn, Battery, or Company | Corps CIC | Date of enlistment 11-4-41 GC Badges | Service or Proficiency Pay NA | 3/17 MFM 6 (AFB 122) 40/P&S/106 (5418)

Date of last entry in Company Conduct Sheet 28-6-42 | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature OC Company, etc G.P. Harrison Lieut. R.C.R. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		TPR	NIL	Sheet No. 1 Destroyed 11-10-41	(Signed: G.P. Harrison Lieut., "A" Sqn RCR)				
Camp Borden Field	31-10-42	TPR		AA 15(1) AWL from 2200 hrs 31-10-42 to 2315 hrs 31-10-42	L/Cpl Balsdon L Sgt McKay BG	14 days CB	2-11-42	J.F.Bingham Lt.Col. Comdr ACR (RCD)	
Field	12-11-42	TPR		AA 10(4) Breaking out of barracks while under open arrest.	Sgt Hayes F Tpr Houghton VJ L/Cpl Boyd GD	14 days FP	20-11-42	Major J.A.I Roberts (C.R.B.)	Forfeits 14 days pay FR&I 149(1)(b)
Field	12-11-42	TPR	1	AA 19 WOAS Was Drunk	Documentary	Admonished	20-3-42	J.F.Bingham Lt. Col.	
Field	18-1-43	TPR		AA 15(1) AWL from 2230 hrs 18/1/43 to 0600 hrs 19 Jan 43 (7 hrs 30 minutes)	Cpl Lewis Cpl MacQuarrie Cpl Knightspay	7 days CB and forf 4 days FR&I 149(1)(b)	20-1-43	J.F.Bingham Lt.Col.	Forfeits 1 days pay FR&I 149(1)(b)

(PTO)

Ex. K

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13/2/43	TPR		AA 15(1) AWL from 1800 hrs 13/2/43 to 2230 hrs 13/2/43 (4 hrs 30 mins)	Cpl Cumming Sgt Snape	Admonished	15-2-43	FCR Black Major	Forfeits 1 day pay FR&I 149 (1)(a).
Field	25/3/43	TPR	2	AA 19 WOAS Drunkenness, while on leave, was drunk.	Documentary Evidence.	7 days C.B.	3-4-43	FA Roberts Capt.	
Field	1/5/43	TPR		1. AA 9(2) WOAS disobeying a lawful comd when ordered to report to guardroom failed to do so. 2.AA 40 Conduct etc appeared in a public place improperly dressed	Sgt Zaberganiets L/Cpl MacBride	24 days F.P.	4-5-43	JF Bingham Lt.Col.	Forfeits 24 days pay FR&I 149(1)(b).
Field	22/6/43	TPR		AA 15(1) AWL from 1330 hrs 22-6-43 to 1340 hrs 22-6-43 (10 mins)	Cpl Walker J Sgt Penman JG	14 days CB	23-6-43	JF Bingham Lt.Col.	
Field	30-11-43	PTE		AA 15(1) AWL from 2000 hrs 30-11-43 to 2200 hrs 30-11-43(Total absence--2 hours)	Sgt Beaumer Cpl Jones H. Documentary	3 days pay	1-12-43	Lt.Col.R.J. McPherson	Forfeits 1 days pay FR&I 149(1) (a).
Field	6-1-44	PTE		AA 15(1) AWL from 2359 hrs 5/1/44 to 2200 hrs 6/1/44 (21 hrs 59 mins)	Cpl Hughes L.	3 days loss of pay.	7-1-44	Lt.Col.RJ McPherson	
Field	30-1-44	PTE		AA 15(1) AWL 32 days 12 hrs 30 mins.		90 days Det'n	9-3-44	FGCM (Initialed-not legib.	

Ex. K.

No. B 216 Name ENGLAND A.B. Sqn, Battery, or Company Corps CIC Date of enlistment 11-4-41 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/136 (5418)

Date of last entry in Company Conduct Sheet 28-6-43 No. and date of last drunk 25 Mar 43 Period not reckoning towards freedom from extra fine Sheet No 2. Signature OC Company, etc WMC Dale Major. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9/5/44	PTE		RELEASED FROM THE DETENTION BARRACK H. DOWN 9 MAY 44 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER "RULES FOR DETENTION BARRACKS AND MILITARY PRISONS" 28 DAYS. COMMANDANTS INITIALS: W.O.D.					
Field	16-5-44	PTE		AA 15(1) AWL from 0800 hrs 16-5-44 to 2000 hrs 17-5-44 (1 day 12 hrs)	Documentary	14 days FP	22-5-44	Col A.S. Pearson.	Forf 2 days pay 149(1)(a) 14 days pay 149(1)(b).
Field	6-7-44			Certified true copy of original MFM 6.					

(W.E. THORNE) CAPT.,
Records Officer,
3 Cdn Inf Aft Unit.

/whn

(PTO)

TTT-45.

Ste. England, L.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 75011 PTE. LEONARD RAYMOND ENGLAND, 2Bn. 1CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ KRO. beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of ninety (90) days.

(Sgd) ~~Judge Advocate, if any~~ KRO. Date awarded. JULY 4th 1944 (Sgd) K.W. Haldenby President. (RP 45, 90)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 758-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 373. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) Col

(1. AA 57A. Delete if not used.)

(Sgd) K.W. Haldenby Brig

Date 4 July 44 Commanding COMMANDER 1 CDN BASE REPT GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K.75011 Pte England. Leonard Raymond	6 July 44	R.W. Smith Lt Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160A 7 7 7 45

FIELD GENERAL COURT-MARTIAL

CPAGE (In lieu of AFA81 and B/F & S/1608 (4038))

4/38B

Convened by Order of Brig E.W. HALDENBY Comd 1 C.B.R.Bde. dated JULY 1ST 1944

JAG BRANCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and his appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K75011	PTE.	LEONARD RAYMOND	ENGLAND	2 Bn 1CBRD

PROCEEDINGS REVIEWED 8 Jul 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

JCHC

PROCEEDINGS OF TRIAL.

Held in the Field (country) ITALY on (date) KRO JULY 4th 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn HQs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 118, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is KRO amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 1. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is KRO brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is KRO fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (1)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~be interpreted by~~ as interpreter? Ans ~~The Interpreter is sworn.~~ (1) Do you object to ~~be shorthand written by~~ as shorthand writer? Ans ~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NIL (2)

(1. RP 110. 2. If no objection, waiting member returned (RP 60(B)). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and waiting Member, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	K.E. SMITH (RCA)	8 Bn. 2 C.B.R.D.
Member	CAPT.	R.E. NEELANDS	7 Bn. 2 CBRD
Member	LIEUT.	A.L. ROBERTSON	2 Can. Re-All Centre
~~Judge Advocate~~ KRO			
Prosecutor	LIEUT.	J.J. MURPHY	2 Bn 1 C.B.R.D.
Defending Offr	LIEUT	D.E. JONES.	2 Bn 1 C.B.R.D.

Questions by President: Is the Prosecutor a lawyer? Ans NIL Is the Defending Offr a lawyer? Ans NIL (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 32.)

A8. The accused KRO before arraignment makes(s) (no) objection.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is KRO arraigned KRO on all charges in the charge sheet.(1) The accused does KRO not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witness from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do *not* understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement(1) ~~The Court decides (not) to advise accused to change his (Their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed; and he (they) ~~ ~~disagree(s) to his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~was~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D see p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(B)(i).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds (by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 90(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath by you may be disregarded or given such weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4. 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service and as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex D. respectively.(2)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 7.*)

E3. President to accused: Do you wish to address the Court on the Statement of Service and Conduct Sheet(s) and in mitigation of punishment?(1) Ans Yes.
(*1. RP 37(C), 46(D). 2. Addresses, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything born or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. of any~~.
(*1. When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges or all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 98, 118, 119(A), KR Can 308, 330, 563-564. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K-75011 Pte Leonard Raymond ENGLAND, Seaforth Highlanders of Canada, presently on strength 2 Canadian Base Reinforcement Battalion, 1 C.B.R.D., a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, in Italy, absented himself without leave from 2 Cdn Base Rft Bn, 1 C.B.R.D., from 0800 hours 5 June 1944 until apprehended in Naples, Italy, at 1000 hours 20 June 1944. (Total absence - 15 days, 2 hours).

(R. W. LAKE) Lt.-Col.,
Commanding,
2 Cdn Base Rft Bn,
1 C.B.R.D., Cdn Army, C.M.F.

In the Field
27th June 1944.

To be tried by Field General Court Martial

In the Field
1 July 44

(E.W. Haldenby) Brigadier
Commander
1 Cdn Base Rft Group

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-75011	Pte		Leonard Raymond,	ENGLAND	2 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 July 44 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.E. SMITH	6 Bn 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R.E. MEELANDS	7 Bn 2 CBRD
Lieut	A.L. ROBERTSON	2 Cdn Reallocation Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by OC 2 Cdn Reallocation Centre	

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy
(Country.)

(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 1 July 44

Commanding 1 Cdn Base Rft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAAD (To Dirs of AFAD) 30-9 & 6-1947 (600))

(See overleaf for oaths and notes for use on trial.)

K Edmonton may 8
Dies

This is to certify that No. 57511 PTE ENGLAND L R
2 Cdn Base Rft Bn. is ..... to undergo Trial by
Court Martial.

4 July 1944

.....
Capt. & M.C.
2 Cdn Base Rft. Bn.

Plea of mitigation by the Defence in the
Case of Pte 75011 Pte England L.R.

Pte England is now on his first court
martial. He landed in Sicily with his
battalion and fought right through to end of
the Sicilian campaign. when he got
malaria and was evacuated to hospital
the point I want to bring out here is
~~the only crime~~ crime in this theatre was during
his stay in the holding unit after having
malaria. Pte England is rather high strung
but thought he ~~could stay the infantry~~
could stand infantry work. Now he has
found he can't. he feels rather discouraged
as it is a hard thing to explain without the
embarassment of having people think you
are afraid. He was posted on staff at
convalescent depot in order to give him
chance a rest. He would like very much
to get into less nerve ~~racking~~ service but
has not been able to do so owing to the
great demand for infantry. He has three
sons and two brothers of school age and
father has taken sick lately and is now
receiving compensation for injury, which also
weighs on his mind. Because of the foregoing
circumstances I ~~do~~ trust that the court will
deal most leniently with this man. therefore
enabling him to become an efficient soldier
at the earliest moment possible. The defence rests

SUMMARY of EVIDENCE

Ex "A"

Summary of Evidence in the case of K-75011 Pte ENGLAND, Leonard, Ramond, of the Seaforth Highlanders of Canada, on strength of 2 Canadian Base Reinforcement Battalion, 1 C.B.R.D., a soldier of the Canadian Army Overseas.

By direction of The Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the PROSECUTION

Capt R. L. Griffin, Adjutant, 2 Cdn Base Rft Bn, 1 C.B.R.D., having been duly sworn, states:

"I am Capt R. L. Griffin, Adjutant, 2 Cdn Base Rft Bn, 1 C.B.R.D., I produce certificate of arrest certifying that K-75011 Pte England, L. R. was arrested at Naples at 1000 hrs, 20 June 1944. The certificate relates to the accused herein."

..... Capt
(R. L. GRIFFIN)

The accused declines to cross examine this witness

The certificate produced is marked Exhibit "R".

..... Capt
(F. T. EGENER) Officer detailed to take Summary

SECOND WITNESS for the PROSECUTION

M-11601 Sgt Hambrook, W. H., Seaforth Highlanders of Canada, C.A.(O), C.M.P.

"I, A/Capt F. T. Egener, the officer taking the Summary of Evidence, certify that in my opinion the attendance of this witness cannot be readily procured. A written statement of his evidence purporting to be signed by him has been read to the accused and is included in this summary (attached, marked Exhibit "M"). The accused did not demand the attendance of the witness for cross examination although given the opportunity to so demand."

..... Capt
(F. T. EGENER) Officer detailed to take Summary

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give any evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given as evidence."

The accused declines to make any statement or give evidence on oath.

Certified that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(to page two)

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused this 27th day of June 1944.

F. T. Egener

..... Capt
(F. T. EGENER) Officer detailed to take Summary

Signed in the Field, Italy,
this 27th day of June, 1944.

Exhibit R
Typewritten Copy

CERTIFICATE OF ARREST.

Certificate in accordance with the ARMY Act Section 155 (1) (ii).

I, _____ certify that :-

No K. 75011. Rank PTE. Name ENGLAND. L. R.
Rad Pte.
Unit SEAFORTH HIGHLANDERS, OF CANADA was arrested at NAPLES. ITALY

at 1000 hours on the 20TH. JUNE. 1944

Signature of F.M., APM, or other officer into whose custody the above named was taken on arrest.

[signature]
Commanding,
510 Prd. A/Bde. Pro. Coy.

Date 20 June. 1944.

Exhibit M
Typewritten Copy

STATEMENT IN CASE OF K.75011 PTE ENGLAND, L.R.

On morning parade, 0600 hours, 5 June 44, I called the roll and found K.75011 Pte England, L.R. to be absent from parade and is still absent to the best of my knowledge.

[signature] Sgt
M.11601 Sgt HANCOCK, W.H.

WITNESS

Ex C" . . . . . Prisoner

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
K75011	Pte.	ENGLAND, L.R.	2 Cdn Base Rft. Bn 1 CBRD

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets[of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement, but not tendered to the prisoner.

[See para. 677, K.R., 1926.

* The numbers inserted should agree with the number of entries in the conduct sheets, preference being given to the most recent entries, and to any recognised special acts of gallantry or distinguished conduct.

Interlineate.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	AA Sec 15(1) AWL one time X	three times.
For	AA Sec 40 Cond Prej. one time X	two times.
For	AA Sec 15(2)Absent from Pde nil time X	two times.
N/A. For	XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of June 1944

R L Griffith Capt. Adjutant

2 Bn I Cdn Base Reinforcement Depot

In the rank of _____ years, _____ Date of Promotion

In the rank of _____ years, _____

In the rank of _____ years, _____

(Insert particulars of any matter in any of the above paragraphs which cannot be stated from the regimental books the paragraph must be struck through, except in the case of a trial by field general court-martial the information may be obtained from such courts as are available and the paragraph completed accordingly.)

SCS

MFM 6
(AFB 122)
40/PAS/136 (3439)

No. XI District Depot (Vancouver) A.F.

N.K75011 Name ENGLAND Pte. Leonard Roy

Sqn, Battery, or Company | Corps | Date of enlistment 25.2.43 | GC Badge | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Kingston Ontario	14.9.42	Pte		AWL from 0615 hrs 14.9.42 to 0900 hrs 14.9.42. Absent 2 hrs 45 min)	Documentary	3 days C.B.	14.9.42	Capt.H.L.Hall	
Kingston Ontario	2.10.42	Pte.		Conduct to the prejudice of good order and military discipline	L/Cpl Penner I.	3 days C.B.	2.10.42	Capt.H.L.Hall	
Kingston Ontario	2.10.42	Pte.		Absent from a place of parade (Absent from Defaulters parade)	Documentary	3 days C.B.	3.10.42	Capt.H.L.Hall	
Calgary, Alberta	28.10.42	Pte		1. Failing to appear at the place of parade appointed by his Superior Officer. 2. AWL 0915 hrs 28.10.42 till 1030 hrs 28.10.42 (abs.1hr.15mins)	L/Cpl Postgate, W. Documentary CSM N.A. Jorgensen Order No 294/6.11.42 "RM"	5 days C.B.	28.10.42	Lt. W.H.J. Stutt	
A.16 CITC		CA	6.11.42	GRANTED EMB. LEAVE & T.W. A244875 Pt.II CERTIFIED NO OTHER ENTRIES			10.11.42		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7.2.44	Pte		(1) AA Sec 15(1) AWL 22 days 20 hrs 14 min (2) AA Sec 40 Improperly dressed	Documentary	28 days detn 28 days pay	14.3.44	Maj.P.H. Stahelen	23 days Forf pay 149(2)(a)

Certified true copy from the regimental books in my custody

.....

2 Bn 1 Cdn Base Reinforcement Depot

LIST of WITNESSES
in the case of
K-75011 Pte England, L. R.

For the Prosecution:

(1) Capt H. L. Griffin, Adjutant, 2 Cdn Base Rft Bn, 1 C.B.R.D.

(2) M-11601 Sgt Hambrook, W. H., Seaforth of Canada, CA(O), CMF

For the Defence:

(1) N i l.

LIST of EXHIBITS
in the case of
K-75011 Pte England, L. R.

Exhibit "R" - Certificate of arrest of K-75011 Pte England, L.R.

Exhibit "M" - Written statement of evidence of M-11601 Sgt Hambrook, W. H.

I, K-75011 Pte England, L. R., 2 Cdn Base Rft Bn, 1 C.B.R.D., request that Lieut. Jones (RPCLI) (or) an officer be appointed to represent me at my trial by Court Martial.

Date 26 June 1944 (K-75011 Pte England, L. R.)

I certify that I have been given, gratis, a copy of the Charge Sheet, a copy of the Summary of Evidence, a copy of the List of Witnesses, and a copy of the List of Exhibits pertaining to my trial by Court Martial.

27th June 1944 (K-75011 Pte England, L. R.)

333-103 (Case #3)

PTE ENGLAND M.L.

See O-120 for 1st case
" V-147 " 2nd "

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY of AWL from 0800 hrs 27 Dec 43 until 2130 hrs 11 Jan 44.	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kis see RP 44 fn 6.)

beginning on (date) ——— (1)

~~At present~~ under sentence fm

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court : ~~To be to be shot~~

To undergo detention for 90 days

14 Jan 44 (Sgd) [signature] President. (RP 45, 50.)

Date awarded.

(Sgd) Judge-Advocate, if any.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

GHQ.

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is

confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) Gott Rockingham Maj-Gen

Date 14 Jan 43 A Commanding 4 Corps Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 574, 577.)

Accused. Date. Signature of Offr.

B67355 Pte England ML. 15 Jan 44 [signature] Capt & Adjt

ROYAL ARMY OF LAW

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

BBB-183

FIELD GENERAL COURT-MARTIAL

CP486 (To files of AFA3) 43/P & R/1608 (2004)

Convened by Order of LT COL J A C KINGHAM A/Comd 4 CORPS TROOPS BDE dated 13 JAN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 67355	PTE	MELVILLE LAWRENCE	ENGLAND	ML

PROCEEDINGS REVIEWED 16 Feb 44 [signature] Capt

PROCEEDINGS REVIEWED Date 13 Feb 44 [signature] Lt-Col AJAG

REVIEWING OFFICER, JAG BRANCH G.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 14 JAN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns. RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is subject amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is brought before the Court. At 1010 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 543(c). Delete, if not applicable.)

A5. ~~President to accused~~ : Do you object to an interpreter ? Ans

The Interpreter is sworn.(1) Do you object to a shorthand writer ? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT COL	G R B STANSMORE	RE
Member	CAPT	P S WESTHEADSTONE	RE
Member	CAPT	P M KAYES	ESSEX SCOT
Judge-Advocate			
Prosecutor	LT	J J MOULDER	R R & T C
Defending Offr	LT	D F MILLER	R A & T C

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 2.)

A8. The accused Pte England ML before arraignment makes(s) (no) plea.(1)

(1. If a special plea is made for separate trial as one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 71, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is arraigned separately on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See paras 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, deliver and separately see RP 71(C), and use separate copies of CF A8s to record proceedings. 3. When more than one Charge Sheet see RP 62 ; when several accused to be tried make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *paras* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 25(*B*); *for Forms* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by son of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the further, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 60(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*a*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 115(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
(1. *The President announces that the accused is found Not Guilty on all charges and is to be released forthwith. And that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.*)
(1. *AA* 54(2) (*a*), *RP* 45, (20)(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)
(1. *MFB* 253 *or AFB* 295. 2. *MFB* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 25(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*b*), *RP* (20)(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 22(*C*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 45, 118, 119(*A*), *KR Con* 308, 330, 563-564, *Overseas RO* 309, 2323, *MML p* 60, 737-738. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(7)(*B*), 66(7), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B67355 Pte. Melville Lansmark England, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, on active service, is charged with:

FIRST CHARGE
Sec 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, on 26 Dec 43, absented himself without leave from 2300 hrs 26 Dec 43 until reporting to Regtl. Guard Room 2130 hrs 11 Jan 44.

(Absent 15 days 22 hrs 30 mins)

In the Field,
12 Jan. 44

(A.M. Young)
Lieut-Colonel, Commanding
1 R. REGT. C., CANADIAN ARMY.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

Field
Jan 44.

(J.M. Rockingham) Lt-Col
A/Comd 4 CDN INF BDE

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PA3/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B67355	Private	Melville Lansmark	ENGLAND	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 13 Jan 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for the purpose of obtaining the service of such offr~~ JAR

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~Due regard to urgent active operations does not admit of delay to obtain the services of persons other than those named herein.~~ JAR

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~No one appointed as Judge Advocate under the Queen's Regulations.~~ JAR

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D.H.B. STINSON	RHLI

MEMBERS.

A Capt to be detailed by OC RHLI

A Capt to be detailed by OC Essex Scot

(Rank.)	(Named or detailed. RP 106.)	(Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt to be detailed by OC R. Regt. C.		

~~NO WAITING MEMBER~~ JAR

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Jas Rockingham (J.M. ROCKINGHAM) (Signed personally. RP 105 fn 2.)

Lt-Col (Rank.)

Date 13 Jan 44

A/ Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See enclosed fm/ oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. B 67353 Pte England J.P.
of Lt. Regt. Regt 7 is in a Good state of health,
and Physically fit to undergo Trial by Court martial.

J C Workman Capt
Medical Officer

Station In the Field

Date 17 January 1944

M. F. B. 246

1. B 3112 S A/L/COL LANG, R L having been duly sworn states as follows ①

On 26 Dec 43 while CO 3 RCAF called roll at 2300 hrs I found Plt England absent. I knew he had a pass so did not mark him AWOL as was on pass until 2359 hrs.

I got return from lunch orderly next day that ENGLAND was NOT present at 2359 hrs. I was on duty until 31 Dec. I did not see England at all during that time.

Cross exam

At 2359 hrs, you did NOT call roll yourself

No

By court - I called roll at 0800 hrs 27 Dec 43 ENGLAND was NOT present.

2 066677 S/L LEONARD R having been duly sworn states as follows

On 11 Jan 44 I was S/L in charge of 3d on main gate at DEANE PK. At 2130 hrs Plt England came into 3d room and said "Hello Lloyd, I'm back." He was taken into custody, searched, and placed in cell. I reported to CO that Plt England had returned.

MOTION by LT HALL that accused - on basis, five days - was NOT voluntary because ENGLAND was under arrest by Sgt R S Smith S.C.C. motion disallowed.

Prosecution closed.

Motion for DSM Suit Depending Pft. No evidence of absence between 27 Dec & 4 Jan evidence of first absence NOT sufficient. This a criminal case, so onus on prosecutor. NOT sufficient evidence to charge

prima facie presumption that accused is NOT GUILTY.
Court closed for consideration of motion. D recalled.

~~Defence~~ MITIGATION FOR THE ACCUSED. D 67355 Pte Copland R.A. R.Regt
~~Leave to study evidence of the case.~~
1. Accused - enlisted in 1940. Has been with R CCS
from Sept 42 until Nov 42. Often times with R Regt C. Wife
and one child in Toronto. Wife Scotch ~~from Ireland~~.
Married in Port Glasgow, Scotland. Went to Canada June 43.
Have heard from her, ~~my~~ my mother, and father. Letters
all say she is running around with other men, that
she says I tried to cheat her, and that all she married
me for was a free trip to Canada. I have been trying
for leave in Canada. As a result of letters, I got a
complex to be alone. I was upset, and could not carry
on my duties as usual. I spoke to Pte Cpl, who referred me
to IT PATTERSON, the pl cmd. I also spoke to IT HEWER Y.
I showed them the letters.

My next duties were that I had been detailed check for RSM.
When I was posted to D Coy, and was to be a batman.
I had leave in Nov 43 and went to NOTTINGHAM, and
met a girl. I had already had letters. I got drunk
and was familiar with girl twice.

I got 7 days pass x mas morning. I went to HORNCASTLE
to friends. I met Lodge, the girl. She told me the
room to come looking for me - she was pregnant, and wanted
something done as she was a good girl and didn't want her
mother and father to find out. She wanted me to go to
Nottingham to see a doctor with her. I went, leaving Monday
27 Dec. I took her to a doctor in Nottingham.

Can't get tablets from doctor. They cost me 12/6. Doctor said could tell in about a week. After 6 - 8 days she was cured. When that happened, I came straight back to unit.

As a result of my report to pl concerning conditions and [illegible] I have changed my mind about her. People at home were just trying to make trouble.

Everything is rosy now, and I will be a good soldier.

Love to all

Cathy xxx now A.

2. Pt W.L. Patterson R Regt C. — Pte Ingland was in my pl in Nov - Dec last year. He spoke to me about trouble with his wife. He was nervous and upset. I spoke to Lt Young about it. Record showed me some letters. I asked my wife to back up.

3. Prosecutor — Sergeant

4. Defending Officer — statement in mitigation.

Old story. Before joined out that girl is pregnant gets squared off with wife and is happy. Then girl shows up and asks him to go to NOTTINGHAM to get this fixed up. When girl had miscarriage he came back.

Does not have too much regard to consent about but regards case on own merits — Did only what any decent man would do in going to NOTTINGHAM.

SUMMARY OF EVIDENCE IN THE CASE OF B67355 Pte. Melville Lansmark ENGLAND, 1 Bn THE ROYAL REGIMENT OF CANADA, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The CO directs that the evidence be taken on oath.

FIRST WITNESS for the prosecution: B37128 A/L/Cpl. LANG. R.L., sworn, states:

I was Coy Orderly Sgt for D Coy on 26 Dec. 43. I called the roll at 2300 hrs and found the accused to be absent from his quarters. The accused was on pass until 2359 hrs 26 Dec. 43, but turned his pass into the unit guardroom in the afternoon and therefore should have been in his quarters at the 2300 hrs roll call. I did not see the accused again until 12 Jan 44.

The accused declines to cross-examine.

R L Lang
B37128 A/L/Cpl. LANG. R.L.

SECOND WITNESS for the prosecution: B66677 Sgt. LEONARD. R., sworn, states:

On 11 Jan 44 I was Guard Commander in charge of the guard at the main gate of the camp. At 2130 hrs the accused reported into the guard room properly dressed and sober. He stated that he had been A.W.L. so I placed him in arrest, put him in the guard room and informed his Coy that he had returned.

The accused declines to cross-examine.

R E Leonard Sgt
B66677 Sgt. LEONARD. R.

The accused, having been duly cautioned in accordance with RP 4(E), says:

"I do not wish to make a statement."

M L England
B67355 Pte. ENGLAND. M.L.

"CERTIFIED THAT RP4 complied with.
In the Field,
12 Jan. 44

R H Paterson Capt
H.H. Paterson, Capt.
Officer detailed to take the Summary.

"I would like to have Lt. D.F.F. Hall defend me at my trial by Field General Court Martial if available and if not I do not wish a Defending Officer."

M.L. England

B67355 Pte. ENGLAND, M.L.

Lt. D.F.F. Hall will be available to defend B67355 Pte. England, M.L. at his trial by Field General Court Martial.

R.H. Paterson

(R.H. Paterson) Capt
Adjutent
1 R.REGT.C., CDN.ARMY

LIST OF WITNESSES FOR THE PROSECUTION

1. B37128 A/L/Cpl. LANG. R.L.
2. B66677 Sgt. LEONARD. R.

LIST OF WITNESSES FOR THE DEFENCE

Nil

LIST OF EXHIBITS

Nil

EXHIBIT 'A'

Substitute for AFB 296
or MFB 355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. B67355 Rank. Pte Name ENGLAND, Melville Lansmark Unit 1 R.Regt.C.

Age 23 Married or Single M No of Dependents 2 Wife & Daughter

Date of attestation 28 Feb 40

Number of days in close arrest awaiting trial 7

Civil ..... Military ..... Hospital ..... Total .....

Dates of appointments, promotions etc (if any). Nil

In the field
14 Jan 44
Date

Officer i/c Records
1 R. REGT. C.
Unit

Note: Certified true copy of MFM 6 must accompany this form.

Army Form B. 152

Form B 12 "B"

No. 3677?? Name England M L | Sqn., Batty. or Company | Corps C I C | Date of enlistment 28 Feb 40 | C.C. Badges | Date of Appointment | Substantive Rank | Present Rate of Pay 5 Feb 41/43

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra tire N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Date	Date of offence	Rank	Leave of Drunken appeal	Offence	Names of Witnesses	Punishment awarded	Date award'd or when beginning	By whom awarded	Remarks
	Original Sheet destroyed 23 Aug 40 Last Entry N/A Cases of circumstances N/A								
Field	27 Nov 40	Pte		AA Sec 9(2) Disobeying a Lawful Command	Cpl Harrison	7 days C.B.	28 Nov 40	A/C Carter Capt	
Field	26 May 41	"		AA Sec 40 Conduct to the prej of good order & military discp	Cpl Cox	14 days F.P.	28 May 41	Maj Cattle	Canc of 15 days pay
Field	31 May 41	"		A.A. 40		14 days F.P.	31 May 41		Canc 15 days pay
Field	30 Sept 41	"		AA 40 Did leave his rifle unattended while on truck picquet	Sgt Rutherford L/Cpl Cox	7 days C.B.	22 Dec 41	Capt Young R.A.	
Field	8 Jan 42			AA Sec 15(1)(a) A.W.I. 2400 hrs 8 Jan 42 to 1130 hrs 9 Jan 42 from P.L.	Sgt Murphy	7 days Pay	15 Jan 42 23 Jan 42	Major Young	forfeit 7 days pay
Field	15 Jan 42			AA Sec 15(2)(a) A.W.I.					
Field	23 Feb 42			A.A. 40 Room was found in a filthy condition, food & dirty mess tins left	L/Cpl McCann	3 days C.B.	14 Feb 42	Capt R.A. Young	

Place	Date of offence	Rank	Cases of previous offences	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16 Feb 42	Pte		AA Sec 15 AWL from 0700 hrs 16 Feb 42 to 1530 hrs 2 Dec 42	Sgt Smythe	3 days Pay	16 Feb 42	Lt Col Beckett	for 4 days
Field	2 Dec 42	"		AWL 16 Feb 42 till May to date of arrest			5 May 43	Lieutenant	under rule for 28 days
Field	28 May 43	"		AA (250) AWL from 2330 hrs 28 May 43 to 1100 hrs 29 Sept 43 (9 days 11 hrs)	Summary of Evidence	28 days detention	15 Sept 43	Lt Col Peters	Stop 1 day pay & Fine $
Field	7 Sept 43	"		99 (a) Leaving Camp without Authority Regt Police			15 Sept 43	Lt Col Peters	Stop 1 Day's pay & Fine $
Field	13 Sept 43	"		AA (186) AWL from 1530 hrs 13 Sept 43 to 2200 hrs 3 May 43 (6 days 11 hrs 30 mins)	Sgt Smythe	14 days FP	5 May 43	Lt Col	Forf 6 days pay
Field	2 June 43	"		AA (1) AWL from 0600 hrs 2 June 43 to 1900 hrs 3 June 43 (1 day 13 hrs)	Sgt Perry	6 days pay	4 June 43	Lt Col	Forf 1 days pay
Field	3 Dec 43	"		AA (1) AWL from 0600 hrs 3 Dec 43 to 1900 hrs 3 Dec 43 (1 day 13 hrs)	Sgt Smythe & Sgt Perry	6 days FP	6 Dec 43	Lt Col	Forf 1 days pay

Corrected true copy

[illegible] Capt. & Adjt
ROYAL REGIMENT OF CANADA

S-106.

Pte. England M L

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B 67355 Pte ENGLAND Melville Lansmark

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of ninety (90) days.

(Sgd) ..... Judge-Advocate, if any. 6 SEP/45 Date awarded. ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that~~ the accused be not committed to prison or detention ~~barracks~~ until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 7 Sep 45 (Sgd) ..... Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B67355 Pte England M.L.	Promulgated 8 Sep 45 as published in D.O. 82 dated 10 Sep 45.	Hambly Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AD 10 5-5-106
RECEIVED 18 SEP 1945 CMHQ

FIELD GENERAL COURT-MARTIAL

CFAPS (In lieu of AFAA) 40/P & B/1698 (E144) 4/38B

Convened by Order of Brig E R Suttie, DSO, ED Comd A Gp Cdn Rft Units dated 5 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 67355	Pte	Melville Lansmark	ENGLAND	6 Cdn Repat Dep

PROCEEDINGS REVIEWED
16 Sept 45
for Reviewing Offr.
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 6 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation or procedure will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 485, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

~~The Interpreter is sworn.~~(1) Do you object to C.S.M. [illegible] as shorthand writer ? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc :

President	LT-COL	D L REDMAN	HQ CRU
Member	CAPT	D A KERGAN	7 CDN REPAT DEP
Member	LIEUT	N P HAGER	7 CDN REPAT DEP
~~Judge-Advocate~~			
Prosecutor	LIEUT	J J BROSSEAU	6 CDN REPAT DEP
Defending Offr	LIEUT	R E HARRIS	6 CDN REPAT DEP

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If fmn a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 36, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and see separate copies of CF 485 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 35(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(1)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans NO SIR (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3. *MAML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1)~~ ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s).~~ The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Forms C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any pleas standing as Guilty, Court will advise accused to change such pleas and, if changed to Not Guilty, try such charge(s) by vote of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using ~~paras~~ D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and recording an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E ~~use p 3~~.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*C*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 102(*B*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Forms B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans Call them - with NOTE - ATT

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Brief address NOTE - ATT (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(8), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *RP* 46. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MAML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 67355 Pte Melville Lansmark ENGLAND, "A" Wing No 6 Canadian Repatriation Depot, a soldier of the Canadian Army, Overseas placed on active service is charged with:

CHARGE
AA Sec 15(1)

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE.

in that he

in the field, did absent himself without leave from 0930 hrs 27 Jun 45 until he reported himself to the military police (British) at Birmingham, England at 0100 hrs 3 Aug 45.

TOTAL ABSENCE: 36 Days, 15 hrs, 30 mins.

(F R Matheson)Colonel
Comd, 6 Cdn Repat Depot

In the Field
4th day of September
1945

To be Tried by Field General Court Martial.

(E R Suttie) Brig
Comd
A Gp Cdn Mrt Units

In the Field
in England
5 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/B or A/Apptmt	Full Christian Names.	Surname.	Unit.
B 67355	Pte		Melville Lansmark	ENGLAND	6 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Sep 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 106(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

(a) I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

(c) I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	to be detailed by Comd 7 Cdn Repat Dep	
A Lt	to be detailed by Comd 7 Cdn Repat Dep	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 5 Sep 45

(Signed personally. RP 105 fn 2.) (Rank.)

(E R Suttie) Brig

Commanding A Gp Cdn Rft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (PARA 139 (2) OF AFAI 42-5 & 139 (1) AAI)

Medical Officer's Certificate
K.R.(Can), para 557

I certify that I have this morning examined No: R 47155
Pte Melville Lansmark ENGLAND of "A" Wing, 6 Cdn Repat Depot
and in my opinion, he is fit to undergo trial by Court Martial.

Station Aldershot, England

Date 6 Sep 45 (Sgd). [illegible] Surgeon Capt.
(Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3 para 27, d/6 Jan 42)

E-3

Plea of Mitigation

Pte England M.L.
No- B67355

The accused volunteered for service 28 Feb 40 and subsequently arriving in England 3 Nov 40. On 7 June 40 went with his regiment to Ireland where he served until 2 Oct. 44. And served with the regiment in Belgium throughout the campaign and then volunteered for the Pacific, and arrived in England in June 45. Saw service with his regiment during the Dieppe raid, one of his family was taken prisoner and recently repatriated. The accused however never got ashore. He served honorably in N.W.E. two members of the England family were killed in action. His father was R.S.M. of the Royal Regiment. His grand father Kings colour sergeant of the old Hussars. He comes from a ~~family~~ family of soldiers He has had difficulty in his marital life however He married in England in Oct. 1941 and a daughter was born in Feb. 43. His wife however since the marriage had been carrying on flirtations with other men. To safeguard the marriage he sent his wife and child to Canada in June 43. However conditions have not improved and he assumed he had not letting from his wife for 18 months. Other heartbreaks had cropped up. It may be given permission to quit from a letter written by the ~~accused~~ mother of the accused.

However on returning to England the accused met some of his buddies from his own Regiment and other friends he had made during his training in England and they went on a drinking bout. [illegible] of [illegible] and [illegible] on the 23rd [illegible] Pte England [illegible] that the soldier [illegible] his country to the best of his ability, be allowed to return as soon as possible to his mother, his wife and child and it is for that reason [illegible] ask the T.T.C.

TRIAL OF

B-67355 PTE ENGLAND M L --- 6 CDN REPAT DEPOT

CHARACTER WITNESS
~~FIRST WITNESS~~

Lieut RE HARRIS, 6 Cdn Repat Depot, sworn, states:-

last night I called at HQ CRU to see Colonel Anderson, formerly a CO of the accused, to ask if he would like to appear at this CM to give evidence for the accused. He informed me that he would be only too glad to appear before the Court to give evidence on behalf of the accused but that he was leaving immediately to catch a plane for Canada and recommended that in lieu of that I should ask Colonel Law of the RRC, who was the OC of the regiment while the accused served with it in France, Belgium and Germany, or Major Patterson who at present is stationed at Camberley. Colonel Anderson also said that while the accused was serving with the regiment his conduct was admirable and that it would be shown by his MTR 6 for that period. He also said that his 6 would show the difficulties the accused found himself as a result of his stay in the CRU depots. He also said that the accused when required was a very efficient soldier in carrying out his duties.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RR 63 (B).

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B 67355 Private Melville Lansmark ENGLAND, C I C, on the strength "A" Wing, No 6 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on oath:

FIRST WITNESS:

For the Prosecution

Lieut R Lortie C I C, on strength "A" Wing No 6 Canadian Repatriation Depot, having been duly sworn states:

I am Lieut R Lortie C I C, Asst-Adjt "A" Wing, No 6 Canadian Repatriation Depot. In the case of B 67355 Pte England M L, whom I now reconize I wish to produce as exhibit "A" a certified true copy of extract of daily Part II Orders No 22 d/ 3 Jul 45, showing the accused Absent Without Leave as of 0930 hrs 27 Jun 45. I also wish to produce as exhibit "B" a certified true copy of declaration of a court of Inquiry held on 3 Aug 45 also showing the accused Absent Without Leave as of 0930 hrs 27 Jun 45. I also produce as exhibit "C" a certificate of surrender made by 168 H Q Provost Coy, C M P at Birmingham England showing that the accused surrendered himself at 0100 hrs 3 Aug 45.

R. Lortie Lieut
(R. Lortie)Lieut

The accused declines to cross-examine the witness.

SECOND WITNESS:

For the Prosecution

I am Capt W S Watson Asst-Adm Offr, "C" Wing No 6 Canadian Repatriation Depot. I have no knowledge of B 67355 Pte England M L was granted 30 days leave.

W. S. Watson Capt
(W S Watson)Capt

The accused declines to cross-examine the witness.

THIRD WITNESS:

For the Prosecution

I B 163682 Cpl Short G W, was on duty at "B" Wing Guard Room, 7 Cdn Repat Depot, "Inf" from 1600 hrs 26 Jul 45 untill 2359 hrs 26 Jul 45. I state that I do not remember of receiving a pass from B 67355 Pte England M L.

Cpl. G. W. Short
(Cpl Short G W) B 163682

The accused declines to cross-examine the witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath:

I certify that the foregoing summary of evidence consisting of ONE page was taken down by me in the presence and hearing of the accused and that rules of procedure 4 (c), (d), (e) and (f) have been complied with

J.J. Brosseau
(JJ Brosseau)Lt
Officer detailed to take summary

IN THE FIELD
2 Sep 45

ETA

Exhibit 'A'

24 Aug 45

Extract of Daily Orders Part II No 22 d/3 Jul 45.

LAST ORDER
No 21
30 Jun 45

6 CANADIAN REPATRIATION DEPOT
DAILY ORDERS PART II

THIS ORDER
No 22
3 Jul 45.

13. ABSENT without leave

13-B A.W.L. from time shown

H.16115	L/CPL	BARINGCUTT	BA	(0930 29 Jun 45)
B.158987	PTE	BOWLER	D	(0930 30 Jun 45)
B.155202	PTE	COBURN	GR	(0930 30 Jun 45)
B.52517	PTE	CROOKS	N	(0930 27 Jun 45)
B.67355	PTE	ENGLAND	M L	(0920 27 Jun 45)
B.15900	PTE	SHOLER	C E	(0930 27 Jun 45)
B.157413	PTE	TENEYCK	H A	(0930 27 Jun 45)
A.311 45	PTE	TUCK	JOW	(2259 26 Jun 45)

Certified True Copy

for (J P Agar) Capt
Records Officer
No 6 Cdn Repat Depot
Officer having custody of original

24 Aug 45

Exhibit 'B'

RECORD of the Declaration of a Court of Inquiry assembled at In the field on the 3rd day of August 19 45, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B.67355, Pte ENGLAND, M.L.

DECLARATION

The Court declare that No. B.67355, Pte ENGLAND, M.L.

illegally absented himself without leave 0930 hrs at Aldershot on the 27th day of June, 1945., that he is still so absent, and that on the 27th June 1945 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
SEE APPX "A" ATTACHED			
100% Value	$44.86	Sterling £ 10-0-7½.	
75% Value	$33.65	Sterling £ 7-11-0	

Sgd JJP Bergeron Capt 6 Cdn Repat Depot — President

Sgd JP Manseau Lt 6 Cdn Repat Depot — Member

Signed at Aldershot

Sgd JLC Guerin Lt 6 Cdn Repat Depot — Member

this 3rd day of Aug 19 45

Signature of Commanding Officer Sgd F.M. Mitchell Lt-Col 6 Cdn Repat Depot

Certified true copy

M.F.D. 370
A.F.D. 118
RM—4-41 (TSC)
H.Q. 1771-19-637

CHARGE

Army Form B 252
(Section [illegible] Regulations)

Lieut.
Staff Lieut.
To H.Q. PROVOST COMPANY, C.M.P.

ROYAL REGT., OF CANADA ..... Regiment
NO. 6 REPAT. COMPANY. ..... Battery / Squadron / Troop or / Company
PTE. .....

CHARGE against No. B/67355 Rank .....

Name ENGLAND M.L.

Place ..... Date of Offence .....

OFFENCE .....

Names of Witnesses —

3709371. Cpl. HALL G. C.M.P.OTTAWA

4919963. Cpl. GILBERT R.C. " "

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

Adjutant.

P.T.O.

2536 W.W.P.(OTTAWA) 400,000 1/45 E.A.H. Ltd. 5467-45

Statement of **EVIDENCE** in the case of -

NO. B/67355. PTE. ENGLAND M.L.
ROYAL REGIMENT OF CANADA,
NO. 6. REPATRIATION CAMP.
ALDERSHOT

REMARKS

MED(B)/AFB/AD/1/1943.
31 August 43

Subject:- AFB 252.

Date.....

Officer Commanding,

In accordance with para 5 of ACI 1911 of 1941 no specific charge has been made out on the face of this AFB 252. Under this ACI the responsibility for framing this charge rests with the commanding officer of the offender's unit.

When this charge has been dealt with the AFB 252 will be forwarded through the usual channels to the "A" Branch of the formation by whom you are administered (i.e. Div., Dist., Sub Dist., Bde., etc.,) Authority:- King's Regulations para 562, (1940)

In no case will the form be returned to the Military Police Unit from which it originated.

Birmingham.

Lieut.
.....Staff Lieut.
168 H.Q. PROVOST COMPANY, C.M.P.

Exhibit 'C'

CERTIFICATE OF SURRENDER UNDER SECTION 163 (1) (j) A.A.

I, ... certify that No. B/67355 Rank PTE

Name ENGLAND M.L. Coy. 6 Regt. REPATRIATION CAMP. R.REGT OF CANADA

surrendered himself to No. 3709371 Rank CPL. Name HALL C. CMP

at(place) BIRMINGHAM at(time) 01.00 on(date) 3 AUGUST 1945

as a deserter (or absentee without leave)

Station BIRMINGHAM

Date 3 AUGUST 1945

Signature of Prevost Marshal, A.P.M., or other Officer into whose custody the a/m person was taken on arrest

(Signed) ..... Lieut.

Staff Lieut.

H.Q. PROVOST COMPANY, C.M.P

LIST OF EXHIBITS

In the case of B 67355 Pte Melville Lansmark ENGLAND

"EXHIBIT "A" - Certified true copy of extract of Part II orders No 22 d/3 Jul 45

"EXHIBIT "B" - Certified true copy of Declaration of court of Inquiry held on 3 Aug 45

"EXHIBIT "C" - Certificate of surrender under AA 163 (c) (1)

LIST OF WITNESSES

For prosecution Lieut R Lortie "A" Wing
6 Cdn Repat Depot

Capt WS Watson "C" Wing
6 Cdn Repat Depot

B 163[illegible]82 Cpl Short G W "B" Wing
7 Cdn Repat Depot

For defence Nil

This is to acknowledge that I have receive free of charge the following papers in connection with my forthcoming trial by PWCM

1 copy of charge sheet
1 copy of summary of evidence
1 copy of list of witness
1 list of Exhibits.

M. L. England
(M L England) B 67355

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 67355	Pte	ENGLAND M L	"A" Wing 6 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The symbols hereto stated should correspond with the number of Forfeits in the Field Conduct Sheet, punishments being given for the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recommendation for special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be detailed here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absent without leave AA 15 — 10 times.
For Disobeying a lawful command AA 9 (2) — 1 times.
For Losing by neglect AA 24 — 1 times.
For Conduct to the prejudice of Good order and mil discp AA 40 — 4 times.

Date of first entry in Field Conduct Sheet 29 Nov 40

Date of last entry in Field Conduct Sheet 4 Apr 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The account of the present time in under sentence for ... beginning on the ... day of ...~~

*Strike out 3 and 4 if not applicable.

4. The accused has been awaiting trial on the present charges for ... days in civil custody; and for 34 days in military custody, i.e., ... days in open arrest, 34 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 25

6. The date of his attestation or calling up for military service is 28 Feb 40

7. ~~The service which the accused is allowed to reckon is ...~~

8. The accused is in possession of; 1939-45 Star -France & Germany star- Defence Medal - CVSM & clasp. ~~The accused has served continuously ...~~

9. ~~If the accused is a N.C.O. ... without forfeiture, to that rank.~~

Strike out whichever is not held by accused.

		Date of Promotion.
In the substantive rank of	N/A	N/A
In the war substantive rank of	N/A	NA
In the acting rank of	N/A	N/A

EXB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(75975) WL30721/3703 2L/3500 9/44 A.&E.W.Ltd. Gp.636

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F G C M	19 Sep 43 In the Field	Absent without leave AA 15 (1)	90 days detn	Remission 30 days
FGCM	14Jan44 In the Field	Absent without leave AA 15 (1)	90 days detn	Remission 30 days
FGCM	4 Apr 44 In the Field	Absent without leave AA 15(1)	168 days detn	Remission 56 days.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 6th day of Sep 45

(W A Desk) Capt Offr IC Records
No 6 Con Repat Depot
offr having custody of original

No. B 67355 Name ENGLAND M L | Sqn, Battery, or Company | Corps CIC | Date of enlistment 28 Feb 40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAR/136 (7010)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature OC Company, etc B Anderson Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Sentence with brief	By whom awarded	Remarks
	Original			Sheet destroyed 29 Aug 40 Last entry	Nil Case of	drunkenness Nil	(Sgd F C Wady Capt)		
Field	27/11/40	Pte		AA 9 (2)Disobeying a lawful com-	Cpl Harrison	7 days CB	28 Nov 40	AC Carter Capt	
				mand					
						15 days F F	28 May 41	Major Catto	Forf 15 days pay
Field	26/5/41	Pte		AA40 Conduct to the prej of good order and military discipline	L/Cpl Cox Sgt Kirkman	15 days F P	31 May 41	Capt Young AC	Forf 15 days pay
Field	28/5/41	Pte		AA 40	L/Cpl Cox	5 days CB	22 Sep 41	(Sgd F S W)	
Field	20/9/41	Pte		AA 40 Did leave his rifle unatt- ended while on truck picquet	Sgt Surphlis	5 days Pay	15 Jan 42	Major Young AC	Forfeits 5 days pay
Field	8/1/42	Pte		AA 15(1) AWL from 2400 hrs 8 Jan 42 until 1530 hrs 13 Jan 42 from Priv leave			25 Jan 42	Capt AG Young	Forf 10 days pay (FGW)
Field	25/1/42	Pte		AA 15(2) AWL					
Field	13/2/42	Pte		AA 40 Room was found in a filthy condition:food sittijg on window still.	L/Cpl McGuinness	3 days CB	14 Feb 42		

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16/2/42	Pte		AA 15(1)AWL from 0900 hrs 16 Feb 42 until 1530 hrs 28 Feb 42	Sgt Surphlis	13 days pay	16 Feb42	Lt-Col Bashin	(FCM)
Field	2/3/42	Pte		AWL 16 Feb 42 until 2 March(12 days 6 hrs 30 mins			5 May 42		Forfeits 26 days pay
Field	28/5/42	Pte		AA 15(1)AWL from 2359 hrs 28 May 42 to1100 hrs 4 Sep 42 (98 days 11 hours 1 min)	Summary of Evidence	90 days detn & stoppages of pay 0-9-9	30 DAYS) 19Sep 42	REMISSION UNDER RULES DB & MP FCM Lt-Col Peffers	
Field	7/9/42	Pte		AA 24(2) Losing by neglect clothing and equipment valued at 2-4-9		stoppage of pay 2-4-9			(FCM)
Field	23/4/43	Pte		AA 15(1) AWL from 2359 hrs 23 Apr 43 to 2100 hrs 3 May 43 (9 days 21 hrs 1 min)	Cpl Byford	18 days pay	5 May 43	Lt-Col McPherson	Forfeits 10 days pay (FCM)
Field	2/6/43	Pte		AA 15(1)AWL from 0800 hrs 2 Jun 43 to 1915 hrs 3 Jun 43 (1 day 11 hrs 15 mins	Cpl Perry NX	14 days F P	4 Jun 43	Lt-Col McPherson	Forfeits 2 days pay (FCM)
Field	3/12/43	Pte		AA 15(1)AWL from 0830 hrs 3 Dec 43 to 2000 hrs 8 Dec 43	Cpl Admiston L/C Mobillard	14 days pay Forf 14 days pay FR&I 149 (1)(b)	10 Dec 43	Lt Col F Miller	Forfeits 6 days pay FR&I 149(1)(a)

No. B 67355 Name [redacted] | Sqn, Battery, or Company | Corps CIC | Date of enlistment 28 Feb 40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/138 (7010)

Date of last entry in Company Conduct Sheet: NAB | No. and date of last drunk: NA | Period not reckoning towards freedom from extra fine: N/A | Sheet No. 1 | Signature OC Company, etc: B Anderson Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				RELEASE FROM CDN DET'N BKS H DOWNS ON 13MAR 44 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER RULES FOR D&B AMP NOS 126&129 30 DAYS - C O INITIALS HOB					
Field	27/12/43	Pte		AA 15(1) AWL from 0800 hrs 27 Dec 43 until 2130 hrs 11 Jan 44 (15 days 13 hrs 30 mins)	Documentary	90 days detn	14/1/44	FGCM confirmed by Lt-Col J M Rockingham	in custody awaiting trial 4 days
				Forf 90 days pay under FR&I 149(1)(b)					
				Forf 2 days pay under FR&I 149(1)(c)(i)					
				Forf 16 days pay under FR&I 149 (1)(a)					
				TOTAL FORFEITURE 108 days pay					
	21/5/44			CERTIFIED TRUE COPY OF ORIGINAL MFM 6 (WE THORNE) CAPT Records Officer 3 Cdn Inf Rft Units					

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
Field	4 Apr 44	Pte		WOAS AWL from 2359 hrs 4 Apr 44 to 2359 hrs 16 May 44 (42 days AA sec 15(1)	Documantery	168 days detn	23 may 44	FOCM	Forf 42 days pay FR&I 149(1)(a) 168 days pay FR&I 149(1)(b) 7 days pay FR&I 149(1)(c)(1)

Certified true copy

(W A Leask) Capt Offr IC Records
No 6 Can Remt Depot
Offr Having custody of original
4 Sep 45

MMM 82 (Can #4)
PTE ENGLAND M2
See O-120 for 1st Can
" U-142 " 2nd "
" 353-103 " 3rd "

MMM-82 (Case #4)

PTE ENGLAND M-2

See O-120 for 1st case

" V-147 " 2nd "

" 333-103 "3rd "

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-67355 Private Melville Lansmark ENGLAND - C.I.C., 3 CIRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ✓ beginning on (date) ✓ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 60 days, of which —— days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of 168 days.

(Sgd) / Judge-Advocate, if any. 23 May 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further ordered.(1)

(1. AA 57A. Delete if not used.)

Date 28 May 44 (Sgd) J R Stewart Lough

Commanding Divisional Commander

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 573, 577.)

Accused.	Date.	Signature of Offr.
B-67355 Pte. ENGLAND, M.L.	24 May 44 (3 CIRU Pt II D.O. No. 121 dated 28 May 44)	[signature] (T. E. Rogers) Capt. & Adjt. 3 Can. Inf. Bde. Unit.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED JUB 1944 JUDGE ADVOCATE BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 MM 11-82

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of APA21) 40/P & R/1698 (2864)

Convened by Order of Brig. J.R. Stewart Lough DSO, MC, VD. Comd "D" Gp CRU dated 23 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-67355	Pte.	Melville Lansmark	ENGLAND	3 CIRU

PROCEEDINGS REVIEWED 5 June 44 H.C. Duck Lieut.

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 23 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 2. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1410 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NIL as interpreter? Ans ✓

The Interpreter is sworn.(1) Do you object to NIL as shorthand writer? Ans ✓

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.M. Bowman	48th Highrs 3 CIRU
Member	Capt.	F.M. Sutherland	C.I.C. 3 CIRU
Member	Lieut.	C. Hollingshead	C.I.C. 3 CIRU
Judge-Advocate			
Prosecutor	Capt.	H.A. Crestes	Essex Scot. 3 CIRU
Defending Offr	Capt.	A.M. Mackenzie	R.Regt of C. 3 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (a) plea (?)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 116), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All cases and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 486 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. JMB

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, see Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on NIL charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on NIL charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* [redacted] 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(2).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3), (4), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *Above.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP 37(F), fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* [redacted]. *One sentence only, comprised of the punishment or punishments (and down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty, RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Can 308, 330, 563-566, Overseas RO 308, 1223, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Ex. A.

CHARGE SHEET

The accused Number B-67355 Private ENGLAND, Melville Lansmark, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

ARMY ACT SEC 15 (1)

in that he,

did absent himself without leave from 3 Canadian Infantry Reinforcement Unit from 2359 hours on the 4th day of April 1944 until surrendering himself to the Canadian Provost Corps at Greenock, Scotland, at 2359 hours on the 16th day of May 1944.

Total time absent: 42 days.

A. Pearson

(A. S. Pearson) Colonel
Commander,
3 Cdn. Inf. Rft. Unit.

In the Field,
22nd day of May
1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J.R. Stewart Lough) Brigadier,
Commander "D" Group,
CANADIAN REINFORCEMENT UNITS.

Convening Officer.

In the Field
23 May 44

Ex. B.

FIELD GENERAL COURT-MARTIAL

CFA56 (To Sec of AFA5)
40/P825/1697 (2603)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-67355	Pte.		Melville Lansmark	ENGLAND	3 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXX] committed the offence[s][X] set forth in the Charge Sheet[s][X] attached and on 23 May 44 (date) endorsed by me, [XXXXXXXXXXXXXXXXXX], "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial; [XXXXXXXXXXXXXXXXX

EX.C.

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Medical Officers Certificate
K.R.(CAN) Para 567.

I certify that I have this morning examined No. B.67655
Pte ENGLAND, M.L. of 3 C.I.R.U. and in my opinion he is
fit to undergo trial by Court Martial.

Station Field

DATE 23 May 44

Medical Officer,
3 Cdn. Inf. Rft. Unit.

JMB

Ex. G.

Statement of Defending Officer

The accused, B67355 Pte England H.A. is the youngest of three brothers who with their father joined the R. Regt. C. at the outbreak of war. He is now 23 yrs. old having served overseas, including 5 months in Iceland, over four years. He married in England in 1941 and his wife and child have since been evacuated to Canada. From here he has repeatedly received disquieting reports of his wife's conduct and connection regarding himself. These caused him considerable distress and it was in this frame of mind he went absent. Partially adjusted mentally to his state he surrendered himself and now wishes to do nothing but soldier and get back to straighten his affairs. His desire appears to be earnest & as he has an older brother still with the Regt. C who can influence him I should be taken into consideration by the Court in determining sentence. The accused's youth, long service overseas, & separate financial difficulties of his family should their allowance be stopped by a sentence of over six months, plus his desire to soldier from now on plead effectually for mitigation of sentence.

Allen H. Anderson Jr Capt.

Trial
23 Aug 44

Allen Anderson Major

Ex E

Last Order #86
d/13 Apr 44

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II
ISSUED BY
COLONEL A.S. PEARSON, O.B.E., E.D.
COMMANDER

No. 87
d/14 Apr 44

10. ABSENCE WITHOUT LEAVE

(a) B.67355 Pte ENGLAND, M.L. (CIC) AWL from 2359 hours 4 Apr 44.

(sgd) W. E. Thorne
(Thomas E Rogers) Capt & A/Adjt
3 Can Inf Rft Unit
Can Army Overseas

Certified true extract as taken from documents in my possession.

In the Field
21st day of May
1944.

(Thomas E Rogers) Capt & Adjt
3 Can Inf Rft Unit
Can Army Overseas

Exhibit "B"

E.F.

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (J)

I, ...(A.E.D.M..Evans).Lieut..C.A.C.Scot..Detachments....certify.th

Re. No.6.7555..Rank .Pte.. Name .Edelsten..W.....

REGIMENT .....No..3.C.I.E.U.....

UNIT .....

STATIONED AT .....

Surrendered himself to No.....Rank.R.P.C.Name..Kitchen..F.....

of the .....R.C.M.....

on the ..1s. day of ...May.....1944 , at .2359... hours .....

.....AS AN ABSENTEE WITHOUT LEAVE .....

at the time of his surrender he was wearing (Military Uniform) ~~xxxxxx~~

~~xxxxxxxxxxxx~~'

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on surrender. (Strike out part inapplicable)'

.....Lieut. C.A.C.

Officer i/c ~~xxxxxxxxxx~~ No 2 Det.
No. 6 Cdn. Provost Coy.

Glasgow
17 May 44.

Scottish Detachments

Ex. A.1.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at "In the Field", on the 22nd day of May 1944, preliminary to My Court Martial.

I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

B-67355 Pte. M.L. England
(B-67355 Pte. ENGLAND, M.L.)

Dated "In the Field"
This 22nd day of May 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my Trial.
I desire the services of Capt A.N. Mackenzie R. Regt C 30 I.R.U.
if he is available.

B-67355 Pte. M.L. England
(B-67355 Pte. ENGLAND, M.L.)

Dated "In the Field".
this 22nd day of May 1944.

Ex. D

SUMMARY OF EVIDENCE

In the case of Number B-67355 Private ENGLAND, Melville, Lansmark, Canadian Infantry Corps, on the strength of 3 Canadian Infantry Reinforcement Unit, as a reinforcement, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Lieut. J.H. Galloway, Canadian Infantry Corps, Acting Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am Lieut. J.H. Galloway, Canadian Infantry Corps, employed as Acting Assistant Records Officer, 3 Canadian Infantry Reinforcement Unit. I produce a certified true extract of 3 Canadian Infantry Reinforcement Unit Part II Daily Order No. 87 dated the 14th of April 1944. This document purporting to be signed by Capt. W.E. Thorne for Thomas E. Rogers Capt and Adjt. of 3 Cdn Inf Rft Unit, is marked Exhibit "A". I also produce Certificate Under the Army Act, Section 163 (I) (J), showing the accused, whom I now recognize as surrendering himself to the Scottish Detachment, Canadian Provost Corps at 2359 hours on the 16th day of May 1944. This document purporting to be signed by R.M. Evans, Lieut. Offr i/c Scottish Detachments Canadian Provost Corps, is marked Exhibit "B".

J.H. Galloway Lieut.
(J. H. Galloway) Lieut.

The accused declines to cross examine this witness.

The accused having been warned according to Rules of Procedure 4(E) reserves his defence.

I certify that the foregoing Summary of Evidence Consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Thomas E. Rogers
(Thomas E. Rogers) Capt.
Officer detailed to take Summary of Evidence.

In the Field
22 May 1944.

Ex 1.

No B67355 Name ENGLAND M.L. Sqn, Battery, or Company — Corps C.I.C. — Date of enlistment 28 Feb 40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 67/748/138 (3428)

Date of last entry in Company Conduct Sheet: N/A — No and date of last drunk: N/A — Period not reckoning towards freedom from extra fine: N/A — Sheet No 1 — Signature OC Company, etc: B. Anderson Major. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original Sheet Destroyed 29 Aug 40. Last Entry Nil. Cases of Drunkenness Nil. (Sgd:F.G.Wady Capt).					
Field	27/11/40	PTE		AA 9(2)Disobeying a lawful command	Cpl Harrison	7 days CB	28 Nov 40	A.C.Carter Capt.	Forfeits 15
Field	26/5/41	PTE		AA 40 Conduct to the prej of good order and military discipline	L/Cpl Cox	15 days F.P.	28 May 41	Major Catto	0 days pay.
Field	28/5/41	PTE		AA 40		15 days F.P.	31 May 41	Capt	Forfeits 15 days pay.
Field	20/9/41	PTE		AA 40 Did leave his rifle unattended while on truck picquet	Sgt Kirkman L/Cpl Cox.	5 days C.B.	22 Sep 41	Young M.C.	(Sgd:F.G.W.)
Field	8/1/42	PTE		AA 15(1)AWL from 2400 hrs 8 Jan 42 until 1530 hrs 13 Jan 42 from Priv. Leave.	Sgt Surphlis	5 days Pay	15 Jan 42	Major Young M.C.	Forfeits 5 days pay.
Field	25/1/42	PTE		AA 15(2) AWL			25 Jan 42		Forfeits 10 days pay.
Field	13/2/42	PTE		AA 40 Room was found in a filthy condition;food sitting on window sill.	L/S McGuinness	3 days C.B.	14 Feb 42	Capt.R.G. Young	(F.G.W.) (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16/2/42	PTE		AA 15(1)AWL from 0900 hrs 16 Feb 42 until 1530 hrs 28 Feb 42	Sgt Surphlis	13 days Pay	16 Feb 42	Lt.Col. Bashin	(F.G.W.) Forfeits 26 days Pay.
Field	2/3/42	PTE		AWL 16 Feb 42 until 2 March(12 days 6 hrs 30 min.)			5 May 42	(REMISSION UNDER RULES DB & MP 30 DAYS).	
Field	28/5/42	PTE		AA 15(1)AWL from 2359 hrs 28 May 42 to 1100 hrs 4 Sep 42 (98 days 11 hours 1 min)	Summary of Evidence	90 days Det'n Stoppages of Pay £0/9/9	19 Sep 42	F.G.C.M.	
Field	7/9/42	PTE		AA 24(2) Losing by neglect clothing and equipment valued at £2/4/9		Stoppage of Pay £2/4/9	15 Sep 42	Lt. Col. Peffers	(F.G.W.)
Field	23/4/43	PTE		AA 15(1)AWL from 2359 hrs 23 Apr 43 to 2100 hrs 3 May 43(9 days 21 hrs 1 min)	Cpl Byford.	18 days Pay.	5 May 43	Lt.Col. McPherson	Forfeits 10 days pay (F.G.W.)
Field	2/6/43	PTE		AA 15(1)AWL from 0800 hrs 2 Jun 43 to 1915 hrs 3 Jun 43(1 day 11 hrs 15 min)	Cpl Perry WA	14 days F.P.	4 Jun 43	Lt. Col. McPherson	Forfeits 2 days pay (F.G.W.)
Field	3/12/43	PTE		AA 15(1)AWL from 0830 hrs 3 Dec 43 to 2000 hrs 8 Dec 43	Cpl Edmiston L/C Robillard	14 days F.P. Forf. 14 days pay FR&I 149 (1) (b)	10 Dec 43	Lt.Col.F. S.Wilder	Forfeits 6 days pay FR&I 149(1a)

No B67355 Name ENGLAND M.L. Sqn. Battery or Company | Corps C.I.C. | Date of enlistment 28 Feb 40 | GC Badges | Service or Proficiency Pay

Company Conduct Sheet Date of last entry in N.A. | No and date of last drunk N.A. | Period not reckoning towards freedom from extra fine N.A. | Sheet No 1 | Signature OC Company, etc B.Anderson Major | Character

MFM 6 (AFB 172) 40/PAS/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				RELEASED FROM CDN DET'N BKS. H. DOWNS ON 13 MAR 44 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER RULES FOR D.B. & M.P. NOS. 126 & 129--30 DAYS--COMMANDANTS INITIALS--ROWB.					
Field	27/12/43	PTE		AA 15(1) AWL from 0800 hrs 27 Dec 43 until 2130 hrs 11 Jan 44 (15 days 13 hrs 30 min)	Documentary	90 days Det'n	14/1/44	F.G.C.M. Confirmed by Lt.Col. J.M. Rockingham.	In custody awaiting trial 4 days
				Forf 90 days pay under FR&I 149(1)(b)					
				Forf 2 days pay under FR&I 149(1)(c)(1)					
				Forf 16 days pay under FR&I 149(1)(a)					
				TOTAL FORFEITURE: 108 Days Pay.					
	21/5/44			CERTIFIED TRUE COPY OF ORIGINAL MFM 6.					

(W.E. THORNE) CAPT.,
Records Officer,
3 Cdn Inf Rft Unit.

/wh

(PTO)

Ex. Exhibit "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 67355	PTE	ENGLAND M.L.	C.I.C. 3 C.I.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, punishments being given in the most serious offence to each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	A.A. 15(1)	6 times.
For	A.A. 40	4 times.
For	A.A. 15(2)	1 times.
For	A.A. 9(2)	1 times.
For	A.A. 24(2)	1 times.

Date of first entry in Field Conduct Sheet 27 Nov 40

Date of last entry in Field Conduct Sheet 27 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not Applicable.

~~*3. The accused at the present time is under sentence for~~ ~~A.C.F.O. 7~~

~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for 6 days in military custody, *i.e.*, N/A days in open arrest, 6 days in close arrest; of which N/A days were spent in hospital.

5. The present age of the accused is 23 yrs, 9 months, 25 days.

6. The date of his ~~enlisting up for military service~~ attestation 28 Feb 40 ~~A.C.F.O. 7~~

7. The service which the accused is allowed to reckon is 4 years, 2 months, 24 days.

8. The accused is in possession of: ~~A.C.F.O. 7~~

State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

~~In the substantive rank of~~

In the war substantive rank of ~~A.C.F.O. 7~~

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(22114) W1.4630/666 100,000 4/42 A.& E.W.Ltd. Gp.698 Forms/B.296/War/2
(22459) W1.29258/1373 60,000 8/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
F.G.C.M.	Field U.K. 19 Sep 42.	AA 15(1) AWL from 2359 hrs 28 May 42 to 1100 hrs 4 Sep 42 (98 days 11 hrs 1 minute)	98 days Detention and placed under Stoppages of pay of £0/9/9.	Remission under rules D.B. & M.P. 30 days
F.G.C.M.	Field U.K. 14 Jan 44.	AA 15(1) AWL from 0800 hrs 27 Dec 43 until 2130 hrs 11 Jan 44 (15 days 13 hours, 30 minutes)	90 days Detention	Released from Cdn Detention Bks. H.Downs on 13 Mar 44 Sentence having expired. Remission of Sentence earned under rules for D.B. & M.P. 30 days. Commandants Initials: H.O.W.B.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 22nd day of May 1944

(A.E. THORNE) CAPT.,
Records Officer,
3 Cdn Inf Bde Unit

147. V. (case #2)

Pt. ENGLAND, M.L.

See 120 - for 1st case.

B-67355 Pte. Melville Lansmark ENGLAND
R. Regt. C. 2 C.D.I.R.U.

147-V

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 17th day of JANUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "A" GROUP CANADIAN REINFORCEMENT UNITS, C.A.(O). , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *and that it is not practicable to delay the trial for reasons of superior military exigency;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*The Officer duly to appoint.

*(1. Three Officers to form the Court.

*(2. A Field Officer as President.

*And the following Waiting Member:

* Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be mentioned. In the latter event, the names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	C.S. NICKLE (Hast.& P.E.R.)	1 C.D.I.R.U.

Members.

Rank.	Name.	Regiment.
Captain	P.P. Loranger (Fus.M.R.)	2 C.D.I.R.U.
Lieutenant	J.V. Greydon (Hast.& P.E.R.)	1 C.D.I.R.U.
Waiting Member Lieutenant	R.A. Welch (R.H.L.I.)	2 C.D.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Colonel,
Commanding "A" Group Cdn. Reinf. Units,
Convening Officer. C.A.(O).

DATE OF ORDER No. 17 January 1943

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-67355 Pte. Melville Lansmark ENGLAND R. Regt. C. 2 C.D.I.R.U.	First Charge A.A. Sec. 15(1) SEE CHARGE SHEET ATTACHED.	Guilty	~~Guilty.~~ ~~one hundred and twenty days detention and to pay 10 shillings and 9 pence cost, of the application~~ To undergo detention for one hundred and twenty (120) days and to be put under stoppages of pay until he has made good the sum of ten shillings and nine pence cost of application	Confirmed J. Stewart Lough Colonel 18 Jan 43

"I have satisfied myself that none of the Officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court Martial."

C. S. Nicholls Maj
President of the Court.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J. Stewart Lough Colonel, (Signed) C. S. Nicholls Maj
Commanding 1st Gp. Cdn. Reinf. Units, Commanding Officer C.I.A.(O). Hqrs. P.E. Regt 1 C.D.I.R.U. President

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18th day of Jan 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~ N/A
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 18th day of Jan 1943

C. S. Nicholls Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (k) on page 762 M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this ~~day of~~ 19

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 18th day of January 1943.

J. Stewart Lough Colonel
Confirming Officer.

PART II ORDER No. 18 / 21 Jan 43 Hqrs.

Promulgated and extracts taken in the case of B-67355 Pte. Melville Lansmark England M. L. (R.R.C.)
Part II O.O. No. 18 / 21 Jan 43
(a) (Dated) Jan 18 1943 (Signed) C. S. Nicholls Maj Judge. * Base writing 2 C.D.I.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[84] Wt. 28042/4258 Thos. Lee. W. & Co., Ltd. Gp. 748.2

CHARGE SHEET

The accused No. B-67355 Pte. Melville Lansmark ENGLAND, R. Regt. of Canada on strength of 2 Canadian Division Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas is charged with, while on active service

ABSENTING HIMSELF WITHOUT LEAVE

ARMY ACT SEC 15(1)

in that he

at 2359 hours on the 9th day of December 1942 absented himself without leave from Laurentide Camp, until apprehended by the Corps of Military Police at Gillingham at 2115 hours on the 12th day of January 1943, thereby incurring a cost of apprehension to the amount of £.0.10s.9d.

Absent 33 days 21 hours 16 minutes.

.....H.C.A. Hervey, Lt.-Col.....
(H.C.A. Hervey) Lt.-Col.
A/Commander, 4th Training Wing,
2 C. D. I. R. U.

Laurentide Camp
January 1943

To be tried by Field General Court Martial.

J.R. Stewart Lough
(J.R. Stewart Lough) Colonel,
Commanding,
"A" Group Cdn. Reinf. Units,
C.A.(O).

Convening Officer.

Witley, Surrey,
17 Jan. 43.

By
A. Mackellaig
Per.

MEDICAL OFFICER'S CERTIFICATE

In the case of No. B-67355 Pte. Melvin Lansmark ENGLAND

I CERTIFY that No. B-67355 Pte. Melving Lansmark ENGLAND is FIT to undergo trial by Court Martial.

Signature of Medical Officer

13 Jan 43

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT #2 Sqts Wess Algonquin ON THE 18th DAY OF Jan 43
Camp

TRIAL OF:-No. B 67355 Pte England M. L. Unit R. Regt C.
The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.
The Court satisfy themselves as provided by R.P. 22 & 23.
The accused is brought before the Court.
Prosecutor:- (Name) CAPT. D.D. ROSE (Unit) R.R.G.T C.
Defending Officer:- (Name) LIEUT B.W. RICH (Unit) R. REGT C.
At 1115 hrs the trial commences.
The order convening the Court is read, signed by the President and attached to the proceedings.
The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.
Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No Sir.
The President, members ~~and judge advocate~~ (if any) are duly sworn.
The following constitute the Court:

President..Major C.C.B. Nickle.....(Unit) Hast & P. E.

Members Capt. F.P.L. Lorsenier.....(Unit) Fus M. R.

Lieut. J.V.V. Brayton.....(Unit) Hast & P. E.

The officers under instruction are duly sworn.
~~Qq Do you object to.....acting as short-hand writer? A2 -~~
~~The shorthand writer is duly sworn.~~
The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.
The summary of evidence is read, signed by the President, and attached to the proceedings.
Court is closed to consider its finding. Court is re-opened.
Name..Lieut R.A.B. Rich....(Unit) R. Regt C.....sworn, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.
Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - I leave that to my defending officer Sir
Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No Sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

TRIAL of No. B 67355 Pte. MELVILLE LANGSHAW ENGLAND
R.RSOT. C. 2 C.D.I.S.C.
PROSECUTOR - Lieut. D.W. Rich R. Regt. C.
DEFENDING OFFICER - Ca pt. D.W. Rose R. Regt. C.

AT 1115hrs. the trial commenced.

The order convening the Court is read signed by the President a nd attached to the proceedings.
The na mes of the President a nd the Members of the Court are read over to the accused and they severa lly answer to their names :

Q. 1. Do you object to be tried by me as President or by any of the Off icers whose names you have heard read over?
A. 1. no Sir.

PRESIDENT - MAJOR C.S WILDE EAST. & P.E.R.
MEMBERS - CAPT. P.P. LORANGER Pub. R.R.
LIEUT. J.V. CHAIDON EAST. & P.E.R.

The Members of the Court duly sworn.
The Office r under instruction Lieut. J. E. Chase R. Regt. C. was sworn as an Officer under instruction.
The Charge Sheet wa s read to the accused who pleaded guilty to the charges a s read. Charge Sheet marked D.2 and signed by the Pr esident
Rule of Procedure 35(B) duly complied with.
Summary of Evidence is read., signed by the President and marked C. a ttached to the proceedings.
Prosecuting Officer presented to the Court the following Documents:(a)Record of Declaration of Court of Inquiry(certified true Copy) marked exhibit A. examined signed by the President and attached to the proceedings. (b)A.F.B. 252 original Charge Sheet and evidence as submitted by C.M.F. Attached as exhibit . examined and signed by the President. (c) expense voucher for journey Chatha m to London for the Accused (under close arrest) and Escort. Total cost 10s. 9d. Exa mined signed by the Presi dent and attached as exhibit C. The Prosecuting Officer identified the accused before the court as the person reffered to in s /m documents.
Court is closed to consider its finding.

Court reopened
Lieut. D.W. Rich R. Regt. C. sworn produces A.F.B. 296 and A.F.B. C. and states that these documents reffered to the accused before the court and that they have been compa red with Regimental Records and are true extracts of the Sentence.
No cross exa mination.
These documents read to the court, examined, signed by the Pres. ma rked D. and E. respectively and attached to the proceedings.
The Defending Officer Ca pt. D.W. Rose addressed the court -
Copy of rema rks attached - marked F. and signed by the Pres.
Court closed to consider the sentence at 1205hrs.

C.S. Wilde Maj
Pres

The defending Officer Capt. D.W. Rose made the following statement in Mitigation of Sentence , "looking at the Conduct Sheet of Pte. England which covers a period of about three years we do not find what you would call a serious crime until 25 May 1942. At that time he went absent without leave for a considera ble length of time but he paid the penalty for this crime. Considering the length of service of this ma n one must conclude that there must be a definite reason for the Charge of A.W.L. for which he is now brought before this Court. The Private life of the Accused reveals that in Oct. 1941 he was married in Scotland. Recently his wife became pregnant and within the next few weeks will become a mother of a child by the Accused. This information I have taken the trouble to verify through the Kent County Hospital, Chatha m. The parents of the Accused's wife were sent to Levis, Quebec, Canada the reason being that the Father in Law of the Accused is an expert Shipbuilder. The Accused's wife has no relatives in England near where she is now living in Gi llingham, Kent to whom she can go. The Accused foolishly and thoughtlessly rema ined absent in order to be with his wife during this very difficul t period of her life. It must be noted by the Court that the Accused was arrested by the Mi litary police at Gi llingham. The Court will rea lise that the Accused was torn between two duties — the duty to his King and the duty to his wife. He frankly admits that he was wrong in his choice of duties and is prepared to pay the penalty. To this extent he has this morning given to me a cult to the Commanding Officer of the R. Regt. asking that ite cigarettes which ma y come to him while he is in detention be distributed among the men of the Ba ttalion. I would ask the Court to consider the private life of Pte. England and the effect that detention will have on his domestic life. This is a crucial period in his life and that of his wife and while I know he has been thoughtless about this I do nit think he has done it with malice of forethough but rather as a foolish boy. After all he is only twenty two years old. The Accused gives himself unto the hands of the Court and is prep ared to accept whatever penalty the Court may decide.

NOTE: The above is typed from notes made by the Court of a statement by Capt. Rose (defending)

Schedule "A"

SUMMARY OF EVIDENCE

In the case of B-67355 Pte. Melville Lansmark ENGLAND, R. Regt. of Canada Company, 4th Training Wing, 2 Cdn. Div. Inf. Reinf. Unit.

By direction of the Commanding, Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS For the Prosecution. Lieut. J. Major, Assistant Records Officer 2 Cdn. Div. Inf. Reinf. Unit, having been duly sworn states:

"I am Lieut. J. Major, Assistant Records Officer 2 Cdn. Div. Inf. Reinf. Unit and I produce.

(A) Certified true copy of the Record of the Declaration of a Court of Inquiry concerning the absence of the accused, dated 30th day of December 1942.

(B) Original copy of Army Form B.252 concerning the apprehension of the accused and dated 12th day of January 1943.

(C) Statement of Expenses incurred in the return of the accused dated 15th day of January 1943.

As EXHIBITS A, B, and C for the Prosecution, all duly initialed by me for the purpose of identification and all pertaining to the accused, who I now recognize.

Jean Major Lieut.
(J. Major) Lieut.

The accused declines to cross-examine the witness.

The accused having been duly warned in accordance with R.P. 4 (e)
Reserves his defence.

Certified that all the provisions of Rules of Procedure No. 4 (c) (d) (e) (f) and (g) have been duly complied with in connection with above Summary of Evidence.

Taken down by me in the presence and hearing of the accused this 16th day of January 1943.

C

T. E. Rogers Capt.
(Thomas E. Rogers) Capt.
Officer detailed to take Summary of Evidence.

RECORD of the Declaration of a Court of Inquiry assembled at Laurentide Camp, on the 30 day of December 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-67355, Pte. England, H. L., Royal Regiment of Canada Company, 2 Canadian Division Infantry Reinforcement Unit.

DECLARATION

The Court declare that No. B-67355, Pte. England, H. L., Royal Regiment of Canada Company, 2 Canadian Division Infantry Reinforcement Unit,

illegally absented himself without leave in that he, at Laurentide Camp at 2359 hours on the 9th day of December, 1942 that he is still so absent, and that on the 30th December, 1942 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE			ARTICLES	VALUE		
	LIST PRICE Less 25%				£	S	D
	£	S	D	Brought Forward	8	12	7½
Badges, Cap	0	0	5	Facepiece	0	7	6
Badges, Canada	0	0	6	Haversack	0	4	11
Battle Dress, Blouse Serge	1	14	3	Ointment, A.G.2	0	0	7½
Battle Dress, Trousers "	2	1	12	Eyeshields (6)	0	1	9
Boots, Ankle prs. 1	0	16	2	Outfit, A.G. (1)	0	0	2
Braces, prs. 1	0	1	0	Drawers woolen prs. 1	0	3	11
Greatcoat	2	17	9	Shirts, woolen prs. 1	0	3	10
Disc Identity (3)	0	0	2	Gym Vest prs. 1	0	1	1½
Dressing, First Field	0	0	10	Gym Shorts prs. 1	0	1	6
Gloves woolen, prs. 1	0	2	0	Shirts Flannel, Khaki	0	6	10½
Housewife	0	1	8				
Knife clasp	0	3	11				
Bags, Rations	0	0	1	TOTAL.....	£10	4	10
Helmet, Steel	0	7	6				
Frogs, Bayonet	0	1	1½				
Container	0	3	3				
	£8	12	7½				

D M Rose, Capt President

D. A. Lee, Lieut Member

H. D. Welch, Lieut Member

Signed at Laurentide Camp

this 30th day of December 1942.

Signature of Commanding Officer H C Atherley Lt Col

Certified true copy Mabel MacPherson Maj A.A.C.

Signature of Officer having custody of original record

M.F.B. 175
A.F.D. 115
2000—6-41 (7540)
H.Q. 1770-19-207

Exhibit "A"
Enlisted

CHARGE

Army Form B 252
(See King's Regulations.)

ROYAL RSGT. OF CANADA. Regiment

No. 2. C.D.I.R.Unit. ~~Battery Squadron Troop or Company~~

CHARGE against No. B/67365. Rank Pte.

Name ENGLAND. M.L. 12th. Jan.

Place GILLINGHAM. Date of Offence 1943.

OFFENCE W.O.A.S.:- Absent from (?) until apprehended by the Corps of Military Police in ALEXANDRA ROAD, at about 2115hrs.

CAPTAIN
PAY MASTER COMPANY CHAIRMAN

Names of Witnesses:—

Cpl. F. WALTON, ROYAL MARINES.
(attached to C.M.Police)
L/Cpl. F. KELNER, Corps of Military Police.
Sgt. LUNN, 7th. Trng. Bn. R.S. (Guard Commander).

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of EVIDENCE in the case of:-
No. B/67355. Pte. ENGLAND. M.L.,
No. 2. C.D.I.R.U.;
ROYAL REGT. OF CANADA,
102 CAMP,
WITLEY,
Surrey.

Sir,

At Gillingham, on 12th. Jan. 1943, at about 2115hrs., as the result of information received, I was on duty in ALEXANDRA ROAD, when I saw the above named soldier.

I stopped him, told him that I had reason to believe he was an absentee. He replied, "Yes".

I arrested him, conducted him to KITCHENER BARRACKS, Chatham, and handed him over to the N.C.O. i/c. Guard, to be detained.

I later notified No. 7. Canadian Provost Corps at Milford, gave them particulars of the above soldier and the charge that was being preferred, and asked them to notify his Unit and arrange escort.

[signature] CPL.
CHATHAM. ROYAL MARINES.
12th. Jan. 1943. (attached to C.M.Police).

Sir,

I have read over and corroborate the above statement. REMARKS

[signature] L/CPL.
CHATHAM. Corps of Military Police.
12th. Jan. 1943.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B-67355 Rank Pte. Name England, M.L. Unit 2 C.D.I.R.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit From London from C Lathom

Date	Particulars	Amount		
15 Jan 43	Escorts return fare from LONDON To C Lathom		5	2
	Prisoners single fare to LONDON From C Lathom		2	7
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Hire~~, Meals, Bus fares		3	0
	Total £		10	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

D. Greenwood Lieut.

Officer Issuing Railway Warrant and Expense Money
No. 6 Provost Company, Canadian Provost Corps, London

Certified

C.M.H.Q. 1000-53
40/P & S/483

CERTIFIED TRUE COPY

No B 67355 Name ENGLAND M.L. | Sqn., Battery, or Company D.Coy | Corps 1st Bn. R.Regt Canada | Date of enlistment 28-2-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	27 Nov 40	Pte		A.A.Sec. 9(2) Disobeying a lawful command given by a superior officer Refusing to work in dishwashing room	Cpl Harrison	7 days C.B.	28 Nov 40	Capt. A.C.Carter	
Aldershot	26/5/41	Pte		A.A.Sec. 40- Conduct to the prej- of good order and Military disc.	L/Cpl Cox	15 days F.P.	25/5/41	Major Catto	Forfeits 15 days Pay for F
Camberley	20/9/41			A.A.Sec. 40-Conduct to the prej of good order and military disc- In that he did leave his rifle unattended while on truck piequet	Sgt Kirkman L/Cpl Cox	5 days C.B.	22/9/41	Capt. A.M.Young	
In the Field	8-1-42	Pte		A.A.Sec. 15(1) A.W.L. from 2400 hrs 8-1-42 from Priv. Leave	Sgt Surphlis	5 days Pay	15/1/42	Major A.M.Young	Forfeits 5 days Pay.

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Nature of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
n the Field	13-2-42	Pte		A.A.Sec. 40- Neglect to the prej. of good order and military disc- in that his room was found in a filthy condition with food sitting on the window sill	L/Sgt Guinness	3 days C.B.	14-2-42	Capt. H.G.Young	
In the Field	16-2-42	Pte		A.A.Sec. 15(1) A.W.L. from 0900 hrs 16 Feb 42 until 1530 hrs 20-2-42	Sgt Surphlis	11 days Fsy	2 Mar 42	Lt-Col G.H.Basher	
Cove, Hants	7 Sep 42	Pte		A.A.Sec 24(2) WOAS losing by neglect clothing & equipment valued at £2-4-9	Documentary	Stoppages of Pay £2-4-9	15 Sep 42	Lt-Col W.O.Ferrers	
Cove, Hants	28 May 42	Pte		A.A.sec. 15(1) A.W.L. from 2345 hrs 28 May 42 to 1100 hrs 4 Sep 42 (Absent 98 days, 11 hr 1 Min)	Summary of Evidence	90 days Detention Stoppage of £0-9-9	19 Sep 42	F.G.C.M.	

CERTIFIED TRUE COPY

Don Lee Capt

D
Lushly hoy
Pun

M.F.B. 355
40/P & B/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-67355	Private	Melville Lansmark ENGLAND	2 C.D. I.R.U

1. The following is a fair and true summary of the entries in the ~~Service and General~~ R ~~Regimental and Squadron, Battery~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For A.A. Sec. 15 (1)	2	times	A.A. Sec. 15 (1)	2 times
For A.A. Sec. 40	1	times	A.A. Sec. 40	3 times
For A.A. Sec. 9 (2)	0	times	A.A. Sec. 9 (2)	1 times
For A.A. Sec 24 (2)	1	times	A.A. Sec. 24 (2)	1 times

~~Number of instances of gallantry or distinguished conduct.~~ R

or,

~~There are no entries~~ in the conduct sheets of the ~~accused.~~ R

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~ R

or,

Previous convictions of the accused by a court-martial ~~or a civil court~~, of summary awards under ~~Air Force Act~~ A.F.A. 73 R Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of ..... R

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which none days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ R attestation paper is 22 years

6. The date of his ~~enlistment~~ R attestation specified in his ~~record of service~~ R attestation paper 28 Feb. 1940

7. The service which the accused is allowed to reckon towards discharge is 2 years 10 months

8. The accused is entitled to reckon 2yr.10mnc service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward military ~~(or is R~~ military in possession of or entitled to). State any air force decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number B-6715 Rank Private

Name Melville Lansmark ENGLAND of R. Regt. C. 2 C.D.I.R.U. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Field General Court Martial	19 Sep. 1942	A.A. Sec. 15 (1)	90 days Detention	30 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of January 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Laurentide Camp preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

Laurentide Camp
January 1943

B-67355 Pte England W. L.
(B-67355 Pte. ENGLAND, W.L.)

I request that the Convening Officer appoint _____

Capt. C. W. Price - R Regt C. to represent me at my forthcoming Court Martial.

Laurentide Camp
January 1943

B-67355 Pte England W. L.
(B-67355 Pte. ENGLAND, W.L.)

120-0

Pte. ENGLAND, H.L.

O. H. M. S.

M. F. B. 270

P.G.C.M. B-67355 Pte. England, M.L.
1 Cdn. Sig. R.U.
5-6-2/26

120-0

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 17th day of September, 1942.

Whereas it appears to me, the undersigned, an officer in Command of "B" GROUP CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial to assemble the proper qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named; appointed or detailed hereunder.

*[I am unable to appoint:—

*[Three Officers to form the Court.]

*[A Field Officer as President.]

*[Three Officers having more than one year's service].

*[The following Officers are detailed:]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVISED.

President.

Rank.	Name.	Regiment.
Major	W.A. McEwen D.S.O	2 Cdn. ASC. R.W.

Members.

Rank	Name.	Regiment.
A/Captain. Captain	from J.C. McBride	1 Cdn. Gen. R.W. 1 Cdn Sig R.U.
A/Lieutenant Lieutenant	from K.O. Templeton	1 Cdn Sig R.U. 1 Cdn Sig R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed. H.R. Tyner (H.R. TYNER), COLONEL
A/Commanding "B" GROUP CDN. REINF. UNITS
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-67355 Pte. ENGLAND, Melville Lansmark (RR of C) 1 Cdn. Sig. R.U.	First Charge A.A.Sec 15(1)	Guilty	Guilty six months detention Placed under stoppages of $4.18.8 to make good deficiencies of Kit.	Sentence mitigated to 3 months detention Placed under stoppages of 9/9 expenses of return to unit.
	See attached Charge Sheet			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) ..... (Signed) .....
(R. A. TYNER, COLONEL)
Commanding "B" GROUP(CDN. SIGNAL UNITS)
Convening Officer (c)

President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of Sept. 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 19th day of Sept. 1942.

..... *President of the Court Martial.*

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1949.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this ..... day of ..... 19..

..... *President of the Court Martial.*

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~)

Signed this 24 day of Sept 1942

..... *Confirming Officer.*

Promulgated and extracts taken in the case of

(a) (Dated) 25 Sep 42 (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, B-67355 Private Melville Lansmark England, Royal Regiment of Canada, on the strength of the No.1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with

First Charge
Sec. 15 (1)
Army Act

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at Delville Barracks, Cove, Hants., on the 28th May, 1942, absented himself from the No.1 Canadian Signals Reinforcement Unit, from 2359 hours on said 28th day of May, 1942, until he surrendered himself to the civil police, Gillingham, Kent, at 1100 hours on the 4th day of September, 1942; the cost of his apprehension and return to his unit being £ 0-9-9.

F. B. Conrad

(F.B. Conrad) Lieut-Colonel,
A/Officer Commanding,
No.1 Cdn. Signals Reinf. Unit.

Delville Barracks,
Cove, Hants.,
9 September 1942

To be tried by Field General Court Martial

H.R. Tyner.

(H.R.TYNER) COLONEL
A/COMMANDER "B" GROUP
CANADIAN REINFORCEMENT UNITS
CONVENING OFFICER

W.A. deFoxe
Major,
A.Provost.

Medical Officer's Certificate

1. I certify that No B-67355 Private Engla nd,M.I., Royal Regiment of Canada, on strength of the No 1 Canadian Signals Reinforcement Unit, is FIT to undergo trial by Field General Court-Martial

R.F. Myers Capt
.....
Signature of the Medical Officer.

...0930....Hrs.

14
18th September 1942.
Delville, Barracks,
Cove, Hants.

PROCEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT Orville Barracks ON THE 19th DAY OF Sept 1942

TRIAL OF:- No. B64355 Pte England M.L. Unit 1 Can Sig. R.V.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- Lieut (Name) J.P. Gleeson (Unit) 1 Can Sig Regt.

Defending Officer:- (~~Name~~) Capt Lt. Anderson (Unit) 1 " " "

At 1000 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - No

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President ..... O.de Spence Major (Unit) 1 Can A&Sc. Regt

Members .. J. C. McBride Capt (Unit) 1 Can Gen Regt.

.... F.O. Templeton Lieut (Unit) 1 Can Eng. R.V.

The officers under instruction are duly sworn.

Q2 ~~Do you object to~~ ..... ~~as to shorthand writer?~~ A2.-

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(3) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court closed to consider its finding. Court is re-opened.

Name Lieut J.P. Gleeson (Unit) 1 Can Sig Regt. sworn, produces AFB 296 and MHR 6 and upon being questioned by Court states that the accused is the person named in those documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - Yes. Statement in Summary

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 - No

---

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

accused made the same statement as contained in summary of evidence herewith.

O.de Spence
Major
President

dlf

Summary of evidence in the case of Number B-67355 Private England, M.L., Royal Regiment of Canada, on strength of the No 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

Person Witness
For the prosecution

Lieut J. P. Gleason, Royal Canadian Corps of Signals, on strength of the No 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas having been duly sworn states as follows:

I produce AFB 115 (certified copy of Record of Court of Inquiry) which relates to the accused whom I now recognize (AFB 115 marked as exhibit "A") I also produce Army Form D. 1617 (Certificate of Surrender to Civil Police of a Deserter or Absentee Without Leave) relating to the accused and purporting to be signed by the Police Officer in charge of the Police Station, Gillingham, Kent (AFD 1617 marked as exhibit "B") I also produce a certificate purporting to be signed by the officer who issued the transportation warrants for the return of the accused and his escorts showing the cost of apprehension of the accused whom I now recognize (Certificate marked as exhibit "X")

The accused declines to cross-examine this witness

Signature of the witness

The accused was cautioned as follows: Do you wish to make any statement or give evidence on oath? You are not obliged to say any thing or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused No B-67355 Private England, M.L., Royal Regiment of Canada, on strength of the No 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn states as follows.

I joined up with the Royal Regiment of Canada and went to Iceland and to England with my regiment. When in England I took battle training which I liked. I was sent to the Canadian Signals Reinforcement Unit to be trained as an Operator (Wireless and Line). This training was too much for me and got on my nerves as I couldn't sleep. I told my Company Commander and he took me off this and put me on training as a switchboard operator. Again this was too

much for my nerves. I again saw my Company Commander and asked to be sent back to the Royal Regiment of Canada but he said I would have to stay here. My wife was having family trouble with her father and I got three days leave to go home and straighten it out. My wife took sick and I got a 3 days extension of leave. Then I went absent without leave.

W. L. England
Signature of the accused

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that the Rules of Procedure 4 (C), (D), (E), (F) and (G) have been complied with.

J. Gold Lieut
officer detailed to take this summary.

Detville Barracks,
Ford, Hants,
19th September 1943

A. D. de Pencier
Major
President

EXHIBIT "A" 98 Gold Lace

Army Form B 115

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at Delville Bks., Cove, Hants. on the 23rd day of June 1942, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-67355 Pte. England, L. (R.R.of C) No 1 Cdn Sigs, Rein, Unit.

DECLARATION.

The Court declare that B-67355. Pte.England. L. (R.R of C) illegally absented himself without leave at Delville Barracks, Cove, Hants on the 20th day of May 1942, at 2359 hrs.; that he is still absent, and that on the 23rd day of June 1942 he was deficient, and that he is still deficient of the items as set out below, valued at £ 4-18-8 (¾ Vocabulary price).

ITEM	No	VALUE	¾ of Vocabulary price
Anklets web	1	£ 0 3 2½	£ 0 2 8
Badges Cap	1	0 0 7½	0 0 4½
Battle Dress Blouses	1	1 7 6	1 0 9
" " Trousers	1	1 7 11	1 0 10
Braces (Prs)	1	0 1 3½	0 0 11½
Shaving Brush	1	0 1 4	0 0 1
Comb, Hair	1	0 0 2	0 0 1½
Dressing Field	1	0 1 1	0 0 9
Fork	1	0 0 5	0 0 3½
Gloves, Woolen Pr	1	0 2 7½	0 2 0
Housewife	1	0 2 3	0 1 9
Knife Clasp	1	0 5 2½	0 4 0
Knife Table	1	0 0 9½	0 0 7
Spoons Table	1	0 0 4½	0 0 3
Rifle Sling	1	0 1 4	0 1 0
Straps shoulder	2	0 6 8	0 5 0
Anti-dim	1	0 0 2½	0 0 1½
Eyeshields	6	0 2 3	0 1 9
Respirator (complete)	1	1 0 10	0 15 6½
Wallets anti-gas	1	0 1 5½	0 1 1½
Capes anti-gas	1	1 3 6½	0 17 6½
Ointement anti-gas	2	0 1 7	0 1 2
Protectors Ear	2	0 0 0	0 0 0
TOTAL.....		£ 6 15 1	£ 4 18 8

Names of President and Members

PRESIDENT.....Lieut. J.D. Smythe R.C.C.S.
MEMBER.....Lieut W.J.P. Creswick R.C.C.S.
MEMBER.....Lieut D.H. Gardiner R.C.C.S.

Signature of Commanding Officer H.R. Tyner, Colonel.
Commanding 1 C.S.R.U.

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

(1855) Wt.44492/1845 120,000 1/41 A.& E.W.Ltd. Gp.699 Forms/S115/57.

EXHIBIT "B"

def

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1. R.C.O.S. TRAINING WING. No. 1 CON. SIGS. REIN. UNIT.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

(6823) W1.42175/5067 11,000 2/39 A.&E.W.,Ltd. Gp.498 Form/O.1617/1

I CERTIFY that the man whose personal description is given below surrendered himself to *A.C. 584 2 C A Smith at Gillingham, Kent at (hour) 11.00 hrs. on the 4th day of Sept 1942 as being No. B 67355 (Rank and Name) Signalman M. N. ENGLAND a deserter (or absentee without leave) from Canadian Corps of Signals and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word " to " to be inserted the name and rank of the police officer concerned.

Age 22 Height 5'-10 Feet Inches

Complexion Pale Hair Fair Eyes Brown.

Marks Mole left cheek.

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	
Probable Date of Desertion or beginning of absence, and from what place	2nd June 1942 Aldershot

Signature of Officer of Police in charge of [signature] Sgt. Gillingham Station.

5th Sept 42 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B 67355 N.Rank Sgmn Name England, M.L. Unit R C C S

The following expenses were incurred in apprehending and returning the M/N Soldier to his ~~Unit From~~ London from Hillingdon

Date	Particulars	Amount		
6 Sept 42	Escorts return fare from LONDON To Hillingdon		5	2
	Prisoners single fare to LONDON From Hillingdon		3	7
	Prisoners fare from London To Hillingdon			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		2	0
	Total £		9	9

EXHIBIT "X"

R. Gold Head [illegible] Officer taking Summary

R.C.C.S. TRAINING WING,

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.R.Q. 1000-55
40/P & S/483

Exhibit "D"

DUPLICATE COPY MADE FROM SOLDIER'S M.F.M. 2 & M.F.M. 4 - 8 Sep 42

M.F.M. 5
A.F.B. 179
(21-10-41) 7-41 (1210-30)
H.Q. 1772-35-1653

No. B-67355 Name ENGLAND, M.L. Sqn., Battery, or Company Corps Royal Regt. of Canada. Date of enlistment 28/2/40 G.C. Badge No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date awarded or of offence if awarding with trial	By whom awarded	Remarks
Field (U.K.)	28/5/41	Pte		A.A. 40		15 dys F.P.	(D.O.#42	of 31/5/41	Forfeits 15 dys pay
Field (U.K.)	25/1/42	Pte		A.A. 15(2) A.W.O.L.		Total forfeit. of 10 dys pay	(D.O.#16	of 25/2/42)	
Field (U.K.)	2/3/42	Pte		A.A. 15(2) A.W.O.L. 16/2/42 until 2/3/42 (absent 12 dys 6 hrs 30 min)		Total forfeit. of 26 dys pay. (D.O.#19 Of 5/5/42)			Stoppages of £4-2-4

CERTIFIED TRUE COPY 9 Sept 1942

ADJT.
R.C.O.S. TRAINING WING,
No. 1 CDN. SIGS. REIN. UNIT.

Exhibit "A"

A.G.'s Office
No. 1
Prosecution

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-67355	Private	ENGLAND, M.L.	R.R. of C.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act / Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For A.A. 40	Nil	times	One	times
For A.A. 15 (1)	Two	times	Two	times
For	XXXXXXX	times	XXXXXXXXXX	times
For	XXXXXXX	times	XXXXXXXXXX	times

Number of instances of gallantry or distinguished conduct None

~~There are no entries in the conduct sheet of accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or civil court of which such~~ / Air Force Act A.F.A. 47 ~~Section 47 of the Army Act and dispensals with which such are to be stated are stated to the contrary.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence of~~

~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and Five days in military custody, making a total of Five days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years 1 month

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper 28 Feb 1940

7. The service which the accused is allowed to reckon towards discharge is 2 years 6 months

8. The accused is entitled to reckon 2 years 6 months service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward military military ~~in possession of or entitled to. State any air force decoration or reward~~ military

10. ~~The accused is a married man.~~ The next of kin of the accused is entered as follows ~~throughout his~~

11. (In the case of an officer) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

and is his regimental (or assigned) rank of dated

12. The accused has struck off strength (or ceased to be an officer) with effect from (as the case may be) as at the present date:—

Date of probable

In the case of years.

In the case of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil courts or summary words under Section 47 of the ARMY Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10 Sep 42 day of E Hulbert major
admin officer 1/C SAU

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH R.P. 14 (B) (h)

I, B-67355 Pte. England, M.L., desire that an officer be detailed to defend me at my trial by Field General Court Martial. I desire the services of Capt. E.C.F. Anderson, R.C.C.S. of R.C.C.S. Wing, No.1 C.S.R.U., if he is available.

M. L. England

1H-118.

Inv. English. MS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C 9687 Gnr William Lloyd English

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to FINDINGS see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 2 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 3. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Nine months detention

(Sgd) ... Judge-Advocate, if any. 19 Nov 44 Date awarded. (Sgd) C R Archibald Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 766.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court and remit three months detention.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) E K Sutton Brig

Date 26 Nov 1944 Commanding CRA 3 Can Inf Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
C9687 Gnr English W.L.	27 Nov 44	S Harrison (Capt) (J.E. HARRISON) Adjt 12 Can Fd Regt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160 44-118

RECEIVED 8 DEC 1944 JAG (MAIL) BRANCH

FIELD GENERAL COURT-MARTIAL

Convened by Brig E.R. Suttie Comd RCA 3 Cdn Inf Div dated 17 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 1a, 31, 109. As to reasons for showing (a) permanent and confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C 9687	Gnr		William Lloyd	English	12 Fd Regt RCA

PROCEEDINGS REVIEWED J. Fulton Capt 20 Dec 44 REVIEWING OFFICER JAG BRANCH CMHQ

PROCEEDINGS RECEIVED 8 DEC 1944 JAG (MAIL) BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 19 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 14|118

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 455, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 1. 2. AA 49, 50, RP 125-127. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 10 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ... as interpreter? Ans ...~~

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer to swear.(1)~~ As shorthand writer? Ans

(1. RP 73. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 16, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C R Archibald	14 Can Fd Regt RCA
Member	Capt	J F Brown	12 Can Fd Regt RCA
Member	Lt	D G K Frost	12 Can Fd Regt RCA
Judge-Advocate	———	———	———
Prosecutor	Capt	L F Kirkpatrick	12 Can Fd Regt
Defending Offr	Lt	D H Gunter	12 Can Fd Regt

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 21, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment where RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused C 9687 Gnr William Lloyd English before arraignment makes(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 36, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or be one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42; when several accused to be tried separately see RP 71(C), and use separate copies of CF 456 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Record 1

page 137

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A)*.) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H)*.) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38*.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A)*.)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s).~~ The Court decides (not) to advise accused to change his ~~their~~ plea(s) of Guilty to Not Guilty on ~~the~~ first charge(s). The accused is (not) so informed, ~~and he (others) change(s) his (their) plea(s) on~~ ~~charge(s).~~ ~~Part 1 of the Schedule is amended accordingly.~~

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 1, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If yes, see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KA Can 525. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 2 and Ex 3 respectively.(3)

(1. *MFS 255 or MFS 256.* 2. *MFM 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statements and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court in closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 192, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas KC) RP, 2323, MML p 66, 757-759. As to sentences assigned for civil offences in the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. C9687 Gnr William Lloyd English, 11 Bty, 12 Cdn Fd Regt, RCA, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1)
Army Act

WHILST ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2100 hrs 28th October 1944 until 1555 hrs 5th November 1944. (Absent 7 days, 18 hrs and 55 mins.)

.....
(R. ... Webb) Lt-Col,
Officer Commanding
12 Cdn Fd Regt, RCA

In the Field
6 Nov 44

To be tried by FGCM

(E.h. Suttie) Brigadier
JSA 5 Cdn Inf Div

In the Field
8 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-9687	Gunner		William Lloyd	ENGLISH	12 Cdn Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 17 Nov 44 endorsed by me, "I/To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial;

(Delete part in brackets when not required for compliance with RP 108(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C.R. ARCHIBALD	14 Fd Regt RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	J.C. DUFFIELD	12 Fd Regt RCA
Lieut.	D.G.K. FROST	12 Fd Regt RCA

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt.	To be detailed by 12 Fd Regt RCA J.F. Brown	12 Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

(E.R. Suttie) (Personally. RP 105 fn 2.)

Brigadier, (Rank.)

Dat 17 Nov 44

Commanding CRA 3 Cdn Inf Div.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for edits and notes for use on trial.)

12 CDN FIELD REGIMENT 19 Nov 44

THIS IS TO CERTIFY THAT C-96867 Gnr ENGLISH W.L. was EXAMINED BY ME THIS DATE AND I FIND HIM IN fit CONDITION TO UNDERGO TRIAL BY FIELD GENERAL COURT MARTIAL.

W.E. Simpson (Capt)
(W.E. SIMPSON CMH)
RMO 12 CDN FIELD REGIMENT

Exhibit 4 to proceedings
1 FGCM 19 Nov 44
CKS

Address by Defending Officer in Mitigation of Punishment

Leniency of the court is asked on the ground that this soldier has long period of service, including service in this active theatre.

He joined the Army in July 1941 at age of 18.
Came overseas in January 1942.
Came to France 12th June 1944 to 2 CBRD.
He has served with 13 Can Fd Regt, and been with 12 Can Fd Regt for the last 2 months.

C R Armstrong
Major

19th 44.

Exhibit 1 To proceedings of FGCM 19 Nov 44 C/OR

SUMMARY OF EVIDENCE IN THE CASE OF No. C9687 GNR ENGLISH, W.L., 11 Bty, 12 Cdn Fd Regt, RCA, CAO, charged with absence without leave, (AA Sec 15 (1))

The Commanding Officer does not direct, nor does the accused demand that the evidence be taken on oath.

FIRST WITNESS - for the prosecution

B11163 Sjt Vidler, R, 11 Bty, 12 Cdn Fd Regt, states -

On the 28 Oct 44 I was in charge of a vehicle taking 11 Bty personnel to a show in ENCLOO. The vehicle was supposed to leave ENCLOO to return to the unit at 2100 hrs. At 2100 hrs C9687 Gnr English, W.L. who was one of the personnel on the vehicle had not shown up, so we left without him. On returning to the unit I reported to S/SSM Yost that Gnr English was absent.

Q.1 - Were all personnel warned that the vehicle would leave ENCLOO at 2100 hrs?

A.1 - Yes sir, I warned them before they dismounted from the vehicle at ENCLOO, and I also said that the vehicle would remain at the market square.

Q.2 - When did you next see Gnr English?

A.2 - At 0930 hrs on 6 Nov 44.

The accused declines to cross-examine this witness.

R.P. 83(b) have been complied with.

R. Vidler
B11163 Sjt Vidler, R.

SECOND WITNESS - for the prosecution

L18321 Sjt Neff, B.A., 11 Bty, 12 Cdn Fd Regt, states -

I am No. 1 of A3 gun detachment. On the 28 Oct 44, at approximately 1715 hrs, C9687 Gnr English, W.L. who was No. 5 of my detachment left with other personnel in a vehicle to attend a show in ENCLOO. When the vehicle returned later in the evening, Gnr English did not report back to my detachment. I then went to Sjt Vidler who was in charge of the party, and he reported that Gnr English was absent, as he had not returned to the vehicle in ENCLOO. I did not see Gnr English again until 0930 hrs 6 Nov 44 and he was not on duty on my gun at any time from when I last saw him on 28 Oct 44 until then.

Q.1 - Have you been away from your unit at any time between 28 Oct 44 and 6 Nov 44?

A.1 - No sir, I have been on duty every day.

The accused declines to cross-examine this witness.

R.P. 83(b) have been complied with.

B.A. Neff
L18321 Sjt Neff, B.A.

THIRD WITNESS - for the prosecution

Lt G.P. Sutherland, 11 Bty, 12 Cdn Fd Regt, states -

On 5 Nov 44 I was Orderly Officer for the 11 Bty, and was on duty in the Battery Office. G9687 Gnr English, W.L. reported to me at 1555 hrs and as he had previously been reported absent without leave I immediately placed him under close arrest.

The accused declines to cross-examine the witness.

R.P. 83(b) have been complied with.

G.P. Sutherland
Lt G.P. Sutherland

The accused was cautioned as follows: -

Q.1 - Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A.1 - I do not wish to make a statement or give evidence on oath.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that R.P. 4 (C),(D),(E),(F) and (G) have been complied with.

L.P. Kirkpatrick
Capt
L.P. Kirkpatrick
12 Cdn Fd Regt

In the Field
6 Nov 44

Enclosed 3 pages of Conduct Sheet

No 9687 Name English, W.L. Sqn. Battery or Company | Corps RCA | Date of enlistment 30 Jul 40 | Badges | Service [illegible] Proficiency Pay [illegible] | MFM 6 (AFB 122) 40/PAM/156 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	18 MAR 44	GNR		Sec 15(1) AWL 4 days 10 hrs 30 mins.	Documentary Sjt Drysdale	7 days FP 7 days pay	24 MAR 44	Lt-Col Armstrong	Total Fine 17 days FP
FIELD	17 MAY 44	GNR		AA15(1) AWL 3 days 21 hrs 15 mins	Bdr Chester	28 days pay 4 days pay	25 MAY 44	Major Young	
FIELD	20 Jun 44	GNR		AA15(1) AWL 1 hr	L/Bdr Goodwin	3 days CB	21 JUN 44	Capt Lafferty	
FIELD	30 JUN 44	GNR		AA40 Conduct etc - Firing blank ammunition in camp area	Sjt Gendar Sjt Maguire	7 days FP 7 days pay	1 JUL 44	Capt DM Cowie	
FIELD	13 OCT 44	GNR		AA15(1) - AWL 7 hrs	T/BSM Yost	7 dys CB	14 OCT 44	Major DM Wilson	

(P10

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY OF ORIGINAL ENTRIES FROM MFM 6 6 NOV 44					
						..A.T. Lieutenant... Capt L.A. LAKEFRICK 11 Cdn Fd Bty			
In The Fd	28 Oct 44			WOAS, Absent without leave from 2100 hrs 28 Oct 44 until 1555 hrs 5 Nov 44 Sec 15 (1) AA	FGCM	6 months detention	19 Nov 44	FGCM	
				"Certify true entry from original MFM 6 .....A.T.P. Lt.....		..			

Exhibit 3 (page 1) to Affidavit

No C9687 Name English, W.L. Sqn, Battery or Company | Corps RCA | Date of enlistment 30-July-40 | QC Badges | Service or Proficiency pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards Freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	SHEET DESTROYED			30 JAN 42: LAST ENTRY 3 NOV 41:	CASES OF DRUNKENNESS - NIL				
FIELD	14 Apr 42	GNR		AA 40, Conduct etc. - left his duty in Mens' Kitchen	Sjt Barnes L/Bdr Shantz Gnr Andrews	5 days CB	14 Apr 42	Major FE Goulding	
FIELD	6 Aug 42	GNR		AA40, Conduct etc. - while on duty as a Regt'l Policeman was improperly dressed and failed to salute an officer entering the Regt'l Area.	BSM Wibe T/BSM Laney	14 Days CB	6 Aug 42	Major FE Goulding	

(FTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	16 Jun 42	GNR		AA40, Conduct etc - while on vehicle picquet failed to awaken his relief before leaving his post.	L/Bdr Toombs	7 days CB	17 Jun 42	Capt JD Harrison	
FIELD	26 Mar 43	GNR		AA40, Conduct etc - dirty buttons when mounting Div Guard.	Sjt Hart	5 days CB	3 Apr 43	Major CM Drury	
FIELD	16 Jun 43	GNR		(1) AWL 1 day, 8 hrs, 20 mins AA 15 (1) (2) AA40, Conduct etc - in close arrest 2 days, 16 hrs, 40 mins.	L/Sjt Jones Documentary	10 days FF 10 days pay Cost of apprehension 0-19-9	21 Jun 43	Lt-Col GT Inch	Total Forfeits 15 days pay
FIELD	12 Feb 44	GNR		AA 15(1) AWL 10 days, 19 hrs, 20 mins.	Documentary L/Bdr MacIver	22 days pay 14 days CB	15 Feb 44	Lt-Col GT Inch	Forfeits 11 days pay.

Exhibit 2 to proceedings
1 FGCM 1947 44 CPL

ARMY FORM B.216.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-9697	Gnr	ENGLISH W.L.	12 Cdn Fd Regt

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See sect. 47, A.A., 1930.

* The entry from each sheet should correspond with the number (or one of the numbers) of the accident sheets produced, being given in the case (where there is such entry), and in any recorded special term of [illegible] or dishonourable conduct.

Interlineation.—If the charge is not proved, the entry in the conduct sheet should be [illegible] and dated.

	* Within last 12 months.	* Since Enlistment.
For Sec 15(1) AA	5 times	6 times.
For Sec 40 A.A	1 times	6 times.
For	time	times.
For	times	times.
For	times	times.

~~Nature of extra-regimental~~ military distinguished conduct ~~x~~ g.s.h.

~~x~~ g.s.h.

There are g.s.h. entries in the conduct sheets of the accused.

C.P. Chatfield Major

2. ~~The accused has previously~~ g.s.h. The accused has not been previously convicted by Court Martial ~~x~~ g.s.h.

~~Nature of the crime or crimes of which he was convicted, and the sentence or sentences passed in each case.~~ g.s.h.

~~Whether any portion of such sentence remains unexpired at the present time.~~ g.s.h.

3. The accused is not under sentence at the present time, ~~or The sentence of imprisonment was remitted on the~~ g.s.h. ~~day of~~ g.s.h.

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 2 days in military custody, making a total of 2 days, of which no days were spent in hospital.

5. The present age of the accused, according to his ~~record of service~~ g.s.h. attestation paper, is 21 years

6. The date of his ~~enrolment~~ g.s.h. attestation, specified in his ~~record of service~~ g.s.h. attestation paper, is 30 Jul 41

7. ~~The date on which the accused is entitled to claim his discharge or release under the terms~~ g.s.h.

8. ~~The date until which he is entitled to pay or on which pay ceases~~ g.s.h. ~~is~~ g.s.h.

9. The accused is entitled to reckon 3 years service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~or is entitled to receive, the following decoration or medal (or in respect of which~~ g.s.h. entitled to *(state any military decoration or reward)*. CVSM and clasp

11. ~~The date on which the accused became entitled to wear~~ g.s.h. ~~was~~ g.s.h.

12. ~~The previous character of the accused is as entered on the conduct sheet~~ g.s.h. ~~is~~ g.s.h.

~~as follows (Here state whether exemplary, indifferent or bad)~~ g.s.h. ~~is~~ g.s.h.

(Signed) W.L. ENGLISH Gnr A.A.F.W.12 Cdn Fd Regt

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7 day of November 1944

J. E. Harrison (Capt)
(J.E. HARRISON)
Adjt 12 CdnFd Regt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of	years	Date of Promotion
In the rank of	years	
In the rank of	years	

Question 13.—If any soldier to any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a Wing by field general court-martial the information may be collected from such sources as are available and the particulars inserted accordingly.

5 L 44
Pt Ennis, R.B.
C 53105

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C-53105 Pte EMNIS, Rayfield Gordon - 1 Cdn Reception Dep

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

N At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for a period of Ninety (90) Days.

(Sgd) ..... 30 Aug 45 (Sgd) D Whitman Col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) c 1946
(1. AA 57A. Delete if not used.)

(Sgd) A.F. Connolly Brig

Date 1 Sep 45 Commanding B Khmp CAV Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C-53105 Pte Emnis R.G.	4 Sep 45	Elvington Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCESSED AT CMHQ IN AB 168 File 5 Dec 44

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA81) 40/P&B/1698 5(44) 4/38B

Convened by Order of BRIG A.B. CONNELLY, CBE Comd "B" Gp., CRU dated 28 Aug 45

RECEIVED 1 SEP 1945 JAG OFFICE

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (a)/(b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C53105	Pte	Rayfield Gordon	EMNIS	1 Cdn Reception Dep

PROCEEDINGS REVIEWED 10 Sept 45 [illegible] JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at Aldershot in (country) ENGLAND on (date(s)) 30 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns KOs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 58, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused~~ Do you object to ~~the Interpreter~~ as interpreter ? Ans .....
~~The Interpreter is sworn.~~(1) Do you object to PRATIK SATHASINGHAS as shorthand writer ? Ans N.D.
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N.O. N.O.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	D.L. Redman, VD	HQ CRU
Member	Captain	A.C. HOLLAND	1 CDN
Member	Lieutenant	N.F. WILTON	1 CDN
~~Judge-Advocate~~			
Prosecutor	A.T.	O.J. KLAUS	1 CDN RECEP DEPOT
Defending Offr	A.T.	W.E. HAGAN	1 CDN RECEP DEPOT

Questions by President : Is the Prosecutor a lawyer ? Ans N.O. Is the Defending Offr a lawyer ? Ans N.O.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings (for information of Conv Offr).
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to attend trial (AA 13, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded (per Notes). For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; where several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 68(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. N.E. (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 4. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court ~~considers the accused's statement.(1)~~ The Court decides [not] to advise accused to change ~~his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*). *See* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 113(*b*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - 2 I/C
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(1. *MFB* 255 *or MFB* 296. 2. *M/M* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*2*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-53105 Pte. ENNIS, Rayfield Gordon, CIC on strength of No. 1 Cdn Reception Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Tournai Barracks absented himself without leave from 0830 hrs. 14 Jun 45 until he surrendered himself at Tournai Barracks at 1700 hrs. 30 Jul 45. (Total absence 46 days 8 hrs. 30 mins.)

(Ronald H. Back) Lt.Col.
Officer Commanding,
No. 1 Cdn Reception Depot.

22 Aug 45.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

IN THE FIELD
26 AUG 45

(A.B. Connelly) Brig
Comd 9th Cdn
Cdn Rft Units

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP (d), 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C53105	Pte	Rayfield Gordon	ENNIS	1 Cdn Reception Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Aug 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, VD	HQ CBD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	Being detailed by CO	1 CBRD
Lieutenant	Being detailed by CO	1 CBRD

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Dat. 28 Aug 45

(A.J. Connelly) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Commanding 2nd Gp, Cdn Rft Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 85 (Dr Secs of AFA 2) Art 9 & 11(2) (1) (a) (See overleaf for oaths and notes for use on trial.)

rtation No 1. C R D.

Date 30th August 45

MEDICAL OFFICERS REPORT

(In lieu of)
(M.F.B. 246)

I certify that No. C53105 Pte Ennis RJ
of Nelson Reception Dept is in a ~~Hut~~ state of suitable
condition to undergo trial by Court Martial

A D McKibbin Capt

Station

PLEA IN MITIGATION

This soldier has been in the army since June 1940. His record is good since he has had no major crimes. He has served in action on the continent and was wounded twice. While he was in guard room he was taking treatment for nerves (sleeping tablets etc.) While I was talking to him he was shaking very badly from nerves. I do [illegible] my opinion this man's crime was a result of an extreme nervous condition. For this reason and because of his long + good service I

request that the court
show leniency in awarding
the punishment

W C Hagan Jr

SUMMARY OF EVIDENCE

In the case of C-83105 Pte. Ennis, Hayfield Gordon, GIC on strength of No. 1 Cdn Reception Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding, Officer this Summary of Evidence is taken on oath.

FIRST WITNESS
For the prosecution — Capt. L.E. Donkin, Adjutant, No. 1 Cdn Reception Depot, having been duly sworn states:

"I am Capt. L.E. Donkin, Adjt. 1 Cdn Reception Depot. I produce certified true copy of a declaration of a court of Inquiry showing C-83105 Pte. Ennis, H.G. absent from 0830 hrs. 14 Jun 45 [illegible] Exhibit "A".

SECOND WITNESS
For the prosecution — B-97448 L/Cpl. Ritza, P. on strength No. 1 Cdn Reception Depot, having been duly sworn states:

"On 30 Jul 45 I was NCO i/c unit guard room, 1 Cdn Reception Depot. At approx 1700 hrs. Pte. Ennis reported to the Guard Room. He reported himself as A.W.L. I placed him under close arrest. He was sober and properly dressed."

The accused declines to cross examine the witnesses.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused reserves his defence.

Certifies that Rules of Procedure 4 (c),(d), (e), and (f) have been complied with.

C.H. Edwards Lieut
(C.H.E. Edwards) Lieut.
Officer Detailed to take
Summary of Evidence.

22 Aug 45.

E+A
M

RSM

1700 30-7-45

BF-13 Aug

Record of the Declaration of a Court of Inquiry assembled in the Field on the 5th. day of July 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. G 83105 Pte. Ennis, R. G.

DECLARATION

The Court declares tha t No. G 83105 Pte. Ennis, R. G Patient No. 1 C. R. D. illegally absented himself without leave from No. 4 C. C. D., R. C. A. M. C. at 0830 hrs. on the 14th. day of June 1945; and that on the 5th. July 1945 he was deficient, and that he is still deficient of the following articles:-

ARTICLES	VALUE
See a ttached list	Total $ 31.55

Signed H. W. Metcalfe Lt. President
H. J. Hoskin Lt. Member
J. Z. Clayton Lt. Member

Signed at Farnborough, Ha nts
this 5th. day of July 1945
Comma nding Officer W. R. Dunlop Lt. Col.

Certified true copy

J. L. McHugh Capt.

J. L. McHugh Capt.
No. 4 Canadian Convalescent Depot R. C. A. M. C.

NO.4 CANADIAN CONVALESCENT DEPOT RCAMC

APPENDIX "B"

DEFICIENCIES OF KIT OF G 55106, PTE ENNIS, R.G.

ARTICLE	DEFICIENCY	VOCABULARY OF SCALE PRICES	75% OF SCALE PRICES
Battledress, blouse	1	6.50	4.88
Boots ankle prs	2	11.64	8.76
Caps, field service	1	0.56	0.42
Drawers cellular short prs	2	0.86	0.64
Jersey pullover	1	1.79	1.35
Shirt angola drab	1	2.05	1.53
Shoes canvas prs	1	0.65	0.49
Socks worsted "	4	1.84	1.38
Battledress, trousers	2	13.10	9.80
Braces	1	0.32	0.24
Brass cleaning	1	0.04	0.03
Brush button	1	0.26	0.20
Brush clothes	1	0.48	0.36
Brush hair	1	0.34	0.25
Brush shoe polishing	1	0.28	0.21
Brush tooth	1	0.11	0.08
Comb hair	1	0.04	0.03
Vests cotton gymnasium	2	0.82	0.61
Towel hand	1	0.34	0.25
		TOTAL	$31.53

(H H Wilkins) Capt
Quartermaster
4 Canadian Convalescent Depot
RCAMC

CERTIFIED TRUE COPY (J L McHugh) Capt

(J L McHugh) Capt
Records Officer
4 Canadian Convalescent Depot
RCAMC

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-53105	Pte.	Ennis, R.C.	1 Cdn Reception Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered to the prejudice. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) ..... 7 times.

For AA Sec 40 ..... 2 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 10 Sep 43

Date of last entry in Field Conduct Sheet 18 Feb 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. Nil

~~3. The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 31 days in military custody, *i.e.*, NIL days in open arrest, 31 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 31 yrs

6. The date of his ~~calling up for military service~~ attestation is 26 Jun 40

7. The service which the accused is allowed to reckon is 5 yrs. 0 mos

8. The accused is in possession of: CVSM & Clasp

Enter the military decorations (if any) held by accused.

~~9. If the accused is a warrant officer or N.C.O.~~ The accused has served continuously without reduction, to the present date

Date of Promotion.

In the substantive rank of .....

~~In the war substantive rank of .....~~

~~In the acting rank of .....~~

EY B
RWo

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(23564) W.L.42139/4299 45,000 12-44 A.S.E.M.Ltd. Gp.698 Forms/C.2 (C.W.O.)/A

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N I L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30 day of Aug 45

L/C Donkin Capt & Adjt
1 Cdn Reception Depot

No. C 53105 Name Annis, R.G. | Sqn, Battery, or Company | Temporary Sheet Corps | Date of enlistment 26Jun40 | GC Badges | Service & Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/T&S/136 (7808)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Original sheet destroyed 26 June 42 on completion of two years consecutive service.								
Fd.	10 Sep 43	Pte.		An offence under Sec 40 A.A.	Sjt. Hayward Pte. Lawson Pte. Brown	20 days F.I.	12 Sep 43	Lt.Col. G.H. Christiansen	Forf 20 days pay. n
Fd.	11 Mar 44	Pte.		AA 40 Opening his 24 hr rations.	Major W.A. Gemmell	Forf 1 days pay.	16 Mar 44	Lt. Col G.H. Christiansen.	
Fd.	5 Oct 43	Pte.		AWL from 2400 hrs. 5 Oct 43 till 1445 hrs. 6 Oct. 43. (Absent 14 hrs. 45 mins. (AA Sec 15(1))	Cpl. Running. J.	7 days C.B.	6 Oct 43	Capt. A.B. MacDonald	
Fd.	15 Apr 44	Pte.		AWL from 2230 hrs. 15 Apr 44 to 0630 hr. 17 Apr 44 (Absent 1 day 10 hrs.) AA Sec 15(1)	L/Sgt. Sandilovitch	5 days CB	17 Apr 44	Major WA Gemmell	

(FT30)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fd.	10 May 44	Pte.		AWL from 2230 hrs. 10 May 44 till 1230 hrs. 12 May 44(Absent 1 day 14 hrs. (AA 15[1]	Sgt. Bissonette, E.F.	Admonished	16 May 44	Major NM Gemmell	Auto Forf 2 dys Pay.
Fd.	20 May 44			AWL from 2359 hrs. 20 May till appreh. at 1900 hrs. 23 May 44 (Absent 2 days 19 hrs. 1 min.)	Sgt. Peer, J.	7 days F.F. 7 days Pay	24 May 44	Lt.Col Christiansen	Total Forf 10 days Pay
Fd.	25 Dec 44	Pte.		AWL from 2359 hrs. 25 Dec until 1500 hrs. 27 Dec 44(1 day 15 hrs.)	CSM Allerson	5 days C.B.	29 Dec 44	C.S. Nickle	
Fd.	29 Dec 44	Pte.		AA Sec 15[1] AWL while on CB from Doc 1500 hrs. 29 Dec 44 until app at. Chichester at 1530 hrs. 12 Jan 45 Cert of return 10-15-2 Absent 14 days 30 mins.)		21 days FF. 21 days Pay YRAI 1457 1 (b)	15 Jan 45	AH Young	Lt Col

Temp Sheet.

3/17 MFM 6
(AFB 122)
40/P&S/138 (7910)

No. C53105 Name ENNIS, R.G. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. TWO | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Feb 45	Lte.		AA Sec 15(1) AWL from 2359 hrs. 18 Feb 45 to 0930 hrs. 20 Feb. 45. (1 day 9 hrs. 31 mins.)	Doc.	14 days Pay FRAI 142 (8)	20 Feb. 45	Lt. Col. A.E. Young	8 dys pay FRAI 140 1(a)

Certified True Copy
A.E. Burke Capt. Adjt.
1 Can Reception Depot.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
FIELD	14 JUN 45	PTE		AA SEC 15(1) - AWL from 0630 hrs 14 JUN 45 until surrendering at TOURNAI Bks at 1700 hrs 30 JUL 45 (ABSENT: 46 days, 5 hours, 30 minutes)		90 days detention	30 AUG 45	F.G.C.M.	Forf.47 days pay FR&I 149(1)(a) Forf.31 days pay FR&I 149(1)(c) (ONE(1) day concurrent) and forf.90 days pay FR&I 149 (1)(b). TOTAL FORF. 167 days pay

CERTIFICATE

If he is available I wish.....Lieut. W.E. Hagan.....

of.....1 Cdn Reception Depot.....to defend me.

R. G. Ennis
(Signature of Soldier)

CERTIFICATE

I, C-83105 Pte. Ennis, R.G. No. 1 Cdn Reception Depot, hereby acknowledge receipt of a true copy of the Charge Sheet in connection with the charges pending against me. I also acknowledge receipt of one True Copy of the Summary of Evidence.

R. G. Ennis
(Signature of Soldier)

LIST OF WITNESSES

In the case of C-83105 Pte. Ennis, R.G. on strength of No. 1 Cdn Reception Depot, a soldier of the Canadian Army Overseas.

	(Corps)	(Location)
Capt. L.E. Dunkin	CIC	1 Cdn Reception Depot
B-97648 L/Cpl. Ritza, P.	C Pro C	1 Cdn Reception Depot

LIST OF EXHIBITS

In the case of C-83105 Pte. Ennis, R.G. on strength of No. 1 Canadian Reception Depot, a soldier of the Canadian Army Overseas.

Exhibit "A" Certified true copy of a declaration of Court of Inquiry.

Exhibit "B"

Exhibit "C"

TT-137

A/M.S.M. ENNOR C.E.

TT-137

FIELD GENERAL COURT-MARTIAL

CFA66 (To file on AFA31) 45-P.G.R.-1600 (3664)

Convened by Order of Maj-Gen J.H. Roberts,DSO,ME. Comd Can Rft Units dated 9 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D91040	Sgt A/W.S.M.	Claud Edward	ENNIS	1 Cdn AGRA T.A. Coy, CASF.

T.R. Beaulieu Capt 17 Nov 43

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 10 Nov/43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant from ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 69S, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

R A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2)

R The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.00 hours trial commences.

R A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(5)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(6)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to be interpreted by an interpreter ? Ans~~

~~The Interpreter is sworn.~~(1) ~~Do you object to be shorthand writer ? Ans~~

~~The shorthand writer is sworn.~~(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ? Ans NO-DIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

R A7. The President, Members, ~~JA if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	H.Q.C.R.C.
Member	Capt	I.C. McIVER	H.Q.C.R.C.
Member	Lt	D. Gelchrist	H.Q.C.R.C.
~~Judge Advocate~~			
Prosecutor	Lt	D.R.L. Bedson	Adm Pst Coy RCASC
Defending Offr	Lt	I Friedmann	RCASC

Questions by President: Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 68 (B) and fn 2 were not followed. See 2A p 3.)

R A8. The accused before arraignment make(s) (no) ~~no~~ plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

R A9. The accused is ~~are~~ arraigned (severally) on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 69s to record proceedings. 2. RP 32, RP 33. If otherwise, deletes and make appropriate record per Notes.)

R A10. The Court ~~in closed sitt~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused:

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	not guilty	not guilty	
2nd	not guilty	not guilty	
~~3rd~~			
4th			
R 5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 4.)

R ~~At present under sentence for~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of days, of which days were spent in hospital~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E1.)

Sentence Awarded by the Court: The accused is Released

(Sgd) Judge-Advocate, if any. 10 Nov/43 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date Commanding Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 2. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) as per paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence and exhibits as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO - BUT .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~not~~ (no) opening address.(1) NOTE-ATT

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st on 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 2nd charge(s), and allowed on the 1st charge(s), and that, accordingly, the trial will proceed on the former, but the accused is ~~are~~ found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans yes on oath. Do you intend to call witnesses on your behalf? Ans yes. Are they witnesses as to character only? Ans character only

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states he accepts that the finding(s) of the Court on the ..... charge(s) being advised by civil servants, will be promulgated later.~~(1) ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFB* 203 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 7.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything more or previously stated which would affect the amount of punishment. RP* 37(*F*); *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP* 70(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 42. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 338, 340-3, 366. *Overseas RO JOP* 7(*L*), *MML p* 86, 7157-7159. *As to sentences assigned for civil offences by the law of England see AA* 4(*c*)(*ii*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3)(*b*), 68(1), *KR Con* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 367. *As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

ENTERED IN RECORDS OF C.N.I.

JAG BRANCH - ROUTING RECORD

Accused

D. 91040 Sgt. (A/MSM) Lemon C.E.
1 admin TP Coy.
R.C.A.S.C.

Remarks	Date
Trial in (Country) Eng	10 Mar.
Charges 11	
Sentence Dismissed	10 Mar.
Rec'd from CR at JAG Branch	11 Mar.
To DW for ~~(pre)~~(post) rev	12 Mar.
Recommendations by DW (1) Pass and record. (2) ~~Ltr on irregularities.~~ (3) ~~Quash~~ ~~charge~~ charge(s). (4)	
Ret'd to JAG Rev 1 by DW	17 Mar.
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record file	17 Mar.
Instrs completed by	

A.

CHARGE SHEET

The accused, D-91040 Sgt. (A/M.S.M.) Claud Edward Ennor, No. 1 Cdn. Adm. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE

SEC. 11. A.A.

WHEN ON ACTIVE SERVICE NEGLECTING TO OBEY CANADIAN REINFORCEMENT UNIT ROUTINE ORDERS,

in that he

At Farnborough, Hants, on 30 Oct 43 rode pillion on a W.D. Motorcycle No. CC-1040087 without authorization in writing from a Commissioned Officer, contrary to R.U.R.O. No. 9 dated 29 Jan 43, and republished in Unit Part I Orders dated 3 Feb 43.

SECOND CHARGE

SEC. 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At approximately 1745 hours, 30 Oct 43 at Farnborough, Hants, was concerned in the improper and unauthorized use of W.D. Motorcycle No. CC-1040087.

G.C. McArthur

(G.C. McArthur) Lt-Col.,
Commanding Officer,
No. 1 Cdn. Adm. Tpt. Coy.,
R.C.A.S.C. C.A. (O)

Farnborough, Hants,
3 Nov 1943

To be tried by Field General Court-Martial.

J.H. Roberts

(J.H. Roberts) Maj-Gen.,
Com, Cdn Rft Units.

In the Field,
9 Nov 1943.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40/FAN/1697 (3rd S)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 320, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
D91040	Sjt	A/M.S.M.	Claud Edward	ENNOR	1 Cdn Adm Tpt Coy, RCASC.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Nov 43 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT-COL	D.T. BROWN, VD.	HQ CBU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A CAPTAIN	FROM	HQ CBU
A LIEUT.	FROM	HQ CBU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 9 Nov 43

(Signed personally. RP 105 fn 2.)
(J.H. Roberts) Maj-Gen.,
Cdn Rft Units.
Commanding Convening Officer.

Maj-Gen. (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

NO. 1. CDN. ADMINISTRATIVE TRANSPORT COMPANY R.C.A.S.C. C.A.(C).

Medical Officer's Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No. D-91040 MSM Ennor, C.E.
(rank) (name)
No.1 Cdn.Adm.Tpt.
of Coy., RCASC. and in my opinion he is fit to undergo

trial by Court Martial.

Station Farnborough, Hants.

Date 10th. November, 1943.

Sgd. A. Cherry Capt. R.C.A.M.C.
(Medical Officer)

Page 4

·M H R Kd by Court Ex 3
unit orders are distributed at present
in this unit by posting same, in H.Q.
at sec Ord. Rooms. mins miss Halls
Sgts mess at officers mess and recreation
hut. This was done duty in 7th/43
when I was C.O. of this unit.
This Order in parts above referred to
was obeyed in this unit

Cross Examd by A/C of Office.

I have known accused since March 1941
in this unit. I have always found the
accused to be a 1st class N.C.O. and fully
capable of performing his duties. He was
a S/Sgt when I was C.O. His work was
excellent at all times. I have always
found him obedient and willing. At
present he is the Chief N.C.O in the workshop
in this unit and responsible for all work
done in the workshop.

The Court ordered the accused proceed
to No 1 Canadian Hosp. at Basingstoke and
took the evidence of

The evidence for the Prosecution

1 W witness per the Prosecution
2 1029774 Pte L.C. Heiser 1 Cdn Pnr Coy being
duly sworn states

I am a member of R. Pol of this unit at appx
1745 hrs 30 Oct 143 I was on duty at main
gate checking incoming and outgoing vehicles
Sgt Galloway of this unit was riding a
motor cycle C.C. 104087. He was going out
He said to me "This bike has been checked
out" I pursuant the bar of the gate and let him
thru. I then checked the list to see if his
name was on the list I found Galloway's
name as the last page. ~~This is the~~
There was no authority on this list for Galloway
to take out the motor cycle at 1745 hrs or
while I was on duty that date between 16 and
at 2000 hrs as I was checking the list I
saw the accused come out of an office
outside the gate with a crash helmet on
his head and he was wearing a A.R. coat I
went on checking my list and looked up and
saw the accused riding on the back of the
motor cycle Sgt Galloway was riding
being the motor cycle which he had ridden
out the gate. I reported the occurrence to
Sgt of the Guard.

Cross Examd by A/C of Office

I scanned each work ticket as the
trip was arranged I let the vehicle go out
and write this occurrence on the sheet. The
sheet is not an authority to show a record
of what had happened. I did not ask Sgt
Galloway for his work ticket. He may have
had one. This is the first occasion I found
it ask for the work ticket. Anyone using this
motor cycle go through the gate could

Trial of W 91040 Sgt A/M S/M. C E Error / Admn
Pnr Coy Release
Page 1

NOTE D 3

Evidence for the Prosecution

1 W witness for the Prosecution

2 1029774 Pte L.C. Heiser 1 Cdn Pnr Coy being
duly sworn states

I am a member of R. Pol of this unit at appx
1745 hrs 30 Oct 143 I was on duty at main
gate checking incoming and outgoing vehicles
Sgt Galloway of this unit was riding a
motor cycle C.C. 104087. He was going out
He said to me "This bike has been checked
out" I pursuant the bar of the gate and let him
thru. I then checked the list to see if his
name was on the list I found Galloway's
name as the last page. ~~This is the~~
There was no authority on this list for Galloway
to take out the motor cycle at 1745 hrs or
while I was on duty that date between 16 and
at 2000 hrs as I was checking the list I
saw the accused come out of an office
outside the gate with a crash helmet on
his head and he was wearing a A.R. coat I
went on checking my list and looked up and
saw the accused riding on the back of the
motor cycle Sgt Galloway was riding
being the motor cycle which he had ridden
out the gate. I reported the occurrence to
Sgt of the Guard.

Cross Examd by A/C of Office

I scanned each work ticket as the
trip was arranged I let the vehicle go out
and write this occurrence on the sheet. The
sheet is not an authority to show a record
of what had happened. I did not ask Sgt
Galloway for his work ticket. He may have
had one. This is the first occasion I found
it ask for the work ticket. Anyone using this
motor cycle go through the gate could

·MARKed by Court EX 3

unit orders are distributed and published in this unit by posting same, in H.Q. and Sgts Mess. Rooms. mine mess Halls Sgts mess and officers mess. and recreation hut. This was done daily in 7th/43 when I was C.O. of this unit.
This order in parts above referred to was obeyed in this unit

Cross Examd by A/Sgt of Office.

I have known accused since March 1941 in this unit. I have always found the accused to be a 1st class N.C.O. and fully capable of performing his duties. He was a S/Sgt when I was C.O. His work was excellent at all times. I have always found him obedient and willing. at present he is the Chief N.C.O in the workshop in this unit and responsible for all work done in the workshop.

The Court including the accused proceeded to No 1 Serv. Hosp. at Basingstoke and took the evidence of

5th witness for the Prosecution

2-916 26 Sgt N. Galloway of 1 Edn Adm Tpt Sqn duly sworn States

I am a Sgt in A Flt of this unit On 30 Oct/43 I was the N.R for a convoy to get moved at Guildford. It was intended it would take all day but it ground at noon. I sat around Sgts Mess all afternoon and at approximately 1630 to 1700 hrs. M & M. Evans the accused said he was going to Farnham so I offered him a ride to Farnham before I put my bike away. I took him to Farnham He rode on the back seat with the Pillion

Brought up 9/10/43 Sgt A/M S/M. C & Evans I adm Tpt Coy R case

NOTE D 3

Page 1

Evidence for the Prosecution

1st witness for the Prosecution

2-102974 Pte L.C. Heiser 1 Edn Tpt Coy duly sworn states

I am a member of R. P of this unit. at approx 1745 hrs. 30 Oct/43 I was on duty at main gate checking incoming and outgoing vehicles Sgt Galloway of this unit was riding a motor cycle C.C. 10400 & 7. He was going out He said to me "This bike has been checked out" I raised the bar of the gate and let him thru. I then checked the list to see if his name was on the list. I found Galloway's name on the last page. ~~This is the~~
There was no authority on this list for Galloway to take out the motor cycle at 17.45 hrs or while I was on duty that date between 1600 and 2000 hrs. as I was checking the list I saw the accused come out of the office outside the gate with a khaki helmet on his head and a A.S.C. coat I went on checking my list and looked up and saw the accused riding on the back of the motor cycle Sgt Galloway was riding being the motor cycle which he had ridden out the gate. I reported the occurrence to the Sgt of the Guard

Cross Examd by A/Sgt's Office

I examined each mark ticket and of the trips was entered I let the vehicle go out and enter this occurrence on the sheet The sheet is not an authority to keep a record of what had happened I did not ask Sgt Galloway for his mark ticket He may have had one. This is the first occasion I failed to ask for the mark ticket. Anyone using the motor cycle to go through the gate would

assume that the work ticket had been
examined by me and was in order.
The accused did not hear my conversation
with Sgt Galloway. Galloway was a
D.R. and go in and out frequently. They
might go out with a convoy and if anything
went wrong with the convoy they might
come in to telephone etc and go out again
(The W of Office shows the entries a
work ticket A/F 3518 on P 1-39 on which
the last entry was dated 30/10/43
marked by Court Ex 1 for identification
entries continue
This work ticket is issued by this unit
for motor cycle LC 1040087 per driver
Sgt Galloway. It is signed by Capt Watson
of this unit. I state this to be Sgt Galloways
work ticket for a period including 30 Oct/43
marked Ex 1 by Court
2nd entries per the Prosecution
L 105-088 Pte C H Thaxter of 1 Cdn Admin Pet
Coy being duly sworn states
I am a member of R.P. of this unit. I was
off duty on late afternoon of 0 Oct 143. I
decided to go for a stroll. I stopped at
the main gate to talk to Pte Hussie who
was on duty. Sgt Galloway rode up on
a motor cycle and said to Hussie that the
motor cycle was checked out or words
to that effect. He let him go out. Galloway
stopped outside the gate and I saw the
accused come out of the office outside
the gate. The accused got on behind Sgt
Galloway on the motor cycle and they
rode off. There is only one vehicle gate for
this camp.
Cross Examined by the D of Officer
Sgt Galloway rode this motor cycle down

the main gate
3rd entries per the Prosecution
Capt J C Watson of No 1 Cdn Admin Pet Coy
being duly sworn states
On appx 1400 hrs 29th Oct/43 while acting as
Orderly Officer. Sgt Galloway of this unit came to
me asking me to sign and authorize a work
ticket for motor cycle LC 1040087 to enable
him to act as D.R. per 6 vehicles going on a
"recce" patrol to Guildford on 30/10/43.
to leave unit lines at 0800 hrs. This is the
work ticket (Ex 1) This is my signature on
the last entry. I did not authorize
Sgt Galloway to make any trip during this
unit at 1745 hrs or during the afternoon on
30 Oct/43. This is a weekly work ticket and
this only one issued per this motor cycle for
30th Oct/43 to my knowledge.
Cross Examined by D of Officer
I had only Sgt Galloway's word that
he should make this trip at 0800 hrs.
30 Oct/43. He may have done a similar
duty on 29 Oct. The work ticket does not
show the hours on 30th Oct. that the duty
was to commence. Any stranger looking
at this ticket would have no warning
or notice as to the hour at which the
duty to be prepared on 30th Oct should
commence.
4th entries per the Prosecution
Major J.W. Westmore 2½ No 1 Cdn Admin
Pet Coy being duly sworn states: On
29 Jan 43 I was C.O. of this unit. I
produce a R.H.Q. No 4 d/29/1/143.
containing Para 79.
(marked Ex 2 by Court)
I produce Pt 1 order of this unit # 28
d/3 Feb/43. containing Para 79.

NOTE D 4

D 9.0 40 - 6yf. (a/M.S.M.) Claude E. Edwards, Trooper, No. 1 Cdn. Armd. Tpt. Coy., R. C. A. S. C.

Arguments for Defence & dismissal charges at close of prosecution's case.

1st charge - Sec. 11 A. A.

The Routine Orders in operation must be interpreted as strictly as would any penal law which purported to create an offence. Clearly it does not apply to a passenger. It is the driver who must obtain the permission and the passenger - non-drivers - is not it an offence to ride without the offence, if any, was committed by the driver not the accused. Any ambiguity in the Order must be interpreted in favour of the accused. M. M. L. notes to Sec. 11 of A. A.

There is insufficient evidence to prove there was no permission in existing which could be granted by any commissioned officers.

2nd charge - Sec. 12 (a) A.A.

To be guilty there must be evidence that the accused participated knowingly in an unlawful journey. No evidence has been led that he had any knowledge that the sergeant had no authority for the journey. He was told by Sgt. Hall that there was a work detail. He does now the back of the gate but the vehicle struck the ground from that fact alone that there was proper authority. There is evidence that two of the front row were members of Battery - the road there is through Terrebonne the accused has not been proved to have been [illegible] that at the time of the journey the sergeant was not on other duties.

W. J. Tomlinson Esquire.
Defending Officers.

Thy OVER

NOTE D 6

Argument on close of Defendant's Case —

2nd Charge — Omen re prosecution to prove beyond a reasonable doubt that the accused knowingly went upon and unauthorized journey, word "unjustly" favored by word "unauthorized" — no demand in first charge, now his counsel. can be omitted now. This charge is not in the alternative. Must be taken to mean unjustly in sense that it was unauthorized. Duty is the right. Will turn be read in Work Relief and the accused have the ground pass the Vehicle. No defendant claim of a duress affect him as every officer in Ireland the gate. Not his duty to recommend Work Relief. He reasonably presumed that the trip was unauthorized. Not type of man who deliberately violates

U.S. Prosecution Counsel

Defendant's Defense

MB

NOTE

Concluding Address

D 4 The prosecution submits that the testimony of the first two witnesses has proved beyond doubt that the accused did ride on EC1040087 as a pillion passenger in contravention of R.U.R.O. 9, dated 29 Jan 43. The third witness for the prosecution has shown that the trip thus made was completely unauthorized. Conduct of this nature is not to be expected in a sergeant, and when found in a Warrant Officer Class I, it deserves a suitable punishment. The facts of this case are known to all members of No. 1 Edn. Adm. Unit Coy; if this behaviour should go unpunished in a senior warrant officer, M.T. discipline, or for that matter, any discipline at all, would be most difficult to enforce on other drivers. It is the duty, as all are aware, of senior N.C.Os. to ensure that orders are obeyed, not that infractions of them are condoned. This type of conduct does more to undermine unit discipline than any other. Petty crimes which provide crimes for greater ones, can have no excuse, and in this case the prosecution asks that no undue leniency be shown to the accused.

The onus of producing a written authorization to ride pillion on a motorcycle rests with the accused.

D.A.C. Dickson Capt
Prosecutor

M

NOTE

Prosecutor summing up

D.A.G. The fact that the accused thought that Lt. Galloway was making an authorized trip, and that he thought that the sergeant was perhaps making a trip further than Farnham, does not excuse the accused from responsibility for participation in the trip concerned. Surely a warrant officer is of sufficient intelligence to make sure that his journey is authorized. As a senior N.C.O. he is all the more responsible for ensuring that Lt Galloway was proceeding on a duty trip. It seems to the prosecution that no intelligent N.C.O. could knowingly allow himself to be conveyed by a D.R. on a private trip at so late an hour on Saturday afternoon, unless he condoned the unauthorized journey. Lt. Galloway took this senior officer on a private journey, the prosecution submits, with the full knowledge and encouragement of his passenger. No mere words can camouflage the fact that the accused did participate in the unauthorized use of CC-1040067, nor that he himself as an intelligent N.C.O. ought to have ensured by every means that such use was legal.

W.C. Pedron Lieut.
Prosecutor

Page 8

He is always obedient, attentive to orders and considerations about his duties
Case for Defense is closed
RW

Trial of A 91040 Sgt A/MSgt. CE Error.

Page 6

NOTE D # 3 (cont)

should be r.t. on the mud guard.

Cross Examined by Def Counsel

The M.S.gt. never talked to me about going to Farnham by bus. Then I offered to take him on my motor-cycle I am not certain of the exact words I said. I am not certain if I used the words "before I put my bike away". My work ticket was made out for all day. I think the trip was authorized a question to be discussed 2 ways one via Farnham and one via Ash. There is not much difference in the distance. The M.S.gt. asked me if I had a work ticket and I said yes.

Re-examined by Def Counsel Prosecution

I have been a Sgt in this unit since April 1941 Usually I do all my trips on one card day on one authorization on my work ticket. If I were told to go to Guildford I would go via Ash. I took the convoy that very first morning.

Questioned by the Court

There was no further conversation about a work ticket with the M.S.gt except that above given. The M.S.gt did not look at the work ticket he just took my word for it. I did no other duty on the trip when I took the M.S.gt to Farnham. This unit has 2 Vans at Bentley. The road lies thru Farnham

The court returned to no 1 Coy Admin Pet Coy
Lines at Farnborough and took this
position underfire.

Page 6

Capt A. E. Hudson of 1 Coy Admin Pet
Coy being duly sworn states

I am the adjt of this unit and was
adjt on 30th Oct 43. No permission was
given by me to the accused to ride on
motor cycle either Pillion or as operator
on the date in question. To the best of
my knowledge no person has been
given to anyone to ride Pillion since
I came here on Apl 15/43.

Cross Examined by the Defending Officer

By the terms of the order any Commissioned
officer could give this permission and
it is possible that some other Commissioned
officer may have given the permission.

The Prosecution is closed.

NOTE D. 6

1st witness for defence.

The accused being duly sworn states

I work in the workshops. I have
nothing to do with the Transport Coy

It was just after Surgery about a
Quarter after five. I got up from the
table and said "I have a bus to catch
I am going to Farnham" Sgt Galloway
says "I will drive you down" I said
"thanks". I went to my billet and washed
when I came out. Sgt Galloway was
in the square. I said I'll have to get
a crash helmet. He drove ahead of
me and I walked up to the workshops
at free minutes to get outside the
main gate. I saw Galloway stop
and talk to the Guard. The Guard

Page 7

opened the gate and let him out. When
out he stopped. I went through the gate
went into the office and got my crash
helmet. I came out and got on the back
of the bike. Sgt Galloway took me to
Farnham where I got off.

I did not hear the conversation between
Galloway and the Guard

I thought Galloway was going
going that way or he would not have
asked me to go with him.

I was not aware that Galloway had
no authority

Cross Examined by Prosecution

It never entered my head that this
trip was made solely for me

Examined by Court

There may have been several duties
to take a Canadian to Farnham that morning
and each is at Farnham and there are
2 ptns of this unit at Bentley. I know
that there should be mustered on a work
ticket the destination of the trip and
that the tickets are checked at the gate
and that of the tickets are in order the
vehicle is allowed out.

2nd witness for the defence

Major J. H. Cornish of 1 Coy Admin Pet Coy
being duly sworn states

I have known accused since Feb 1942
He has been serving in C Coy workshops. His character and his
services to the shop are beyond question

COPY

FG 3518
(Revised 1942)
O/P&S/400(2749)
AKE OF VEHICLE

Exhibit "B"

TRANSPORT WORK TICKET

No. P-1-39

H/D CLASS Solo Unit No.1 Transport Coy. RCASC. Section "D" Driver's Name Sergeant Galloway W.D.No. CC-1040087 Month & Year Oct 43

ate	For whom journey is performed	Details of load	From	Route To	Via	Signature of Person Authorizing Journey	Fuel Gallons At Start	Drawn	At End	Used	Time Out	In	Speedometer In	Run	Day
1	2	3	4	5	6	7	10	11	12	13	14	15	16	17	18
.10.43	1 Cdn Trans	Convoy Duties	Farnboro	As Directed	Return	H.A.Bonnell Lt.	2½	2½	3	2	0800	1700	6245		104
.10.43	1 Cdn Trans	D.R. School	Farnboro	Aldershot Command	Return	J.C.Wilson,Capt	3			½	1430	1630	6262		17
.10.43	1 Cdn Trans	D.R. School	Farnboro	Aldershot Command	Return	M.Shipley,Capt.	2½		1	1½	0730	1300	6315		53
.10.43	1 Cdn Trans	D.R. Duties	Farnboro	Bordon	Return	J.C.Wilson,Capt	1½		½	1	1400	1630	6364		49
.10.43	1 Cdn Trans	D.R. Duties	Farnboro	Guildford	Return	sig.illeg. Capt	1½	2½	1½	1			6598		47
0.10.43	1 Cdn Trans	D.R. Duties	Farnboro	Guildford	Return	J.C.Wilson,Capt	1½								

Certified true copy of Exhibit "B" in the
FGCM proceedings of Sgt Ennor, C.E.

3 Dec 43

(W.H.Waugh) Capt
JAG-Rev 11

Ex 1
(Sgd) DLR

EX 2

ROUTINE ORDERS

by

Brigadier F.R. Phelan, D.S.O., M.C., V.D.
Commanding, Canadian Reinforcement Units.

No.9.
Nos:76-83

No. 9.
29 Jan 43.

GENERAL STAFF

76. TRAINING AREAS

A.C.O. 563 of 1940 is re-published for information and compliance:-

" The road leading SOUTH from the cross-roads on Hartford Bridge Flats at the Blackwater A.A. Box 285793 to the estate at Starve Acre 283705 is placed 'OUT OF BOUNDS' to all military motor traffic.
M.T. wishing to enter the F.2 training area from HARTFORD BRIDGE FLATS will do so by the special accommodation road which takes off from a point at 279789."

(402/AREAS/1 (G))

77. RADIO RECONNAISSANCE TRAINING BROADCAST

1. Mr. Trevor Blewitt, the B.B.C. producer in charge of Radio Reconnaissance, has notified this H.Q. that during "Army Week" on the Forces Programme from 2120 - 2140 hours, 1 Mar 43, there will be a discussion "The Division as a Team."

2. Any comments on the above programme would be appreciated by the British Army Broadcasting Section.

(423/BROADCAST/1 (G))

78. BOARD OF OFFICERS

A Board of Officers composed as under will assemble at the call of the President to examine Lieut. C.P. Smith, 5 Cdn Gen Hosp, R.C.A.M.C., for Qualification as Quartermaster.

PRESIDENT
Major W.H. Baker — D.A.D.S.T.

MEMBERS
Major T.B. Holland — D.A.D.M.S.
Capt. T.E. Veitch — A/D.A.D.O.S.

(409/QUAL/1 (G))

(H.L. Ibbotson) Lt.-col.
G.S.O. I, C.R.U.

ADMINISTRATIVE STAFF

79. PILLION PASSENGERS - CARRYING OF

D.Rs. and any personnel operating motorcycles will NOT carry pillion passengers, unless such action is authorized by a Commissioned Officer, in writing, who will NOT grant such permission except in emergent cases.

(406/RESTRICT/1 (DAQ))

80. MATTRESSES SINGLE, 2 PIECE

All mattresses single, 2 piece in use by O.R. will be withdrawn and returned to Barrack Stores forthwith where they will be replaced by paillasses barrack. The above exchange will be made through the proper channels, i.e., Cdn Barrack Services.

(448/BK STORES (Q))

81. OFFICIAL VISITOR TO CDN DETENTION BARRACKS - HEADLEY

Reference R.O. R.O. 75 d/26 Jan 43, para 2 is amended to read:

Next for duty, week ending 13 Feb 43:
Lt.-col. C.N. Mitchell, VC — 1 C.E.R.U.

(442/DET BKS/1 (DAQ))

82. LEAVE - CARRYING OF TOWELS, PERSONNEL PROCEEDING ON LEAVE

1. The Board of Trade Regulations now restrict the number of towels to Hotels, Hostels, Boarding Houses and similar establishments; therefore all ranks proceeding on leave are advised to take towels unless they are certain that these will be available at their leave destination.

(419/LEAVE/1)DAQ))

83. POSTAL - ASSISTANCE TO CIVIL POSTAL AUTHORITIES DURING CHRISTMAS 1942.

1. The Director of Postal Services has expressed his appreciation of the most valuable assistance given by soldiers in disposing of the Christmas mail so willingly and cheerfully and wishes the thanks of the Post Office to be conveyed to all military personnel concerned.

2. Os. C. Units will see that the substance of the above is communicated to the men concerned.

(421/APPREG/1 (DAQ))

D.F. Sponkie, Lt.-Col.
A.A. & Q.M.G.,
CANADIAN REINFORCEMENT UNITS.

N O T I C E

AGRICULTURE ASSISTANCE BY TROOPS

The following extracts from a letter addressed to The Secretary of State for War by the Minister of Agriculture are published for information:-

"I should like to take this opportunity of expressing my warmest thanks to the Army for all the splendid help they have given with the harvesting of the crops this Summer and Autumn.

"I do know from my travels about the countryside and contacts with the agricultural industry that there is a very deep sense of gratitude amongst the whole farming community for the magnificent work which the soldiers have done.

"It is not only the agricultural industry but the whole nation which has cause to be grateful.

Os. C. Units will ensure that the above is brought to the attention of all concerned.

To be repeated in Unit Orders. (406/AGRIC/1 (Q))

EXHIBIT "C"

E+3

G.R.O. R.O. NO 9 6/29 Jan 43

79. PILLION PASSENGERS - CARRYING OF

D.Rs. and any personnel operating motorcycles will NOT carry pillion passengers, unless such action is authorised by a Commissioned Officer, in writing, who will NOT grant such permission except in emergent cases.

(406/RESTRICT/1 (D.R.))

G.R.O. R.O. NO 9 6/29 Jan 43

88. LEAVE - CARRYING OF TOWELS, PERSONNEL PROCEEDING ON LEAVE

The Board of Trade Regulations now restrict the number of towels to Hotels, Hostels, Boarding Houses and similar establishments; therefore all ranks proceeding on leave are advised to take towels unless they are certain that these will be available at their leave destination.

(419/LEAVE/1 (D.R.))

G.R.O. R.O. NO. 9 6/29 Jan 43

83. POSTAL - ASSISTANCE TO CIVIL POSTAL AUTHORITIES DURING CHRISTMAS 1942

1. The Director of Postal Services has expressed his appreciation of the most valuable assistance given by soldiers in dispersing of the Christmas mail so willingly and cheerfully and wishes the thanks of the Post Office to be conveyed to all military personnel concerned.

(421/APPREC/1 (D.R.))

A. E. Hiskins Lieut & Adjt.,
for J. W. Watmore Major,
Officer Commanding
No. 1 [illegible] Transport Company
R.A.S.C. C.F.,(O).

N O T I C E

G.R.O. NO. NO 9 6/29 Jan 43

AGRICULTURE ASSISTANCE BY TROOPS

The following extracts from a letter addressed to the Secretary of State for War by the Minister of Agriculture are published for information.

"I should like to take this opportunity of expressing my warmest thanks to the Army for all the splendid help they have given with the harvesting of the crops this Summer and Autumn.

"I do know from my travels about the countryside and contacts with the agricultural industry that there is a very deep sense of gratitude amongst the whole farming community for the magnificent work which the soldiers have done.

"It is not only the agricultural industry but the whole nation which has cause to be grateful.

(406/AGRIC/ 1 (D))

NO 1 ADMINISTRATIVE TRANSPORT COMPANY R.C.A.S.C. C.A.(C)

-/ PART I ORDERS /-

by

MAJOR J.W.WATMORE OFFICER COMMANDING

WEDNESDAY
3 Feb 43

1. DUTIES:

Duty Officer	3 Feb 43	Lieut. H.... Bonnell
Next for Duty	4 Feb 43	Capt. P. MacMurdo.
Duty N.C.O.		Sgt. Milligan, A.L.

2. GUARD:

1 N.C.O. (6) men to be detailed.

Guard N.C.O.	3 Feb 43	Sgt. Donsmore, W.A.
Next for Duty	4 Feb 43	Sgt. Galloway, N.

The u/m personnel are detailed for Guard on dates shown.

Wednesday 3 Feb 43

24 Hour Guard			12 Hour Guard		
D-89427	Pte.	Quigg, H.	D-106685	Pte	Duguette, E.C.
B-14494	"	Doyle, D.M.	B-94951	"	Cooley, P.
C-12240	"	Henderson, G.J.A.	B-83259	"	Coverdale, J.E.

Thursday 4 Feb 43.

24 Hour Guard			12 Hour Guard		
K-98490	Pte	Lord, C.M.	D-106794	Pte	Dizier, M.
A-9652	"	Benedict, R.	B-95012	"	Cuthbertson, J.
D-121140	"	Maissonneuve	D-84416	"	Dennis, D.

3. BLACKOUT: FROM 0824 HOURS TO 0804 HOURS

DISCIPLINE:

AUDIT BOARD

The u/m officers will assemble at the call of the President for the purpose of auditing the following accounts.

Officers Mess Account
Mens Mess Account
Regimental Funds Account
Unit Convoy Impressed Account
Barrack Damage Account
Postage Account
Imprest Account.

Accounts will be closed as of 2359 hrs. 31 Jan 43, inventory taken and immediate action taken to prepare statement for Audit.

President	Capt. R.... Pelletier
Member	Lieut. R.C. Lamb.

COURT OF INQUIRY

The u/m officers will assemble at the call of the President to take evidence and render an opinion on a matter to be laid before them.

President	Capt. R.A. Pelletier
Member	Lieut. K.G. Rose
Member	Lieut. G.D. Harper

P. E. C.

Summary of Evidence in the case of D-91045 (A/M.S.M.) Error, C.E., No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., a soldier of the Canadian Army Overseas

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS: L-102 974, Pte. Mercer, L.C., No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At 1745 hrs on 30 Oct 43, I was reinstated on duty at the entrance gate of No. 1 Cdn. Admn. Tpt Coy vehicle park. My duty was to stop and check all vehicles at the gate, and ensure that their Work Tickets were in order. At the hour stated Sergeant Galloway of "D" Platoon in this unit came up to the gate on his motorcycle CC 104008 F. He said to me "this bike has been checked out already." I raised the gate and Sgt. Galloway took his machine through and stopped just outside. I then checked my list on which vehicles are marked down as they enter or leave the camp. I found Sgt Galloway's name marked down as D.R. to a convoy which had left the camp area at 0730 hrs and returned at 1200 hrs on 30 Oct 43. A few lines beneath the 0730 hrs entry I noticed a further entry showing that Sgt. Galloway had again left camp at 1555 hrs. I herewith submit the above mentioned vehicle marking "In" and "Out" list as evidence (this is read to the accused, and marked Exhibit "A").

After Sgt. Galloway had taken his motorcycle through the gate, I saw M.S.M. Error of this unit follow him through the gate on foot. When I looked up from checking my list, I noticed Mr. Error standing in the doorway of the Police Orderly Room wearing a crash helmet and a D.R. coat. He locked the door, and the next thing I saw was the motorcycle moving off with Mr. Error riding behind Sgt. Galloway, sitting on the fender. By this time I had finished checking my vehicle list & had not found that Sgt. Galloway had previously checked

out as he stated to me. I checked my list again to ensure that I had not missed the required entry, but finding none, I notified the N.C.O. in charge of the regimental guard room of the facts of the case. That is all I know of the matter.

The accused declines to cross-examine this witness.

Pte L. B. Heiser

SECOND WITNESS: L-105088 Pte. Traverse, C. H., No. 1 Cdn. Admn. Hqt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am a member of the regimental police of No. 1 Cdn. Admn. Hqt. Coy, R.C.A.S.C. I went off duty in the regimental guard room shortly after noon on 30 Oct 43. Late in the afternoon, I decided to leave camp and go for a walk. I stopped to talk to Pte. Heiser who was on duty at the main gate. Almost immediately, Sergeant Galloway of this unit drove up on a motorcycle and stopped at the gate. He said to Pte. Heiser, "This has been checked out already" or words to that effect. Pte. Heiser then lifted the bar, and Sgt. Galloway drove through the gate and stopped again just outside.

The next thing I noticed was that W.S.M. Eynon of this unit was coming out of the Police Office which is just outside the gate. I saw him get on the motorcycle behind Sergeant Galloway, and they drove away together. That was the last I saw of them, and that is all I know of the matter.

The accused declines to cross-examine this witness.

C H Traverse

THIRD WITNESS: Captain J. C. Nelson, No. 1 Cdn. Admn. Hqt. Coy, RCASC, an officer of the Canadian Army Overseas, having been duly sworn, states as follows:

At approximately 900 hrs on 29 Oct 43, while acting as Orderly Officer, Sergeant Galloway of this unit came to me to ask me to authorize a tuff as D.R. in charge of a "wood" detail to be carried out by

"C" Platoon on the following morning, 30 Oct 43. The detail was to leave at 0800 hrs and to proceed to Guildford where it would pick up the load and, I understand, that it was to be completed by approximately 1200 hrs the same day. As commander of "D" Platoon to which Sgt. Galloway belongs, I did not authorize any further journey for him during the day of 30 Oct 43. I herewith submit Work Ticket No P-1-39 for Harley-Davidson motorcycle CC 104008 driven by Sgt. Galloway, the last entry in which is signed by myself to authorize Sgt. Galloway to go on the detail of the morning of 30 Oct 43. (Work Ticket marked Exhibit "B") That is all I know of the matter.

The accused declines to cross-examine this witness.

Lieutenant Corps

FOURTH WITNESS: Lieut D. R. C. Hudson, No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., an officer of the Canadian Army Overseas, having been duly sworn, states as follows:

I am Headquarters subaltern and Records Officer of No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C. From documents in my possession, I certify that D. 81640, A/M.S.M. Eaton C.E. was T.O.S. this unit on 23 Mar 41, and that he has remained on strength to the present date.

The accused declines to cross examine the witness.

D. R. C. Hudson Lieut.

FIFTH WITNESS: B-81626 Sergeant Galloway, W., No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On the morning of 30 Oct 43, I was N.C.O. in charge of a convoy going to Guildford to haul wood for No. 1 Cdn. Admn. Tpt. Coy. I had six lorries on the convoy and my own motorcycle CC 104008. The lorries arrived back at camp at 1200 hrs, and I followed them about half an hour later, having spent some time looking for one lorry which was missing from the convoy when it had arrived back at camp before I did. During the afternoon, I remained in camp and did not use my motorcycle. After supper, which was at approx 1700 hrs, I heard M.S.M. Eaton state that he was going to Farnham by bus, and I offered to take him there on my motorcycle. I assumed that the Work Ticket made out in the morning would include the extra journey, as the convoy to haul wood was supposed to last all morning and afternoon. I told the guard at the gate that I had already checked out, therefore he opened the gate, and I took my machine through. I waited just outside for M.S.M. Eaton who had gone to the M.T. Office to pick up his wash kit. I do not know at what time he rejoined me, but it must have been after 1700 hrs. Mr. Eaton got on the motorcycle behind me, and I drove him direct to Farnham, where I dropped him. At this time it was not yet dark

(i.e. "blackout time") I intended to go back to camp, but I cannot remember what happened after leaving Mr Ennor in Farnham. The next thing I know was my awakening in the Cambridge Military Hospital on 31 Oct 43. That is all I know of the matter.

The accused declines to cross examine this witness.

W Galloway.

The accused was cautioned as follows "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you say or any evidence you give, it will be taken down in writing and may be given in evidence."

The accused elects to make a statement.

The accused, No. D-91040, M.S.M. Ennor, C.E., No. 1 Cdn. Abna. Sqt Coy, R.C.A.S.C., a soldier of the Canadian Army Overseas, states:

On 30 Oct 43 at about 1730 hrs, I was talking to Sergeant Galloway on the parade ground of No. 1 Cdn Abna Sqt Coy, and remarked that I was then leaving for Farnham by bus. He then offered me a ride down to Farnham on his motorcycle. Although I am not in a transport platoon, I knew that he ought to have proper authority before taking his vehicle out of the vehicle park. As I walked over towards the Battalion Orderly Room, I saw him talking to the guard at the camp gate. As I came up to him, the guard opened the gate and let Sgt. Galloway pass through on his vehicle. I assumed from this that he was on an authorized journey. I collected my chard ticket from the W/S Orderly Room, and found Sgt. Galloway waiting for me just outside the camp gate. I got on the motorcycle behind him and we proceeded as far as Farnham where I got off at approx. 1800 hrs. That was the last I saw of Sgt. Galloway, until 3 Nov 43.

M S Ennor

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 14 (c), (D), (E), (F), and (G) have been complied with.

Aldershot, Hants
3 Nov 43

D.A.C. Pedersen Lieut
Officer detailed to take the summary of evidence.

Additional Summary of Evidence in the case of D-91040 Sgt (A/M.S.M) Emmon, C. E., No. 1 Cdn. Admn. Tpt. R.C.A.S.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS: Major J. W. Patmore No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., an officer of the Canadian Army Overseas, having been duly sworn, states as follows:

As Commanding Officer of No. 1 Cdn. Admn. Tpt. Coy, R.C.A.S.C., I caused to be published in Daily Part I Orders of 3 Feb 43, the following extract from R.U.R.Os.: "Pillion Passengers - Carrying Of D.R's and any personnel operating motorcycles will not carry pillion passengers, unless such action is authorized by a Commissioned Officer, in writing, who will not grant such permission except in emergent cases." I herewith submit a copy of the above mentioned unit Part I Order, which to my knowledge, was prominently displayed throughout the unit area. (Part I Order, marked Exhibit "C")

The accused declines to cross-examine this witness.

per Patmore

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement, and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 41 (C), (D), (E), (F) and (G) have been complied with.

Yarmouth, N.S. 5 Nov 43

J. R. C. Fredenburgh Capt. Officer detailed to take the Summary of Evidence

Summary of Evidence in the case of D-91040 M.S.M. Ennor, C.E. No. 1 Cdn. Admin. Transport Company R.C.A.S.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

1st. Witness L-102974 Pte. Heiser, L.C., No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C. a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

At 1745 hrs on 30 Oct 43, I was Regimental Policeman on duty at the entrance gate of No. 1 Cdn. Admn. Tpt. Coy. vehicle park. My duty was to stop and check all vehicles at the gate, and ensure that their work tickets were in order.

At the hour stated Sergeant Galloway of "D" Platoon in this Unit came up to the gate on his motorcycle CC-1040087. He said to me "this bike has been checked out already". I raised the gate and Sgt. Galloway took his machine through and stopped just outside. I then checked my list on which vehicles are marked down as they enter or leave the camp. I found Sgt. Galloway's name marked down as D.R. to a convoy which had left the Camp area at 0750 hrs and returned at 1200 hrs on 30 Oct 43. A few lines beneath the 0750 hrs entry, I noticed a further entry showing that Sgt. Galloway had again left camp at 1555 hrs. I herewith submit the above mentioned vehicle marking "In" and "Out" list as evidence. (This is read to the accused, and marked Exhibit "A").

After Sgt. Galloway had taken his motorcycle through the gate, I saw M.S.M. Ennor of this Unit follow him through the gate on foot. When I looked up from checking my list, I noticed Mr. Ennor standing in the doorway of the Workshop Orderly Room wearing a crash helmet and a D.R. coat. He locked the door, and the next thing I saw was the motorcycle moving off with Mr. Ennor riding behind Sgt. Galloway, sitting on the fender. By this time I had finished checking my vehicle list but had not found that Sgt. Galloway had previously checked out as he stated to me. I checked my list again to ensure that I had not missed the required entry, but, finding none, I notified the N.C.O. in charge of the regimental guard room of the facts of the case. That is all I know of the matter.

The accused declines to cross-examine the witness

(Sgnd) Pte. L.C. Heiser.

2nd Witness L-105086 Pte. Traverse, C.H., No. 1 Cdn. Admin. Transport Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

I am a member of the Regimental Police of No. 1 Cdn. Admn. Tpt. Coy., RCASC. I went off duty in the regimental guard room shortly after noon on 30 Oct 43. Late in the afternoon I decided to leave camp and go for a walk. I stopped to talk to Pte. Heiser who was on duty at the main gate. Almost immediately, Sergeant Galloway of this Unit drove up on a motorcycle and stopped at the gate. He said to Pte. Heiser "this has been checked out already", or words to that effect. Pte Heiser then lifted the bar, and Sergeant Galloway drove through the gate and stopped again just outside.

The next thing I noticed was that M.S.M. Ennor of this Unit was coming out of the Workshop Office which is just outside the gate. I saw him get on the motorcycle behind Sergeant Galloway, and they drove away together. That was the last I saw of them, and that is all I know of the matter.

The accused declines to cross-examine this witness.

(Sgnd) C.H. Traverse

3rd Witness Captain J.C. Wilson, No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C. an officer of the Canadian Army Overseas, having been duly sworn, states as follows:-

At approximately 1900 hours on 29 Oct 43, while acting as Orderly Officer, Sergeant Galloway of this Unit came to me to ask me to authorize a trip as D.R. in charge of a "wood" detail to be carried out by "C" Platoon on the following morning 30 Oct 43. The detail was to leave at 0800 hrs and to proceed to Guilford where it would pick up the load and, I understand, that it was to be completed by approximately 1200 hrs the same day. As commander of "D" Platoon to which Sgt. Galloway belongs I did not authorize any further journey for him during the day of 30 Oct 43. I herewith submit Work Ticket No. P-1-39 for Harley-Davidson motorcycle CC-1040087 driven by Sgt. Galloway, the last entry on which is signed by myself to authorize Sgt. Galloway to go on the detail of the morning of 30 Oct 43. (Work Ticket marked Exhibit "B").

The Accused declines to cross-examine this witness.

(Sgnd) J.C. Wilson, Capt.

4th Witness Lieut. D.H.C. Bedson, No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., an officer of the Canadian Army Overseas, having been duly sworn states as follows:-

I am Headquarters subaltern and Records Officer of No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C.. From documents in my possession, I certify thatD-91040 A/M.S.M. Ennor, C.E. was T.O.S. this Unit on 25 Mar 41, and that he has remained on strength to the present date.

The accused declines to cross-examine this witness.

(Sgnd) D.H.C. Bedson, Lieut.

5th Witness B-81626 Sergeant Galloway, N., No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:-

On the morning of 30 Oct 43, I was N.C.O. in charge of a convoy going to Guilford to haul wood for No. 1 Cdn. Admn. Tpt. Coy., I had six lorries on the convoy and my own motorcycle CC-1040087. The lorries arrived back at camp at 1200 hrs., and I followed them about half an hour later, having spent some time looking for one lorry which was missing from the convoy. However it had arrived back at camp before I did. During the afternoon I remained in camp and did not use my motorcycle. After supper which was at approximately1700 hrs, I heard M.S.M. Ennor state that he was going to Farnham by bus, and I offered to take him there on my motorcycle. I assumed that the Work Ticket made out in the morning would include the extra journey, as the convoy to haul wood was supposed to last all morning and afternoon I told the guard at the gate that I had already checked out, whereupon he opened the gate, and I took my machine through. I waited just outside for M.S.M. Ennor who had gone to the W/S Office to pick up his crash helmet. I do not remember at what time this happened, but it must have been after 1700 hrs. Mr. Ennor got on the motorcycle behind me, and I drove him direct to Farnham, where I dropped him. At this time it was not yet dark (i.e. blackout time) I intended to come back to camp but I cannot remember what happened after leaving Mr. Ennor in Farnham. The next thing I knew was my awakening in the Cambridge Military Hospital on 31 October 43. That is all I know of the matter.

The accused declines to cross examine this witness.

(Sgnd) N.Galloway, Sgt.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused elects to make a stat[redacted]

The accused No. D-91040, M.S.M. Ennor, C.E. No.1 Cdn.Adm.Tpt. Coy R.C.A.S.C. a soldier of the Canadian Army Overseas states:

On 30 Oct 43, at about 1730 hrs. I was talking to Sgt. Galloway on the parade ground of No.1 Cdn.Adm.Tpt.Coy and remarked that I was then leaving for Farnham by bus. He then offered me a ride down to Farnham on his motorcycle. Although I am not in a transport platoon, I know that he ought to have proper authority before taking his vehicle out of the vehicle park. As I walked over towards the Workshop Orderly Room, I saw him talking to the guard at the camp gate. As I came up to him, the guard opened the gate and let Sgt. Galloway pass through on his vehicle. I assumed from this that I was on an authorized journey. I collected my crash helmet from the Workshop Orderly Room, and found Sgt. Galloway waiting for me just outside the camp gate. I got on the motorcycle behind him and we proceeded as far as Farnham where I got off at approx. 1800 hours. That was the last I saw of Sgt.Galloway.

(Sgd) C.E. Ennor, M.S.M.

I certify that the foregoing Summary of Evidence consisting of four pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c),(D),(E) (F), and (G) have been complied with.

(Sgd) D.R.C. Bedson Lieut.
Officer detailed to take the Summary of Evidence.

Farnborough, Hants
3 November 1943.

Additional Summary of Evidence in the case of D-81040 Sgt. (A/W.S.M.) Ennor, C.E., No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS Major J.W. Watmore, No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., an officer of the Canadian Army Overseas, having been duly sworn, states as follows:

As Commanding Officer of No. 1 Cdn. Admn. Tpt. Coy., R.C.A.S.C., I caused to be published in Daily Part I Orders of 3 Feb 45, the following extract from R.U.R.Os. "Pillion Passengers-Carrying Of D.R's and any personnel operating motorcycles will NOT carry pillion passengers, unless such action is authorised by a Commissioned Officer in writing, who will NOT grant such permission except in emergent cases." I herewith submit a copy of the above mentioned unit Part I Order, which to my knowledge, was prominently displayed throughout the unit area. (Part I Order, marked Exhibit "C")

The accused declines to cross examine this witness.

(sgd) "J.W. Watmore"

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence, unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement, and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (C), (D), (E), (F), and (G) have been complied with.

Farnborough, Hants,
5 Nov 1945.

(sgd) D.H.C. Bedson Lieut.,
Officer detailed to take
Summary of Evidence.

I, D-91040 Sgt (A/M.S.M.) Claud Edward Ennor , elect to be dealt with summarily under Section 47 of the Army Act in connection with the charge(s) pending against me.

I acknowledge having duly received a copy of the charge sheet and a copy of the Summary (or Abstract) of evidence at.....1200..... hours, ...8.Nov.43.....

I consent to the use of the Summary (~~xxxbxxbxxxx~~) of evidence in connection with the charge(s) pending against me and agree to dispense with the witnesses giving their evidence orally.

Signed at ....Farnborough..Hants

this .....8.Nov.43..... ...C.E.Ennor.....

Trial of D-91040 A/M.S.M. Claud Edward Ennor,
No. 1 Cdn. Administrative Transport Company, RCASC

List of Witnesses for the Prosecution

Captain J.C. Wilson
No. 1 Cdn. Administrative Transport Company, R.C.A.S.C.

Lieutenant D.R.C. Bedson
No. 1 Cdn. Administrative Transport Company, R.C.A.S.C.

B-81626 Sergeant N. Galloway
No. 1 Cdn. Administrative Transport Company, R.C.A.S.C.

L-102974 Private L.C. Heiser
No. 1 Cdn. Administrative Transport Company, R.C.A.S.C.

L-105088 Private C.H. Traverse
No. 1 Cdn. Administrative Transport Company, R.C.A.S.C.

Dated at Farnborough, Hants this 3rd day of November, 1943.

"A.G. Hudson", Captain,
Adjutant,
No. 1 Cdn.Adm.Tpt.Coy.,
R.C.A.S.C. C.A.(O)

I,D-91040 A/M.3.M. Claud Edward Ennor, desire to have an officer assigned to represent me at my trial by Court-Martial.

November 3rd, 1943.

5 S.-26
M/S/M. Ennor, C.C.
D9040

3

30

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D.91040 M/S/M ENNOR CE, 1 Cdn Adm Tpt Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instn p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 40 AA	NOT GUILTY	GUILTY	
2nd Sec 40 AA	NOT GUILTY	GUILTY EXCEPT that he did not cause the death of D 91107 S/SGT. BATTEN H.S.	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Reduced to the Rank of Company Sergeant Major (W.O. II) and to be put under stoppages of Pay until the loss made good £18-11-2 the amount of the Pay Bounty and Allowances lost by the Commission of the offence on the 20 Aug 45

Date awarded. President. (RP 45, 50.)

~~Sentence to be confirmed and ordered to be executed. (Subject to approval of record after trial.)~~

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~not~~ committed to prison or detention barracks until further orders.(1) NIL

(1. See AA 57A. Delete if not used.)

Date 28 Aug 45 (Sgd) D.C. Spry (DC SPRY) MAJ-GEN

Commanding COMD CDN RFT UNITS Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D.91040 M/S/M ENNOR CE	29 Aug 45	J.A. Ziegler Maj Pay

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED SEP 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of MAJ-GEN D.C. SPRY DSO Comd Cdn Rft Units dated 16 AUG 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D.91040	M/S/M	Claude Edward	ENNOR	1 Cdn Adm Tpt Coy R.C.A.S.C.

PROCEEDINGS REVIEWED 6 Sept 45

[illegible] Capt.

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held (or Tld in (country)) ENGLAND on (date) 20 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~acting Member, JA, if any, and Offrs under instn, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form occurs, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused is to be tried by [illegible] instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 44(B), RP 80 fn 1. For effect see KR Can 562(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to [illegible] as interpreter? Ans:~~ ~~The interpreter is sworn.~~(1) Do you object to SGT AP SINCLAIR as shorthand writer? Ans: No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans: NO, SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~Judge Advocate, and Offrs under instn, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REIMAN	HQ CRU
Member	CAPT	R.D. HUTSELL	8 Cdn Repat Depot
Member	LT	F. MCDONALD	8 Cdn Repat Depot
~~Judge Advocate~~			
Prosecutor	LT	R.A. COOPER	1 Cdn Adm Tpt Coy RCASC
Defending Offr	CAPT	N. BERGMAN	3 Cdn Repat Depot

Questions by President: Is the Prosecutor a lawyer? Ans: NO Is the Defending Offr a lawyer? Ans: YES(2)

(1. RP 28, 37, 109, 111. List of offrs under instn will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in MB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet, see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 895 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed) and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement?[1] Ans .....[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3, para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D6 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D6 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO, SIR .....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~an~~) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1] NOTE -ATT
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st & 2nd charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the 1st and 2nd charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans Make Evidence
Do you intend to call witnesses on your behalf?
Ans NO-SIR ~~Are they witnesses as to character only? Ans~~
(*1. RP 115. 2. RP 40(A), see 80(3). 3. RP 40 fn 12. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1] NOTE ATT
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

~~D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.[1]~~

D8. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[1]
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative commencement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans NO, SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (z) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans BY MY DEF OFFR (NOTE ATT)[2]
(*1. RP 37(C), 46(2). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.[2]
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 563-566, Overseas AO 209, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D-91040 M/S/M Claude Edward ENNOR, No 1 Cdn. Administrative Transport Coy. RCASC, a soldier in the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec 40 A. A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

In the field on the night of 13 Jun 45, improperly authorised and used Cdn. Mil. Veh. CV 199139

SECOND CHARGE
Sec 40 A.A.

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

in that he

In the field on the night of 13/14 Jun 45 so negligently drove Cdn. Mil Veh. CV 199139 as to cause it to collide with a civilian milk tanker, license no DYK 704, thereby causing damage to said CV 199139 to the extent of £18-11-2, the death of D/91167 S/Sgt Batten, N.J. and the injuries sustained by D/106676 Sgt.Allan, G.F.

J.A. Bingler
(J.A. Bingler) Lieut. Lt. Col.
Commanding Officer,
No 1 Cdn. Adm. Tpt. Coy.
R.C.A.S.C. C.A.(O)

Farnborough, Hants
9 Aug 45

To be tried by Field General Court-Martial.

D.C. Spry
(D.C. Spry) Major-Gen.
Commander
Cdn. Rft. Units.

16 Aug 45
In the Field

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt B.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D.91040	M/S/M		Claude Edward	ENNOR	No 1 Cdn Adm Tpt Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXX] committed the offence(s) set forth in the Charge Sheet[X] attached and on (date) 16 Aug 45 endorsed by me, [XXXXXXXXXXXXXXXXXXXX] "To be tried by Field General Court Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [XXXXXXXXXXXXXXXXXXX

NO. 1. CDN. ADMINISTRATIVE TRANSPORT COMPANY R.C.A.S.C. C.A.(C).

Medical Officer's Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No. D-91040 MSM Enner, C.E.
(rank) (name)
of 1 Cdn Adm Tpt Coy and in my opinion he is ~~unfit~~ fit to undergo
trial by Court Martial.

Station Farnborough, Hants.

Date 20 Aug 45.

Sgd. [signature] Capt.
(Medical Officer)

TRANSCRIPT BY: P28126 SGT AH SINCLAIR

TRIAL OF

D.91040 M/S/M ENNOR C.E. 1 Cdn Adm Tpt Coy RCASC

PROSECUTION

FIRST WITNESS

B.89672 Sgt HOOD CG, 1 Cdn Adm Tpt Coy RCASC, having been duly sworn, states:

I recognize the accused. On the night of 13 Jun 45 Cpl Jurek approached me about 2145 hrs and told me that his party had missed the Stains train and would I get a veh and take them. I took it that he meant to Stains when he said this. I got the Log Book and Work Ticket for the Wksp Panel CV199139 and took them across to the Sgts Mess and gave them to Sgt Allan. I waited while he took them across to the accused, and I saw him do this. The accused at first refused to sign the Work Ticket. I know this from his actions; he wouldn't take the Work Ticket, and I was about 10 feet away.

Q. Did he do anything about the Work Ticket later?
A. Yes, I moved up closer I think, because I heard him say "well, I'll sign it but just on the condition that I drive myself so that there'll be no trouble". He handed me back the Work Ticket and Log Book and I then noticed it was signed MSM Ennor. I returned the Work Ticket and Log Book to the veh pk and there picked up the Panel which I drove across through the gate to the Sgts Mess. When I got there I had to wait for some time until the fellows gathered their eqpt and then Cpl Jurek, S/Sgt Batten, Sgt Allan and the accused got in the Panel. The accused drove with me alongside him as spare dvr and the other three got back in the back. We were just about to leave when Sgt Hayes came along and he was called to join, so he climed in the back too. We then went directly to the PT Mess on Hammerseley Rd. It then occurred to me that there was no need of my going along because Sgt Hayes was a qualified dvr so I spoke to the accused about it and he said "by all means, if you want to I could return to Camp and Sgt Hayes could take my place". Then I told Sgt Hayes that I was going and I left.

Q. Before you left did you go into the PT Mess at all?
A. No.

Q. Did you see any members of the party go in?
A. I couldn't say I saw them but they had dissappeared somewhere at the time I left.

Q. Was there any evidence of drinking among them?
A. I didn't see any going on.

Q. By their actions could you say they had had anything to drink?
A. They seemed quite happy and carefree.

Q. In your opinion was the veh in good mechanical repair?
A. Very good.

Q. What do you do in the unit?
A. Test finished vehs.

Q. Was there a governor on it?
A. No.

CROSS-EXAMINED

Q. Did you work on this veh just before the accused took it out?
A. Not that day, but about 3 days before, and it was in very good shape then, and to the best of my knowledge when the accused took it out that night it was in good working order.

Q. You didn't give him any instrs to be careful about any certain part?
A. No, Sir.

Q. Do you attribute the fact that these people seemed happy and carefree to the influence of alchohol?
A. No.

Q. Do you do much driving on recreational tpt?
A. Once a week, a trip to the Dancing School, which is a duty trip.

Q. Do you take a spare dvr with you when you go there?
A. Never.

Q. Do you know much about the rules surrounding such tpt?
A. Yes.

Q. It is only so far as duty trips are concerned that spare dvrs are used then?
A. Yes.

Q. You assumed that it was quite alright to make that trip?
A. Yes, I assumed that it was a regular duty trip.

Q. How long have you been here?
A. 4 yrs and some months.

Q. Was it raining that night?
A. No, it was a normal clear night.

Q. Up to the 13 Jun you had been continually giving men in your unit a lift to the stn going on leave?
A. Yes.

Q. And you didn't make any special endorsation on the Work Ticket?
A. No.

Q. And had it been the accepted custom in this unit at the time?
A. Yes.

RE-EXAMINED

Q. You say that you consider these weekly trips to the Dancing School as a duty trip?
A. Yes.

Q. It is not a recreational trip?
A. No.

Q. Who signs the tickets for this trip?
A. Sometimes the accused.

QUESTIONS BY THE COURT:

Q. Where do you make your test runs to?
A. Past North Camp and Ash Vale Stn, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(3)

SECOND WITNESS

H.65745 Cpl JUREK J, 1 Cdn Adm Tpt Coy RCASC, having been duly sworn, states:

I recognize the accused. On the night of 13 Jun S/Sgt Batten, Sgt Allan and myself were going on leave. Allan invited me over to the Sgts Mess saying he had got permission to take me in to the Mess and we went there for a couple of drinks of beer and gin with S/Sgt and after that I went back to my quarters and got my pack and then I went back to the Mess and I believe we had another drink. Then we went to the Sgts Quarters while Batten and Allan went to get ready to go on leave. After they were ready they sent me back to my quarters where Allan sleeps to get Allan to get a veh to take us to Ash Vale Stn. Sgt Hood then drove us to Ash Vale Stn. When we got there we found we had missed the last train for Stains and we made our way back to the Sgts Mess and I again went to see Sgt Hood to see if he could get a veh to take us to Stains. This was Sgt Allan's idea. I got Hood and he got the Log Book and Work Ticket for CV199139, and I stood outside while he went into the Mess; then he came back and Hood and myself went to the veh pk and got the veh and drove it up to the Mess. After that Hood, Allan and Batten got into the back of the Panel and Sgt Hayes joined the party. Batten said he wanted to go to the PT Mess at CASCRU to see a friend of his. I'm not quite sure who drove the Panel there but I believe it was Sgt Hood. I was in the back of it at the time and I wouldn't be certain. We went to the PT Mess and Hood left us for a time. We stepped in and had a drink, Batten, Allan, Hayes, the accused, and myself. I had a small beer, but I couldn't say what the other had. We stayed there about 10-15 mins and then we all got into the Panel again and started on our way for Stains with the accused driving as I was now sitting beside the spare dvr then. After that the accident happened.

Q. Did you stop at any time on the rd before the accident?
A. I'm not quite sure.

Q. Tell us about the accident?
A. I was sitting beside Hood when all of a sudden a heard a shout from him and then we hit something. I hit my head and nose against the back of Hood's head; he opened the door and crawled out and I crawled out the same way. Someone then drove the Panel to the side of the rd to get it off and out of the way.

Q. What was the position of the Panel when you got out?
A. More or less sideways I think, from the impact.

Q. Which way was the front of it facing?
A. More or less on an angle.

Q. Did you see the other car?
A. When I got out I noticed it was a big milk tanker.

Q. What happened after you got out?
A. I walked up to the accused and Hayes and they asked me if I was alright and I asked them if they were alright. There was nothing wrong with me except the blow on the head I got. I noticed S/Sgt Batten lying on the side of the rd.

Q. Is this veh a left hand drive?
A. Yes, the Panel you mean don't you?

Q. Yes, go on?
A. I saw Batten lying there and I thought he was knocked out.

Q. After that?
A. The accused said as there was nothing wrong with me I could go on my way. It wasn't far from Stains, and so I thumbed a ride up to the other side of Stains.

Q. Did you at any time see the accused drinking in the Mess?

A. I wasn't paying attention, Sir.

Q. Would you be in a position to judge the speed of the veh from the back?
A. It would be hard to say, 30-35 at the most I'd say.

Q. At the time of the accident was it a violent impact?
A. It happened so quick I wouldn't know.

Q. What sort of a night was it?
A. Dry and fairly dark.

Q. Straight rd?
A. I couldn't say.

Q. After the accident did you go to the back of the car and make any inquiries as to what happened Sgt Allan or S/Sgt Batten?

DEF OFFR: I object to that question.

OBJECTION SUSTAINED

CROSS-EXAMINED

Q. Is it always a custom that you go on leave the night before?
A. Yes.

Q. Did you have any trouble getting to Ash Vale?
A. No.

Q. Was it at night?
A. No, evening.

Q. You used a test veh to go?
A. Yes.

Q. Ordinarily your staff is not testing vehs at that time?
A. No.

Q. In other words it is just a way of getting around a trip to the Stn?
A. Yes.

Q. You were anxious that night later to get to Stains?
A. Yes.

Q. Were you mixed up in any discussion that night as to whether you were allowed in a certain Sgts Mess or not?
A. Not that I remember.

Q. There was no reason for the accused to go to Stains?
A. He was just doing us a favour.

Q. You don't take spare drivers on recreational trips?
A. No.

Q. Yet the accused that night wanted to take a spare dvr did he not?
A. I don't know whether or not the fellow as spare dvr came along for the trip or whether he came as spare dvr.

Q. But to all intents and purposes Hayes was the spare dvr?
A. Yes.

Q. You and the other two were quite happy to get away on leave?
A. Yes.

Q. The accused was much less elated than the other three?
A. He wasn't drinking with us as far as I know.

Q. Did you have complete confidence in the accused handling that veh?
A. Absolutely.

Q. The speed was normal and the night was clear?
A. Yes.

Q. There was no reason for any special precaution to be taken by the dvr?
A. No.

Q. The rd is quite wide?
A. Yes.

Q. No heavy traffic?
A. No.

Q. Did you stand around the scene of the accident for any length of time after it happened?
A. I couldn't say.

Q. Did you notice a tail light on the milk truck?
A. No.

Q. You've seen the accused drive vehs before around here?
A. For 2½ yrs, Sir.

Q. Is he a good and careful dvr?
A. Yes, as far as I know.

Q. He was careful that evening?
A. Yes, as far as I know.

Q. Have you had any experience with meeting these milk trucks on the rd at night?
A. No.

RE-EXAMINED

Q. Have you done much duty driving with this unit?
A. No.

Q. Did you consider this trip strictly legal or is it just something that had been going on and had never been caught?
A. No, you could take it both ways. I've often seen Sgt Hood out testing vehs at night.

Q. Is it normal to take vehs out after supper?
A. No.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THIRD WITNESS

R.80342 Sgt HAYES JS, 1 Cdn Adm Tpt Coy RCASC, having been duly sworn, states:

I recognize the accused and at a quarter to eleven at night on 13 Jun 45 I arrived at the Sgts Mess of this unit, and he approached me while I was eating in the kitchen to accompany him on a short trip and act as spare dvr on the return journey. I agreed to do this and we left at approx 11 o'clock in a 15 cwt Panel, No. CV199139, and proceeded over to the PT Sgts Mess at CASCRU with the accused driving and I was in the back. We had a drink apiece in the PT Mess and remained there 15 mins to half an hour.

Q. Had you had anything else to drink that evening before?

A. Yes, I had dinner at Farnham and I had two light ales.

Q. What happened after you came out of the Mess?
A. I got in the front seat and Cpl Jurek, S/Sgt Batten and Sgt Allan were all sitting in the rear of the Panel. We proceeded on our way towards Staines, passing through Sunningdale. We proceeded on further and actually the first recollection I have of the accident itself is of shaking my pipe out of the window and then I glanced up and saw this tank trailer about 15-20 ft ahead of us parked against the curb on the left hand side of the rd; on our side of the white line that is. At first glance I noticed it was stopped and I shouted this to the accused. I didn't see a light on the parked veh, and we were driving between 30-35 miles an hour. Just as I shouted to the accused and at the same time he noticed the veh was sitting still and he was pulling out and then we side-swiped the parked veh. The Panel swerved around and we ended up facing the tanker beside the cab on the tanker. I got out of the Panel and went around and helped the injured in the rear of the veh and I noticed that S/Sgt Batten had a crushed skull, his pulse beats were very weak and his heart beats were practically negligible, and then I helped with the accused to carry him out on the grass. Then the accused assisted me in laying out Sgt Allan and we left him in the back of the veh until a Dr showed up. I had a slight piece of my forehead bruised which didn't show up until the next day, and also a slight bruise on my knee.

Q. What sort of a veh did you run into?
A. A milk tanker.

Q. Go on?
A. On the arrival of the civilian police and Dr the Police Inspector asked me to accompany the injured men to the hosp which I did in the rear of the ambulance. On arrival at the hosp Sgt Allan was taken in first and S/Sgt Batten was taken in next.

Q. Did you see them after you went in the hosp?
A. Yes.

Q. Did you consider this trip an authorized journey?
A. It wasn't up to me to know that with seniors to my rank in the Panel. I might say here that the accused complained on the way about the lights needing focusing.

Q. What is your job in this unit?
A. Trouble shooter and veh tester.

Q. Have you had any experience in testing lights on vehs?
A. No, but I've had a bit of experience in working on lights.

Q. Would you say that if the veh's lights were improperly focused that this would reduce the driving range?
A. Yes, the focus on those lights were not as far to the left as usual.

Q. Did any members of the party appear to have been drinking?
A. The members going on leave did.

Q. The accused?
A. He wasn't under the influence of alcohol as far as I'm concerned.

Q. Were you paying any attention to the rd?
A. I was spending quite a bit of time talking to Jurek behind me and wasn't paying any attention in particular to the rd. When I'm driving I watch the rd, and when I'm [illegible] I don't pay much attention.

CROSS-EXAMINED

Q. As far as the authorization of this trip was concerned you assumed that it was duly and properly authorized?
A. Yes.

Q. Did you notice whether or not you had just come over a rise when you saw the tanker?
A. I verified this after; we were coming down a slight grade.

Q. So that you couldn't possibly have seen it?
A. Only after you had come over the rise.

Q. Do you consider yourself a competent driver?
A. Yes, for 17 yrs.

Q. Would you say that the accused reacted capably?
A. Yes, the same as I would have done.

Q. Were brakes applied?
A. I don't believe so, turning and braking at the same time is a poor thing.

Q. Did you notice a tail light on the back of the tanker?
A. No.

Q. What colour was the tanker?
A. A dull grey type of veh, blending with the colour of the rd, and with no markings on it at all.

Q. At all times did the accused have the veh under control?
A. Yes.

Q. He was driving at normal speed?
A. Yes, and the rd was dry and the night was clear.

Q. And there was no reason at that particular time that the accused should take any special precuations?
A. No, the traffic was very light.

Q. Do you know whether or not the accused was in the habit of signing work tickets prior to the 13th?
A. Yes, once when he was acting as Orderly Offr he signed a stack of them.

Q. And with the knowledge of his immediate superior offr?
A. Yes.

Q. Did you at any time consider this a recreational trip?
A. No.

Q. I would suggest to you that the reason the accused was driving was that he was sufficiently conscientious that there would be no monkey business and that you would go straight there and straight back?
A. There's nothing wrong with that theory, Sir.

Q. You were going to do nothing else that evening except drive these three and come straight back?
A. Nothing else.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

FOURTH WITNESS

L.28451 MSS BIGGIN CT, 1 Cdn Adm Tpt Coy RCASC, having been duly sworn, states:

I recognize the accused and I was present in the Mess on the evening of

13 Jun 45. I came in the Mess at approx 7.30 and I noticed the accused, the late S/Sgt Batten, Sgt Allan and Cpl Jurek, seated at a table. The accused immediately called me over and requested that another bottle of spirits be put on sale. At the time I was Mess President. I refused to put another bottle of spirits on sale in view of the fact that we were running the spirits on a quota and the quota for that day had already been on sale. The argument continued for half an hour at which time the party left to catch a train. In order to avoid further argument I agreed to put on a further bottle of spirits in view of the fact that most of the party had gone. Then I left and went into the Billiard Room where I remained until about 9.30, until lunch was served and immediately after lunch I left. Later on as I was leaving the Mess S/Sgt Batten came in as I was going out and he remarked that they had missed their train.

Q. Had this party at the table been drinking?
A. Yes, there was evidence of drinking; there were one or two glasses of beer on the table and so on.

Q. Would you say they were affected?
A. I'd say they were feeling good.

Q. The accused, was he noticeable affected?
A. He was feeling good.

CROSS-EXAMINED

Q. The only evidence of drinking that you saw was the glasses on the table?
A. Yes.

Q. You didn't notice anything specific that showed that the accused was under the influence of drink?
A. Nothing in particular, Sir.

Q. They were just a happy little group?
A. Yes.

Q. You had put out this other bottle of spirits to avoid further argument after the other people had gone?
A. Yes, then the accused argued with me after that again.

Q. You were pretty made because he had a Cpl in the Mess?
A. No, I wasn't mad, Sir, but I was Mess President and it was my duty to see that no Cpl should be in there.

Q. Then why did you allow one week later someone permission to bring a Cpl in?
A. I didn't, Sir.

Q. Did you acquiesce to have someone in there?
A. I didn't say anything to the Cpl being in.

Q. And yet you saw him there?
A. Yes.

Q. You closed your eyes to that?
A. Yes.

Q. Yet you argued with these other people for 20-30 mins?
A. Yes.

Q. What have you against the accused?
A. Nothing.

Q. A Sgt is a Sgt regardless of sex?
A. Yes.

Q. And you acquiesced a week later?
A. Yes.

Q. Are you going to suggest to the Court that the accused was under the influence of liquor?
A. No, Sir.

Q. Was he quite capable of carrying on a conversation with you?
A. Yes.

Q. You understood everything he said?
A. Yes.

Q. Do you realize that practically throughout the entire night of 13 Jun the accused had practically nothing to drink?
A. No, I don't, I didn't get there until 7.30.

Q. Did you see him around 10 that evening?
A. I had left the Mess then, Sir.

Q. Did you see him around 9.30?
A. Yes.

Q. Was he staggering or stumbling around the place?
A. No.

Q. The only reason they wanted this liquor was because they were going on leave?
A. Yes.

Q. You were quite naturally annoyed with these people pleading with you after you had said no?
A. No.

RE-EXAMINED

Q. You've known the accused quite some time?
A. Yes.

Q. You feel you would be competent to tell when he had something to drink or not by his actions?
A. Yes.

Q. Then would you say that he had something to drink the night in question?
A. I'd say so.

DEF
OFFR: I object to that question and answer

OBJECTION SUSTAINED

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SIXTH WITNESS

Lt WT LITTLER, 1 Cdn Adm Tpt Coy RCASC, having been duly sworn, states:

On 13 Jun 45 my duties were A/OC 1 Cdn Adm Tpt Coy RCASC Wksp and in those duties I had the accused, whom I now recognize, as my Tech man.

Q. I show you a Tpt Work Ticket for veh CV199139, where a trip to Stains is authorized; do you recognize the accused's signature on it?
A. Yes, I am familiar with his signature.

TPT WORK TICKET MARKED EXHIBIT 1

Q. To your knowledge has the accused had authority to sign work tickets?
A. Yes, it was granted to him by Maj Cornell the former OC here.

Q. Were you present when he was given this authority by Maj Cornell?
A. No., but there was an occasion last Dec when the accused had signed a Work Ticket to go to BORDON for parts and there was a discussion at the time about it and Maj Cornell said "that's O.K., I've never changed that order".

Q. What was the condition of this veh prior to this trip on the 13th?
A. Roadworthy. It is not a WD type veh, it is strictly a commercial veh.

Q. The headlights, their condition?
A. Only fair on account of the weather over here unless they are "seal beamed" they become tarnished and therefore are not up to the mfg's standard.

Q. How would this affect the driving range?
A. It certainly would, it would govern your speed a great deal.

Q. On a normal dark night?
A. I would say that the direct beam would be 30-40 feet out in front on a white rd, but if on a dark rd it would be very little.

Q. What would be a safe driving speed?
A. 25 m.p.h.

Q. What is the authorized speed of this veh?
A. 30 m.p.h.

Q. Why?
A. Because it is under mil use and their speeds are laid down.

CROSS-EXAMINED

Q. The accused has been detailed for duty as Orderly Offr here before?
A. That I believe was before my time, 4 Jun 45.

Q. You did nothing to change Maj Cornell's order that the accused could sign Work Tickets?
A. Nothing.

Q. You considered the accused a person of sufficient responsibility to carry out that duty properly?
A. Yes.

Q. He has always performed his duties well?
A. Yes.

Q. There were no mechanical defects that one would have to watch out for or be particularly careful of that night on that veh?
A. No.

Q. When you say the veh was roadworthy, you are taking into consideration the condition of the headlights at that particular time as you knew them?
A. Yes.

Q. Prior to the 13 Jun this year it was quite common to give people lifts to the stns when going on leave?
A. Not to my knowledge.

Q. From what distance on a straight and clear rd should a tail light be visible?
A. There is quite a variety of tail lights.

Q. A normal tail light?
A. Some hundreds of feet, providing it is not a tail light with blackout eqpt in it. On a good straight rd I would say 150 yds and on staff cars a good half mile away.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SEVENTH WITNESS

Capt A.G. HUDSON, 1 Cdn Adm Tpt Coy RCASC, having been duly sworn, states:

I am the Adjt of 1 Cdn Adm Tpt Coy RCASC and have been such since 13 Apr 43. I present herewith Dvrs Standing Orders d/12 Jan 44 for 1 Cdn Adm Tpt Coy with particular ref to para 7. These are posted in the Sgts Mess among another places throughout 1 Cdn Adm Tpt Coy RCASC.

DEF OFFR: I now object to each and every one of the exhibits which this witness is about to present to the Court.

STANDING ORDERS MARKED EXHIBIT 2

(Witness continues)

I present an extract from Pt I Orders d/5 Jun 43, with particular ref to para 7.

PT I ORDER MARKED EXHIBIT 3

(Witness continues)

I present an extract from Pt I Orders d/5 Aug 44, with particular ref to para 4.

PT I ORDER MARKED EXHIBIT 4

(Witness continues)

I present an extract from Pt I Orders d/3 Jan 44, with particular ref to para 2.

PT I ORDER MARKED EXHIBIT 5

CROSS-EXAMINED

Q. How long have you known the accused?
A. Since Apr 43.

Q. Has he always done his job satisfactorily?
A. All reports on him from the diff wksps have been very satisfactory.

Q. You are aware that in spite of the publications of exhibits 2-3-4-5, a practice has apparently grown up which allowed the accused to sign Work Tickets?

A. No, I'm not aware of any such practice.

Q. You know apart from this particular case that he has signed them?
A. I've checked back and found that he had signed 5 in the preceding three months, all of which were for trips during the daytime.

Q. Duty trips?
A. I presume, yes.

Q. I show you a copy of a document, what is it?
A. It is a RAR.

PROSECUTOR: I don't see the relevancy of this.

Q. Does it purport to be made out in the regular manner?
A. The form itself is out of date but it appears to be a normal RAR.

Q. Does that report appear to refer to a collission between one of your sedans and a milk tanker?
A. Yes.

PROSECUTOR: I object again to this document.

Q. Will you check that document and see if it refers to a tail light on a milk tanker?
A. There is a statement here by some Maj of 23 CGH that says that shortly after passing a veh a tank milk truck parked on the side of the rd without lights came into view.

DEF OFFR TO PRESIDENT: The point of relevancy, Sir, is that there have been quite a number of accidents which have been reported where similar types of vehs have been involved in accidents with mil vehs and it shows that there has been a tendency due to wartime regulations to operate without proper lights. I tender this document under RP 60.

PRESIDENT: I am very doubtful whether the Court will regard this document as having any relevancy, but if the Defence wants it in it will be admitted.

ROAD ACCIDENT REPORT MARKED EXHIBIT 6

Q. Have you republished Dvrs Standing Orders yourself since those you have given to the Court as an exhibit?
A. No, I don't believe, no.

Q. What is this document?
A. Sheet 114 1 inch to the mile WD map.

Q. It shows the distance from FARNBOROUGH to STAINS?
A. Yes.

MAP MARKED EXHIBIT 7

Q. Have you personally checked the mileage between those points?
A. No.

Q. I suggest to you that the distance is 16 miles?
A. To where?

Q. To the Great Western Ry at STAINS and 17 to the Southern Ry at STAINS?
A. Yes, that would be about right; it is under 20 I know that.

QUESTIONS BY THE COURT:

Q. What is the custom here about driving men to the stn when they are going on leave?
A. Sir, the custom that I know of in particular relation to the wksp

has been that personnel going on leave at 0900 hrs have frequently been picked up on the rd near the Camp by vehs which were on test. This was a practice that was known to the CO. I have never known of vehs being used at night for this purpose as leave does not start until 0900 hrs in the morning.

Q. Any different rule respecting NCOs?
A. No.

Q. Offrs?
A. They have been permitted to phone and secure a veh to report to their Mess to drive them to the train.

Q. Is there anything hung on the trucks when they are out on test?
A. Yes, a metal sign with the words "on test".

Q. Know anything about dancing classes at FARNHAM?
A. Yes, at one time the Educ Offr had arranged dancing classes at FARNHAM and tpt was authorized under a Routine Order.

Q. [redacted] men testing vehs drive to the stn only for the purpose of taking men to the stn?
A. The previous CO had instructed the wksps to give all vehs a rd test and that personnel proceeding on leave frequently had been picked up and driven to the stn on that rd.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(8)

EIGHTH WITNESS

Mr Leonard MOUSLEY, 25, the Crescent, WEYHILL 84, ANDOVER, Hants, having been duly sworn, states:

I am a lorry dvr and I was the dvr of the milk tanker which was struck by an army veh on the night of 13 Jun 45, or rather on the night of 13-14 Jun 45. We dvrs have to stop every hour for a tire inspection; it was 12 o'clock midnight when I came to a standstill about 2 miles from SUNNINGDALE. I put my hand brake on, took a torch from my pocket and it was exactly midnight by the clock in the cab of my truck. Then I glanced in my rear vision mirror to see if there was anything coming, and I saw that my tail light was alight. The tail light on my tanker is on the right side of the veh near the number plate, and it can be seen by looking in the rear vision mirror. Then I put my hand in the door to open it and with that lights from an oncoming veh came into my vision and I thought I would sit there until he had passed, but he didn't pass me; he struck me in the chassis. It seemed to strike in the middle of the chassis, the tanker moved 2-3 feet, and the tanker was loaded at the time with milk, weighing 22 tons. I had the handbrake on at the time and it affects the eight tires of the tanker at the back. The tanker was on a slight slope and I don't think it would take as much to move it as if I had been on a flat rd.

CROSS-EXAMINED

Q. How long have you been driving vehs?
A. 18 yrs come Christmas, Sir.

Q. What condition was your tail light in when you started out that evening?
A. In very good condition.

Q. What about your headlights?
A. Perfectly good condition, Sir.

Q. Were they still conforming to blackout conditions?
A. No, they were open headlights.

Q. You parked on an incline?
A. Yes, sort of.

Q. You chose that particular spot to park in?
A. There's no place on that rd where there is clear vision anyway.

Q. How far down the rd from the top of the hill were you?
A. It must have been 40 yds.

Q. If your tail light hadn't been on you would have been in rather a difficult position as far as liability of this accident?
A. Yes.

Q. So it is very much to your interest to make sure that your tail light was on?
A. Oh, yes, Sir.

Q. What condition were your brakes in?
A. Perfect.

Q. When did you decide to examine your tail light through your rear vision mirror?
A. When I looked at the clock.

Q. Is it usual for you to look at the tail light through your mirror?
A. I see it all night, Sir.

Q. When you turn on your headlights does that automatically turn on your tail light?
A. No.

Q. After the accident you had to change lights?
A. I put a new bulb in.

Q. Was the other one smashed?
A. Yes, and the moment I inserted a new bulb it lit immediately.

Q. How did you get the old one out?
A. It had been knocked out, Sir.

Q. Did you find parts of the glass from the old bulb?
A. I found parts of the casing, the red glass was still intact, but I didn't find any remains of the old bulb.

Q. Do you stop anywhere regardless of your position?
A. I stopped by the clock.

Q. Rather than by the rd?
A. Yes.

Q. Whether you are over the top of a hill or not?
A. Our time is so slow that we can practically be on the same spot within a quarter of a mile. The car coming over the hill behind me couldn't see the tanker until it got to the top of the hill.

Q. Have you had any other accidents of this sort?
A. No.

Q. Other people have haven't they?
A. I couldn't say.

RE-EXAMINED

Q. Do you ever follow other vehs of your type at night?
A. Yes.

Q. And is their tail light quite bright? A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R.P. 83 (B)

NINTH WITNESS

Mr J.M. KING, TC 134 Surrey Joint Police Force, SUNNINGDALE, having been duly sworn, states:

Sir, at about 10 past 12 on 14 Jun 45 at night I was on duty in SUNNINGDALE, when I was informed that an accident had taken place 2 miles the LONDON side and Capt Maxwell told me that he had sent an ambulance but that he required a Dr. I called for a Dr McDonald and then I went to the scene of the accident and arrived there at 12.20. Soon after I got there the Dr arrived and on the side of the rd there was an injured man lying on the grass, blood pouring from his face and over his head and the Dr said that he must have surgical treatment instantly or as soon as possible. We then discovered that the ambulance sent for was a mil ambulance so I went to a nearby phone to see if I could get a civilian ambulance, as it would be quicker, but another soldier passing had called at the Police Stn and reported the accident again, so the civilian ambulance was on the way and when I got back to the scene it was and the injured men were placed in it and taken to Windsor Hospital. I then examined the scene of the accident and on the near side of the rd facing LONDON was an Atkinson milk tanker and the number of it was GYK 704.

Q. Are you sure it wasn't DYK 704?
A. No, definitely not, it was GYK 704, Sir.

Q. Please continue?
A. The rear of the tanker was 9" from it's near side curb, and the front was 1' 2" from the near side curb. The veh was 29' 10" overall length, 7' 6" wide in front, 7' 4" wide at the back, and I noticed when I approached the scene of the accident in the first place that the driver of the tanker was bending over his rear lamp. It was showing a white light and he was repairing it. Also standing 26 yds nearer LONDON was a Chevrolet CV 199139, but she had been moved after the accident and before I arrived. The width of the rd at this place was 30' 4". In company with Inspector Backshell and Mr Mousley I measured skid marks that were present and there was a skid mark commencing 40' 10" before the point of impact, commencing 1' 5" from the near side of the rd and extending to the point of impact which was plainly marked by dust, dirt and glass and by a heavy blurring mark of 4' 2" where the skid mark turned to the right. There was another skid mark further from the near side which extended 33' and ran up level to the point of impact. These two marks then went on, one for 34' and the other for 47' 11", the second one almost to the offside of the rd. There was a further skid mark which was probably made by the offside wheel which ran for two distances, 29' level to the impact, and then in a blurring way for another 49' to the offside of the rd, and a fourth one ran 47' meeting the nearside mark roughly in the centre. I produce herewith a chart which I prepared myself. It is drawn to proportion.

DEF CVFR: I have no objection to the admission of this chart.

CHART MARKED EXHIBIT 8

Q. How far did the milk tanker appear to have moved?
A. 8'. That was the distance between the point of impact and the rear of the milk tanker when I found it.

Q. What injury had been done to the milk tanker?
A. The damage was a grazed mark 1' on the offside rear of the chassis, damage to the tank of 6' 6" from the ground, the tank itself being split about 1'. The number plate was damaged. The light was alight when I arrived but the red glass was off.

Q. Was the rear light near the number plate?
A. It was att to it. The spare wheel carrier was pushed fwd about 1', the offside rear mudguard 3'6" from the ground was

damaged, the rim of the offside wheel and the tire was cut, but the wheel had turned round once or twice.

Q. What was the rd like?
A. In good condition, 30' 4" wide, dry surface at the time, and there were no other obstructions and it was not too dark really, the moon had just set. The rd in this place however drops down hill in two different grades. We carried out a test with the Inspector's car afterwards. I knelt on the rd where the milk wagon had been, taking up the same position as where it's rear light was, and the Inspector drove his car towards where I was, being in the direction of LONDON and I stooped down and with a signal lamp in my hand I stopped him with a signal from the lamp when his lights fell full in my face, and that was a distance of 220 yds. We measured further and we found that by placing his veh in the same position that a full view of the milk tanker would only have been obtainable at 90 yds.

Q. Was the milk tanker marked in any other way?
A. The milk tanker was almost the same colour as the road, and there were no relief lines on it.

Q. Do you think that that was a good place for it to park?
A. In my private opinion, no. Before this war I was a dvr-mech all my life and I should say that if that same veh were parked around the left in view it would be considered dangerous.

CROSS-EXAMINED

Q. What type of car was it you used to carry out this test?
A. A Hillman 10, Sir.

Q. Were the skid marks made from braking?
A. No.

Q. Would you say the brakes were applied at all?
A. No, I wouldn't say that even; the marks on the rd were made by the edges of the tires biting in as the car was being pulled to the right.

Q. Did the accused seem to be shaken by the accident?
A. He was in a ruffled condition that I've seen many dvrs in after an accident, Sir.

QUESTIONS BY THE COURT:

Q. Did you have any reason to form an opinion that the accused had been drinking?
A. If there had been any reason for me to think that, Sir, he would have been taken to the Police Stn and put before a Dr.

Q. If there was no rear light on the tanker would you have any idea how far away they would be when they could see the tanker?
A. The maximum would be 90 yds, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 834(B)

17

TENTH WITNESS

Mr H.E. GIBBS, PC 60 Surrey Joint Police Force, EGHAM, having been duly sworn, states:

Sir, I was present at the scene of an accident which occurred on the night of 13-14 Jun and I took a statement from the accused whom I now recognize. He was properly cautioned, I wrote it down and he signed it. It read "I have been cautioned that I need not say anything unless I wish but if I do it will be taken down in writing and may be given in evidence". He signed this caution in my book, which I cannot part with.

Q. Were any threats or inducements used?
A. No, Sir, I fully explained the caution to him and told him that any statement he made would be absolutely voluntary on his part, and read over to him which he could read and sign.

DEF
OFFR: I object to the admission to the statement, and wish to cross-examine this witness on it.

GRANTED

CROSS-EXAMINED

Q. The accused was rather upset when you interviewed him?
A. He was a little.

Q. Have you dealt with many accidents where the dvrs of Cdn mil vehs have been involved?
A. A fair number.

Q. And you realize from your experience that these dvrs are not to give you a statement until they have been put through the proper military channels?
A. I'm not aware of that.

Q. I show you an exhibit, Exhibit 6, would you read the line at the top of the page?
A. Yes, it reads "do not admit liability. Give your name and unit to other party and refer him to Cdn Claims Commission, 2 Cockspur St., Trafalgar Square, LONDON".

Q. Is that the first time you have become acquainted with that?
A. Yes.

Q. Why did you find it necessary to caution him?
A. It is customary to caution any person making a statement of any serious consequences.

Q. Did you explain to him your duties in this case?
A. Fully.

Q. I suggest to you that the accused was sufficiently upset that he gave you a distorted statement?
A. I don't agree with that.

Q. Don't you usually wait and give people time to get over any shock or excitement before you take your statements?
A. No, Sir, if they are cautioned and are willing to make a statement, it is taken.

Q. And on top of that you are anxious to get it?
A. No, it is a voluntary statement.

Q. Your duty is done once you administer the caution?
A. Yes, and explained to them that the statement is voluntary.

PRESIDENT TO DEF OFFR: Do you wish the accused to give any evidence on the matter of the admissibility of this statement?

DEF OFFR: No, Sir.

PRESIDENT TO WITNESS: Are you allowed to take this page out of your book so that they may be kept permanently by this Court.

A. No, Sir.

Q. Will you show us the signature of the accused at the end of this statement?

A. Yes (Witness shows statement of accused and his signature to Court)

Q. Is there anything else you wish to say?

A. Sir, the statement in my book may be marked as an exhibit by this Court but I will have to take my book away with me. However, this book will always be available at the Police HQ at GUILDFORD.

THE COURT IS CLOSED TO CONSIDER THE ADMISSIBILITY OF THE STATEMENT

THE COURT REOPENED AND THE PRESIDENT ANNOUNCED THAT THE STATEMENT WOULD BE ADMITTED IN EVIDENCE.

STATEMENT MARKED EXHIBIT 9

PRESIDENT TO WITNESS: Will you read it to the Court?

A. Yes.
(THE WITNESS THEN PRODUCED TO THE COURT A COPY OF THE SAID STATEMENT MADE BY THE ACCUSED WHICH HE CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL STATEMENT. THE PRESIDENT COMPARED THE ORIGINAL WITH THE SAID COPY AND HE CERTIFIED THE COPY TO BE A CORRECT COPY AND THE SAID COPY WAS MARKED EXHIBIT 9) (NOTE ATT)

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP83(B

THE PROSECUTOR SAID THAT LT LITTLER NOW HAD MORE INFORMATION WITH RESPECT TO THE COSTS OF THE PARTS AND ASKED LEAVE OF THE COURT TO RECALL HIM.

LEAVE GRANTED

Lt W.T. LITTLER, 1 Cdn Adm Tpt Coy RCASC, having been recalled by the Prosecutor, on his former oath, states:

Q. Did you make a list of the parts necessary for the repair of veh CV 199139?

A. Yes, I went to BORDON MT Tech Stores to do this. I went in to see the chap IC of the Parts Dept and I was with him when the part number was selected as against the illustrated book and then compared to the catalogue for the price list.

Q. Did you see the prices in the Price Book with respect to each item?

A. Yes, and I wrote it down on a piece of paper and then it was typed and I destroyed my longhand copy. It was typed in my presence and I compared it with my own notes.

Q. Will you read it to us now?
A. Yes, they were as follows:

PART NUMBER	DESIGNATION	PRICE
5802034	Hub Cap	$ .61
605417	Left front fender	17.04
4103268	Left front door	18.00
1797911	Left rear fender	7.12
3656701	Left running board	3.17
2042504	Left running board bracket	1.00
469979	Body panel	36.00

making a total of $82.94 or £18/11/2

CROSS-EXAMINED

Q. You have had an opportunity of comparing the accused's work with other people's?
A. Yes. From a point of view of tech knowledge I have yet to meet a better one than the accused, both as regards to efficiency and his tech ability.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP83(B)

THE PROSECUTION IS CLOSED

SUBMISSION BY THE DEF CSFR OF NO PRIMA FACIE CASE

I would like to move at this time that the Prosecution has failed to make out a prima facie case and the accused should not be called upon to present a Defence.
I intend to say only a word or two about the first charge.
It is the Adjt's responsibility of this unit to see that certain instrs are issued from time to time, but irrespective of these instrs I think the Court will agree with me when I say that practices might grow up which would be a direct violation of those instrs but nevertheless if it becomes a practice then it becomes equally good law; it becomes tacid permission to do things. The accused for the past year and a half has been and was until 13 Jun 45, not only authorized to sign work tickets for duty trips but was directed to sign work tickets for duty trips. Everything within the line of practice within his unit showed that the trip was a regular duty trip but he now finds himself involved solely because he was sufficiently conscientious to see that there was no monkey business, and by signing that work ticket and driving the veh it was to all intents and purposes a duty trip, therefore he committed no offence to be charged with conduct to the prejudice of good order and military discipline in that he improperly authorized and used a Cdn Mil veh CV 199139, and I refer the Court in this regard to Footnote to Sec 40 at the bottom of Page 458 MML, and I submit on that basis that the first charge cannot succeed.

With respect to the second charge there is an amendment to the footnote of Sec 40 dealing with neglect which must be the bible of military courts dealing with this charge. (DEF OFFR READS AMENDMENT D/5 JUN 42). That amendment places the onus on the Prosecution not only to prove neglect but to prove it affirmatively; they have failed in this respect and the accused should be acquitted of the charge.
The evidence to me strongly suggests that there was no light at the

back of the milk tanker. You have the evidence of two witnesses, two independent people, that of Sgt Hayes who states that had there been a light he would have noticed it or words to that effect, and also the evidence of Jurek who was in the back seat. Mouseley parked his tanker in a particularly dangerous spot, that is borne out by the Police Constable who also gave evidence here today. You also have his evidence as to the distance at which the tail light might become visible. He gave us maximums - the minimums should also be estimated. In the opinion of Hayes, himself a driver, and on whose evidence the Prosecution is bound, the accused drove that veh with due caution throughout the journey and when the tanker loomed up he did exactly the right thing by swerving to the centre of the rd to avoid an accident. It is quite clear that the neglect was neither wilful nor culpable. It is not blameworthy and therefore not deserving of punishment and I would ask the Court to acquit the accused on the ground that the Prosecution have not established a prima facie case against him.

REPLY BY THE PROSECUTOR

In respect to the first charge I would say that the mere fact that certain instances of improper use within the unit does not in itself excuse a senior warrant officer to improperly use a veh; in other words, two wrongs do not make a right.

In respect to the second charge, the evidence of a competent witness, Mr Littler, stated that the faulty lights were such that would limit the driving speed to 25 m.p.h., and he also stated that the maximum speed for this veh is 30 m.p.h., and yet the witnesses Sgt Hayes and Cpl Jurek both say that the speed was up to 35 m.p.h, which is a direct violation of the order and a fact. From P.C. King's evidence the visibility would not be nil and I contend that a driver who had his mind on his driving would have been able to avoid the tanker with ease.

THE COURT IS CLOSED TO CONSIDER THE SUBMISSION

THE COURT IS REOPENED AND THE PRESIDENT ANNOUNCES THAT THE SUBMISSION BY THE DEF OFFR IS DISSALLOWED.

- D E F E N C E -

FIRST WITNESS

The ACCUSED, having been duly sworn, states:

Q. Would you describe to the Court how you came to authorize this trip, what you had to drink that evening, and what you did till the time of the accident?

A. Yes, Sir. At 5 o'clock I finished work and went over to the Mess where Sgt Allan and S/Sgt Batten were. I had a drink before supper, and after that I went and got washed and then came back to the Mess where Allan asked me permission to bring Cpl Jurek into the Mess, which I did. I was then around the Mess nearly all evening, and later Allan and Batten approached me and asked me if I could get another bottle of liquor. I asked the Mess President about it and he started on me about having a Cpl in the Mess and then the boys left for their train. I had lunch and immediately after they came back again with a Work Ticket and a Log Book, saying that they had missed their train and could make the connection at Stains, and would I sign the Work Ticket for Sgt Hood to take them there. I said no, I'll take you there myself because I wanted to see that the veh returned and no monkey business on the rd. I signed the ticket and as they all got in the veh S/Sgt Batten said he wanted to see someone at the PT Mess or something he wanted to get and I took him there. He asked us in for a drink when we got there

and he bought me a small beer. We were there about 10 mins and then we came out and proceeded to Stains. Just before Sunningdale some of the boys wanted to stop and relieve themselves, which I did. We then continued over a ry crossing, possibly a mile from it this veh loomed up in front of me and I immediately turned to the right and at the same time I heard Sgt Hood shout and just then when I thought I had cleared it, we hit broadside sort of. I saw no tail light on the veh.

Q. From 7 o'clock on that evening how many drinks did you have?
A. One before supper, then another after dinner and then one at the PT Mess, Sir.

Q. What speed were you driving?
A. Approx 30 m.p.h.

Q. Did you have the veh under control at all times?
A. Yes.

Q. How long have you been driving?
A. 16-17 yrs.

Q. What authority did you have to sign work tickets?
A. The OC Wksps, and I've been signing them for the past 2 yrs.

Q. Are the trips to the stn for people going on leave considered duty or recreational trips?
A. Duty trips, Sir.

Q. Was it clearly within the 20 mile limit?
A. Yes.

Q. Driving conditions were normal?
A. Yes.

Q. It was a fairly clear night?
A. Yes, fairly, except that the trees threw a shadow here and there on the rd.

Q. Were you aware of any mechanical defects on the truck?
A. Not mechanical, but the headlights were a little off to the right.

CROSS-EXAMINED

Q. Had you ever before this night signed a work ticket for a trip of this nature?
A. Not in the evening that I can remember of, but I have in the daytime.

Q. Didn't you question the trip at all?
A. They were all my NCOs that were working for me and they were going on leave and were going some distance, and it was the custom in this unit when personnel are going some distance to give them that extra time so that they would be on their way by morning.

Q. What is the maximum speed of that veh?
A. 30 m.p.h., it is marked on the windshiled.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP83(B)

THE DEFENCE IS CLOSED

STATEMENT BY THE PROSECUTOR ON THE FINDING

- NIL -

STATEMENT BY THE DEF OFFR ON THE FINDING

I might add one or two words to what I said on my submission. I don't wish to say anything more about the neglect except to point out and I think the Court realizes that the evidence of liquor is negligible. The Court may be influenced by a question put to the accused by the Prosecutor insofar as this trip was in the evening, and not in the afternoon. If the accused had authority to sign work tickets in the daylight that authority was still vested in him for the whole 24 hours, day or night. I ask on that basis that the accused be acquitted of both charges.

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED

PLEA IN MITIGATION

It has been laid down previously by the JAGs Branch that the accused is bound by the statements made by his Def Offr on his behalf.
I wish to make it quite clear that anything I say is under no circumstances whatsoever an admission of liability or guilt with respect to these charges.
The accused has done exceptionally good service, is extremely valuable, and has worked every single day up until today carrying out his duties and doing them well in spite of this hanging over his head for over two months. Any punishment over and above reprimand or severe reprimand, naturally affects gratuities, and the Court cannot err on the side of leniency in this particular case. It is an unfortunate accident and the accused would not have been involved in anything of this nature had he not been trying to do something for his brother NCOs who had been working for him and living with him for a considerable time. There is nor was absolutely no intention on his part whatsoever to commit any military offence throughout the entire transaction, and I say again, no punishment can be too lenient.

TRANSPORT WORK TICKET

No. 44

TYPE OF VEHICLE	CLASS	UNIT	SECTION	DRIVER'S NAME	W.D. No.	MONTH & YEAR
Chev.	Panel	No.1 Admt. Transport Coy. RCASC	"E"		CV-199139	June 45

Exhibit "A"

DATE		FOR WHOM JOURNEY IS PERFORMED (3)	DETAILS OF LOAD (4)	ROUTE To (5)	ROUTE Via (6)		SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Kms (17)	SPEEDOMETER Day (18)
	A			Brought forward from Work Ticket No.												284	71	
11	B	1 Trans.	Duties	Farnboro	Bordon	Return	W.T. Little Lt.			12	3	9	3					
12	C	1 Trans.	Duties	Farnboro	Bordon	Return	W.T. Little Lt.			12	3	9	3					
13	D	1 Trans.	Duties	Farnboro	Aldershot	Area	[illegible]											
	E	"	"	Same	"	Return	[illegible]											
	F																	
	G																	
	H																	
	I																	
	J																	
	K																	
	L																	
	M																	

Ex 1

Exhibit "D"

Dated 12 January 1944

NO 1 CDN ADMINISTRATIVE TRANSPORT COMPANY R.C.A.S.C.

DRIVERS STANDING ORDERS
BY
LT.COL. G.C.McARTHUR COMMANDING OFFICER

1. Drivers will parade daily at 0800 hrs and 1315 hours, or as detailed in Part I Orders.

2. M.T. Drivers Regulation (CAO) will be carried by drivers at all times. Drivers will be responsible that the provisions of this pamphlet insofar as applicable to them, are carried out in every detail.

3. Daily Maintenance will be carried out as laid down in M.T.Drivers Regulation (CAO), pages, 84,85,86,First Parade,Adits, and Last Parade.

4. Weekly maintenance will be carried out as laid down in M.T.Drivers Regulations (CAO) pages, 86 to 48

5. Dress:- Denim or overalls must be worn when doing maintenance other than daily. Proper dress on driving duties will be Serge, Battles Dress, Field Service Cap, Web Belt and Anklets, and First Field Dressings. Steel Helmet, Rifle or Sten Gun will be carried in the cab, when ordered. Respirators

6. Vehicles when not in use, will be parked, each in its designated area in the vehicle park, and will be properly chocked and

7. All Work Tickets must be signed by an officer and drivers will not proceed on any journey without this authorization. Drivers will sign out at gate on the Guard's record before leaving Camp and will check in at the gate on returning. Keys, Work Tickets and Log Books, of all vehicles will remain in Platoon Orderly Room, while vehicles or Motorcycles commences are not on duty, and will be turned into pln. O.R. immediately a duty run has been completed.

8. Drivers will carry at all times, driver identity card. (CMHA 2036) Road Accident Report (CMHQ 1000-42A), M.T. Drivers Regulation Book (CMHQ 1000-42) Drivers will acquaint themselves with the information contained in the Regulation Book, and will carry out instructions re speed, maintenance, lubrication, etc as laid down.

9. Refuelling of vehicles will be carried out immediately a duty run has been completed.

10. Vehicle holidays will be strictly observed consistent upon details laid on by M.T.O.

11. Drivers will ensure that prior to proceeding on any duty run, all the instructions concerning the trip are complete and thoroughly understood.

12. Work Tickets will be kept clean, legible and completed in full detail as explained in M.T. Drivers Regulations (CAO) pages, 6,7, and 8.

13. Smoking is prohibited while driving or working around vehicles.

14. M.T. Drill will be carried out on convoys if ordered by Officer i/c Convoy.

Ex 2

P. T. O.

M.T. Drivers Standing Orders, Contd.

15. Section M.C.O's will ensure that early meals or lunches are provided if required.

16. Parade will be called by Section Sgt. Half and hour before detail is scheduled to move off.

17. Cond'd of Pltns whose vehicles are parked on Lille Square or at Pax-Hill Camp will be responsible for rendering the following certificate daily to the Area Transport Officer, who will check these after which they will be forwarded to the Commanding Officer.

NO 1 CDN ADM [illegible] THROUGHOUT CONF NY R.C.A.S.C.

Platoon.....

Date .....

Certified that all vehicles of this Platoon (except those on attachment) were checked and found to be located as follows.

Vhcs	On Square	On Duty	On Attachment	Total	Sig. of person Counting
TOTAL					

.....
Signature of Pltn. Comdnt.

Vehicles in Workshop will not be included in Pltn. Count. W/S will include all vehicles in for repair or inspection in their figure.

A.G.Macdonald Capt
p (G.C.MacArthur) Lieut-Col.,
Commanding Officer,
No.1 Cdn.Admn.Bpx.Coy.,
R.C.A.S.C. C.A.(O)

Trans/

"E"

NO 1 CDN. ADMINISTRATIVE TRANSPORT COY. R.C.A.S.C. C.A.(O)

Extract from Part 1 Orders No 128 d/ 5 June 43.

Para 7 DISCIPLINE - WORK TICKETS.

1. With reference to work tickets and vehicle holiday authorizations, the following items must be shown.

2. Some of the items are not being shown are:-

(a) Initials, rank and number of driver.
(b) Time of departure.
(c) Any deviation in the most direct route.
(d) The Orderly Room stamp must appear
(e) Authorization must be made by an officer.

EX 3

3. Persons issuing work tickets and drivers, are responsible for the proper completion of work tickets.

R.A. Cooper Lt

(R.A. Cooper) Lieut.
Officer having custody
of orgianl documents.

CERTIFIED TRUE COPY

"F"

NO 1 CDN. ADMINISTRATIVE TRANSPORT COY. R.C.A.S.C. C.A.(O)

Extract from Part 1 Orders No 42 d/ 5 Aug 44.

Para 4 DISCIPLINE - WORK TICKETS

1. With reference to W/T and Veh Holiday authorizations, the following items must be shown:

(a) Number, Ran, Initials & Name of Driver.

(b) Time of departure.

EX 4

(c) Any deviation from the most direct route.

(d) A.T.O. stamp must appear on Veh. Holiday Authorization.

(e) Work Ticket or Veh. Holiday auth. must be signed by an Officer.

2. Persons Issuing W/Ts are responsible for their proper completion.

R.A. Cooper Lt

(R.A. Cooper) Lieut.
Officer having custody
of original documents.

CERTIFIED TRUE COPY

Exhibit "G"

NO 1 CDN. ADMINISTRATIVE TRANSPORT COY. R.C.A.S.C. C.A.(O)

Extract from Part 1 Orders No 1 d/ 3 Jan 44.

Para 2 DISCIPLINE - RECREATIONAL TRANSPORT

All applications for recreational transport for use of officers or other ranks must be submitted through the Officer Commanding each platoon and in accordance with instructions in possession of these Platoon Commanders. There will be no exception to this ruling.

R.A. Cooper

(R.A. Cooper) Lieut.
Officer having custody
of original document.

CERTIFIED TRUE COPY

Exhibit "H"

NO 1 CDN. ADMINISTRATIVE TRANSPORT COY. R.C.A.S.C. C.A.(O)

Extract from Part 1 Orders No 16 d/ 28 Mar 44.

Para 4 DISCIPLINE -- PASSES. Extract from R.O. No 154.

(a) Effective forthwith ORs of Gps and units under Comd CRU will NOT require passes when proceeding to places after duty within the ALDERSHOT AREA, which, for the purpose of this order will incl the area bounded and incl WOKINGHAM, SUNNINGDALE, WOKING, HASLEMERE, PETERSFIELD, ALTON and ODIHAM.

(b) After duty is defined as the period between 1700 hrs and 2230 hrs each week day. On Saturdays the hrs may be 1200 hrs - 2230 hrs. In the case of WOs and Sgts, 2359 hrs will apply.

(c) Effective 28 Mar 44 "Tattoo" will be at 2230 hrs, and "lights out" will be at 2245 hrs.

(d) Passes are essential at ALL other times outside of Unit lines for all ORs. Any pass of this nature will be signed by an offr of NOT lower than fd rank, or by adjts or NOT lower than Capts. rank, or by offrs of NOT less than Capt rank acting in an adm capacity.

(e) Attention is also directed to paras 1137 - 1139 K.R. (Can). Relative to para 1138, "the OC the Coy, etc" will be interpreted as an offr of NOT less than fd rank or of Capts rank as detailed in para (b) above.

(f) This order will be repeated in unit orders once monthly hereafter, and will be read on unit parade.

(g) Unit Comds will be held personally responsible that the terms of this order are complied with rigidly.

R.A. Cooper

(R.A. Cooper) Lieut.
Officer having custody
of original documents.

CERTIFIED TRUE COPY.

Dr probable

Ex L

M3

C.M.H.Q. 366, G.
A.F.X. 426, 5/20. Revised.

ROAD ACCIDENT REPORT

PART I—DRIVER TO FILL IN IMMEDIATELY AT SCENE OF ACCIDENT

Do not admit liability. Give your name and unit to other party and refer him to Canadian Claims Commission, 2 Cockspur St., Trafalgar Square, London.

Date of Accident 27 June, 45 Time 2300 hrs

Place of Accident Near Hook

No., Rank and Name of Driver Thomson, J. K 76984 Att. No. 23 Can.Gen.Hosp.

Unit No. 1 Adm. Tpt. Coy. Type Sedan

Vehicle, W.D. number CM 4202511 Make Chev.

Exact nature of duty Officer & Nursing Sister's kit Journey from Watford to Basingstoke

Authorized by Col. Hazard, J. Speed of Cdn. Vehicle App. 25 M.P.H.

Work Ticket No. Loaded or unloaded Loaded Speed of other vehicle Parked

Condition of Road Surface Good Density of Traffic Light

Visibility (Clear, Foggy, raining, etc.) Clear

Warning given, if any, and how No State whether full or dim full

LIGHTS. Left front Yes

Right front Yes

Rear Yes

Was reflector displaced? Yes Where? Hook

Was the accident reported to the Police

WITNESSES NAMES ADDRESSES (Obtain signed statements and attach)

Major R.K.Yahnke,
M/S Malone, L.S.

OTHER VEHICLE/S, PERSONS & PROPERTY INVOLVED (BE CERTAIN TO OBTAIN NAMES OF DRIVER AND OWNER)

Registration No. See police Make Type

Name of Insurance Company

State whether collision coverage with or without excess

Name of driver Address

Name of Owner

Nature of damage claimed, if any

Persons injured or complaining of injuries Names Addresses

Damage to other property

Owner Address

DRIVER WILL ALSO COMPLETE STATEMENT AND DIAGRAM OVER PAGE

PART V—INJURY TO PERSONS

(NOTE—The reporting Medical Officer should state whether or not he has actually examined the injured person, or patient. If he has not, the source of his information should be given.)

Name Age Occupation

Address

If under age 21, Name of Parent

Address

Particulars of injury: history of the case since the accident and present condition

Period of actual or anticipated absence from work

Whether permanent disability is likely to result and, if so, to what extent

Any special remarks

Hospital, if any Signature of M.O.

Date

PART VI—FOR COMPLETION BY COMMANDING OFFICER

(i) RESPONSIBILITY: (Opinion must be clear cut and definite with reasons. "THE HIGHWAY CODE" will be found helpful. Fatal or other serious accidents must be reported immediately to the Formation Claims Officer).

(1) By the evidence the driver of the R.D. vehicle was not proceeding at excessive speed.

(2) He had just passed a civilian vehicle with bright lights when the unlighted, parked milk truck came into view. Hix He attempted to take evasive measures which were not successful.

(3) The responsibility for the accident is on the driver of the milk tank truck for parking on a highway without lights.

(ii) Length of experience of driver in Canada 6 months In England 2 yrs 1 month.

(iii) Disciplinary action taken and stoppages (if any) awarded or recommended Nil.

(iv) Number of previous accidents recorded Nil.

(v) Remarks (will Court of Inquiry be held, etc.?) Yes

Date 2 Jul 45 (Signature) J.K.Hazard Lt Col
Command and Unit 23 Cdn Gen Hosp

PART VII—DECISION OR RECOMMENDATION OF FORMATION COMMANDER

G.O.C.

Date

DRIVER'S STATEMENT

BE SURE ALL PREVIOUS QUESTIONS HAVE BEEN ANSWERED

State here fully what actually occurred

Driver Thomson, J. K 76984

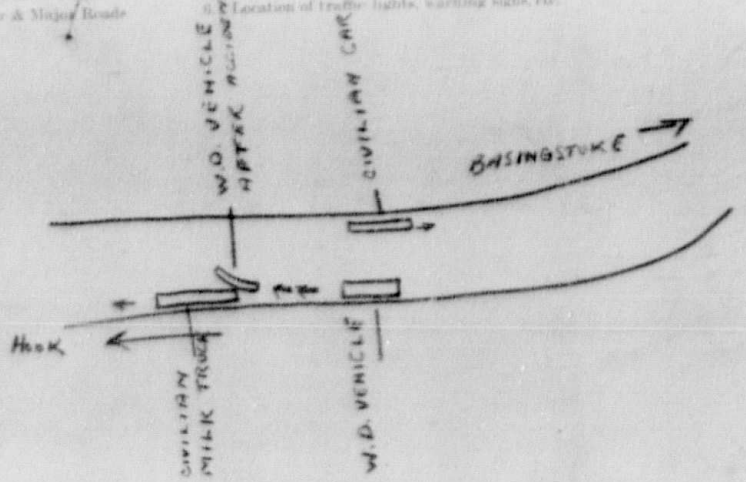
Does not remember anything about accident and is unable to give statement as he was unconscious after accident.

Driver Thomson, J.
Maj. B.M.Fahrni
Maj. J.C.Mascovich
N/S L.A. Malone
} --- All in W.D. vehicle were injured and in hospital

Rec

SPACE FOR DIAGRAM

Show—1. Position of vehicles before and after accident.
2. Direction of Traffic
3. Minor & Major Roads
4. Width of Roads
5. Skidmarks
6. Location of traffic lights, warning signs, etc.



DAMAGE AND INJURY REPORT NOTES

PART II DAMAGE TO CANADIAN ARMY VEHICLE

Vehicle No. CM-42C2511 Make Che V Type Sedan
Particulars of damage

Estimated cost of repairs: Labour £9-0-0 (No. of hours 60 @ 3/) Materials £40-1-7 Overhead TOTAL £49-1-7

Any special remarks

Date 4 th July 1945 (Signature) D Sheringham Major
(Workshop, Unit or Det.)

PART III DAMAGE TO OTHER VEHICLE

Vehicle No. Make Type
Particulars of Damage. (To be checked by competent officer immediately following accident).

Estimated cost of repairs on the basis of ordinary commercial charges
(Number of hours required to complete repairs
Labour Materials TOTAL £
Any special remarks.

Date (Signature)
(Workshop, Unit or Det.)

PART IV DAMAGE TO OTHER PROPERTY

Location
Owner Address
Particulars of damage

Estimated cost of repairs Labour Materials TOTAL £

Date (Signature)
(Unit or appointment)

Statement - Major B.M.Fahrni

I was sitting in front seat of vehicle proceeding to Watford at approximately 2300 hours travelling at 25 M.P.H. Near Hook we passed vehicle going the opposite direction with lights on. Shortly after passing this vehicle a tank milk truck parked on road without lights came into view. The driver pulled the car to centre of the road and struck rear end of milk truck. In my opinion the driver did everything possible to avoid the accident. Police were called when we were removed to hospital.

Major, B.M.Fahrni
NO. 23 CDN. GEN. HOSP.

Statement - M/S L.A. Malone

All I remember about the accident was the milk truck coming into view and then the crash and I was removed to the hospital. In my opinion the driver did all possible to avoid the crash.

Lieut, M/S L.A. Malone
NO. 23 CDN. GEN. HOSP.

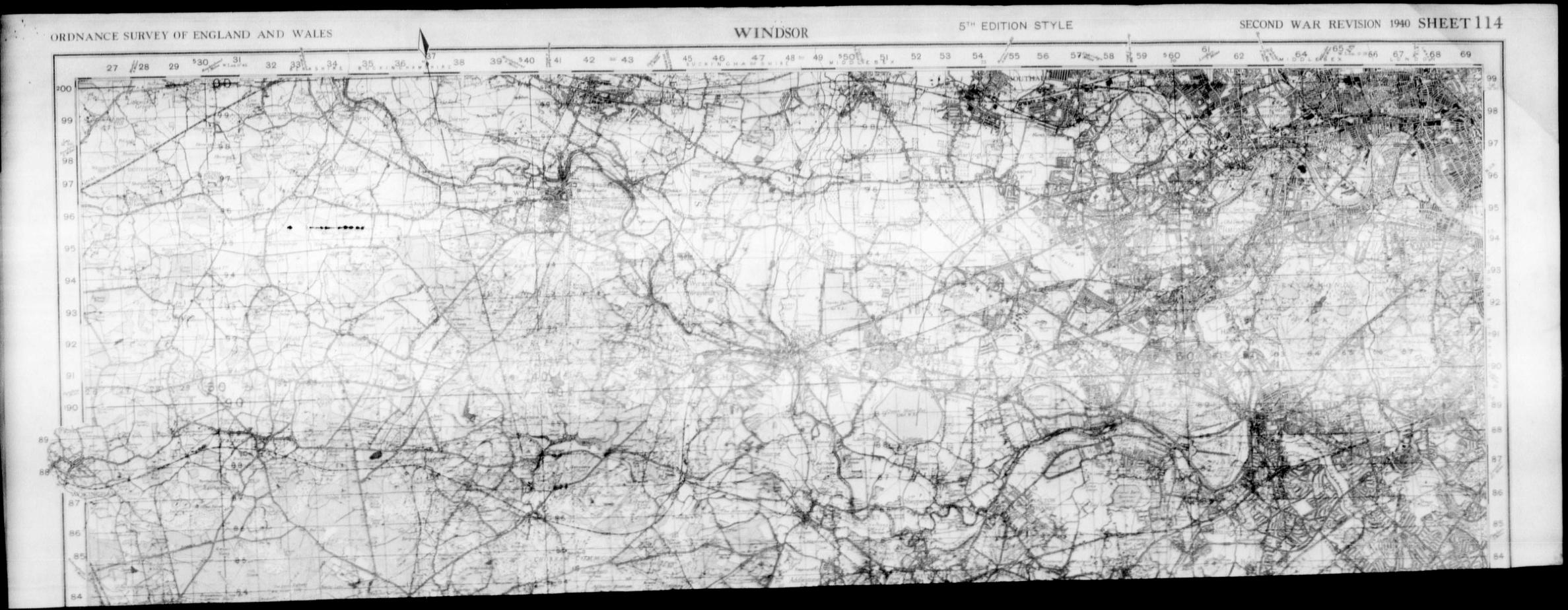
Lieut M/S L.A. Malone

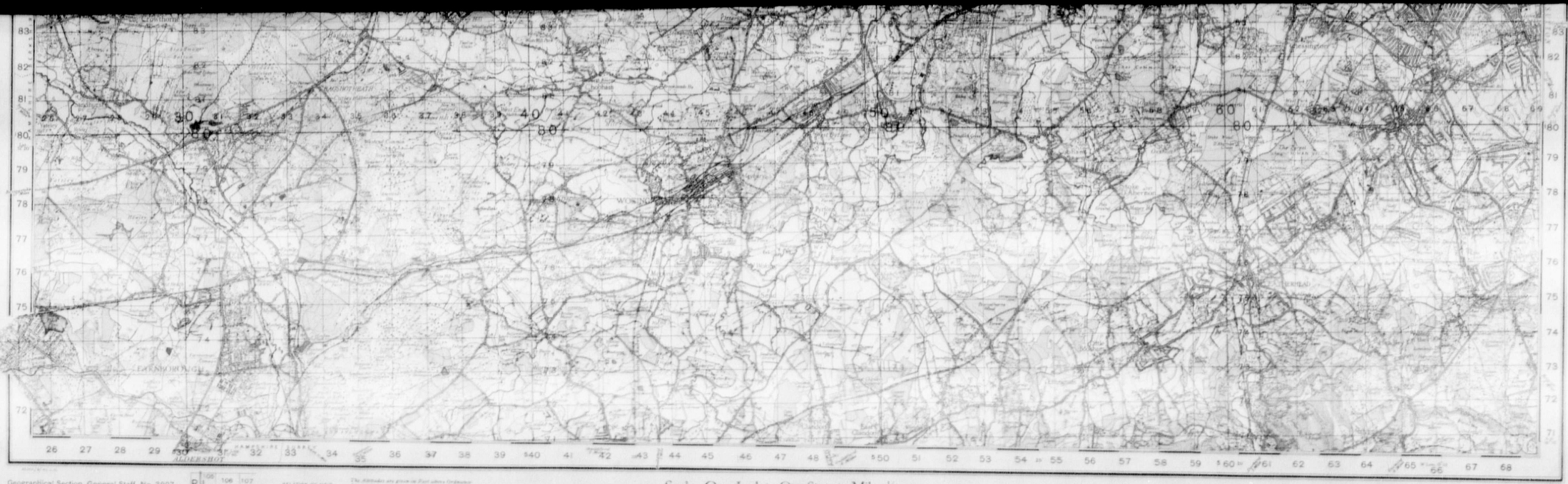
ORDNANCE SURVEY OF ENGLAND AND WALES

WINDSOR

5TH EDITION STYLE

SECOND WAR REVISION 1940 SHEET 114





Geographical Section, General Staff, No. 3907.
Published at the War Office, 1940.

W.O. Cassini Grid.

Ex 1
M7

P	06	106	107
U	06	114	115
	123	124	125

200

RELATION OF GRID LETTERS AND SHEET NUMBERS

The Altitudes are given on Feet above Ordnance Survey Datum (Mean Sea Level). Contours surveyed on the ground, 50', 100', 200' and so on. Hachures at 250' intervals. Other Contours interpolated and only approximately correct. Subsidiary Contours in Fathoms from Admiralty Soundings.

Contour Interval 50 feet

Scale: One Inch to One Statute Mile = 1/63,360

1 Miles

Scale of Kilometres

HEIGHTS IN FEET

MAGNETIC VARIATION

The BLACK ARROW on the West of the map is Magnetic North on 1st January, 1942, and is 16° 15' 00"W. of Grid North.
Annual decrease (Year constant) 13'

ALWAYS CORRECT

True North at the centre of this sheet is 0° 31' 36" W. of Grid North.
The Bearing of the sheet lines is neither True North nor Grid North but is 15° 00' 00" E. of Grid North.

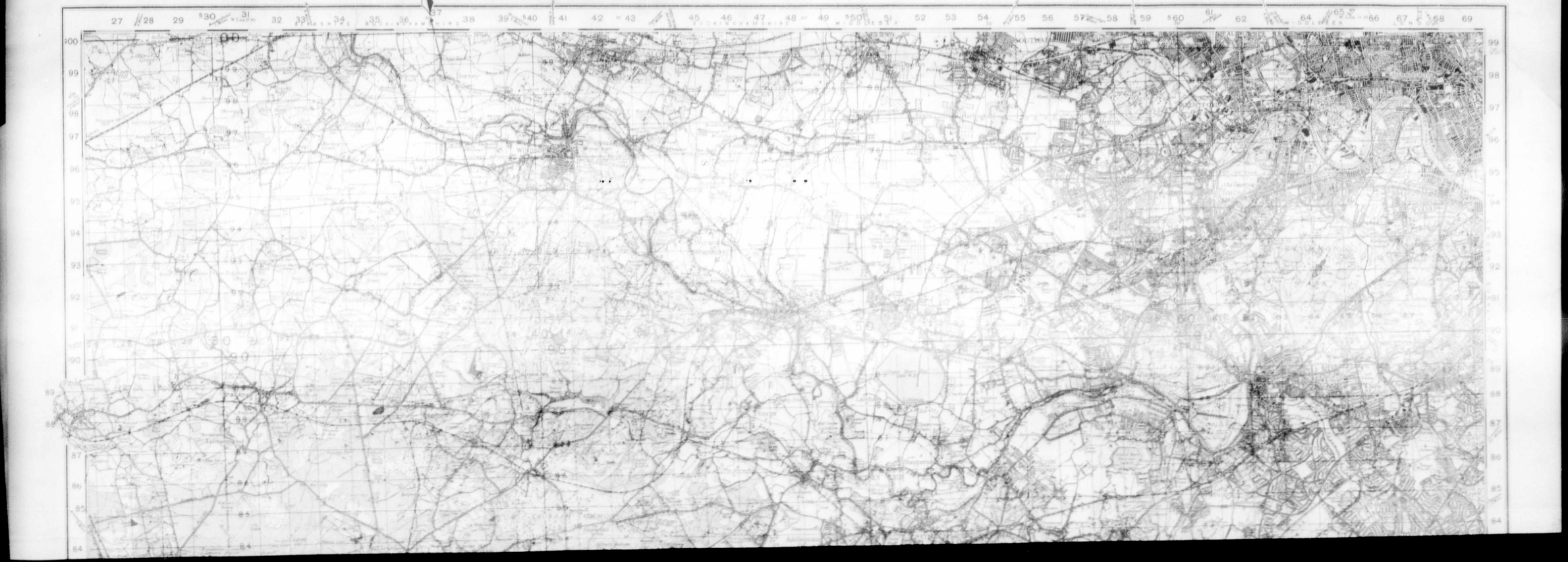
Crown Copyright Reserved.

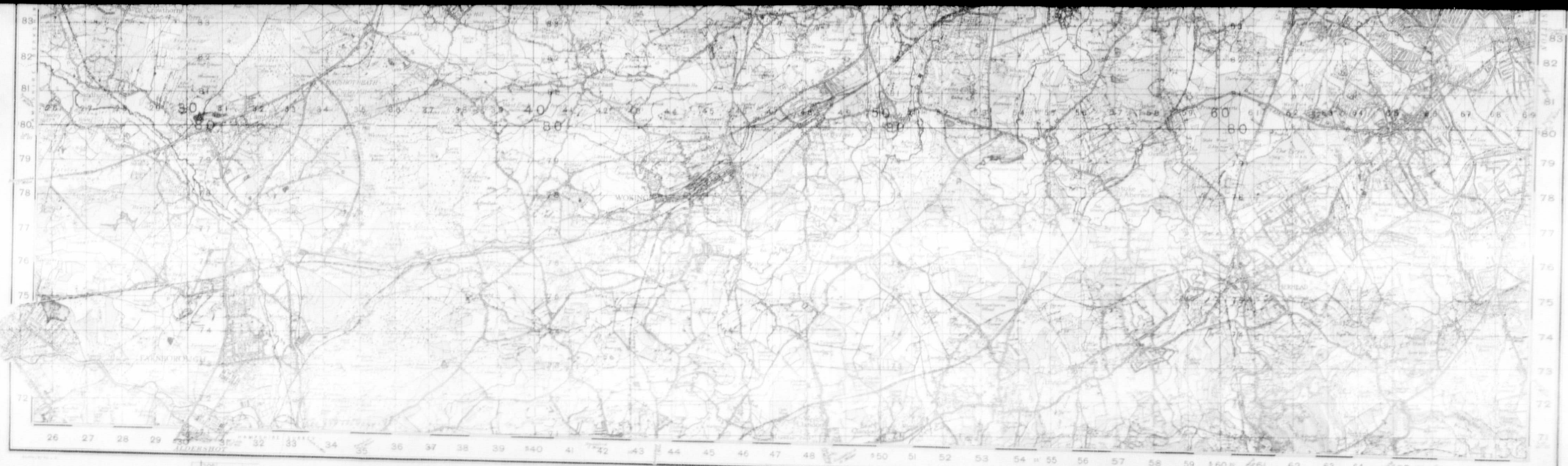
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1 Miles

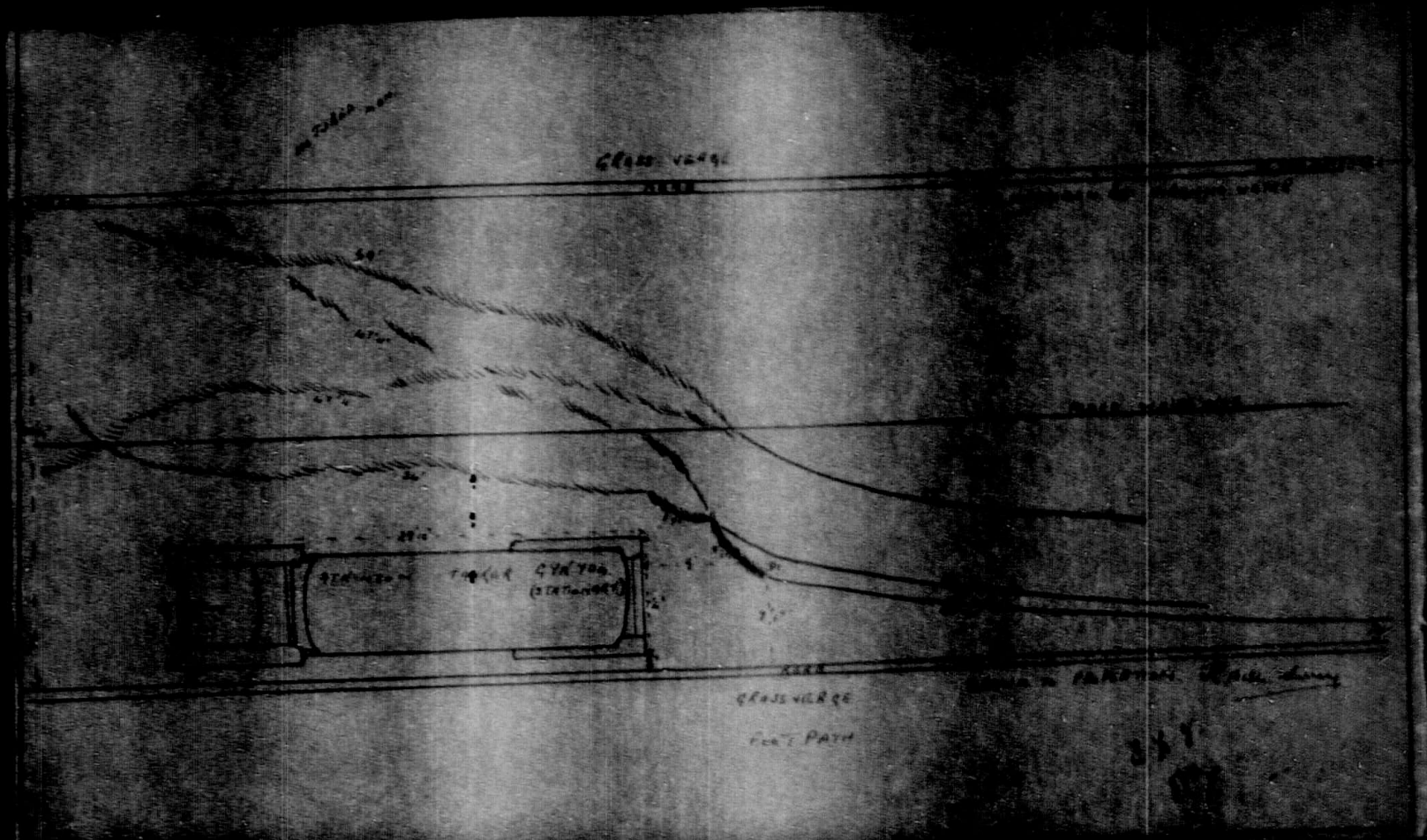
Scale of Kilometres

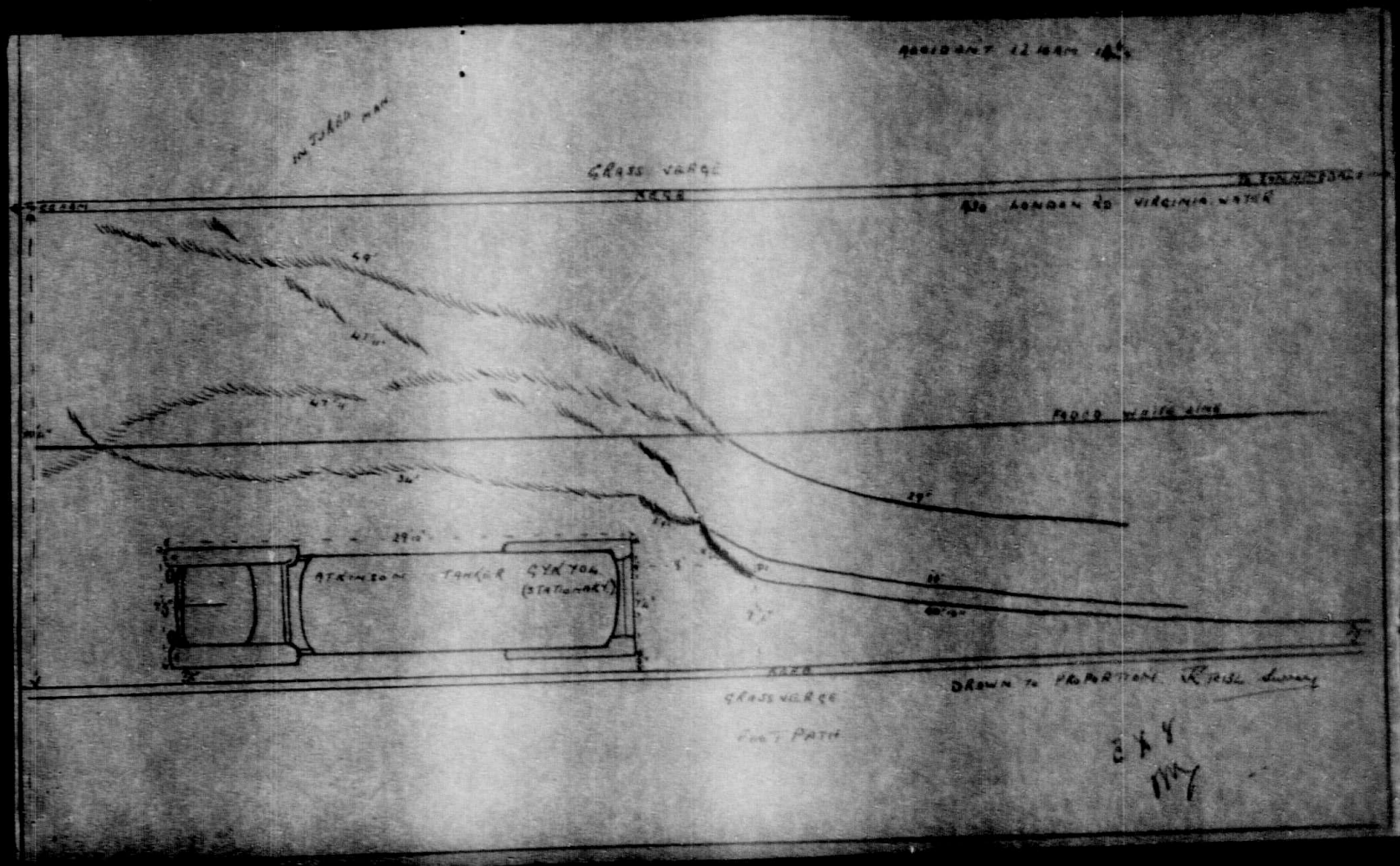
HEIGHTS IN FEET

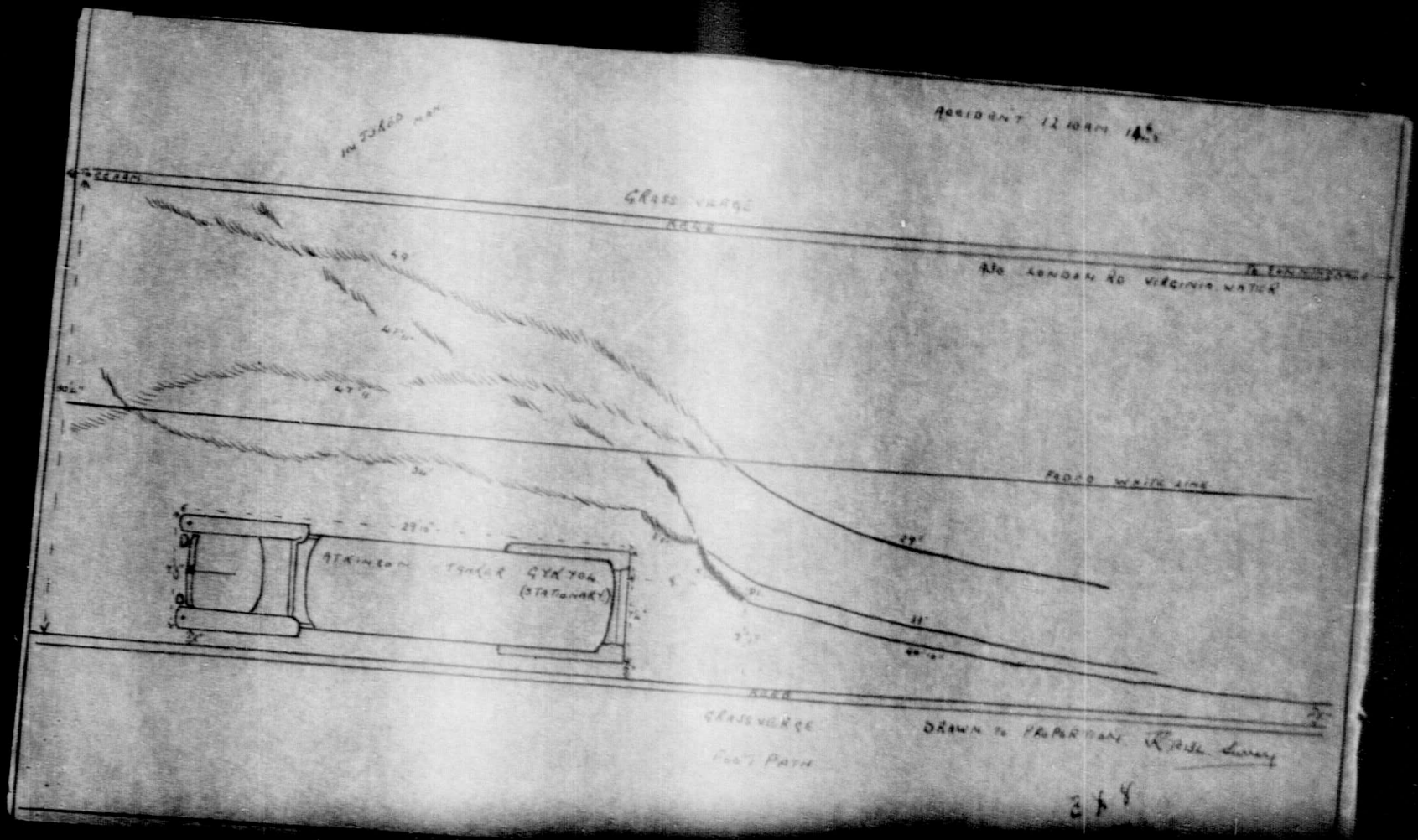
MAGNETIC VARIATION

ALWAYS CORRECT

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GRASS VERGE
GRASS VERGE
FOOT PATH


GRASS VERGE
KERB
FLOOD WATER LINE
ATKINSON TANKER GYK 704
(STATIONARY)
KERB
GRASS VERGE
FOOT PATH


ACCIDENT 12.10 PM
GRASS VERGE
KERB
A30 LONDON RD VIRGINIA WATER
PROPD WHITE LINE
ATKINSON TRAILER GYR 704
(STATIONARY)
GRASS VERGE
FOOT PATH
DRAWN TO PROPORTION

Harry Edward Gibbs.

I am a Police Constable, 60, stationed at Egham. I visited the scene of this accident at 12.50 a.m. on the 14th June and I saw the driver, Mechanised Sergeant-Major Ennor, and he made me a voluntary statement which I took down in my pocket book and he signed after being cautioned. After caution, he said:-

I have been cautioned that I need not say anything unless I wish but if I do it will be taken down in writing and may be given in evidence" and he signed that.

Statement of M.S.M. ENNORS STATEMENT

"At about 10 p.m. on Wednesday, the 13th June, 1945, a Sergeant brought a Chevrolet Pannel 85 vehicle to the Mess at the Barracks, and asked me to sign the work ticket for him to take a couple of boys who were going on leave, to the station. I said "No." but the boys kept on to me to see them down the station, so I said "All right" I would sign it but I would drive them myself.

I drove, and there were four others in the vehicle. I drove to Ash Vale Station, but by the time we arrived the train had left. Two of the boys were going to Ireland, one to Feltham and the other I believe to Ascot. I said I would take them to the nearest station to Feltham, and they could find their own way from there. I did not know the way to the next station, as I do not know the highways in this country very well, because I have been in the shops most of the time. Staff Batten said "I will show you the way to the next station." So we left Ash Vale at about 10.30 or 10.45 p.m.

APPENDIX "C"

I do not know the roads we travelled on, but after we had been travelling for about half an hour we were then on a wide straight main road. I was driving at about 30 to 35 miles per hour and close to my left hand side of the road. One passenger was sitting beside me in the front and the other three were in the back. I had the head lights on, but these only showed for about 20 yds. in front. I did not notice anything in front of me until I was about 10 to 15 yds. away. I then saw

117

a tank carrier, I mean this to be a petrol carrier, which I thought was stationary on the left hand side of the road. I did not notice any red light on it at the time but later the driver showed me it, and when he put a new bulb in it, it was in working order. On seeing this vehicle, I swerved out to the centre of the road to try and avoid it but I struck some part of it.

"The next thing I knew was that my vehicle was broadside across the road with the front facing the petrol carrier and about 2 yds. away from it. The front of my vehicle was level with the front of his. I at once got out and went to the back of the petrol carrier, where I saw the driver, who was standing beside it. I said to him "What, no light at the back!" and he said "There was until you knocked it off."

"About 10 minutes after he got a bulb, which he put in, and it then operated. In the meantime, I returned to my vehicle and found that two of the chaps were hurt. We took one out and laid him on the grass."

~~He said "I asked the driver of the other lorry what - no light (not lights) at the back" - singular. This is the only person I interviewed.~~

Harry E. Gibbs
Pc. 60

I certify that the foregoing is a true copy of the original statement of H.E.H. Gibbs which is in my presence.

EXQ

Harry E. Gibbs Pc. 60.

WW

accept to be a correct copy

Pte 71 Com.

ARMY FORM B.236 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D 91040	MSM	ENNOR, C.E.	No.1 Cdn Adm Tpt Coy.RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be submitted to the president. The numbers herein stated should correspond with the counterpart of Part I in the Field Conduct Sheet, punishments being given in the most active chronological order in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded service acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For .... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

~~3. The accused at the present time is under sentence to~~ .....

~~commencing on the~~ ..... day of .....

4. The accused has been awaiting trial on the present charges for .....

..... days in civil custody; and for 67 days in military custody, *i.e.*,

67 days in open arrest, ... days in close arrest; of

which ..... days were spent in hospital.

5. The present age of the accused is 33 yrs 6 mos.

6. The date of his attestation / calling up for military service is 13 Sep 39

7. The service which the accused is allowed to reckon is 5 yrs.

8. The accused is in possession of CVSM and clasp.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of WO 1	22 Sep 43
In the acting rank of	.....

E + B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*Signature*) W1.30721/3701 41,000 9.44 A.A.I.N.Ltd. Gp.999

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 20 day of Aug 45 Galcooper Lt

No. 1 Gen. Adm. Det. Hq. S.O.S.

No. D91040 Name ENNOR, C.E. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 13 Sept. 39 | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/156 (7019)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				ORIGINAL DESTROYED ON BEING CONFIRMED IN THE RANK OF SERGEANT.					
				CONFIRMED IN THE RANK OF M.S.M. W.O.1.			22 Sep. 43.		
				CERTIFIED TRUE COPY R.A.Cooper Lieut. (R.A.Cooper) Records Officer, No.1. Admin. Trans. Coy. RCASC.					

(PTO)

Trial of D 91040 MSM Ehnor, C.E.
No.1 Cdn.Adm. Transport Coy RCASC

List of Witnesses for the Prosecution.

1. B 89672 Sgt. Hood, C.C. RCASC No.1 Cdn Adm Tpt Coy
2. H 65745 Cpl. Jurek, J. RCASC No.1 Cdn Adm Tpt Coy.
3. B 80342 Sgt Hayes, J.S. RCASC No.1 Cdn Adm Tpt Coy.
4. L 22451 MSS. Biggin, C.T. RCASC No.1 Cdn Adm Tpt Coy.
5. Lieut. Littler, W.T. RCASC No.1 Cdn Adm Tpt Coy.
6. Capt. Hudson, A.G. RCASC No.1 Cdn Adm Tpt Coy.
7. Mr. J.M.King, TC 134 Surrey Joint Police.Sunningdale.
8. Mr. Leonard Mousley, 25 The Crescent, Weyhill Rd.Andover.
9. Mr. H.E.Gibbs, PC 60 Surrey Joint Police, Egham.

Summary of Evidence in the case of D-91040 MSM Ennor, C.E., No.1 Cdn.Administrative Transport Company RCASC. A soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS: B-89672 Sgt. Hood, C.G. 1 Cdn.Admin.Tpt.Coy., RCASC having been duly sworn states:

I am B-89672 Sgt. Hood, C.G. 1 Cdn.Admin.Tpt. Coy., RCASC and I recognize the accused MSM Ennor, Workshops Sgt.Major of this Unit.

On the 13 June 45 at 2145 hrs Cpl. Jurek came to my room and asked me to drive S/Sgt.Batten Sgt. Allen and himself to Staines as they had missed the train. I got the log book and work ticket for the workshop panel CV 199139 and took them to theSgts. Mess and I gave these items to Sgt. Allen. He took the log book and work ticket over to MSM Ennor. Mr. Ennor at first refused to sign the work ticket but later did. I took the work ticket and log book and returned to the vehicle park and picked up the panel and drove it through the gate across to the Sgts Mess. There was a delay of 20 minutes or so, then MSM Ennor, S/Sgt. atten, Sgt. Alle n Cpl. Jurek and Sgt. Hayes, who just happened along at that moment got in the vehicle. MSM Ennor drove and we went over to what is known as the P.T. Mess opposite 1 CASC RU workshops. There seemed no need of both Sgt. Hayes and myself going as spare drivers, so I spoke to theSgt. Major about it and he agreed that I wouldn't be needed further. I told Sgt. Hayes I was going home and I left.

Q. To your knowledge is it customary for MSM Ennor to sign work tickets.
A. for duty trips. (b) for recreational trips
A. It is customary for duty trips.
B. It is not customary for recreational trips.

Q. Did you feel this to be a recreational or duty trip.
A. I never thought about it sir. It was just a trip to me.
Q. Did the members of this party by any of their activities lead you to believe that there was some drinking going on prior to the trip.
A. The party with the exception of Sgt. Hayes seemed to be in good spirits.
Q. Did MSM Ennor make any objection to signing the work ticket.
A. Yes, he did and signed same only on conditions that he drove.
Q. When Cpl. Jurek approached you for transportation, did he mention where the members of the party wished to go and why.
A. They had missed their train to Staines and wished to be taken there in the panel.
Q. Was Staines the only destination mentioned.
A. Feltham was mentioned but I took it that they wanted to go th Staines.

P. T. O.

P27

Q. Was CV 199139 in good mechanical order.
A. Yes sir.
Q. In what condition were the headlights.
A. I couldn't say because it was not light enough to use them when I left.
Q. Was there a governer on CV 199139.
A. No sir.
Q. To your knowledge is the speedometer correct.
A. Yes sir.

Cross examined by MSM Ennor.
Q. You are in the habit of taking men from this unit to a dancing school at Farnham once a week. Do you consider this to be a recreational or duty trip.
A. That has been laid on as a duty trip each week.
Q. Have I on occasions, to your knowledge signed the work tickets for this trip.
A. Frankly, I don't remember.

L G Hood Sgt.
B-89672 Sgt. Hood, C.G.

Summary of Evidence in the case of D-91040 MSM Ennor, C.E., No.1 Cdn. Administrative Transport Company RCASC. A soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

RECORD OF WITNESS: H-65745 Cpl. Jurek, J. 1 Cdn.Admin.Tpt.Coy., RCASC having been duly sworn states:

I am H-65745 Cpl. Jurek, J. of 1 Cdn.Admin.Tpt.Coy., RCASC and I recognise the accused as MSM Ennor of this Unit. On the night of the 13th June about 2000 hrs. I met Sgt. Allen outside the Sgt's Mess. He invited me in for a drink. I had a drink with Sgt. Allen and S/Sgt. Batten and then went over to their quarters while they changed as they were getting ready to go on leave and I was going with them. They asked me to go over and see Sgt. Hood and get a vehicle to take us to the station. Sgt. Hood got a chad with an "On Test" sign and drove over to the Sgt's Quarters. We picked up Sgt. Allen and S/Sgt Batten up and went to the station. We found that the last train to Staines had left so we walked back to the Sgt's mess. I again went over and got Sgt. Hood explaining that S/Sgt. Batten, Sgt. Allen and myself wanted a lift to Staines. Sgt. Hood returned to the mess with me bringing along the log-book and work ticket for the panel No.CV199139. I waited outside the mess while he went in. He came out shortly and I walked over to the vehicle lines with him and brought this vehicle back to the Sgt's mess. Sgt. Hood went inside for Sgt. Allen and S/Sgt Batten and I crawled into the back of the panel. Mr. Ennor came out of the mess too, and Sgt. Hayes, joined the party. They all got into the vehicle and we drove over to the P.T. mess, opposite C.A.C.M. Workshops. Sgt. Hood left us here, and the rest of us went in the mess for a drink. We were there for about 10 minutes then we started out for Staines. MSM Ennor was driving and sitting in the front right seat beside him was Sgt. Hayes. I was sitting right behind Sgt. Hayes on a bench and beside me was Sgt. Allen. S/Sgt Batten was sitting opposite us on a box.

As we were driving along I suddenly heard Sgt. Hayes shout, and almost immediately there was the collision. I climbed out by the front right hand door. I was feeling quite dazed as I had suffered a heavy bump across the nose. Some one drove our car to the side of the road to get it out of the way. I noticed S/Sgt Batten lying on the side of the road and I thought that he was just knocked out. Then I walked up to Mr. Ennor to find out how he was. As there was nothing wrong with me, Mr. Ennor gave me permission to go. I made my way to a friend's house where I stayed for the night and returned to my Unit the next morning.

Q. Was it dark when the accident occurred?
A. Yes it was and our vehicle lights were on.

Q. Did you notice the condition of the lights?
A. No, I did not sir.

Q. Did you notice the speed of the vehicle or if not from your experience as a driver estimate the approx speed?
A. We were travelling at an average speed approx 30 m.p.h. is my estimate.

Q. Was there much traffic on the road?
A. I couldn't say as I was paying no attention.

Q. Did you notice the parked milk tanker?
A. No.

Q. Did you have any apprehension over Mr. Ennor's driving?
A. No.

Q. Did you think it unusual for MSM Ennor to drive? If not why?
A. No, because I had seen him drive before.

J. J. C.

Q. Was MSM Ennor drinking with you in the Sgt's Mess?
A. No, not to my knowledge.

Q. Do you recall the general feeling of the members of the party?
A. We were all happy in anticipation of our leave.

Q. Do you know why Mr. Ennor was driving?
A. No, I don't.

Q. Did you know that Sunningdale is the boundary for Aldershot Area as laid down in Part I Order No.16 d)28 March and beyond this point it is necessary for an O.R. to have a pass.
A. Yes I did sir.

Q. Do you realize that the accident occurred outside this area?
A. Yes sir.

The accused declines to cross examine the witness

.....Jurek.....Cpl.....
R-65745 Cpl. Jurek, J.

Summary of Evidence in the case of D-91640 MEM Ennor, C.E., No.1 Cdn. Administrative Transport Company RCASC. A soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

THIRD WITNESS: B-80342 Sgt. Hayes, J.S. 1 Cdn. Admin.Tpt.Coy., RCASC having been duly sworn states:

I am B-80342 Sgt. Hayes, J.S. of 1 Cdn. Admin.Tpt.Coy., RCASC and I recognize the accused MEM Ennor of this Unit.

On 13 June 45 at about 2245 hrs. on returning from Farnham I was in the kitchen or hallway of the Sgt's Mess when S/Major Ennor asked me to come along on a trip to act as spare driver and drive on the way home. I had something to eat and about 2300 I went outside and got into the vehicle CV199139 and drove over to the P.T. Mess opposite 1 CASCEU Workshops. I stayed in the P.T. Mess for between 15-30 minutes and had 1 pint of beer. We then went out and I got in the right hand front seat and Mr. Ennor was behind the wheel. Sgt. Allen and S/Sgt Batten and Cpl. Jurek got in the back. I am not sure where they were sitting then. We stopped en route for the boys to relieve themselves. On resuming our trip Cpl. Jurek was sitting immediately behind me on the right hand bench. We passed through Sunningdale going at about 30-35 m.p.h. along a straight Class I Rd. I had been knocking my pipe out the window and on looking ahead I saw a stationary truck about 30-35 feet ahead. I shouted the S/Major "Look out-that vehicle is sitting still". As I said that he was turning out to the right to avoid it. The next thing I knew we had side swiped the vehicle and swerved diagonally across the road and ended up at right angles to the front off ise of the stationary tanker our radiator facing it. I got out opened the rear door. Someone handed me a flashlight and I saw S/Sgt Batten and Sgt. Allen huddled on the floor. I felt S/Sgt's Batten pulse and his heart beats which were very faint. I noticed that he had a crushed skull. We carried him out and laid him on the verge of the road. S/Major and I laid out Sgt. Allen in the back of the panel. He was unconscious but breathing and pulse were normal.

Shortly after a policeman, doctor and ambulance arrived. At the request of a police inspector I accompanied the amb. carrying the two injured men to King Edward VII Hospital windsor. One of the resident doctors told me S/Sgt Batten was dead. I identified the body. I gave the usual particulars on both men.

Q. When the S/Maj asked you to accompany them on the trip did you know the purpose of the trip?
A. I knew that S/Sgt Batten, Sgt. Allen and Cpl. Jurek were going on leave but I don't recall anything more about the trip before starting out except that we were going to Staines.

Q. Did you know when their leave passes started?
A. I knew that they started the next morning. I don't know whether they had an overnight pass or not. It is not out of the ordinary for overnight passes to be issued prior to leave.

Q. Did any thought enter your mind as to whether or not this was an authorized regular trip or did you think that the trip was somewhat out of the ordinary?
A. I did not think that the trip was out of the ordinary. There were two senior ranks to me in the vehicle and it was not for me to question them.

Q. When you were outside the mess before stepping into the vehicle did you notice any of the passengers under the influence of liquor?
A. I noticed that all the passengers had been drinking, but none were unduly under the influence.

P. T. O.

Q. After you started out were there any remarks passed by any member of the party as to the condition of the vehicle?
A. The S/Maj remarked that the lights were out of focus.

Q. Did you yourself notice any defect in the lights?
A. I noticed that the left beam needed adjustment, as it was turned too far toward the centre of the vehicle.

Q. Did you consider that the lights were safe for night driving?
A. Yes under normal conditions.

Q. Do you consider that S/Maj Ennor drove within the range of his lights?
A. Yes I felt no apprehension at his driving.

Q. What was the average speed during the trip?
A. 30-35 m.p.h.

Q. Is this an estimate?
A. Yes but I base my estimate on 17 years driving experience.

Q. When you first saw the stationary vehicle do you consider that if the brakes had been applied your vehicle could have stopped in time?
A. The brakes might have stopped the vehicle but in the same situation I would have tried to steer the vehicle to the right.

Q. Did you notice any tail light on the stationary vehicle?
A. No I didn't notice it.

Q. How was the visibility along this particular part of the road?
A. It was a clear night but visibility was limited somewhat by the shadow cast by the trees alongside the wall.

Q. What was the condition of the road?
A. It was a dry macadam road.

Q. Do you know the rules governing the application for use of recreational tpt.
A. Yes, application is made through the A.T.O. and Commanding Offr.

Q. Did you consider this a recreational or duty trip?
A. I didn't consider the matter at all as Mr. Ennor is my senior offr.

Q. How do you account for the fact that you were only 30-35 feet away from the stationary tanker when you first saw it?
A. I was shaking my pipe out and I was paying no attention to the road at that moment.

Q. Was there any loud talking, singing or arguments of any kind by the three passengers in the back of the vehicle that would distract the attention of the driver.
A. I don't recall anything out of the ordinary. There was just the normal amount of talking.

Cross examined by Mr. Ennor.

Q. You have stated that all members of the party had been drinking but none were unduly under the influence. Do you include me in this party?
A. I noticed that Mr. Ennor was not visibly under the influence of liquor.

Jack Hayes

.....

B-30342 Sgt. Hayes, J.B.

FOURTH WITNESS:

L-22451 M.S.S. Biggin, C.T. No.1 Cdn.Admin Tpt.Coy., RCASC, a soldierof theCdn Army Overseas having been duly sworn states:

I am L-22451 M.S.S. Biggin, C.T. of No.1 Cdn.Adm.Tpt.Coy. RCASC. I was president of the Sgts. Mess from 15 Apr 45 to 15 July 45, and I recognize MSM Ennor, the accused of this Unit.

On the evening of 13 Jun 45 I went into the Mess about 1930 hrs. I noticed that MSM Ennor, S/Sgt.Batten,Sgt. Allen and Cpl.Jurek were seated together at a table. MSM Ennor immediately called me over to the table and asked for another bottle of Whisky to be on sale. I refused and also pointed out to him that the Mess was no place for a Cpl. He replied that Cpl. Jurek had been invited in as a guest by him for a couple of drinks before he went on leave. They all with the exception of the Cpl. kept after me for about a half an hour to put up another bottle. Then S/Sgt. Batten,Sgt. Allen and Cpl. Jurek left the Mess.
In view of the fact they had gone, I thought it would be alright to put out another bottle to save further argument and I instructed the steward to do so.
Sometime later, I had lunch and left the Mess at approx 2145 hrs. As I was leaving, I met S/Sgt. Batten. They had returned as they had missed their train.

Q. Did you notice whether the members of this party were affected by the drinks they had had?
A. They all showed evidence of "feeling their liquor" and I particularly noticed that in Mr. Ennor as he was the only one with whom I spoke. This would be about 2000 hrs.

Q. By MSM Ennor
Are you sure that I was feeling the effects of liquor when I first spoke to you.
A. I would say you were feeling good.

M.S. Biggin

L-22451 MSS Biggin, C.T.

Lieut. W.T. Littler 1 Cdn.Adm.Tpt.Coy RCASC having been duly sworn states:

FIRST WITNESS:

At the time of the accident 13 June 45 I was acting as Officer Comd the Workshops Section. MSM Mnnor was my WO I. All the personnel involved in this accident came directly under me for duty and discipline. I present a Transport Work Ticket for vehicle CV 199139 number 44 dated June 1945, that was signed by MSM Mnnor authorizing a trip to Staines and return. I also recognize MSM Mnnor's signature. Entered as Exhibit "A"

Q. To your knowledge what was the condition of vehicle CV 199139 on 13 June 45
A. The condition of CV 199139 was fair and considered road worthy. The reason for this vehicle being placed in this capacity is that it is a commercial type and not a standard MD. This makes replacements of prts very difficult to procure.
Q. In what condition were the headlights.
A. The headlights were only in fair condition as it is a 1939 model and not being a sealed beam type the reflectors had become tarnished.
Q. What sort of a beam would these lights give and what is your estimate of a safe speed to drive within this beam.
A. I would say that the beam on this vehicle would reach out approx 40 feet and that a safe speed would be 25-30 m.p.h.
Q. What is the max. speed for this type vehicle as laid down by the Army.
A. 30 m.p.h.
Q. What authority has MSM Mnnor had in the signing of work tickets.
A. To my knowledge MSM Mnnor was given permission by the previous O.C. Workshops to sign work tickets for duty trips. I had not changed this order.
Q. In the normal course of events would you have authorized this trip for the parties in question.
A. Owing to the circumstances of this particular trip my answer is NO without first checking with the Adjutant or O.C.
Q. Can you produce an estimate of repairs to CV 199139.
A. Yes, repairs amounted to £23-19-2. I hereby produce a statement of cost of materials needed for repairs and labour.
Exhibit "B"
Q. Can you produce a Road Accident Report covering this accident.
A. I produce hereby a Road Accident Report covering this accident.
Exhibit "C"

Cross examined by MSM Mnnor

The accused declines to cross examine this witness.

W.T. Littler Lieut.

W.T. Littler Lieut

SIXTH WITNESS:

Capt. A.G. Hudson, 1 Cdn.Adm.Tpt.Coy. RCASC an Officerof the Cdn Army Overseas having been duly sworn states:

I am Adjutant of No.1 Cdn.Adm.Tpt.Coy., RCASC and have have been since 13 Apr 43. I present herewith Drivers Standing Orders, No.1 Cdn. Adm.Tpt.Coy., dated 12 Jan 44 with particular reference to para 7 (Enteredas exhibit "D") I also produce certified true extracts from Unit Part I Orders #128 d/5 June 45 with particular reference to 7 - 2(M) Exhibit "E" Unit Part I Orders #42 d/5 Aug 44 with particular reference to para 4(e) Exhibit "F" Unit Part I Orders #1 d/3 Jan 44 with particular reference to para 2. Exhibit "G" Unit Part I Orders 16 d/28 Mar 44 with particular reference to para 4. Exhibit "H" All Part I Orders and Unit Standing Orders are posted in the Workshop Orderly Room and in the Sgts. Mess. This practice has not ceased since at least April 1943 to my knowledge. [illegible] Esmor declines to cross examine the witness.

A.G. Hudson Capt.

VENTH
TNESS:

Mr. John Melton King TC 134 of Surrey Joint Police, a written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Appendix A

Having regard to The expense involved and loss of time involved.

attendance of this witness cannot in my opinion be readily readily procured.

(Signature) M.M. Bot. Cpl

Officer detailed to take the Summary of Evidence

The accused does not demand the attendance of this witness for cross examination.

John Melton King
T.C. 134
Surrey Joint Police

I am TC 134, Surrey Joint Police, stationed at Sunningdale. At 1210 a.m. 14 June 45, while on duty at Sunningdale, I was notified of an accident two miles up the road. I arrived at the scene of the accident at 1220 a.m. after notifying Dr. McDonald. There was an injured soldier on the roadside and the Doctor informed me of the necessity to get him to a hospital. I went off to a nearby house and ordered a civilian ambulance. When I got back the injured soldiers were placed in the ambulance and it left.

I then made a detailed examination of the accident, noting the positions of the vehicles, their description and measuring the skid marks on the road. I recorded same.

I then inspected the vehicles, noting down the damage to both. I examined the tail light on the rear of the milk tanker. I measured the width of the road, examined the type of surface and noted that there were two declines. I also recorded the type of night i.e. visibility. I made a plan of the accident and I have available a sketch of this accident, showing the measurements of the vehicle and skid marks.

APPENDIX "A"

Certified True Copy.
Asst Capt.

EIGTH WITNESS:

Mr. Leonard Mousley of 25 The Crescent, Weyhill Road, Andover, a written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Appendix "B"

Having regard to The expense involved and loss of time involved.

attendance of this witness cannot in my opinion be readily procured.

(Signature)... M.C. Root Capt

Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

Mr. Leonard Mousley

I am Leonard Mousley and I reside at 25 The Crescent, Weyhill, Road, Andover, and am a lorry driver.

On the evening inquestion, I stopped for my hourly tire inspection. It was approximately 12 o'clock p.m. I looked into the rear vision mirror and saw my tail light alight. It was quite plain. At this time I saw the lights of a following vehicle and decided to stay in my lorry until it had passed. It did not, as it hit my vehicle on the back of the chassis. The tanker moved forward half a complete turn, two or three feet. My lorry is very heavy, weighing about 22 tons loaded. My brakes were on the four wheels -- eight tires.

APPENDIX "B"

Certified true copy
Herbert Croft

NINTH
WITNESS:

Mr. Harry Edward Gibbs, Police Constable, 60, of Egham, a written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence and marked Appendix "C"

Having regard to The expense involved and loss of time involved.

attendance of this witness cannot in my opinion be readily procured.

(Signature) [signature]
Officer detailed to take the Summary of Evidence

The accused does not demand the attendance of this witness for cross-examination.

[signature]

The accused was cautioned as follows " Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

B.S. Evans.....
D-91040 WO2, Ennor, C.E.

I certify that the foregoing Summary of Evidence, consisting of seventeen pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

W.C. Root Capt.
(W.C. Root) Capt.
Bc 1 Cdn. Adm. Tpt. Coy. RCASC
Officer detailed to take the
Summary of Evidence

FARNBOROUGH, HANTS
6 AUG 45

John Melton King
T.C. 134
Surrey Joint Police

I am T.C. 134, Surrey Joint Police, stationed at Sunningdale. At 1210 a.m. 14 June 45, while on duty at Sunningdale, I was notified of an accident two miles up the road. I arrived at the scene of the accident at 1220 a.m. after notifying Dr. McDonald. There was an injured soldier on the roadside and the Doctor informed me of the necessity to get him to a hospital. I went off to a nearby house and ordered a civilian ambulance. When I got back the injured soldiers were placed in the ambulance and it left.

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APPENDIX "A"

J. M. King

John Melton King
T.C. 134

TTT 114

Edw. Enright. M.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 6590 Bdr Enright ME

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	not Guilty	not Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MAML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MAML p 753, and in lieu of kit see RP 44 fn 6.)

B [illegible] under sentence for ~~beginning on (date)~~ (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of days, of which days were spent in hospital.~~ (1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

B

~~Night~~ Judge-Advocate, if any. ~~Vice arrested~~ (Sgd) [illegible] President. (See back of Convening Order as to assembly and disposal of record after qual.) (RP 45, 50.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attained before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

[illegible]

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

Date 3 Aug 44 (Sgd) [illegible] Commanding C.R.A. 2 CDN. INF. DIV. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 14 AUG 1944 JAG BRANCH G.H.Q.

RECORDED AT G.H.Q. IN AD 160 TTT-114

UPAAG 4th Dist of AFAD 2 AFB 8/1808 (1864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig H.S. Ladd Comd 6 CA Bde dated

ACCUSED.

(As to the trial of two or more charged jointly see RP 1a, 71, 109. As to reasons for showing (a) permanent or temporary rank, and (b) appmt, A/crank or A/appmt, if any, see AA 182, 582, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
B 6590	Bdr	Martin Eugene	Enright

PROCEEDINGS REVIEWED 15 Aug 44 Bde J.A.G. 6th Cdn Inf Bde

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED 23 Aug 44 D.J.A. Sec GHQ 2 Echn. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date) 27 July 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmns ROs. For guidance on procedure when a variation in this form arises, see fmns for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1600 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to be interpreted~~ Ans —

~~The Interpreter is sworn.(1) Do you object to be sworn as shorthand writer? Ans —~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2).

(1. RP 110. 2. If no objection, waiting member retires. RP 56(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.A. Blakely	B Cdn Inf Bde KCA.
Member	Capt.	J.P. Beer	17 Cdn Inf Bde KCA.
Member	Capt.	J.K. Dickinson	3 A/Tk Regt, KCA
~~Judge-Advocate~~			
Prosecutor	Capt.	A.E. Harrison	17 Cdn Inf Bde, KCA.
Defending Offr	Lieut	J.J. Bell	17 Cdn Inf Bde, KCA.

Questions by President: Is the Prosecutor a lawyer? Ans No (3) Is the Defending Offr a lawyer? Ans No (3)

(1. RP 20, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 56 (B) and fn 2 were not followed. See Div p 3.)

A8. The accused B guilty Bdr Enright ME before arraignment make(s) ~~insert~~ (a) plea. (3)

(3. If a special plea is made for separate trial on one or more charges (RP 63(F), 102), or as to the jurisdiction of the Court, (RP 34, 35(A), 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB room and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 34, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings. 2. RP 32, RP 33. If otherwise, advise and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 4B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

France 1, page 2.1

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, see Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 37(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the one charge.(2) The Court is closed, and considers the submission.(3) ~~The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the one charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answers and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

~~D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.~~

~~President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?~~
~~Ans .....~~
~~..... Do you intend to call witnesses on your behalf ?~~
~~Ans .....~~
~~Are they witnesses as to character only ? Ans .....~~
(1. *RP 155.* 2. *RP 40(A), see (C)(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s) of ..... of Not Guilty, ~~and states to the accused that the findings(s) of Guilty on the ..... charge(s), being subject to confirmation, will be promulgated later.~~(1)
~~Or,~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, ~~and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Can 308, 330, 345-346, Overseas AO 309, 2323, 3006, p 60, 737-739. As to sentences assigned for civil offences in the law of England see AA 44(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 58(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 547. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B 6590 Bdr. ENRIGHT, ~~M.E.~~ 11 Fd Bty., 12 Cdn Fd Regt a soldier of the Canadian Army Overseas, being on Active Service is charged with

First Charge
A.A. Sec 40

Conduct to the prejudice of good order and military discipline

in that he

in the field, on B Troop gun position, at 2300 hrs 20 July 1944, on being warned by T/BSM Kukulski, S. to take over as No. 1 of B4 began to argue and conduct himself in a manner unbecoming an NCO.

.....Lt-Col
(H.H. WEBB)
OC 12 Cdn Fd Regt

IN THE FIELD
22 July 1944

To be tried by F.G.C.M.

(PAS Todd) Brigadier
CRA 3 Cdn Inf Div

In the Field
23 Jul 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/PAS/1697 (2nd/8)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B6590	Bdr		Martin Eugene	ENRIGHT	12 Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXXX] committed the offence[X] set forth in the Charge Sheet[X] attached and on (date) 23 July 44 endorsed by me, [XXXXXXXXXXXXXXXXXX], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial; [XXXXXXXXXXXXXXXXX

B

MEDICAL OFFICER'S CERTIFICATE

(K.R. (Can) Para. 55)

I certify that I have this morning examined:-

No. B6590 Rank Bdr Name ENRIGHT, M.E.

and in my opinion he is fit to undergo trial by Court Martial.

Date 27 Jul 44
0830 hrs

(Wm. E. Finkelstein) (Capt.)
R.M.O. 12 Can Fd Regt RCA

FIRST WITNESS FOR THE PROSECUTION:

Capt. L.F. Kirpatrick, 12 Cdn Fd Regt RCA, having been duly sworn, states:-

I am Capt. L.F. Kirkpatrick, O.C. "B" Tp, 12 Cdn Fd Regt RCA. The accused, Bdr. Enright, is 2i/c of B.4. Gun. At 2300 hrs, on 20 July 44, I was standing outside "B" Tp Command Post, with T/BSM Kukulski. Bdrs. Enright and McIlreavey approached and asked T/BSM Kukulski if they could speak with him. They walked some distance away, and I heard T/BSM Kukulski tell Bdr. Enright he would be taking over B.4. Gun, since Sgt. Grant had been placed under arrest. An argument ensued and I heard Bdr. Enright say he did not see why he should take charge of B.4, as he thought Sgt. Grant was capable of taking over himself. A few more words were passed, of which I did not hear, and then T/BSM Kukulski placed Bdr. Enright under open arrest, and Bdr. McIlreavey was put in charge of B.4. Gun.

EXAMINED BY PROSECUTION:

Q. Did Bdr. Enright conduct himself unbecoming to an N.C.O.?

A. After he was placed under arrest, he continued to argue with T/BSM Kukulski, and directed personal remarks at T/BSM Kukulski.

Q. Can you give us one or two examples of the actual personal remarks?

A. I did not completely hear any of the remarks that were passed by Bdr. Enright.

Q. Can you give us something definite that Bdr. Enright actually said?

A. No, sir.

CROSS-EXAMINED BY THE DEFENCE:-

Q. In what way did Bdr. Enright act that was unbecoming an N.C.O.?

A. By arguing with T/BSM Kukulski.

Q. Do you feel that arguing where there was a lack of a definite order, presumed conduct unbecoming an N.C.O.?

A. Yes, sir.

SECOND WITNESS FOR THE PROSECUTION:

Lt. W.D. Cook, having been duly sworn, states:-

I am Lt. W.D. Cook, Tp Ldr of "B" Tp, 11 Bty, 12 Cdn Fd Regt RCA. The accused Bdr. Enright is an N.C.O. on B.4. Gun. At approximately 2315 hrs on 20 July 44, Capt. Kirkpatrick & T/BSM Kukulski and I, were outside "B" Tp Command Post. Bdr. Enright and another Bdr. came up to us and Bdr. Enright asked T/BSM Kukulski if he might speak to him. The three of them walked away from the Command Post and began to talk. I did not hear what they were saying.

EXAMINED BY THE PROSECUTION:

Q. By the way they were talking, did you conclude that Bdr. Enright was arguing with T/BSM Kukulski?

A. Yes, sir.

Q. Did you see Bdr. Enright conduct himself in any way unbecoming to an N.C.O.?

A. Only in as much as he was arguing with the T/BSM and in my opinion, under some circumstances, this would be proper.

continued

THIRD WITNESS FOR THE PROSECUTION:

B.11042 BSM Kukulski, S. having been duly sworn, states:

I am B;11042 T/BSM Kukulski, S., Tp Sgt. Major, of "B" Tp, 11 Fd Bty, 12 Cdn Fd Regt RCA. The accused Bdr. Enright, is 2 i/c of B.4. Gun. On the night of 20 July, after placing the No.1. of B.4. Gun under arrest, I returned back to the Tp Command Post. Shortly afterwards, Bdr. Enright and McIlreavey came over and asked to have a few words with me. We stepped a few paces away from the Command Post and Bdr. Enright asked why Sgt. Grant had been placed under arrest. I told him I though Sgt. Grant should have been put under arrest, & I did so, and asked him if he was going to take over the No.1. of that Gun without any further argument. Bdr. Enright said he thought Sgt. Grant was quite capable of doing that himself. I then placed Bdr. Enright under arrest.

EXAMINED BY THE PROSECUTION:

Q. Was Sgt. Grant relieved of his duty of i/c B.4, when placed under arrest?

A. He was told to go to his bed, and that gun was not to be in action.

Q. Did you give Bdr. Enright a direct order to take over that gun?

A. No, sir.

Q. Is it necessary for you to give your 2i/c's of Guns a direct order to assume command of a gun, when the Sgt. is relieved of that duty?

A. No, sir.

Q. Did Bdr. Enright cease to argue, when you asked him to take over the gun without further argument?

A. Yes, he ceased to argue, as I walked away.

Q. In your opinion, did Bdr. Enright conduct himself in any way, unbecoming an N.C.O.

A. Yes, in that he questioned my decision on arresting Sgt. Grant.

CROSS-EXAMINED BY THE DEFENCE

Q. Who was the senior Bdr. on B.4?

A. I am not sure.

EXAMINED BY THE COURT:-

Q. During the course of the alleged argument between the accused and yourself, did you give a direct order to take over the gun?

A. No, sir.

Q. Did you at any time during the period that this incident occurred, give any direct order to the accused that he would take over the gun?

A. No, sir.

SUMMARY OF EVIDENCE IN THE CASE OF B 6590 Bdr. ENRIGHT, M.E. 11 Fd Bty 12 Cdn Fd Regt a member of the Canadian Army Overseas

The CO directs that the evidence be taken on oath.

FIRST WITNESS for the prosecution - Capt. L.F. KIRKPATRICK Troop Commander 11 Fd Bty 12 Cdn Fd Regt having been duly sworn, states:-

I am Capt. L.F. Kirkpatrick, troop commander, B Troop 11 Fd Bty 12 Cdn Fd Regt. At approx 2300 hrs 20 Jul 44 I was standing with Lt. Cook and Sjt-Major Kukulski at B Troop command post. Bdr. Enright and Bdr. McIlreavey came up and asked Sjt-Major Kukulski if they could speak with him. They withdrew some distance away and I heard Sjt-Major Kukulski warn Bdr. Enright that he would be No. 1 of B4 since Sjt. Grant had been placed under arrest. An argument ensued during which I heard Bdr. Enright say that he thought Sjt. Grant was capable of acting as No. 1 and saw no reason why he should take it over. The argument went on until Bdr. Enright directed some personal remarks at Sjt.-Major Kukulski. Sjt-Major Kukulski then placed Bdr. Enright under open arrest, and warned Bdr. McIlreavey to take over as No. 1 of B4.

Q.1 - Did Bdr. Enright make any threatening gestures?

A.1 - No

Q.2 - Did he make any other actions unbecoming an NCO?

A.2 - No

Q.3 - Can you recall any of the personal remarks passed?

A3 - Not in particular.

Cross examined by the accused.

Q.1 - Can you recall the exact words of the warning order I received from Sjt-Major Kukulski?

A.1 - I cannot recall the exact words, but the gest of the order that you were to take over as No. 1 of B4 gun.

L.F. Kirkpatrick

SECOND WITNESS for the prosecution - Lt. W.D. Cook, Troop leader, 11 Fd Bty 12 Cdn Fd Regt, having been duly sworn, states:-

I am Lt. W.D. Cook, troop leader, 11 Fd Bty, 12 Cdn Fd Regt. On the 20 Jul 44 at approx 2300 hrs I was at B Troop command post talking to Capt Kirkpatrick and Sjt-Major Kukulski. Bdr. Enright and another Bdr. came up to the command post and Bdr. Enright asked Sjt-Major Kukulski if he might speak with him. The three of them walked away a few paces and began to talk. Bdr Enright asked the Sjt-Major why he had taken Sjt. Grant off the gun, and said that Sjt. Grant could carry on with his duties. Parts of the conversation which ensued were not heard by me, as I went into the command post for a short time. When I came out I heard Sjt.-Major Kukulski tell Bdr. Enright that he was under arrest.

Q.1 - Did you hear Sjt-Major Kukulski, warn or orderBdr. Enright to take over as No. 1 of B4?

A.1 - No

Q.2 - Did you hear Bdr. Enright argueing with Sjt-Major Kukulski?

A.2 - Yes

Q.3 - Did you see Bdr. Enright conduct himself in a manner not becoming an NCO?

A.3 - Only in as much as he was arguing with the Sjt-Major.

SUMMARY OF EVIDENCE IN THE CASE OF B6590 Bdr. ENRIGHT, M.E. 11 Fd Bty 12 Cdn Fd Regt a member of the Canadian Army Overseas

The accused declines to cross-examine this witness

.....

THIRD WITNESS for the prosecution - B11042 T/BSM KUKULSKI, S. "B" troop 11 Fd Bty, 12 Cdn Fd Regt having been duly sworn, states:-

I am B11042 T/BSM Kukulski, S. B Troop 11 Fd Bty, 12 Cdn Fd Regt. After putting Sjt. Grant under arrest on the night of 20 July 44 at 2300 hrs I returned to troop command post. A few minutes later Bdr. Enright came over with Bdr. McIlreavey to ask why their gun should not go back into action. I told them I did not think the gun could be properly manned at the time. After asking him if he would take over the gun without any argument then and there he said he didn't think he should as he thought Sjt. Grant was capable of doing that himself. I then placed Bdr. Enright under arrest.

Q.1 - Did you give Bdr. Enright a direct order to take over B4?

A.1 - No, I did not give him a direct order in so many words, but there is no doubt in my mind that he understood that he was to take over that gun in place of Sjt. Grant.

Q.2 - Did he argue with you?

A.2 - Yes, to the extent of whether Sjt. Grant was capable of carrying out his duties or not.

Q.3 - Did Bdr. Enright conduct himself in a manner unbecoming an NCO?

A.3 - Only that he argued about my decision of placing Sjt. Grant under open arrest.

The accused declines to cross-examine the witness.

.....

The accused having been duly cautioned in accordance with RP 4 says "I do not wish to make a statement at this time."

.....

FIRST WITNESS for the defence - B11124 Bdr. McILREAVEY, J. B Troop 11 Fd Bty 12 Cdn Fd Regt having been duly sworn states:-

I am B11124 Bdr. McILREAVEY, J. B Troop 11 Fd Bty, 12 Cdn Fd Regt. I walked to troop command post with Bdr. Enright at approx 2300 hrs 20 July 44, after Sjt. Grant had been placed under arrest. Bdr. Enright asked Sjt-Major Kukulski for an angle to put B4 on line. Sjt-Major Kukulski asked Bdr. Enright if he would take over B4 since he was next in line. Bdr. Enright said he would not take the gun because he thought Sjt. Grant was capable of handling it. Then Sjt-Major Kukulski placed Bdr. Enright under arrest. I walked back to B4 and Bdr. Enright followed shortly after.

Q.1 - Was there any other argument besides the TSM's decision that Sjt. Grant was unfit for duty?

A.1 - No, not while I was there.

Q.2 - Did you see Bdr. Enright conduct himself in a manner not becoming an NCO?

A.2 - No.

SUMMARY OF EVIDENCE IN THE CASE OF B6590 Bdr. ENRIGHT, M.E. 11 Fd Bty 12 Cdn Fd Regt a member of the Canadian Army Overseas

FIRST WITNESS FOR
the defence (Cont)

Cross examination by the accused.

Q.1 - Did Sjt-Major Kukulski order you to take over the gun?

A.1 - No, he never.

...E. M. Enright...

CERTIFIED THAT RP 4 complied with
In the Field
22 Jul 44.

...J. E. Harrison... A/Capt
(J.E. HARRISON)
Officer detailed to take Summary

B

SUMMARY OF EVIDENCE IN THE CASE OF B6590 Bdr. ENRIGHT, M.E. 11 Fd Bty 12 Cdn Fd Regt a member of the Canadian Army Overseas

I request that Lt. T.J. BELL be appointed to defend me on my trial by F.G.C.M.

M E Enright

EE-150

PTE ENRIGHT P.R.

E5-150 1

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 13th day of May, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 11 Cdn Inf Bde., 5 Cdn Armd Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [redacted]

*Omit if not applicable.

NOTE.—The President must be named. The members and waiting member (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the rank, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	W W Ogilvie	C B Highrs

Members

Rank.	Name.	Regiment.
Capt	J S Whyte	Perth Regt
Lt	D Smith	Irish R C
	WAITING MEMBER	
Lt	S N Budreski	C B Highrs
	JUDGE ADVOCATE	
Capt	G M Morrison ADJA	5 Cdn Armd Div

*Signed (H Sharp) Brigadier
Commanding 11 Cdn Inf Bde
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.11941 Pte Paul Robert KNWRIGHT The Perth Regt 5 Cdn Armd Div	1st CHARGE When on active service, absenting himself without leave in that he (see charge sheet att) Sec 15 (1) A.A.	guilty	guilty To undergo detention for 150 days. 14 May 43 W.W. Ogilvie Mayer Brigadier	Confirmed Confirmed 15 May 1943 [illegible] Brig

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) H Sharp (H Sharp) Brigadier
Commanding 11 Cdn Inf Bde

(Signed) W.W. Ogilvie Mayer.
Convening Officer (e)

F McLennan Capt. Judge Advocate
Prosecutor

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

W.W. Orpha Major 2 President

The accused A-11941 Pte. Paul Robert ENRIGHT, The Perth Regiment C.A., a soldier of the Canadian Army Overseas

Is charged with

First Charge
Sec 15 (1)
Army Act

When on Active Service, absenting himself without leave

in that he

In The Field on the 1st of May 1943 absented himself without leave from his Regiment, The Perth Regiment C.A. from 2230 hours on said 1st May 1943 until apprehended by the Military Police in the City of Brighton, Sussex at about 1100 hours 7 May 1943.

Total time Absent: 5 days, 12 hours, 30 minutes.

In The Field
12 May 1943

H.E.T. Doucet
(H.E.T. Doucet) Lt. Colonel
Comd. Perth R

To be tried by Field General Court-Martial.

In The Field
13 May 43

H Sharp
(H. Sharp) Brigadier
Comd 11 Cdn Inf Bde

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 527

I certify that I have this morning examined

No: A 11941 Pte Enright Paul Robert.

of the Perth Regiment C.A. and in my opinion he is fit to undergo trial by court-martial.

Station in the Field

Date 14 May 43

Capt

M O Perth R

Trial of A11941 Pte Paul Robert ENWRIGHT, The Perth Regiment, 5 Cdn Armd Div.

Held in the Field in England this 14th day of May 1943.

PRESIDENT
Major W.W. Ogilvie — C B Highrs

MEMBERS
Captain J.S. Whyte — Perth Regt
Lieutenant D. Smith — Ir R C

JUDGE ADVOCATE
Captain G.M. Morrison — ADJA 5 Cdn Armd Div

OFFICER UNDER INSTRUCTION
Lieutenant L.W. Budreski — C B Highrs

PROSECUTING OFFICER
Lieutenant M.J. Geller — Perth Regt

DEFENDING OFFICER
Lieutenant H.C.O. O'Hagan — Perth Regt

The President produced the Convening Order, Charge Sheet and Summary of Evidence.

The President, in closed court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court, and at 0930 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is fit to undergo trial by court martial. The certificate is signed by the President and attached to the Proceedings.

President to accused

Q. 1 Do you object to A57365 Cpl B.N. Manhaffer, CMSC, HQ 5 Cdn Armd Div, acting as shorthand writer?
A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused.

President to accused

Q. 2 Do you object to be tried by me as President or by any of the Officers whose names you have heard read over?
A. 2 No, sir.

The President, Members, Judge Advocate and Officer under Instruction are duly sworn.

The Charge Sheet is signed by the President.

The charge is read to the accused and he is asked as the charge is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Guilty

R.P. 35(B) is complied with, by the President ascertaining that accused understands the nature of the charge and his plea thereto, explaining the difference in procedure by the plea and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

President to accused

Q. 3 Do you desire to make any statement of the circumstances, in reference to the charge?

A. 3 No, sir.

Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

President to accused

Q. 4 Do you wish to make any statement in mitigation of punishment?

A. 4 No, sir.

Q. 5 Do you wish to give evidence yourself or call any witnesses as to character?

A. 5 No, sir.

Statement of Character and Service and Field Conduct Sheet signed in the manner required by AA 183(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, signed by the President and attached to the proceedings.

President to accused

Q. 6 Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment?

A. 6 Yes, sir.

The Defending Officer makes the following plea in mitigation of punishment.

"As will be seen, the accused has a long record on his conduct sheet and the opinion of the unit is apparently that he is incorrigible and so has been placed on trial. He is not a married man".

The Court is now closed to consider sentence.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 14th day of May, 1943.

Captain
Judge Advocate

SUMMARY OF EVIDENCE

W. Waghorn Major Presiding

(Accused present at summary)
(when evidence of witnesses)
(taken down in writing.) 0

H.Q. 4
Perth Regt. C.A.
In the Field
11 May 43.

Summary of evidence in the case of A11941 Pte. Paul Robert ENRIGHT The Perth Regiment C.A. Canadian Army Overseas, charged with:

(1) A.W.L. A.A. Section 15 (1)

The Commanding Officer directs that the evidence be taken on oath.

First Witness
for the prosecution.

A 56039 Sgt. James Walter Mc ILWAIN, No. 13 Platoon "C" Coy, Perth Regiment (C.A.) being duly sworn states:

I was on 1 May 43 and am still sergeant of No. 13 Platoon, "C" Company, Perth Regiment. The accused whom I recognize here is a member of my platoon. On 1 May 43 I was Company Orderly Sergeant. I called the roll at 2230 hrs. 1 May 43 and the accused did not answer to his name. I searched his billets but was unable to find him. I reported his absence on the absentee report. I produce, marked Exhibit "A", a copy of the absentee report showing the accused absent. I have called the roll on each subsequent day and the accused has not answered to his name. I did not see the accused again until the taking of this summary.

The Accused Declines to cross-examine this witness.

J.W. McIlwain

Second Witness
for the prosecution

Lieutenant P.J.F. Baker, Adjutant of The Perth Regiment C.A. having been duly sworn states:

I produce Exhibit "B" , a certificate in accordance with Army Act Section 163 (1) (JJ) which relates to the accused. The document purports to be signed by Major H.L. Bucknell, DAP (for) Cdn Corps Dist.

The accused declines to cross-examine this witness.

P.J.F. Baker

Witness
e prosecution

7691185 Cpl. Powell, M. , Brighton and Hove Military

Document purporting to be signed statement of evidence said Military Police which was read to the accused and Exhibit "C" .

I certify that in my opinion owing to the exigencies rvice, including the time and expense involved, the e of this witness at the taking of the summary of evidence ould be procured.

M. Powell

Officer [illegible] Summ

Fourth Witness
For the prosecution

H41137 L/Cpl. Hyde, R.E. No. 13 Canadian Provost Company, Canadian Provost Corps, C.A.

Document to be a signed statement of evidence of the said Canadian Military Police which was read to the accused and marked Exhibit "C".

I certify that in my opinion, owing to the exigencies of the service, including the time and expence involved, that the attendance of this witness at the taking of the summary of evidence could not readily be procured.

Officer taking Summary.

Fifth Witness
For the prosecution

A-11139 Sgt. John James McCOLL, Regimental Police, The Perth Regiment, C.A. having been duly sworn states:

I was on the 7th of May 1943 and am still Sergeant of Regimental Police. On 7 May 1943 I was notified by the Adjutant that the accused Pte. Enright, whom I recognize here, had been picked up by the Brighton Corps of Military Police. I was ordered to proceed to Brighton and return the accused to the regiment. The accused was handed into my custody in Brighton and I returned with him to the regiment. The accused was wearing military uniform.

The accused declines to cross-examine this witness.

Sixth Witness
For the prosecution

A-9091 Pte. Dennis ALLSOP, 10 Platoon, "C" Company Perth Regiment, C.A. having been duly sworn states:

On 1 May 43 the accused whom I recognize here said he was going to Brighton so I asked him to get my lighter out of the tobacco store for me. I had been down to Brighton previously and I left the lighter at this store as security in order to raise money to return to the regiment. The shop-keeper said he would hold it for a month and that he would not give up the lighter until the person claiming it produced my Service Book. Since Enright was going to Brighton I asked him to get the lighter for me and I gave him my Service Book as that was the only way he could claim my lighter. That was the last time I saw my Service Book until I received it from the Unit Orderly Room 10 May 43. I did not get my lighter. I produce my Service Book marked Exhibit "D".

The accused declines to cross-examine this witness.

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A copy of the Absentee Report referred to by A -56039 Sgt. McIlwain, J.W. was produced, read over to the accused, marked Exhibit "A", signed by me and attached hereto.

(M.J. Geller) Lieut.

The certificate showing that the accused was apprehended by the DAPA M Canadian Corps, Brighton, referred to by Lieut. P.J.F. Baker was produced, read over to the accused, marked Exhibit "B" and Attached hereto.

(M.J. Geller) Lieut.

The document purporting to be a signed statement of evidence of 7691186 Cpl. Powell, M. Brighton and Hove Military Police and H-41137 L/Cpl. Hyde, R. E. No. 13 Provost Company Canadian Provost Corps, referred to by myself was produced, read over to the accused, marked Exhibit " C" signed by me and attached hereto.

(M.J. Geller) Lieut.

The Service Book belonging to A-2091 Pte. Allsop, D. was produced, shown to the accused, marked Exhibit "D" and referred to by Pte. Allsop, signed by me and attached hereto.

(M.J. Geller) Lieut.

The accused was warned as follows, " Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or give evidence until you wish to do so but whatever you say, or any evidence you give will be taken down in writing, and may be givenn in evidence."

The accused: " I have nothing to say at this time."

" The accused declines to call any witnesses on his behalf.

Rules of procedure 4 (c) , (d), (e) (f) (g) have been complied with.

Taken before me in the field, in the presence and hearing of the accused , 11 May 1943

(M.J. Geller) Lieut.
Perth Regiment, C.A.

A-11041 Pte. Paul Robert ENRIGHT
The Perth Regiment C.A.

LIST OF EXHIBITS

Exhibit "A" — The Absentee Report " C" Coy. for 3 May 1943

Exhibit "B" — Certificate in accordance with Army Act Sec 163 (1) (JJ)

Exhibit "C" — Statement of evidence of 7691125 Cpl. Powell, M. Brighton and Hove Military Police, and statement of H-41137 L/Cpl. Hyde, R.E. of No. 13 Cdn. Provost Coy.

Exhibit "D" — Soldiers Service Book of A-2091 Pte. Allsop, D.

Exhibit "A" in the case of A-11041 Pte. Paul Robert ENRIGHT

M.J. Geller

(M.J. Geller) Lieut.

ABSENTEE REPORT.

Squadron, Battery, Troop, Company. C

Army Form B 290 (In sheets of 7) 19

Army No.	Rank and Name	When Absent	Hour of Return	In what state	Remarks
[illegible]	Pte KNIGHT H.R.	2230 hrs. 1 May 43			
[illegible] 926	" EBBS C.H.	2230 " 2 May 43			
[illegible] 961	" COLLINS T.V.	2230 " 2 May 43	2345 hrs. 2 May		

Date 3 May 43

K. [illegible] Orderly Sergeant

Exhibit "B" in the case of A-11941 Pte. Paul Robert ENRIGHT

B

M. J. Geller

(M.J. Geller) Lieut.

Subject: Discipline

13

The enclosed AFB 258 is forwarded for your information and any action you deem necessary.

H.L. Ducknell
Major H.L. Ducknell
DAP (Sr)Gdn Corps Dist

18 Old Steine,
Brighton.

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ificate in accordance with Army Act Sec 163(1)(ii)

This is to certify that No. A.11941 Name ENRIGHT P.R. Pte
Unit C.Coy.Perth Regt was arrested at Brighton
at 1100 hrs 7/5/43 and that at the time of his arrest he
was wearing military uniform.

Signature of P.M. A.P.M.
or other officer into whose
custody the a/n was taken
into arrest.

Exhibit "C" in the case of A-11041 Pte. Paul Robert ENRIGHT

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M.J. Geller

(M.J. Geller) Lieut.

CHARGE

Army Form B 252
(See King's Regulations)

NORTH RHODESIA, (5 CDN DIV). Regiment

"C" COY. Battery / Squadron / Troop or / Company

CHARGE against No. A11941 Rank Pte.

Name ENRIGHT, P. .

Place BRIGHTON. Date of Offence ?

OFFENCE W.O.A.S. Absenting himself without leave from.....until apprehended by an N.C.O. of the Military Police at 5 Buckingham Street about 1100 hrs 7 May 1943.(2) Was in unlawful possession of N.B.I.(Pay-Book Identity) of A2094 Pte Allan D.L. North Regt. in Buckingham Street at about 1100 hrs.

Names of Witnesses :—

Cpl. Powell.M. Brighton & Hove Military Police.

L/Cpl. Ryde. No.13 Cdn Provost Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of

A11941 Pte Enright, P.R.
"C" Coy
Perth Regt.
5 Cdn A Div.

Sir,

At Brighton on the 7 May 1943 about 1100 hrs I proceeded to 6 Buckingham Street where I saw the above named soldier whom I had received information that he was an absentee. I asked to see his pass which he failed to produce. He was unable to give any satisfactory explanation. I placed him under arrest and conducted him to H.Q. Brighton & Hove Military Police. On being searched I found a M.B.L. belonging to A2091 Pte Allsop of the same unit. His particulars were verified, and he was taken to Brighton Police Station and handed over to the Station Sergeant to be detained.

M to Powell Cpl.
Brighton & Hove Military Police.

Brighton
7.5.43.

Sir,

I have read over and corroborate the above statement.

R.E. Bye L/Cpl.
No. 1 [illegible] Coy

REMARKS

Brighton
7.5.43.

EXHIBIT "D"

Service Book

A 2091 Pte Allsop D L

This Service Book was removed by the undersigned and returned to Pte Allsop.

20 May 43.

O.O.T. Baker

A/Adjutant. The Perth Regt.

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F.G.C.M. A-11941 Pte. Paul Robert ENRIGHT
The Perth Regiment C.A.

I do/~~do not~~ desire the convening officer to detail an officer to represent me at my forthcoming trial by FIELD GENERAL COURT - MARTIAL .

I request the services of Lieut. R.C.O. O'Hagan if available.

I acknowledge that I have been notified that it is proposed to detail an officer with legal qualifications to act as Prosecutor at my forthcoming trial by FIELD GENERAL COURT-MARTIAL.

In the Field

13 May 43

P R Enright

A-11941 Pte. Enright, P.R.

No. A11941 Name Pte. Enright, P. Sqn., Battery, or Company C Corps Perth R Date of enlistment 18-1-41 G.C. Badges W.W. Service or Pensioner

M.F.M. 6 (A.F.W. 1791) 11336—7-41 (1219-20) H.Q. 1772-39-1442

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. C.A. Bryan, Capt. Character

Place	Date of 1941	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
London	26-1	Pte.		A.W.O.L. from 0700 hrs. 26-1-41 to 0700 hrs. 3-2-41 (192 hrs) Held under close arrest while awaiting trial, from 0700 hrs. 3-2-41 to 0830 hrs 4-2-41. Brought back in custody	CSM King	7 dys C.B, 10 dys pay forfeiture Escort Fees $ 2.00	4-2-41	C.A. Bryan	Capt.
London	4 Feb.	Pte.		Conduct to the prejudice of good order & military discipline, i.e. Insubordination	Cpl. Mertens	96 hours detention	6 Feb. 41	Lt.-Col. Neilson	
London	4-2-41	Pte.		Absent without leave from 2200 hrs 10-2-41 until 1730 hrs. 25-2-41	Cpl Hoppe	28 dys Detention. Forfeits 15 dys pay, $ 2.50 Escort fees.	28-2-41	Lt. Col Neilson	

(P.T.O.)

Place	Date of 1941	Rank	Cause of desertion	OFFENCE	Name of Witness	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
London, Ont	8-3-41	Pte.		Act to the prejudice of good order & Military Discipline, Breaking Detention Barracks.		Close confine-ment, #1 punish-ment dist.	10-3-41	Lieut. Shipley	
Windsor	Apr. 24	Pte.		An act to the prej of good order and Mil.disc, in that he was in improper poss. property belonging to a comrade.	Sgt. Jaques Sgt. Hollefreund	21 days det.	25 Apr 41	Mjr. Beattie	
Windsor	9 Jun	Pte.		An act to the prejudice of good order and Mil. Discipline, Absent from Garrison Pard.	Sgt. Jones L/Cpl. Turgeon	5 dys C B.	9 Jun 41	Maj. Beattie	
Chatam	7 Jul	Pte.		AWL from 2300 hrs 27-7-41 to 1930 hrs 16-7-41	Sgt. Morrison	168 hrs Detn	16 Jul 41	Lt Col Aneell	19 days Forf of pay
Chatham	7 Jul	Pte		AWL while awaiting disposition by Civil Authroities from 2200 hrs 25-7-41 to 2359 hrs 21-8-41	Sgt Morrison	Admonished	7 Nov 41	Maj Bingle	FOP 28 days pay
Goderich	21 Aug	Pte		Convicted at Goderich Ont 21 Aug 1941 of: Break, Enter, and Theft Sec 460 of the Criminal Code. Sentenced to undergo a term of 3 months in the common jail commencing 22 Aug 41.		To forfiet all regular pay and allowances for the above period			Total forf 69 days pay

M.F.M. 6
A.F.B. 179.

No. A11941 Name Enright P R | Sqn., Battery, or Company: C | Corps: Perth Regt | Date of enlistment: 18/1/41 | G.C. Badges: | Service or Proficiency Pay:

Date of last entry in Company Conduct Sheet: 21 Aug 41 | Number and date of last drunk: | Period not reckoning towards freedom from extra fine: | Sheet No. 2 | Signature O.C. Company, etc.: M W Andrew Major

Place	Date of offence 1941	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Goderich	30 Oct	Pte		Released from Civil Custody at 1200 hrs 30/10/41					
Chatam	16 Nov	Pte.		AWL from 2359 hrs 15-11-41 to 0245 hrs 16-11-41	Sgt.Morrison	7 days C.B.	21 Nov41	Maj Bingle	FCP 2 days
Chatam	21 Nov	Pte.		AWL from 2200 hrs 18-11-41 to 2250 hrs 20-11-41	Sgt.Morrison		21 Nov41	Maj Bingle Lt. Col.	FCP 3 days FCP 3 days
Chatam	29 Nov	Pte.		AWL from 2200 hrs 29-11-41 to 0030 hrs 2-12-41.	Sgt.Morrison	14 days C.B.	2 Dec 41	E.M. Ansell	
Att. A 10 I(A)TC from No. Camp Borden	23 Jan	Pte.		12 BTC Chatam Ont "A" Pt.II No.7 Absenting himself without leave from 0100 hrs 16 Jan 42 until surrendering himself at Wolsely Bcks. London Ont at 0525 hrs. 20-1-42. (Total Absence 4 days 4 hrs. 2 min.)	6/9 Jan 42 Cpl.LaBonty	Eff. 7 Jan 42 10 Days C.B. 5 Dys Pay A.A. 46	23Jan 42	Mjr. C.Goodday	Forfeits 5 days pa F.R.I. Cost of Escort $6.80

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kingston	14-3 1942	Pte.		Neglecting to clean his kit when instructed to do so	Cpl.Smale	2 days C.B.	16-3-42	J.A.Easterbrook, Capt.	
Kingston	13-4 1942	Pte.		Unproperly dressed Wearing Cpl. Badges	Cpl.Smale	28 days Detention	17-4-42	M.Sanderson, Major for Lt. Col.	
T.O.S. A 10 IATC				D.O. Pt. II #144 18 June 42	J.D. Steen Lieut.				
Camp Borden	3 July 1942	Pte.		Conduct to the prejudice of good order and military discip, in that he had his quarters in an untidy condition. A.A. 40	Sgt.Cotton,J.	2 days C.B.	4 July 42	Capt.W. McBean	
Camp Borden	4 July 42	Pte.		AWL from 1315 hrs 4 July 42 until 0620 hrs 6 July 42. Total Absence 1 day 17 hrs.,15 min. A.A. 15 (1)	Cpl.Esson,S. Cpl.Gibson,L. Documentary	5 days pay A A 66	6 July42	Lt.Col.Hare M.P.A.	2 days pay forfeit. F.R.I.
Camp Borden	7 July 42	Pte.		AWL from 0600 hrs. 7 July 42 to 0715 hrs 9 July 42. Absence 2 days 1 hour 15 minutes	Cpl. Mitts Cpl. Gibson	7 days C.B.	9 July42	Capt.D.Mace	Forfeits 3 days pay F.R.I.

No. A11941 Name Enright, P.R. Sqn., Battery, or Company C Corps Perth R Date of enlistment 18-1-41 G.C. Badges Service or Proficiency Pay M.F.M. 6 A.F.B. 178.

Date of last entry in Company Conduct Sheet 7 July 42 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. J.D. Green, Lieut.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.Borden	12/7 42	Pte.		Failing to appear on Defaulters Parade at 1800 hrs 12/7/42 A.A. 15 (2)	L/Cpl. Moreau	3 Days Pay A.A. 46	13/7/42	Lt.Col. M.P.A. Hare	
C. Borden	16/7 42	Pte.		Failing to appear on Defaulters Parade 15 July 42. A.A. 15 (2)	Cpl.Gibson	3 Days C.B.	16/7/42	Lt. Col. M.P.A. Hare	
	S.O.S.	Proceeding Overseas				18 July 42		J.D. Steen, Lieut.	
Field	29/8 42	Pte.		WOAS - AWL from 1800hrs. 29/8/42 until 0600 hrs. 31/8/42 . Total 1 day, 6 hrs. A.A. 15	Cpl. McLeod	Forf.10 days pay.FRI 149.	31/8/42	A.B. Noble Lt. Col	Forf 2dy Pay.FRI 149 (1)
Bordon	28/9/ 42	Pte.		(1) AWL 2130/28-9-42 - 0600/29-9-42 8 hrs. 30 min. (2) Cond. to the prej. etc. did urinate on Barrack Room floor A.A. Sec. 40.	Cpl.Esdon,A. Cpl.Hall, H.	7 days C.B.	29/9/42	Mjr.Stuart	Forf.1 dy pay. FRI

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	7 Dec 42	Pte		A.A. Sec. 15 (1) AWL from Dr. course from 1330 hrs 7 Dec 42 to 1700 hrs. 7 Dec 42. Absent 3 hrs, 30 min.	Lieut. F. Twist	7 days C.B.	10 Dec. 42	S.R.Granger Capt.	
In the Field	15 Dec 42.	Pte.		A.A. Sec. 15 (1)AWL from defaulters from 1830 hrs. 15 Dec. 42 till 2240 hrs 15 Dec. 42 Absent 4 hrs. 10 min.	L/Sgt. G.C. Martin	3 Days C.B.	16 Dec.42	S.R.Granger Capt.	
In the Field	26 Dec 42	Pte.	(1)	A.A. 15 (1) AWL from 1800 hrs 26 Dec. 42 untill 0130 hrs. 27 Dec. 42 (7hrs. 30 min.)	L/Cpl. McKay	Forfeits 14 days pay FRI 149 (2)	31 Dec.42	Major R.L. Tindall	Forfeits 1 days pay FRI 149,1(a)
			(2)	A.A. 40 Neglect to the prej. in that he neglected to clean C Coy. Mess Hall when ordered to do so By L/Cpl. McKay					
In the Field	4 Jan. 1943	Pte.		WOAB AA Sec 15 (1) AWL from 0630 hrs 4 Jan 43 until apprehension at 2210 hrs 21 Jan 43.(17 days 15 hrs 45 min.)	L/Sgt. Howe, J.M.	28 days F.D. ASbtpg. of 23. 7.7. Cost of Apors & Return	25Jan43	Lt.Col J S H Lind	Forf.28 days. FRI 149 1 (a)

M.F.M. 6

No. A11941 Name Enright, P.R. Sqn., Battery, or Company C Corps Perth R Date of enlistment 18 Jan 41 O.C. Riding Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 4 Jan 43 No. and date last drunk Period not reckoning towards freedom from extra fine Sheet No. 4 Signature O.C. Company, etc. M.W.Andrew Major Character

Place	Date of 1943	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	11 Ap.	Pte.		(1)A.A. Sec.15 AWL from 2359 hrs 10 Apr.43 till apprehended by Rgt'l Police in Brighton, Sussex at 1045 hrs.11 Apr.43 (10hrs.45m.) (2)A.A.Sec 40 Cond. to the prej. in that he was in the street of Brughton Sussex improperly dressed i.e, without a hat, Field Service	L/Cpl. C.W. Menzen Sgt. J.W. McIlwain	7 Days C.B.	13 Apr43	M.W.Andrew, Major	Forf 1 dy pay, FRI 149 (1a)
In the Field	18 Ap.	Pte.		(1) A.A.Sec.15 AWL from 1200 hrs 18 Apr.43 till 0630 hrs 19 Apr 43 (Absent 18 hrs. 30 min.) (2) A.A. Sec 10(4) Breaking out of Barracks when a defaulter.	L/Sgt. Rowe, J.M. L/Sgt. Rowe, J.M.	7 days C.B.	2 Apr. 43	M.W.Andrew (1a) Major	Forfeits 1 days pa FRI 149

Certified Ture Copy: (P.J.F Baker) Lieut & A/Adjt
Custodian Regimental Documents

W.W. Coplin Major. President

M.F.D. 350
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A 11941	Pte	ENRIGHT, Paul Robert	Perth

1. The following is a fair and true summary of the entries in the [illegible] Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	Conduct to the Prejudice 3 times	Conduct to the Prejudice 7 times
For	Neglect to the Prejudice 1 times	Neglect to the Prejudice 2 times
For	A W L 10 times	A W L 18 times
For	Failing to appear on defaulter's parade 2 times	Improperly Dressed 1 times
	Breaking out of Barracks 1	Break, Enter, and Theft 1

[illegible]

Note:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

[illegible]

3. The accused is not under sentence at the present time.

or,

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 7 days in military custody, making a total of 7 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his [illegible] attestation paper is 21 yrs, 1 month, 21 days

6. The date of his [illegible] attestation specified in his [illegible] attestation paper is 18 Jan 41

7. The service which the accused is allowed to reckon towards discharge is 2 yrs, 3 months, 24 days,

8. The accused is entitled to reckon 2 years 3 months 24 days service for the purpose of determining his pension, etc.

[illegible]

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11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A11941 Rank Pte

Name ENRIGHT, Paul Robert of Perth Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of May 43 (P J T Baker) Lieut.
A/Adjt Perth R

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B.

I certify that the above Court assembled on the fourteenth day of May 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. Certificate of President as to proceedings

I also certify that :—

1. The members of the Court, and Judge Advocate W.A.O. and shorthand writer W.A.O.
2. The witnesses
*3. ~~The Interpreter~~ W.A.O.
*4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this fourteenth day of May 1943.

Lieutenant Capt. Judge Advocate — W.W. Cryle Mayor — President of the Court Martial.

C.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. Certificate in case of death sentences.

*See footnote to par. 767 K.M.L., 1929.

Signed this day of W.A.O. 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. Confirmation

*~~I direct that the soldier named in the margin be not committed to detention barracks until further orders.~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 10th day of May 1943.

[signature] BRIG COMD W CDN INF BDE

Promulgated and extracts taken in the case of A 11941 pte Enright P.R.

(a) (Dated) 19 May 1943 (Signed) H.C.T. Drew LT COLONEL COMD PERTH R.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

40-147
PTE ENRIGHT P.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A11941 Private Paul Robert ENRIGHT - 1 Cdn NETD

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	15(1)	GUILTY	GUILTY	
2nd	40	GUILTY	GUILTY	
3rd	40	GUILTY	GUILTY	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of One Hundred and Fifty (150) days

(Sgd) ..... Judge-Advocate, if any. 14 Nov/44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to [illegible] detention barracks under sentence.~~(1)

(1. AA 57A. Delete if not used.)

Date 15 Nov 44. (Sgd) J. H. ROBERTS, Maj-Gen. Commanding Comd. Can. RC. Unit. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A. 11941 Pte. ENRIGHT, PAUL ROBERT.	16 Nov 44	[signature] Major.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 22 NOV 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160 CPA86 (To lieu of AFAM) 40/P & S/1698 (H144) 4/38B

WD-147

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj-Gen J.H.Roberts DSO MC Comd CRU dated 11 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A11941	Private	Paul Robert	ENRIGHT	1 Cdn NETD

PROCEEDINGS REVIEWED JCTC 22 nov 44 REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the ~~FD~~ in (country) England on (date) 14 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference [illegible] para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record additional evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR [illegible] 557. 2. AA 46(F), RP 60 fn 1. For effect see KR Can 563(6). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans .....

~~The Interpreter is sworn.~~(1) Do you object to Sgt Baines AJC as shorthand writer? Ans No. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO — SEE TO/Enright, P.R.[illegible] Min. of Arrgts 2.1

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 118, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt.Col	D.L. Redman	HQ CRU
Member	Capt	J.E. Westbrook	3 CACRU
Member	Lt	C.F. Crain	1 CACRU
~~Judge-Advocate~~			
Prosecutor	LIEUT	~~W~~ R.V. Cunningham	1 Cdn NETD
Defending Offr	LIEUT.	W.C. Hay	1 Cdn NETD

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 39 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 312. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence,* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - SIR (5)
(*1. RP 37(D). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p. 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The ~~Court considers the accused's~~ statement.(1) The Court decides [not] to advise accused to change ~~his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on~~ ..... charge(s). ~~Part I of the Schedule is amended accordingly~~.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 41. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf. AR5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Invite the Further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(7) (d), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFM 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans MY LAWYER WILL DO IT (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, compounded of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 152, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-344, Oversea KO 309, 1323, MML p 60, 737-739. As to sentences consigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 98(1), KR Can 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assemblies and disposal of record after trial see Instrns on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. A-11941 Pte. Paul Robert ENRIGHT (CIC) on transit strength of No. 1 Cdn. N.E.T.D. (Lorne Scots) a soldier of the Canadian Army Overseas is charged with:

First Charge — WHILST ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

at No. 1 Cdn. N.E.T.D. (Lorne Scots) did illegally absent himself without leave from 1745 hrs 26 July 44 until apprehended by the RCAF Police at 12 Fairwall House, Peckham Road, Camberwell, London at 2115 hrs 1 Nov 44. Total time absent - 98 days, 3 hours, 30 minutes.

Second Charge — WHILST ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

IN THAT HE

at London at 2115 hrs 1 Nov 44 was improperly in possession of a leave pass in the name of Sgt. JOHONSON, R.R.

Third Charge — WHILST ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

IN THAT HE

at London at 2115 hrs 1 Nov 44 did improperly wear a uniform to which he was not entitled, in that he was dressed as a Sergeant of the RCAF.

(John B. Barber) Major
A/Commanding Officer
No. 1 Cdn. N.E.T.D.
(Lorne Scots)

Tweedsmuir Camp,
Thursley, Surrey
9 Nov. 1944.

To be tried by Field General Court Martial.

(J.H. Roberts/ Maj-Gen
Comd
Cdn Rft Units

Farnborough, Hants
11 Nov 1944

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate author. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A11941	Private	Paul Robert	ENRIGHT	1 Cdn NETD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 11 Nov 1944 endorsed by me, (~~or by an offr of my comd (or me)~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I nominate to appoint as President thereof the Offr so hereunder, for the reason I have checked X~~ (*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I appoint and detail the persons mentioned for the same hereunder.~~ (*RP 106(L). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.Col	D.L. Redman VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC	3 CACRU
Lt	To be detailed by OC	1 CACRU

~~WAITING MEMBER~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

Date 11 Nov 1944

(*Signed personally. RP 105 fn 2.*)
(J.H. Roberts)
Commanding The Cdn Rft Units
Convening Officer.

Maj-Gen (*Rank.*)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

4/38A (CFAN 13b (Sec of AFA) 80-7 & 8-1307 (1951))

Medical Officers' Certificate
KR (Can) para 557

I certify that I have this morning examined No. A11941 Rank Pte.
Name ENRIGHTER of 1 CNETD and in my opinion he is
fit to undergo trial by Court Martial.

Station 1 CNETD
Date 14 Nov 44

W R Bruney Capt.
Medical Officer
No. 1 Cdn. N.E.T.D.
(Lorne Scots)

MM

Mr President, Gentlemen:-

I wish to enter a plea of mitagation for the accused. In regard to the charges laid against him, I wish to draw attention to his condition. His category is MH SS. We cannot doubt the ability of the authority who awarded him this rating

I could give you the details of his background that would have some bearing on his present instability — orphaned at 3, brought up by bickering and impoverished grandparents, joined the army while still 15 and overseas when barely 17 — but his category is all that is necessary to prove that he is not responsible for his actions as you and I are.

It shows that this man is mentally deficient and mentally instable. He is not mentally fit to remain in the Canadian army, yet we are prepared to judge him by army standards. This would seem to be a grave miscarriage of justice.

E* NM

With regard to the first charge, I would like to point out that the accused was in London, 12 hrs after going A.W.L. before he realized the seriousness of his crime and he was afraid to come back.

With regard to the second charge, the accused did not write the pass himself, he obtained it casually from a chance acquaintance. He had no intention of fooling the authorities with it as it was so obviously fraudulent, having as it did ~~the R.C.A.F. stamps on the buttons and~~ R.C.A.F. printed on the top of an army form. His sole reason for accepting this fraudulent pass was to safeguard his innocent hosts from a charge of harboring a deserter in case he were apprehended. The fact that he confessed ~~the~~ his true ~~nature~~ identity to the R.C.A.F. Police bears this out.

The R.C.A.F. uniform, again, was not used with the intention of escaping detection but to impress the girl whom he had met some time previously, and on

being invited to be their guest for his next leave he showed up in the RCAF uniform to bear out the story he had previously told the girl, that he was in the RCAF. It was on the first day of his alleged privilege leave that he obtained the fraudulent pass to show her parents.

In concluding my plea, I wish to ask for leniency for the accused. On the first & third charges on the grounds that he was not fully responsible for his actions, and on the ~~third~~ second charge on the grounds that his act was less a crime than an act of gallantry and gratitude to protect his ~~sinister~~ benefactors.

Signed this 14 day of Nov. Aug 44

W J G Hay Lieut

1 Cdn N.F.I.D.

SUMMARY OF EVIDENCE

In the case of A-11941 Pte ENRIGHT, P.R. (CIC) on transit strength of No. 1 Cdn. N.E.T.D.(Lorne Scots) a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

FIRST WITNESS for the Prosecution.

Capt. H.E. Couch, R.C.A., Adjutant No. 1 Cdn. N.E.T.D. (Lorne Scots) having been duly sworn states as follows:

I produce a certified true copy of Declaration of a Court of Inquiry d/26 Aug 44 relating to the accused and attached as Appendix "A".

H.E. Couch Capt.
(H.E. Couch)

SECOND WITNESS for the Prosecution.

R-156711 Cpl. Jackson, R.H. RCAF Police.

A statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "B". Having regard to the exigencies of the service attendance of this witness, in my opinion cannot be readily procured.

J.M. Read Capt.
(J.M. Read)
Officer detailed to take Summary of Evidence.

I do not require attendance of this witness at the taking of this Summary of Evidence.

P.R. Enright Pte
(P.R. Enright)

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declined to make a statement and reserved his defence.

I certify that the foregoing Summary of Evidence was taken down in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

J.M. Read Capt.
(J.M. Read)
Officer detailed to take the Summary of Evidence.

EXA

Tweedsmuir Camp,
Thursley, Surrey.
9 Nov. 1944.

IN THE CASE OF

A-11941 Pte ENRIGHT, P.R.

LIST OF EXHIBITS

Exhibit "A" - Leave Pass in Name of Sgt. Johonson, P.R.

Exhibit "B" - 1 pair blue Sergeant's Chevrons.

Appendix "A" - Declaration of Court of Inquiry d/26 Aug. 44.

Appendix "B" - Statement of R-156711 Cpl. Jackson, E.H.

IN THE CASE OF

A-11941 Pte ENRIGHT, P.R.

LIST OF EXHIBITS

Exhibit "A" - Leave Pass in Name of Sgt. Johonson, P.R.

Exhibit "B" - 1 pair blue Sergeant's Chevrons.

Appendix "A" - Declaration of Court of Inquiry d/26 Aug. 44.

Appendix "B" - Statement of R-156711 Cpl. Jackson, E.H.

LIST OF WITNESSES

Capt. H.E. Couch - No. 1 Cdn. N.E.T.D. (Lorne Scots)

R-156711 Cpl. Jackson, E.H. - R.C.A.P. Police, London.

STATEMENT OF ACCUSED

It is my wish to have the Convening Officer detail an Officer to defend me at my trial.

P.R. Enright Pte

(P.R. Enright)

SGT. STRIPES

EXHIBIT
B

APPENDIX "A"

Army Form B 115.

Record of the Declaration of a Co ... **a Soldier**

RECORD of the Declara... ...dsmuir Camp ...rsley Surrey

on the 26 day of Aug... ...vestigating

and recording the absence, with... ...any, in the

Arms, Ammunition, Equipmen... ...Clothing of

No. A-11941 Pte. Enright, ...

The Court declar... ...rmerly of

No. 3 C.I.R.U. and now on t... ...D. (Lorne

Scots) illegally absented hi... ...amp, Thursley

Surrey England at 1745 hrs 26 ... ...and that at

1745 hrs 16 Aug 44 he was deficient and that he ... ...nt the articles

on the attached list.

EXHIBIT A

OVERSEAS

LEAVE PASS

Date 26 AUG 44

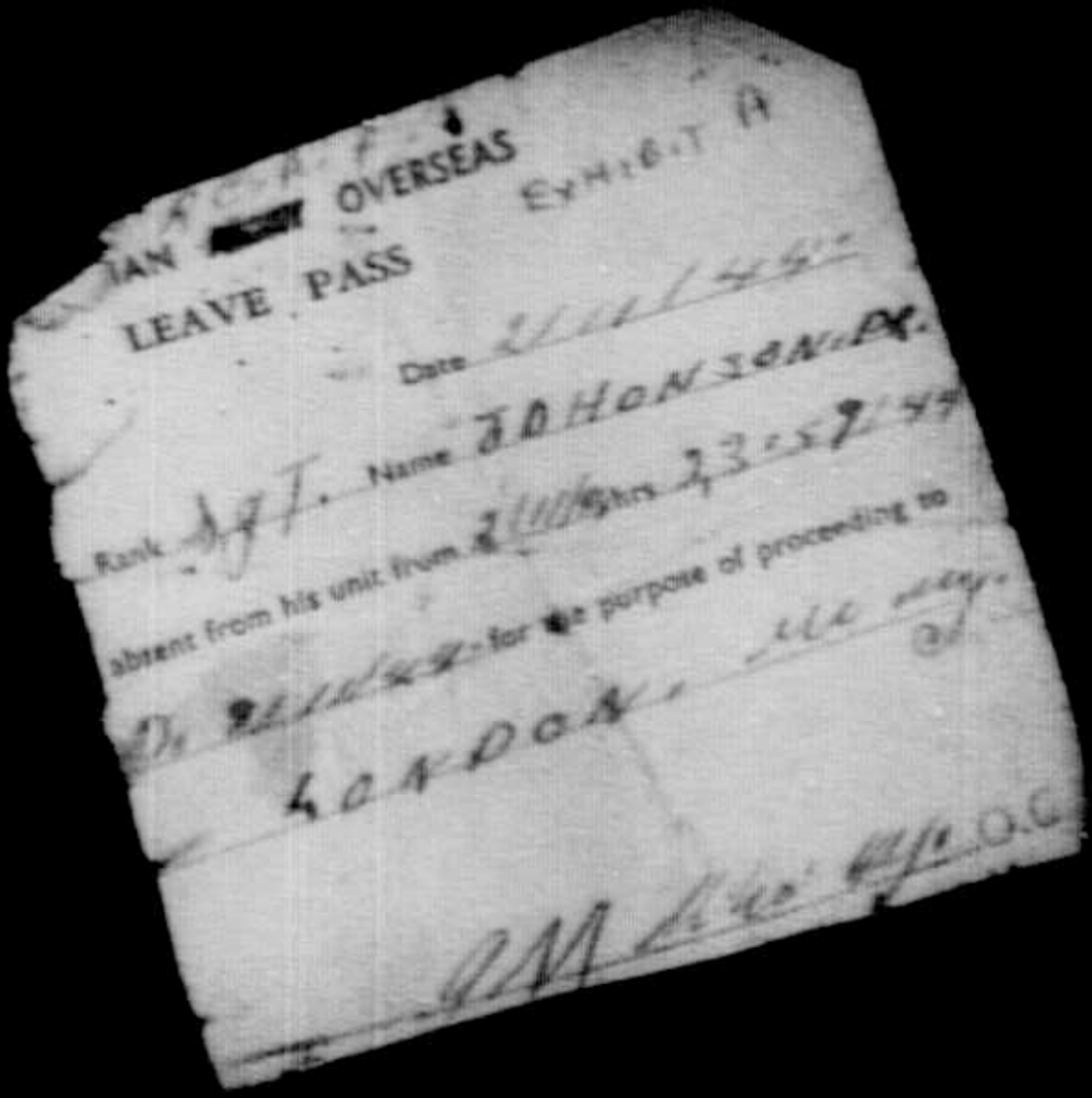
Name ENRIGHT J.

Rank PTE.

absent from his unit from 1745 hrs 26 AUG 44

for the purpose of proceeding to LONDON via LEAVE

DML LEAVE 26 AUG 44



CANADIAN [redacted] OVERSEAS

EXHIBIT A

LEAVE PASS

Date [illegible]

Rank Sgt. Name J.D. HOWISON R.X.

absent from his unit from [illegible] hrs [illegible]

[illegible] for the purpose of proceeding to

LONDON,

[illegible]

[illegible] A.A.G. A.F.O.C.

APPENDIX "A" Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at Tweedsmuir Camp Thursley Surrey on the 26 day of August 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A-11941 Pte. Enright, P.R.

DECLARATION.

The Court declare that A-11941 Pte. Enright, P.R. formerly of No. 3 C.I.R.U. and now on transit strength of No. 1 Cdn. R.H.T.D. (Lorne Scots) illegally absented himself without leave at Tweedsmuir Camp, Thursley Surrey England at 1745 hrs 26 July 44 . that he is still absent and that at 1745 hrs 16 Aug 44 he was deficient and that he is still deficient the articles on the attached list.

Names of President and Members

President - Capt. H. De. Blois
Member - Lieut. G. Guy
Member - Lieut. H.E. Couch

Signature of Commanding Officer

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

(39027) W1.21014-560 100,000 2/44 A.S.P.W.Ltd. Gp.698 Form/D 115/50

NO. I CDN. H.R.T.D. (LORNE SCOTS)

Q.M. STORES,
26 Aug 44.

KIT DEFICIENCIES
A.11941 Pte. Enright, P.R.

		Vocabulary price	Voca. price less 25% depreciation
Boots, ankle, prs	1	£ 1. 4. 5	£ .18. 3½
Drawers, cell sheets	1	. 1.11	. 1. 5½
Drawers, woollen	2	.10. 9	. 8. 1
Greatcoats, drab	1	2.10. 7	1.18. 0
Shirts, angola	1	. 9. 1	. 6.10
Shoes, canvas, prs	1	. 2.11	. 2. 2½
Socks, worsted, prs	1	. 1. 8	. 1. 3
Trousers, B.D.	1	1. 4. 1½	.18. 2
Vests, woollen	2	. 5. 4½	. 4. 0½
Bags, kit	1	. 4. 7	. 3. 5½
Braces, prs	1	. 1. 4	. 1. 0
Brasses, cleaning	1	. . 2	. . 1½
Brushes, button	1	. 1. 2	. .10½
Brushes, clothes	1	. 2. 2	. 1. 7½
Brushes, hair	1	. 1. 6	. 1. 1½
Brushes, shaving	1	. 1. 8	. 1. 3
Brushes, polishing	1	. 1. 3	. .11½
Brushes, tooth	1	. . 6	. . 4½
Haversack	1	. 8. 0	. 6. 0
Helmet, steel	1	.10. 0½	. 7. 6
Pouches, basic	2	.10. 8	. 8. 0
Ointment, A.C.	1	. . 8	. . 6
TOTALS :-		£ 8.14. 6½	£ 6.11. 1½

"Certified that the above is a true list of the kit deficiencies of A.11941 Pte. Enright, P.R., as of 26 Aug 44."

R. Lindner Capt

R.B. Lindner, Captain,
Quartermaster,
for O.C. No. I Cdn. H.R.T.D. (Lorne Scots)

APPENDIX "B"

To:- D.A.P.M., R.C.A.F.,
No.V District,
Princes Gate Court,
Exhibition Road, S.W.7.

Date:- 2nd November, 1944.

Subject:- P.R. NIL. RE: A.11941 - PTE. EHRENDT, P.R., 3 CDN. INF. REINF. UNLT - A.W.L.

Sir,

On 1st November, 1944, at 21.15 hours, I investigated a complaint re Sgt. JOHNSON, R.C.A.F., living at 12, Fairwall House, Peckham Road, Camberwell, London.

I checked his pass (attached) which did not appear to be in order, so I took him to R.C.A.F. Police Headquarters and interrogated him. He admitted that he was Pte. EHRENDT, P.R., and was A.W.L. from the Canadian Army.

Pte. EHRENDT was posing as a R.C.A.F. Sergeant and was wearing khaki battledress with R.C.A.F. Sergeants' chevrons and a R.C.A.F. field service cap when apprehended.

Pte. EHRENDT was turned over to the Canadian Provost S.I.B. at 22.45 hours, under close arrest.

Case concluded.

E. H. Jackson Cpl.
R.C.A.F. Police. No.R.156721.

LONDON.
2.11.44.

ED.

No. 11941 Name ENRIGHT B.L. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 18 JAN 41 | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 132) 40/PAY/106 (5412)

Date of last entry in Company Conduct Sheet | No. and date of last drunk N.I.L. | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
CAM	6.2.41	Pte		A.A. No. INSUBORDINATION		96 HRS DETN	6.2.41	2 I/C	
"	10.2.41	"		A.A. 15(c) - 2200 HRS. 10.2.41 TO 1730 HRS 25.2.41		28 DAYS DETN	1.3.41	"	FINE 28 DAYS PAY, 96 HRS DETN.
"	24.4.41	"		A.A. No. IMPROPER POSSESSION		21 DAYS DETN	24.4.41	"	
"	27.6.41	"		AA 15(c) - 2230 HRS 27.6.41 TO 1900 HRS 16.7.41		168 HOURS DETN	16.7.41	"	19 DAYS PAY AR.
"	25.7.41	"		AA 15(c) - 2200 HRS 25.7.41 TO 2359 HRS 31.8.41		28 DAYS DETN	7.11.41	"	28 DAYS FINE AR.
"	16.11.41	"		AA 15(c) - 2355 HRS 16.11.41 TO 0245 HRS 18.11.41		7 DAYS C.D.	18.11.41	OC Unit	2 DAYS PAY AR.
"	19.11.41	"		AA 15(c) - 2200 HRS 18.11.41 TO 2250 HRS 19.11.41		AWAITING TRIAL	21.11.41	OC Unit	2 DAYS PAY AR.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
BARADA	29.11.41	PTE	D/L	AA 15(1) - 2200 hrs 29.11.41 to 0800 hrs 2.12.41		14 days C.B.	2.12.41	O.C. Unit	3 DAYS PAY FINE
						10 DAYS Pay + ALL	29.1.42		REMAINDER OF SENTENCE REMITTED
"	29.1.42	"		AA 45					
"	12.4.42	"		AA 40 - In possession of [illegible] Tools with L/Cpl EAGLES knowing he was not entitled to same		28 days DETN	13.4.42		
						5 DAYS PAY	6.7.42	"	2 DAYS PAY FINE
"	6.7.42	"		A.D. 46		3 DAYS PAY	15.7.42		
"	13.7.42	"		AA 45		14 DAYS C.B.	31.8.42	"	12 DAYS PAY FINE
UK	31.8.42			AA 15(1)		7 DAYS [illegible] C.B.	29.9.42		1 DAYS PAY
"	29.9.42	"		AA 15(1) AA 45		14 DAYS C.B.	16.10.42		
"	16.10.42	"		AA 15(1)					

No. 1941 Name ENRIGHT . RB. Sqn, Battery, or Company | Corps C.I.C | Date of enlistment 18 JAN 41 | GC Badge | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM/150 (5433)

Date of last entry in Company Conduct Sheet | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order dispensing with trial	By whom awarded	Remarks
UK	19.10.42	Pte		AA 40		14 DAYS F.P	19.10.42	OC UNIT	13 DAYS PAY FR1
"	31.12.42	"		AA 15(1) AA 40			31.12.42	" "	1ST DEAF 15 DAYS PAY
"	25.1.43	"		AA 15(1)		28 DAYS F.P	25.1.43	" "	28 DAYS PAY & 2.2.43 BOOK of AFF.
"	13.4.43	"		AA 15(1) AA 40		7 DAYS C.B	13.4.43	" "	1 DAYS PAY
"	20.4.43	"		AA 15(1)		7 DAYS C.B	20.4.43	" "	1 DAYS PAY
"	"	"		AA 15(1)		180 DAYS DETN	14.5.43	FGCM	193 DAYS PAY
				448 DAYS REMISSION					

(2710)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
UK		PTE	7	AA 15(1), No. 22 61 DAYS REMISSION		8 MONTHS DETN	13-12-43	F.G.C.M.	365 DAYS FAY
UK	11 JUL 44	"		AA 15(1) 2359 HRS 11 JUL 44 TO 0130 HRS 22 JUL 44	DOCUMENTARY	28 DAYS PAY	24 JUL 44	(Lt-Col. MARSH) MAJOR	FORF 11 DAYS PAY A 44 (1) (a)

No MF Mts of A.1941 Pte BRIGHT, G.R. being available, I certify that the above entries have been extracted from MF M 2 of the soldier in our possession

(H.E. COWLEY) CAPT.
OFFICER IN CHARGE OF ORIGINAL DOCUMENTS

Description of Court by which tried, or date of Commanding Officer's dispensing of the charge or dispensing with Trial	Date and place of Trial or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14th day of November 1945

Records Officer
1 Cdn NEFD
(Lorne Scots) C.A.(O/C)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A-11941 Pte ENRIGHT, P.R. of the CIC on transit strength 1 Cdn NEFD

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.		*Since Enlistment.	
For A.A. Sec.15(1)	1	times	14	times
For A.A. Sec.40		times	7	times
For A.A. Sec.46		times	3	times
For		times		times

~~Number of occasions of gallantry or distinguished conduct.~~ Ø

~~or~~

~~There are no entries in the conduct sheets of the accused.~~ Ø

2. ~~The accused has not been previously convicted.~~ Ø

~~or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Ex B

3 The accused is not under sentence at the present time.

or,

4 The accused has been in confinement, awaiting trial on the present charges

for nil days in Civil Custody,

and 13 days in Military Custody.

Total 13 days.

Of which nil days were spent in hospital.

5 The present age of the accused according to his attestation paper is 23 yrs.

6 The date of his attestation specified in his attestation paper

transfer to the reserve is

8 The accused is entitled to deferred pay or gratuity in respect of years' service.

9 The accused is entitled to reckon years' service for the purpose of determining his pension, &c.

10 The accused is in possession of, or entitled to, no military decoration or military reward (*or is in possession of or entitled to*

11 (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12 (*In the case of an officer.*) The accused holds in the army the rank of , and in his regiment (*or corps or department*) the rank of dated

13 The accused has served as a non-commissioned officer continuously, without reduction, to the rank of , to the present date,

	Date of Promotion.
In the rank of	years.
In the rank of	years.
In the rank of	years.

Declaration.—It may suffice to accept the above paragraph unless to [illegible] *from the regimental books.*

the paragraph must be struck through.)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name A-11941 Pte ENRIGHT, F.R. of the CIC

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or name of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
Civil	22 Aug 41 Goderich Ont.	Breaking, Entering and theft	3 Months in common Jail	22 days
FGCM	14 May 43 Field	A.A.Sec.15(1)	180 days Detention	48 days
FGCM	13 Dec 43 Field	A.A.Sec.15(1) A.A.Sec.40 A.A.Sec.28	6 Months Detention	61 days

(Continued overleaf.

YY-25 (case #2)

PTE ENRIGHT PR

See EE 160 for 1st case

YY-28

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-11941 Pte ENRIGHT, Paul Robert - Perth R. - 3 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	3rd Charge
2nd AA Sec 40	Guilty	Guilty	Pleas bar allowed.
3rd AA Sec 22	NOT Guilty		To be or not to be confirmed
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and on loss of kit see RP 44 fn 8.)

R ~~At present under sentence for~~ beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo A detention for a period of Eight (8) months and to be put under stoppages of 1/- per week. He was made Good £0-11-11 the expenses of his arrest and return

(Sgd) Judge-Advocate, if any. Date awarded 13 Dec/43 (Sgd) President (RP 45, 90.)

(See back of Convening Order re re assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 44(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence Confirmed. The plea in bar of trial on the third charge, is confirmed. EF

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) E Fromoeur BRIG

Date 18 DEC 1943 Commanding D CP COM RFT UNITS Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A 11941 Pte Enright Paul Robert	13/Dec/43	E Fromoeur Brig

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AFA3) 40/P & S 1608 (2064)

Convened by Order of Brigadier G. Francoeur Comd "D" Gp CRU dated 11 DEC 43.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt. Proceedings Reviewed	Full Christian Names.	Surname.	Unit.
A-11941	Pte	Paul Robert	ENRIGHT	3 CIRU Perth R.

Signature Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

R Held in the Fd in (country) England on (date(1)) 13 Dec/43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~waiting Member, JA~~, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns 80c. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc., which matters are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

R A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2)

R The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is (are) brought before the Court. At 11.00 hours trial commences.

R A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

R ~~A5. President to accused: Do you object to an interpreter? Ans~~

R ~~The Interpreter is sworn(1). Do you object to as shorthand writer? Ans~~
~~The shorthand writer is sworn(1).~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do your object to be tried by me as President or by any of the Members of the Court?

Ans NO-SIR
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 1B, MML p 742.)

R A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	REDMAN	D.L	H.Q. C.M.H.Q.
Member	CAPT.	COOKE	M.R.	4 C.A.S.C.R.U.
Member	LIEUT	BROWN	D.H.	41 C.A.S.C.R.U.
~~Judge-Advocate~~				
Prosecutor	LIEUT.	JEWELL	J.M.	43 C.I.R.U.
Defending Offr	LIEUT	CULLITON	F.J.	3 C.I.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans NO to the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment unless RP 89 (B) and fn 1 were not followed. See DI p 3.)

R A8. The accused before arraignment makes(s) ~~(each fact)~~ plea
Not to his term Committed and pronounced per the Officer Commanding (1)
(1. If a special plea is made for separate trial on one or more charges (RP 20(F), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's unsound fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see conferences in fns to RP cited. Insert in All cases and name of the accused making the plea.)

R A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See paras 1 of insers p 2. When more than one Charge Sheet see RP 22; when several accused to be tried separately see RP 71(C), and use separate copies of CF A65 in record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record (per Notes.))

R A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 13

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination : and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - I K (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E1 of Record Form E. 5. Statement, if any, recorded per Notes.)

K B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

K B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41. 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (4), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - I K
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 6, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

K E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~copies~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and them to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFR 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Only by way of Mitigation (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or ask anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

K E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also JA, if any~~.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its commos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44A, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 306, 330, 561-564, Overseas RO 389, 2323, MML p 80, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, Regt., number A.11941, Private Paul Robert ENRIGHT, Perth Regt., a reinforcement on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. SEC. 15(1).

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1030 hrs. 13 Oct 43 until apprehended by M.P. at Brighton at 2000 hrs. 3 Dec 43. (Total absence 51 days, 9 hrs. 30 mins.), incurring cost of apprehension £0/11/11.

SECOND CHARGE
A.A. SEC. 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, on 3 Dec 43, when questioned by Military Police, made a false statement, well knowing it to be false.

THIRD CHARGE
A.A. SEC. 22

WHEN ON ACTIVE SERVICE, WHEN IN LAWFUL CUSTODY, ATTEMPTED TO ESCAPE.

in that he

In the Field, at 2015 hrs., 7 Dec 43, attempted to escape from No. 2 Guard Room, 3 C.I.R.U.

J.A. McIntosh

(J.A. McIntosh) Colonel
Commanding Officer
3 Cdn. Inf. Reinf. Unit

Dated in the Field.
9 Dec 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
11 DEC 43.

G. Francoeur

(G. Francoeur) Brigadier.
Commander,
"D" Group, Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFAB) 40) P&S/697 (2048)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-11941	Pte		Paul Robert	ENRIGHT	3 CIBU Perth R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet~~(s)~~ attached and on (date) 11 DEC 43 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-col. *(Rank.)*	D. L. Redman *(Must be named. RP 106.)*	HQ CMP *(Unit.)*

MEMBERS.

A Captain	to be detailed by CO	1 CASCDE
A Lieutenant *(Rank.)*	to be detailed by CO *(Named or detailed. RP 106.)*	1 CASCDE *(Unit.)*

WAITING MEMBER.

(Rank.)	*(Named or detailed, if any. RP 106.)*	*(Unit.)*

JUDGE-ADVOCATE.

(Rank.)	*(Must be named, if any. RP 106.)*	*(Unit.)*

On Active Service in the Fd

in England *(Country.)*

Date 11 DEC 43

(Signed personally. RP 105 fn 2.) Brigadier. *(Rank.)*

Commanding "D" Group, Cdn Rft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Medical Officers Certificate
K. R. (Can) para 567

I certify that I have this morning examined No. A-1194[illegible] Name & Rank of Perth Regt and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station Aldershot

Date 13 Jan 43

Medical Officer
3 Cdn. Inf. Reinf. Unit.

Trial of A/1944, Pte. P.P. Enright, 2 C.I.R.V. Perth Regt.

Note A-8

When the accused was arraigned upon the third charge, the Defending Officer made a plea under K.R. 36 that the accused had previously been punished for this offence. His appointment of L/Corporal had been terminated by his C.O., and he was reverted to Private. The Defending Officer produced a charge sheet covering the offence in the third charge and stated that there is written on it in the handwriting of Lieut Col. J Fletcher the following words "reverted to the ranks as ~~unsatisfactory~~ unsatisfactory". The charge to be ~~attached~~ added to Court Martial charges". The prosecutor states that the Charge Sheet shows what happened when the accused was before his C.O. on that charge. The Charge Sheet was marked "Exhibit One" by the Court. The Defending Officer refered to para 1113 K.R.&O. (Can) and stated that regardless of what was said on the Charge Sheet it was clear that the reversion to Private was a punishment for the offence mentioned in the third charge.

The Prosecutor replied ~~by~~ by stating:

The accused was not punished for the offence, but because he was unsatisfactory as a L/Corporal as stated on the Charge Sheet.

The Court adjourned to consider the plea.

The Court reopened

The President announced that it finds the plea proven which finding would be notified

Trial of A11941, Pte. P.R. ~~Enright~~ Enright, 2 C.I.R.C.,
Perth Regt., Contd.

~~transferring officer~~.

MB

Plea of Defending Officer in mitigation:

He attended Public School in Stratford, Ontario, being there eight years but only got into the second book. His lack in progress in school is due to sickness and probably to him being backward with the result that he is unable to read and write. He gets a room mate to write home for him and to read his letters for him. He left school at the age of 14. He worked several months on a soft drink truck. At the age of 16, he joined the Army not giving his correct age. He enlisted in the Canadian Army on 15 Jan 41 and has served in many centres in Canada. He got into trouble several times caused by the influence of others as in each case he was found with someone else. It is clear that he could be easily led by older men. He arrived in England in November 1942 and joined the Perth Regt. He went A.W.L. for six days and was given ~~six~~ months detention. At 2 C.R.D. he had to repeat Basic Training. He was recommended to be a L/Cpl which showed improvement on his part. He learnt that the Perth Regt was leaving England, and he was anxious to be with them. He claims that he asked for leave but was refused. His last seven days leave was in April 1943. His purpose in going A.W.L. was to see if someone in the Perth Regt would claim him and get him into the Perth Regt again. This will explain the statement he made to the military police. The Perth Regt had been stationed at Hove but finding the Perths had moved he decided that he might as well make a stay of it and remain until apprehended. The accused is of neat

appearance and has proved his ability because he was made a L/Corporal. I ask the Court to take all these circumstances into consideration and to be lenient in awarding the sentence.

WM

Certified that this is a true copy of the Part II Order Stencil bearing the number 238 d/ 9 Nov 43.

(W.E.Thorne) Captain,
Records Officer,
3 Cdn Inf Reinf Unit.

EXHIBIT "A"

3 CANADIAN INFANTRY REINFORCEMENT UNIT
D A I L Y O R D E R S P A R T II

Last Order No 237 8 Nov 43

issued by
LIEUT-COL D. FLETCHER, V.D.
A/OFFICER COMMANDING

No 238 9 Nov 43

"A"

1. COURSES

A/MAJOR J.M. GREGG RCR	(PE)"H" WING	Returned from CMHQ Crs 760 Ser 2 (Enemy Army & Intelligence) at 1 CGRU wef 6 Nov 43

2. LEAVE OF ABSENCE

(a) A/MAJOR J.H. ANDERSON HLI of C	(PE)"H" WING	Granted 7 days P/L plus 48 hrs pass (Total - 9 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 8 Nov to 16 Nov 43

(b) The u/m are granted 7 days P/L plus 48 hrs pass (Total - 9 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 6 Nov to 14 Nov 43:

A/CAPT J.D. COWIE	PERTH R	(PE)"H" WING
A/CAPT J.R. SHEPHERD	ALQ R	(PE)"H" WING
CAPT A.F. WHITE	RCR	

3. QUALIFICATIONS

The u/m qualified as shown on CRU Crs 12 Ser 5 (Offrs Refresher) wef 23 Oct 43 at Camp 49-A (Auth: AFB 197A d/23 Oct 43):

LIEUT W.G. BOOTH	GEN LIST	"QII"
LIEUT K.D. BULLER	HLI of C	"QII"
LIEUT K.E. BUTLER	HLI of C	"QII"
LIEUT N.A. CHRISTOPHERSON	ALQ R	"QI"
LIEUT J.L. COHEN	ALQ R	"QII"
LIEUT F.J. CULLITON	PERTH R	"QII"
LIEUT J.L. DAVIS	RCR	"QII"
LIEUT F.T. DEBANKE	PERTH R	"QI"
LIEUT J.R. DENT	ESSEX SCOTTISH R	"QII"
LIEUT J.H. GALLOWAY	PERTH R	"QI"
LIEUT W.L. HARPER	ESSEX SCOTTISH R	"QII"
LIEUT F.E. HOLLOWAY	RCR	"QII"
LIEUT W.L. LISCOMBE	ALQ R	"QII"
LIEUT C.M MCARTHUR	RCR	"QI"
LIEUT R.A. MCCANCE	HLI of C	"QII"
LIEUT L.M. MILES	RCR	"QII"
LIEUT G.A. PALMER	ESSEX SCOTTISH R	"QII"
LIEUT H.C. PATTISON	PERTH R	"QII"
LIEUT J.R. REID	HLI of C	"QII"
LIEUT T.E. WOOLLEY	PERTH R	"QII"

"B"

4. STRENGTH INCREASE

(a) A 60162 PTE FOWLER ESSEX SCOTTISH R	A G	TOS from 1 NDTD wef 9 Nov 43 Posted as reinforcement to "H" WING (Auth: CMHQ AT 5854 d/5 Oct 43 (A.G.2))
(b) A 3614 A/L/CPL KILBY RCR	C A	TOS from 1 CGRU wef 9 Nov 43 Posted as reinforcement to "H" WING (Auth: CRU/444/RETURN/1(SCA) d/3 Nov 43)

5. ATTACHMENTS

(a) A 68258 PTE BOISTON ALQ R	(Clerk "C")	S G	Attached fap to HQ CRU wef 9 Nov 43 (Auth: CRU MESSAGE A5573 d/6 Nov 43)

5. ATTACHMENTS (CONTINUED)

(b) A 86195 PTE FLEMING W O Attached fap to CMHQ wef 8 Nov 43
HLI of C (Cat "B2") (Auth: CMHQ AT 6433)

(c) A 49527 PTE FOURNIER L A Ceases to be attached fap to PERTH R
ESSEX SCOTTISH R Fd Unit on admission to 13 Gen Hosp
wef 4 Nov 43

(d) A 71063 PTE KELLY G E R Attached to 1 CASCRU wef 7 Nov 43
RCASC ATT AS IN W.E. (Auth: TRADES TESTING)

(e) The u/m are attached fap to 1 CBOD wef 8 Nov 43 (Auth: CMHQ AT 6458 d/6 Nov 43) (TEMPORARY):

A106192 PTE BAKER			
A112550 PTE BEDNARSKI	J J	G	GEN LIST
A112845 PTE BIRCH			GEN LIST
A106697 PTE CLULOW	H A		GEN LIST
A106471 PTE COWAN	R J		GEN LIST
A 50436 A/CPL GARNETT	C E		GEN LIST
A105740 PTE JONES	G E		ESSEX SCOTTISH R
A 67721 PTE SCHUSSLER	H J		GEN LIST
	W D		GEN LIST

6. ATTACHMENTS--ADDENDUM

Ref Pt II O 237 d/8 Nov 43 para 7(d) insofar as it concerns A105585 PTE FOX F L (GEN LIST), add "Overage"

7. ATTACHMENTS--AMENDMENTS

(a) Ref Pt II O 237 d/8 Nov 43 para 7(d) insofar as it concerns A105862 PTE EDMANSON M P (GEN LIST), "EDMANSON" is amended to read "EDMONDSON"

(b) Ref Pt II O 237 d/8 Nov 43 para 7(d) insofar as it concerns A 64489 PTE GARTON L G (GEN LIST) delete "Overage"

(c) Ref Pt II O 237 d/8 Nov 43 para 7(b) insofar as it concerns C 5894 BDMR PERRODON J L (TORONTO IRISH SUPER TO W.E.), "PERRODON" is amended to read "PERRODOU"

8. PERMANENT ESTABLISHMENT

A 38192 PTE MCAVOY W F Ceases to be absorbed in the (PE)
HLI of C (PE)RHQ (Clerk "C") 3 CIRU and is posted as a reinforcement to "H" WING wef 17 Oct 43

To be absorbed in the (PE) 3 CIRU and is posted to RHQ wef 6 Nov 43

COURSES

A 11377 L/SGT WELCH T L Returned from Battle Drill Crs (Rifle, Mortar & Carrier) at 5 WING CTS wef 6 Nov 43
PERTH R

COURSES--AMENDMENT

Ref Pt II O 237 d/8 Nov 43 para 10(b) insofar as it concerns B 24256 PTE DAVID A P E (GEN LIST), "CMHQ Crs" is amended to read "CIRU Crs"

EDUCATIONAL ASSISTANTS

A 49981 PTE FAIRBANKS J T To be Educational Assistant and carried
ESSEX SCOTTISH R (Overage) SURPLUS TO W.E. wef 1 Nov 43 (Auth: CMHQ/REC/A 49981 dd in (PE) 3 CIRU

C 41846 PTE MILLWARD O E Ceases to be Educational Assistant
RCR (PE) HQ "H" WING and is to be SURPLUS TO W.E. wef 1 Nov and carried (Auth: CMHQ/REC/C 41846 d/5 Nov 43)

5. ATTACHMENTS (CONTINUED)

(b) A 86195 PTE FLEMING W O — Attached fap to CMHQ wef 8 Nov 43 (Auth: CMHQ AT 6433)
HLI of C (Cat "B2")

(c) A 49527 PTE FOURNIER L A — Ceases to be attached fap to PERTH R Fd Unit on admission to 13 Gen Hosp wef 4 Nov 43
ESSEX SCOTTISH R

(d) A 71063 PTE KELLY G E R — Attached to 1 CASCRU wef 7 Nov 43 (Auth: TRADES TESTING)
RCASC ATT AS IN W.E.

(e) The u/m are attached fap to 1 CBOD wef 8 Nov 43 (Auth: CMHQ AT 6458 d/6 Nov 43) (TEMPORARY):

A106192	PTE BAKER	J J	GEN LIST
A117550	PTE EDNARSH	[illegible]	GEN LIST
A117845	PTE BIRCH	H A	GEN LIST
A106697	PTE CLULOW	R J	GEN LIST
A106471	PTE COWAN	C E	GEN LIST
A 50436	A/CPL GARNETT	G E	ESSEX SCOTTISH R
A105740	PTE JONES	H J	GEN LIST
A 67721	PTE SCHUSSLER	W D	GEN LIST

6. ATTACHMENTS--ADDENDUM

Ref Pt II O 237 d/8 Nov 43 para 7(d) insofar as it concerns A105585 PTE FOX F L (GEN LIST), add "Overage"

7. ATTACHMENTS--AMENDMENTS

(a) Ref Pt II O 237 d/8 Nov 43 para 7(d) insofar as it concerns A105862 PTE EDMANSON M F (GEN LIST), "EDMANSON" is amended to read "EDMONDSON"

(b) Ref Pt II O 237 d/8 Nov 43 para 7(d) insofar as it concerns A 64489 PTE GARTON L G (GEN LIST) delete "Overage"

(c) Ref Pt II O 237 d/8 Nov 43 para 7(b) insofar as it concerns C 5894 BDMN PERRODON J L (TORONTO IRISH SUPER TO W.E.), "PERRODON" is amended to read "PERRODOU"

8. PERMANENT ESTABLISHMENT

A 38192 PTE MCAVOY W F — Ceases to be absorbed in the (PE) 3 CIRU and is posted as a reinforcement to "H" WING wef 17 Oct 43
HLI of C (PE)RHQ (Clerk "C")

To be absorbed in the (PE) 3 CIRU and is posted to RHQ wef 6 Nov 43

9. COURSES

A 11377 L/SGT WELCH T L — Returned from Battle Drill Crs (Rifle, Mortar & Carrier) at 5 WING CTS wef 6 Nov 43
PERTH R

10. COURSES--AMENDMENT

Ref Pt II O 237 d/8 Nov 43 para 10(b) insofar as it concerns B 24956 PTE DAVID A F E (GEN LIST), "CMHQ Crs" is amended to read "CRU Crs"

11. EDUCATIONAL ASSISTANT'S

(a) A 49981 PTE FAIRBANKS J T — To be Educational Assistant and carried SURPLUS TO W.E. wef 1 Nov.43 (Auth: CMHQ/REC/A 49981 d/5 Nov 43)
ESSEX SCOTTISH R (Overage)

(b) C 41846 PTE MILLWARD O E — Ceases to be absorbed in (PE) 3 CIRU and is to be Educational Assistant and carried SURPLUS TO W.E. wef 1 Nov 43 (Auth: CMHQ/REC/C 41846 d/5 Nov 43)
MCR (PE) HQ "H" WING

11. EDUCATIONAL ASSISTANT'S (CONTINUED)

(c) B 24957 PTE NOTT M A — To be Educational Assistant and carried SURPLUS TO W.E. wef 1 Nov 43 (Auth: CMHQ/REC/B 24957 d/5 Nov 43)
GEN LIST

12. PUNISHMENTS

A 50570 PTE COUTURE D E — AA 15(1) AWL from 2359 hrs 31 Oct 43 to 0810 hrs 2 Nov 43(Total Absence 1 day 8 hrs 11 mins)
ESSEX SCOTTISH R (Underage)
Awarded forfeiture of 14 days Pay FR&I 149(2) and 14 days C.B. on 4 Nov 43
Forfeits 2 days Pay FR&I 149(1)(a)
TOTAL FORFEITURE: 16 days Pay

13. APPOINTMENTS, PROMOTIONS & REVERSIONS

(a) The u/m revert to the rank of A/L/CPL on return from Crs wef 6 Nov 43:

A 82168 A/SGT BUTCHER J A
A 82255 A/CPL ROBINET L H
RCR

(b) The u/m revert to the rank of CPL on return from Crs wef 6 Nov 43:

A 76013 A/SGT BIEHL H V — GEN LIST
E 52851 A/SGT LACELLE R — RCR
A 76064 A/SGT LEGGE R H — GEN LIST
A 50173 A/SGT MCGEE G A — ESSEX SCOTTISH R
F 54704 A/SGT MCKINNON J F — ESSEX SCOTTISH R

(c) A 50291 A/SGT HUTCHESON J J A — Reverts to the rank of A/CPL on return from Crs wef 6 Nov 43
ESSEX SCOTTISH R

(d) The u/m revert to the permanent grade of PTE on return from Crs wef 6 Nov 43:

A 50396 A/L/CPL ALTIMAN L S — GEN LIST
A 60071 A/L/CPL COLENUTT H L — ESSEX SCOTTISH R

(e) A 11916 A/CPL EICHLER C B — Reverts to the permanent rank of L/CPL on return from Crs wef 6 Nov 43
PERTH R

(f) The u/m are to be A/CPL's wef 1 Nov 43:

C 41846 PTE MILLWARD O E — RCR
B 24957 PTE NOTT M A — GEN LIST
A 43981 PTE FAIRBANKS J T — ESSEX SCOTTISH R (Overage)

14. APPOINTMENTS, PROMOTIONS & REVERSIONS--AMENDMENT

Ref Pt II O 237 d/8 Nov 43 para 13 insofar as it concerns A 36192 A/L/CPL MCAVOY W F (HLI of C)(PE/MEQ "6 Oct 43" is amended to read "6 Nov 43"

15. HOSPITALS

			Admissions	
(a)	A117480 PTE ALEXANDER E K		8 Gen	8 Nov 43
	GEN LIST			
	A 22179 PTE CENNAMO P J		8 Gen	7 Nov 43
	ESSEX SCOTTISH R (Cat "B2")			
	D 57891 PTE CUCO J		3 CMC	8 Nov 43
	ESSEX SCOTTISH R			
	A 60492 A/L/CPL KING C		3 CMC	8 Nov 43
	RCR (Overage) (PE)"A" WING			
	A105632 PTE MARR R J		3 CMC	8 Nov 43
	GEN LIST			

15. HOSPITALS (CONTINUED)

Transfers

(b)	A 11693 PTE FLEMING PERTH R	M	A	2 Gen to 17 Gen	23 Oct 43
	A 3883 CPL MICHALSKI RCR (Dr Mech "C")	E	T	Alton Con to 16 Gen	4 Nov 43
	A 49682 PTE WILDE HLI of C	K	W	2 Gen to Alton Con	5 Nov 43

Discharges

(c)	A106154 PTE GRANT HLI of C	N	G	17 Gen	8 Nov 43
	A106429 PTE HERTEL GEN LIST	H	G	8 Gen	8 Nov 43
	H 8152 PTE HOBEN HLI of C		V	2 Gen	8 Nov 43
	A 49717 PTE STERLING HLI of C	C	L	2 Gen	8 Nov 43

16. HOSPITALS--AMENDMENT

Ref Pt II O 225 d/25 Oct 43 para 13(a) insofar as it concerns D 3001 CPL COUBROUGH H M D (RCR), "CPL" is amended to read "A/CPL" and "H M D" to read "H M" and "Dr Mech "C"" to read "Motor Mech "C""

17. LEAVE OF ABSENCE

(a)	A 3287 CPL BINDNER RCR	F	F S P	Granted 14 days P/L plus 48 hrs pass (Total - 16 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 9 Nov to 24 Nov 43
(b)	A117558 PTE MYERS GEN LIST	J	V	Granted 7 days P/L plus 48 hrs pass (Total - 9 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 5 Nov to 13 Nov 43
(c)	A 59588 PTE SUMSION CDC	J	V	Granted 7 days P/L plus 48 hrs pass (Total - 9 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 8 Nov to 16 Nov 43

(d) The u/m are granted 7 days P/L plus 48 hrs pass (Total - 9 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 6 Nov to 14 Nov 43:

A 11124 CPL BARNES		L	PERTH	(PE)"H" WING
D 71958 PTE BRIGHTON	C	J	RCR	
A 3594 PTE BRUSH	C	O	RCR	
A 3041 CSM BRISTOW	A	W	ESSEX SCOTTISH R	
A 4036 PTE DECHESNE	M	P	RCR	
B 19677 PTE FLAHERTY	F	R	GEN LIST	
B 28863 A/L/BDR GARTEN		H	RCA (L&W REGT)	
C 40203 PTE GOULET		L	PERTH R	
A 3672 SGT HANDYSIDES	J	K	RCR	
A 6038 PTE HAYES		D	RCR	
A 37231 L/SGT HEDLEY	W	L	HLI of C	(PE)"H" WING
A105783 PTE INDER	C	A	GEN LIST	
A 11469 PTE JOHN	A	E	PERTH R	
A117422 PTE LUCAS	J	L	GEN LIST	
D 72275 PTE MCCABE	G	J	RCR	
A 37889 PTE MCCAULEY		J	HLI of C	
A105853 PTE MCGUFFIN	A	G	GEN LIST	
D 82524 PTE MCCREATH	J	G	RCR	
B 87823 L/CPL ORMANDY	O	G	RCR	
A 11069 PTE PRATT	K	C	PERTH R	
H 1967 PTE ROE		S	GEN LIST	
B135747 PTE STACEY	W	W	ALQ R	
A105384 PTE STANLAKE	J	L	GEN LIST	

17. LEAVE OF ABSENCE (CONTINUED)

(d)	A 20646 PTE WATERMAN	R	V	RCR
	A104649 PTE WATSON	J	D	ESSEX SCOTTISH R
	A 89223 PTE WILLIAMS		Q	ESSEX SCOTTISH R
	D 71516 SGT WILLIAMS	W	A D	HLI of C (PE)"H" WING
	B132197 PTE WILLIS		A B	RCR
	A104625 PTE WOOD		A E	ESSEX SCOTTISH R

18. ABSENCE WITHOUT LEAVE

(a)	A 37918 PTE CLARK HLI of C	R	J	AWL from 2359 hrs 7 Nov 43
(b)	B 42087 PTE HANCOCK ALQ R		H	AWL from 2359 hrs 7 Nov 43
(c)	A 3553 PTE HANSFORD RCR		J	AWL from 2030 hrs 30 Oct 43 8th day of Absence 2030 hrs 7 Nov 43
(d)	A 11678 PTE KEESO PERTH R	A	J	AWL from 2359 hrs 7 Nov 43
(e)	A 11904 PTE TEATHER PERTH R		A	AWL from 2359 hrs 7 Nov 43

19. ABSENCE WITHOUT LEAVE--CANCELLATIONS

(a) Ref Pt II O 237 d/8 Nov 43 para 17(f) insofar as it concerns A 3288 PTE HASTINGS A (RCR), is cancelled

(b) Ref Pt II O 236 d/6 Nov 43 para 13(a) insofar as it concerns A 3872 PTE EDWARDS A (RCR), is cancelled

20. QUALIFICATIONS

A 59804 PTE WALKER PERTH R (PE)"A" WING — A B — Qualified "G2" at CRU Crs 4 Ser 23 (Regt'l Water Duties) wef 9 Oct 43 (Auth: AFB 1974 d/3 Nov 43)

21. CHANGE OF DATE OF BIRTH

D127784 PTE BROCHU GEN LIST — J A G — Change Date of Birth from 23 Mar 1923 to 1 Nov 1926 All documents to be amended accordingly (Auth: CMHQ/REC/D/127884 R.2.Admin d/2 Nov 43)

22. CHANGE OF NEXT OF KIN

A 56574 PTE NEWTON RCR (PE) RHQ — D Y — Next of Kin now is: MRS MARY WINNIFRED NEWTON (Wife), 41 BEDALE AVENUE BILLINGHAM-ON-TEES, DURHAM, ENGLAND

23. CHANGE OF ADDRESS/NEXT OF KIN

(a) A106429 PTE HERTEL GEN LIST — H G — Address of Next of Kin now is: MRS MARGARET HERTEL (Wife), 127 STRANGE STREET, KITCHENER, ONTARIO, CANADA

(b) H 8152 PTE HOBEN HLI of C — V — Address of Next of Kin now is: MRS PATRICIA HOBEN (Wife), 106 NORTH HILL STREET, PORT ARTHUR, ONTARIO, CANADA

(c) B 55628 PTE PARKER ALQ R (Dr Mech "C") — W F — Address of Next of Kin now is: MRS IVY ELIZABETH PARKER (Wife), 2 CHANDOS STREET, TORONTO, ONTARIO, CANADA

24. CHANGE OF RELIGION

A 68190 SGT BASTIEN GEN LIST — M F J — Change Religious Denomination from R.C. to read C of E. All documents to be amended accordingly (Auth: CMHQ REC/A/68190 R.2. Admin d/2 Nov 43)

25. PAY & ALLOWANCES

The u/m are granted increased rates of Pay as shown wef dates shown having completed the required service with efficiency and good conduct (Auth: G.O. 486/42):

		EFF DATE $1.40	EFF DATE $1.50
A 21268 PTE ALDOUS	L W	7 Nov 43	
ESSEX SCOTTISH R (PE)HQ "H" WING			
B132809 PTE JONES	M P		8 Nov 43
A117948 PTE MCTAGGART	J A		6 Nov 43
GEN LIST			

26. PAY & ALLOWANCES--CANCELLATIONS

(a) Ref Pt II O 64A d/21 Apr 43 para 1(b) and 1(j) insofar as it concerns B 42241 PTE BANNERMAN W G (RCR), is cancelled

(b) Ref Pt II O 64A d/21 Apr 43 para 1(j) insofar as it concerns B 42176 PTE BRAINE A W (RCR), is cancelled

(c) Ref Pt II O 64A d/21 Apr 43 para 1(j) insofar as it concerns B 41921 PTE CLARK P T (RCR), is cancelled

(d) Ref Pt II O 180A d/4 Sep 43 para 1(b) insofar as it concerns A104645 PTE DUMMER A E (GEN LIST), is cancelled

(e) Ref Pt II O 64A d/21 Apr 43 para 1(j) insofar as it concerns B 42133 PTE KOSTUK A L (RCR), is cancelled

(f) Ref Pt II O 64A d/21 Apr 43 para 1(j) insofar as it concerns B 42002 PTE LAMBERT C V (RCR), is cancelled

(g) Ref Pt II O 64A d/21 Apr 43 para 1(j) insofar as it concerns B 42182 PTE MACBRIDE R V (RCR), is cancelled

(h) Ref Pt II O 64A d/21 Apr 43 para 1(j) insofar as it concerns B 42124 PTE MCKEE A Y (RCR), is cancelled

27. STRENGTH DECREASE

(a)	A 3771 PTE ARMITAGE RCR	H W	SOS to 1 NETD while in 10 Gen Hosp wef 4 Nov 43 (Auth: Cat "E")
(b)	A 82205 PTE ASHER GEN LIST	J I	SOS to 1 CSRU wef 8 Nov 43 (Auth: SP&M PERS in U.K.)
(c)	B142747 PTE CLUSIEAU RCR	A	SOS to 1 NETD while in 1 NEURO Hosp wef 4 Nov 43 (Auth: Cat "E")
(d)	A 42465 PTE FITZSIMONS PERTH R	N B	SOS to 1 NETD while in 1 NEURO Hosp wef 4 Nov 43 (Auth: Cat "E")
(e)	P 15372 CPL MACMANUS RCR	J P	SOS to 1 CASCRU (C&B WING) while attached to 7 CIRU wef 6 Nov 43 on transfer from Cdn Inf Corps to RCASC (Auth: CRU 408/C&B WING/1 (SCA) d/6 Nov 43)
(f)	A 56997 CPL MALCOLM GEN LIST	J A	SOS to 1 CERU pending transfer from Cdn Inf Corps (Gen List) to RCE wef 8 Nov 43 (Auth: CRU 408/TRANS "M"/2 (SCA) d/1 Nov 43)
(g)	B 8023 PTE SANDERS RCA	S F	SOS to 3 CARU wef 8 Nov 43 (Auth: CRU-408/C&B WING/1 (SCA) d/4 Nov 43)

27. STRENGTH DECREASE (CONTINUED)

(h) A 11941 PTE ENRIGHT P R — SOS as a DESERTER wef 4 Nov 43 having been found by a Court of Inquiry to have been illegally absent from 1030 hrs 13 Oct 43
PERTH R

Placed under Stoppages of Pay to the amount of £9/17/5½ to recover cost of deficiencies of Kit FR&I 158(2) (Auth: Approved MFB 375 d/4 Nov 43)

(i) A 3544 PTE TAYLOR C — SOS as a DESERTER wef 3 Nov 43 having been found by a Court of Inquiry to have been illegally absent from 1330 hrs 12 Oct 43
RCR

Placed under Stoppages of Pay to the amount of £7/13/2½ to recover cost of deficiencies of Kit FR&I 158(2) (Auth: Approved MFB 375 d/3 Nov 43)

(j) The u/m are SOS to 1 CGRU wef 6 Nov 43 (Auth: ECH ESI/1757 d/5 Nov 43):

A103442 PTE VALE	F	G	GEN LIST
A 38142 PTE VOISIN	R	N	HLI of C

(k) A 37236 PTE BELCHER C W — Ceases to be posted SURPLUS TO W.E. and is SOS to 1 CCRU wef 6 Nov 43 (Auth: ECH ESI/1757 d/5 Nov 43)
HLI of C SURPLUS TO W.E.

28. STRENGTH DECREASE--AMENDMENTS

(a) Ref Pt II O 169 d/23 Aug 43 para 25(h) insofar as it concerns the u/m "wef 21 Aug 43" is amended to read "wef 25 Aug 43":

A116892 PTE DESJARDINS	R	G	GEN LIST
D136749 PTE GRAHAM	L	C	GEN LIST
D 71667 L/CPL MCNAUGHTON	D	W	RCR
B132837 PTE TAMMINEN	T	V	ESSEX SCOTTISH R

(b) Ref Pt II O 231 d/1 Nov 43 para 26 insofar as it concerns A106458 PTE GEHL R A (GEN LIST), "SOS to MASSEY FOUNDATION CONVALESCENT HOME" is amended to read "SOS to 1 CGRU"

(c) Ref Pt II O 237 d/8 Nov 43 para 24(f),(g) & (h) insofar as it concerns the u/m "Auth: CMHQ 408/DR COND/1 (SCA) d/3 Nov 43" is amended to read "CRU 408/DR COND/1 (SCA) d/3 Nov 43":

K 62377 PTE BRINKMAN	D	W	C SCOT R (PE)"A" WING (Cat "B2")
M 12290 PTE CHESWORTH		E	C SCOT R (PE)"A" WING (Cat "B2")
A 21715 PTE MARACLE		H	ESSEX SCOTTISH R (PE)"A" WING (Overage)
A 21735 PTE JONES	B	L	ESSEX SCOTTISH R SUPER TO W.E. (Overage)
A 21532 PTE OUIMET		A	ESSEX SCOTTISH R SUPER TO W.E. (Cat B2)
A 21442 PTE SCALES		J	ESSEX SCOTTISH R SUPER TO W.E. (Overage)
D 71633 PTE DAVIS	C	W	RCR (Cat "C2")

"C"

SPECIAL INCREMENT

29. LIEUT J.W. DOUGLAS — TOS from ALQ (SPEC INC) wef 7 Nov 43
ALQ R — Posted as reinforcement to "H" WING
(Auth: ECH 99/29/ALGON R/1 d/26 Oct 43)

CHC

(W.E. THORNE) CAPT.,
RECORDS OFFICER
3 CDN INF REINFORCEMENT UNIT
CDN ARMY OVERSEAS

Certified that this is a true copy of the Part II Order Stencil bearing the number 262 d/7 Dec 43.

(W.E.Thorne) Captain,
Records Officer,
3 Cdn Inf Reinf Unit.

3 CANADIAN INFANTRY REINFORCEMENT UNIT
D A I L Y O R D E R S P A R T II
issued by
COLONEL J.A. MCINTOSH, D.S.O., E.D.
OFFICER COMMANDING

Last Order
No 261
6 Dec 43

No 262
7 Dec 43

EXHIBIT "B"

"A"

1. STRENGTH INCREASE

The u/m are TOS from 1 CGRU wef 5 Dec 43 Posted as Reinforcement to "H" WING (Auth: CMHQ/44/DESPATCH/2/6/(AG2a) d/29 Nov 43)

CAPT D.T. HARLEY	HLI of C
CAPT A.M. HAYES	ESSEX SCOTTISH R
MAJOR H.J. KENNEDY	ESSEX SCOTTISH R
MAJOR C.N. CLARK	ESSEX SCOTTISH R

2. ATTACHMENTS

CAPT B.G. MCCURDY RCAMC	Attached fsp (TEMPORARY) from 1 CGRU wef 5 Dec 43

3. COURSES

LIEUT W.W. CAMERON L & W REGT	Proceeded on CMHQ Crs 701 Ser 28-W (Gas Offr & Gas NCO)(6 Dec - 18 Dec 43 at Army Gas School wef 6 Dec 43

4. HOSPITAL

The u/m are admitted to 8 Gen Hosp wef 6 Dec 43:

LIEUT E.L. ROBERTS	RCR	(PE) "I" WING
MAJOR W.F. WANSBROUGH	HLI of C	

5. LEAVE OF ABSENCE

The u/m are granted 7 days P/L plus 24 hrs pass (Total - 8 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 4 Dec 43 to 11 Dec 43:

LIEUT R.L. CHANTLER	HLI of C	(PE) "H" WING
LIEUT R.A. MCCANCE	HLI of C	

6. STRENGTH DECREASE

LIEUT W.C. WILSON ESSEX SCOTTISH R	SOS to ESSEX SCOTTISH R Pd Unit wef 6 Dec 43 (Auth: Reinf Demand 2735 d/ 5 Dec 43)

"C"

SPECIAL INCREMENT

7. STRENGTH INCREASE

A/CAPT A.K. MCTAGGART HLI of C	TOS from HLI of C Pd Unit (Special Increment) wef 5 Dec 43 Posted as Reinforcement to "H" WING (Auth: ECH/ 99/29/HLI of C/1 d/22 Nov 43)

"B"

8. STRENGTH INCREASE

(a) A 21589 PTE BURD ESSEX SCOTTISH R (Overage)	W	TOS from 2 CDN RAILWAY OPERATING COY RCE wef 21 Sep 43 Posted to "H" WING (Auth: CMHQ/10/BURD 1/1(AG2e) d/10 Sep 43
(b) A 11941 PTE ENRIGHT PERTH R	P R	TOS from DESERTION wef 3 Dec 43 having been apprehended by Military Police at BRIGHTON at 2000 hrs 3 Dec 43 (Held in Close Arrest)
(c) B 24919 PTE LAUZON GEN LIST	L A J	TOS from CCS RCAMC wef 6 Dec 43 Posted as Reinforcement to "H" WING (Auth: CMHQ Adm Order 167 d/22 Nov 43)
(d) A 11995 PTE TIDS RC/SC	P G A	TOS from 2 CDN MOTOR ANB CONVOY RCASC wef 5 Dec 43 pending transfer from RCASC to CDN INF CORPS (PERTH R) Posted to "H" WING (Auth: ECH/99/Unfit Gen/1 d/29 Nov 43)

9. ATT/CHMENTS

(a) A 59697 PTE CONNOY J F Attached fap (TEMPORARY) to 1 CBOD on discharge from 2 Gen Hosp wef 6 Nov 43
ESSEX SCOTTISH R

(b) The u/m cease to be attached fap (TEMPORARY) to CAPE BRETON HIGHRS Fd Unit wef 6 Dec 43:

A116483 PTE JOHNSON S
B 24950 PTE LAZZARO S
B 24904 PTE LITTLE J S L
B 79233 PTE LUNT J P
GEN LIST

(c) B 64664 RFN MAIR J W Attached fap (TEMPORARY) to 1 CDN GEN PION COY wef 6 Dec 43 (Auth: DGHQ/ST-86 d/6 Dec 43)
QOR of C (Cat "B1")

(d) A 23370 A/L/CPL STICKLEY R R Ceases to be attached fap (TEMPORARY) to 2 (TECH) WING CTS wef 6 Dec 43
GEN LIST (PE) "I" WING

(e) The u/m cease to be attached fap to 8 CDN FD REGT RCA wef 6 Dec 43:

D156086 PTE LACOSTE L L & W REGT
A106314 PTE MELANCON R P GEN LIST
A116498 PTE MONTPETIT R H GEN LIST
C 58455 PTE PERRY H P PERTH R
A 82140 PTE SIVYER T S ESSEX SCOTTISH R
A105855 PTE STEELE C F GEN LIST
A106602 PTE STEWART C L GEN LIST
A 76077 PTE WEBER W R GEN LIST
A106611 PTE WIFFEN G W GEN LIST

(f) The u/m cease to be attached fap except pay from Units shown on completion of CMHQ Crs 725B Ser 11 (PT) wef 4 Dec 43:

A 32079 GNR BILLINGS J D 1 CORU
D 7551 GNR BOULANGER R 1 CORU
M 37076 GNR CHEW J E 1 CORU
M102264 SPR GABRIELSON R A 6 CCS
C 15589 PTE GALLINGER G W 1 CBOD
D150160 PTE GARDREAU N 6 CIRU
M100414 GNR GLINTZ A L 1 CORU
A 20479 SPR KELLESTINE G W 1 CMRU
E120178 PTE LAVIGNE R 6 CIRU
D121174 GNR OSTIGUY J I M 1 CORU
B 39024 A/L/CPL OULLAHAN 1 CSRU
K 65409 A/L/CPL ROCHE 1 CSRU
L102264 L/CPL SHAW C C 5 CIRU
L 67247 SPR SLOBODA W B 1 CERU
K 50471 GNR TRUDEAU P T 2 CARU

10. ATT/CHMENTS - CANCELL/TIONS

Ref Pt II O 261 d/6 Dec 43 para 6(e) insofar as it concerns A 23185 PTE SQUIRES G W (ESSEX SCOTTISH R), is cancelled

11. COMPASS

A105892 PTE WATERS D F Returned from CAU Crs 4 Ser 25 (Regt'l Water Duties) at 1 CORU wef 4 Dec 43
GEN LIST

12. PUNISHMENTS

(a) A 11691 PTE BARR R T AA 15(1) AWL from 2215 hrs 3 Dec 43 to 0145 hrs 4 Dec 43 (Absent 3 hrs 30 mins)
PERTH R
Awarded 15 days Field Punishment on 6 Dec 43
Forfeits 15 days Pay FR&I 149 (1)(b)

12. PUNISHMENTS (CONTINUED)

(b) C 58234 PTE FELTEAU — B
PERTH R
AA 15(1) AWL from 0600 hrs 15 Nov 43 to 1030 hrs 30 Nov 43 (Absent 15 days 4 hours 30 mins)
Awarded 28 days Field Punishment on 4 Dec 43
In close arrest from 1030 hrs 30 Nov to 1000 hrs 4 Dec 43
Forfeits 16 days Pay FR&I 149(1)(a)
Forfeits 28 days Pay FR&I 149(1)(b)
Forfeits 3 days Pay FR&I 149(1)(c)(ii)
TOTAL FORFEITURE: 47 days Pay

(c) B 45432 PTE KOSOWAN — J
GEN LIST
AA 24(2)
Placed under Stoppages of Pay to the amount of $55.72 FR&I 158(2)on 6 Dec

(d) A117750 PTE LESTER — J D
GEN LIST
AA 11 (Auth: DGHQ 6-0-K d/4 Dec 43)
Awarded forfeiture of 2 days Pay FR & 149(2) and 7 days C.B. on 6 Dec 43

(e) A 61522 PTE O'NEIL — J H
GEN LIST
AA 11
Awarded forfeiture of 2 days Pay FR&I 149(2) and 7 days C.B. on 6 Dec 43

(f) A 28608 GNR REDFERN — G H
RCA (GEN LIST)
AA 10
Awarded forfeiture of 1 days Pay FR&I 149(2) and 7 days C.B. on 6 Dec 43

(g) A 68005 PTE Schultz — A E
GEN LIST
AA 11 Awarded forfeiture of 2 days Pay FR&I 149(2) and 7 days C.B. on 6 Dec 43

(h) A102516 PTE WOOLWORTH — M A
HLI of C
AA 15(1) AWL from 1000 hrs 4 Dec 43 to 1200 hrs 4 Dec 43 (Absent 2 hours)
Awarded forfeiture of 2 days Pay FR&I 149(2) and 14 days C.D. on 6 Dec 43

13. PUNISHMENTS -- AMENDMENTS

(a) Ref Pt II O 252 d/25 Nov 43 para 11(b) insofar as it concerns B 45432 PTE KOSOWAN J (GEN LIST), delete "Forfeits 7 days Pay FR&I 149(1)(a)" and "TOTAL FORFEITURE: 21 days Pay" is amended to read "TOTAL FORFEITURE: 14 days Pay"

(b) Ref Pt II O 217 d/15 Oct 43 para 7(f) insofar as it concerns A 20695 PTE SOLOMAN H (GEN LIST), Delete "Forfeits 28 days Pay FR&I 149(1)(b)" and "TOTAL FORFEITURE: 72 days Pay" is amended to read "TOTAL FORFEITURE: 44 days Pay"

14. APPOINTMENTS, PROMOTIONS & REVERSIONS

A 23370 A/L/CPL STICKLEY — R R
GEN LIST (PE) "I" WING
Reverts to the Permanent Grade of PTE wef 6 Dec 43 on return from ors

15. PERMANENT ESTABLISHMENT

A116453 PTE HENDERSON — J C
GEN LIST (PE) "I" WING
(Clerk "C")
Ceases to be absorbed in the (PE) 3 CIRU and is posted as Reinforcement to "H" WING wef 6 Dec 43

16. HOSPITAL

Admissions

(a) A106151 PTE HERBERT — W G
GEN LIST
16 Gen — 6 Dec 43

Transfers

(b) H 64671 A/CPL SOBKOWICZ — J C
R WPG R (Clerk "C")
8 Gen to 1 Spec — 3 Dec 43

A 37949 PTE THURLOW — W C T J
HLI of C
Mt. Vernon Hosp to 12 Gen — 3 Dec 43

A 37398 PTE WILSON — W
HLI of C
2 Gen to 1 Spec — 2 Dec 43

16. HOSPITAL (CONTINUED) — Discharges — 6 Dec 43

(a) D 72545 A/L/CPL GILLIGAN — N 1 CMC
RCR.

17. LEAVE OF ABSENCE

The u/m are granted 7 days P/L plus 24 hrs pass (Total - 8 days) with money allowance in lieu of rations under FR&I(O) 789 (3) & (4) from 4 Dec 43 to 11 Dec 43:

A116782	PTE ANDERSON	D	H	GEN LIST
B 41688	PTE BRAY	H	R	ALQ R
A 4012	PTE BYRNE	W	A	RCR
B133141	A/L/CPL CHILD	D	F	ESSEX SCOTTISH R
B 54991	PTE CHRISTIAN		W	ALQ R
A 11862	CPL COTTEL	C	T	PERTH R
A 67873	PTE EASSON	J	H	GEN LIST
A 37752	SGT ELMES	A	W	HLI of C (PE) "H" WING
D 55423	PTE EMPIE	B	H	ALQ R
A 76148	PTE EVERS	M	E	GEN LIST
B13914[illegible]	PTE FARQUHAR	A	L	GEN LIST
A 67772	PTE FICKLING		J	GEN LIST
H 1192	PTE GARDINER	E	S	GEN LIST
D106567	PTE GOLDSTEIN		S	RCR
A 11021	PTE GROSE	V	F	PERTH R
A 71077	PTE HAIR	H	T	RCR
B 41171	PTE HANNIGAN	N	M	L & W REGT
A102432	PTE HANNAUER		J	GEN LIST
D 71589	PTE HERDMAN	N	J	RCR
A 40949	PTE HOLMES		T	ESSEX SCOTTISH R
A 61022	PTE KAY	W	J	GEN LIST
A 11167	PTE KING	C	P	PERTH R
B135521	PTE LONG	G	F	L & W REGT
A117173	PTE LOTT	F	E	GEN LIST
A 38091	A/CPL LUCAS	F	R	HLI of C (PE) "H" WING
A 11065	PTE MARSHALL	M	R	PERTH R (PE) "H" WING
B 87957	A/SGT MARSHELLO	A	J	RCR
A 22569	PTE MAXIM		P	ESSEX SCOTTISH R (PE) "H" WING
B 55639	PTE MILLER		M	ALQ R
R 1996	PTE MORRIS		W	GEN LIST
A 38002	SGT MUIR	G	A	HLI of C
A116597	PTE PASTORIUS	E	J	GEN LIST SURPLUS TO WE
B 24929	PTE PIEPER		J	GEN LIST
A 61048	PTE PLANT		R	GEN LIST
A 11914	PTE ROSSO	J	R	PERTH R
A116752	PTE SIMARD	R	P	GEN LIST
A106057	PTE STUDHAM	A	C	GEN LIST
A116865	PTE TEARE	D	L	GEN LIST
A 5041	A/L/SGT TREBELL		R	RCR
A106074	PTE TURNER		F	GEN LIST
A116550	PTE WEBSTER	H	T	HLI of C
A 67745	PTE WEILER	B	J	GEN LIST
A 23329	PTE WHITEYE		J	ESSEX SCOTTISH R
P 13162	A/CSM WILLIAMS	E	J	RCR (PE) "H" WING
A 37407	L/SGT WILSON	B	J	HLI of C
D 24915	PTE ZETTEL		H	GEN LIST

18. ABSENCE WITHOUT LEAVE

(a) A 21589 PTE BURD — W AWL from 1930 hrs 20 Sep 43
ESSEX SCOTTISH R (Overage)

(b) A 21589 PTE BURD — W Surrendered from AWL to the Civil Police in DERBY at 0830 hrs 20 Nov 43 (Held in Close Arrest)
ESSEX SCOTTISH R (Overage)

18. ABSENCE WITHOUT LEAVE (CONTINUED)

(c) The u/m are AWL at times shown:

A 56637 CPL FRANZ PERTH R	R R	2359 hrs 5 Dec 43	
A 3630 PTE HUNT RCR	J W	2359 hrs 5 Dec 43	
B136964 PTE MILLER L & W REGT	C S	2359 hrs 5 Dec 43	
A 21139 PTE MCELROY A 22351 PTE RUSSELL ESSEX SCOTTISH R	C E J D	2200 hrs 5 Dec 43	
(d) A 5036 PTE FITZJAMES RCR (Cat "B2")	D V	Returned from AWL at 1800 hrs 5 Dec 43	
(e) A 4036 PTE DECHESNE RCR	M P	AWL from 2359 hrs 14 Nov 43 21st day Absence 2359 hrs 5 Dec 43	
(f) A 3059 PTE FOURNIER RCR	F J	AWL from 2359 hrs 13 Nov 43 21st day Absence 2359 hrs 4 Dec 43	

19. ABSENCE WITHOUT LEAVE--CANCELLATIONS

Ref Pt II O 261 d/6 Dec 43 para 15(a) insofar as it concerns A 23357 PTE GILLETT R T (ESSEX SCOTTISH R - SURPLUS TO WE), is cancelled

20. QUALIFICATIONS

(a) The u/m qualified as Drs 1/c (W) at 3 CIRU Crs 11A wef 4 Dec 43 (Auth: 3 CIRU/C.I. d/6 Dec 43:

A 88007 PTE ADAMS	L W	GEN LIST	(Dr Mech "C")
A 88078 PTE BOWERN	J M	GEN LIST	(Dr Mech "C")
A 88079 PTE BOWERN	M J	GEN LIST	
B132830 PTE CAIRNS	R G	GEN LIST	(Dr Mech "C")
A 58381 PTE CARON	G M	GEN LIST	
A 64839 PTE CORNWALL	S A	GEN LIST	
B 65996 PTE DAWDY	E D	ALO R	
H 1608 PTE EGILSSON	A L	GEN LIST - L	(Dr Mech "C")
B133140 PTE FARQUHAR	A L	GEN LIST	(Dr Mech "C")
B 55462 PTE FENTON	W F	ALO R	(Dr Mech "C")
D 71588 PTE GIROUX	O W	RCR	
A132909 PTE HEASLIP	D W	GEN LIST	(Dr Mech "C")
B 24924 PTE HUEHN	H R	GEN LIST	(Dr Mech "C")
B 24951 PTE KEMP	D H	GEN LIST	
A115029 PTE MARENTETTE	R J	GEN LIST	(Dr Mech "C")
A 76083 PTE MARTIN	H W	GEN LIST	
A 61070 PTE RIVERS	E B	GEN LIST	
A115024 PTE ROMANISH	J	GEN LIST	
A 88093 PTE WILSON	R C	GEN LIST	(Dr Mech "C")
B 24915 PTE ZETTEL	H	GEN LIST	

(b) The u/m qualified at CMHQ Crs 725B Ser 10 (Command Boxing) wef 20 Nov 43 (Auth: SE/3407/G(PT) d/1 Dec 43):

H 1782 PTE GINN	R T	GEN LIST
H 1996 PTE MORRIS	W	GEN LIST

21. PERMISSION TO MARRY

(a) A 11740 A/L/CPL SAGER PERTH R — R E — Granted permission to marry MISS ELSIE CLAYTON on or after 2 Feb 44 in accordance with ORO 3744 (Auth: CMHQ 1000 110s 40/P&S/1237 (3871) d/2 Dec 43)

22. CHANGE OF NAME OF NEXT OF KIN

A148002 PTE CARP GEN LIST — H H J — Name of Next of Kin now is: MRS EVA CARP (Wife), 518 BRUNSWICK AVENUE, TORONTO, ONTARIO, CANADA

23. CHANGE OF NEXT OF KIN

A 44703 PTE RUSTON — L I — Next of Kin now is: MRS ANNA PEARL RUSTON (Mother), LAIRD AVENUE, ESSEX, ONTARIO, CANADA
PERTH R

24. CHANGE OF ADDRESS/NEXT OF KIN

(a) A 61020 PTE LAPOINTE — R L — Address of Next of Kin now is: MRS ALIDA LAPOINTE (Mother), 2583 TURNER ROAD, WINDSOR, ONTARIO, CANADA
GEN LIST

(b) A 21663 PTE O'CONNOR — R — Address of Next of Kin now is: WREN JEAN O'CONNOR (Wife), H.M.C.S.CORNWALLI CORNWALLIS, NOVA SCOTIA, CANADA
ESSEX SCOTTISH R (PE) RHQ

25. CHANGE OF CATEGORY

(a) A 64493 PTE BAXTER — J V — Having been reboarded are categorized "B2" wef 4 Nov 43 (Auth: Approved MFB 227 d/19 Nov 43)
A117444 PTE BEAUDIN — J G
GEN LIST

(b) The u/m having been reboarded are categorized as shown wef 11 Nov 43 (Auth: Approved MFB 227 d/25 Nov 43)

A 86637 CPL FRANZ — R R — "C1"
RCR

A 71077 PTE HAIR — H T — "C1"
RCR

A 49931 PTE MANNINGER — F — "C1"
GEN LIST (Carpenter "C")

F 96333 PTE MCISAAC — W D — "A1"
ALQ R

A 37518 CPL RICHARDSON — R C — "C1"
HLI of C (PE) "H" WING

(c) A 68258 PTE BOISTON — S G — Having been reboarded is categorized "B1" wef 4 Nov 43 (Auth: Approved MFB 227 d/25 Nov 43)
ALQ R (Clerk "C")

26. PAY & ALLOWANCES

A118097 PTE KEPPLER — P J — Granted a daily regimental rate of Pay of $1.50 wef 5 Dec 43 having completed 6 months' proficient service (Auth: G.O. 486/42)
GEN LIST

27. TRADESMEN'S RATES OF PAY

D136157 PTE BANDEEN — G B — Granted Tradesmen's Rates of Pay of $1.65 wef 7 Dec 43 having completed 4 months' proficient service (Auth: G.O. 486/42)
GEN LIST (Bricklayer "C")

28. STRENGTH DECREASE

A 4516 PTE ROBINSON — D H — SOS to 1 NETD while in 8 Gen Hosp wef 6 Dec 43 (Auth: Cat "E")
RCR

29. STRENGTH DECREASE--AMENDMENTS

Ref Pt II O 151 d/2 Aug 43 para 30(c) insofar as it concerns B 64508 PTE SHUTTLEWORTH F (PERTH R), delete "Placed under Stoppages of pay to the amount of £4/7/10 to recover cost of deficiencies of Kit FMAI 158(2) (Auth: Approved MFB 375 d/30 Jul 43)"

LJF

(C.E. THORNE) CAPT.,
RECORDS OFFICER
3 CDN INF REINFORCEMENT UNIT
CDN ARMY OVERSEAS

EXHIBIT "D"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. A111941 Rank L/Cpl. Name Enright, PR Unit 3 C I R U

The following expenses were incurred in apprehending and returning the ~~M/N Soldier to His Unit From~~ London from Brighton

Date	Particulars	Amount		
	Escorts return fare from LONDON To Brighton		2	11
4 Dec 43	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares 1 Station			
	Total £		11	11

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

F. D. Chapman Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

CMHQ 1000-53
4(C)4-8(4053-5307)

EXHIBIT "C"

CHARGE

Army Form B 252
(See King's Regulations)

PERTH REGT (5 Cdn Div) — Regiment
Battery / Squadron / Troop or Company

CHARGE against No [illegible] Rank L/Cpl.

Name ENRIGHT, P.R.

Place BRIGHTON Date of Offence ?

OFFENCE W.O.A.S. Absenting himself without leave from... until apprehended by an N.C.O. of the Military Police in Castle Inn P.H. Castle Square about 2000 hrs 3 Dec 43.(2)

Did make false statements to an N.C.O. of the Military Police.

Names of Witnesses:—

L/Cpl. North Brighton [illegible] Military Police.

L/Cpl. Porter " " " "

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded: remanded for Court Martial

By whom awarded: D. Hickie Major
Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of

11941 L/Cpl. Enright P.H.
Perth sgt
5 Cdn Div.

Sir,

At Brighton on the 3 Dec 43 about 2000 hrs I was on duty in the Castle Inn, P.H. Castle Square where I saw the above named soldier. He was a suspected absentee. He was conducted to the Brighton Police Station for interrogation. This N.C.O. stated that he was not absent from his unit, and was stationed at Hove. The location was endeavoured to obtain, but with no succes, it appears that they had moved sometimex previous. After further questioning the N.C.O. stated that he had been left behind with a rear party. This was found also to be not true. His particulars were obtained, and he was conducted to Preston Barracks and detained.

G North L/Cpl.

Brighton & Hove Military Police.

Brighton
3.12.43.

Sir,

I have read over and corroborate the above statement.

W Porter L/Cpl.

Brighton **REMARKS** itary Police.

Brighton
3.12.43.

LIST OF WITNESSES

Prosecution:	Capt. W.E. Thorne, C.M.S.C., Records Officer, 3 CIRU.
	L/Cpl. North, G., C.M.P., Brighton and Hove Military Police. (DOCUMENTARY)
	A.822114, L/Cpl. Dean, F.F. (R.C.A.), R.M.P. of 3 CIRU.
	Capt. L.S. Grayson, No. 6 Area Provost Company, Canadian Provost Corps, London. (DOCUMENTARY)
Defence:	NIL.

LIST OF EXHIBITS

Exhibit "A"	Certified true copy of original 3 CIRU, D.O. Part II No. 236, d/ 2 Nov 43.
Exhibit "B"	Certified true copy of original 3 CIRU, D.O. Part II No. 262, d/ 7 Dec 43.
Exhibit "C"	Documentary evidence of L/Cpl. North G., C.M.P. Brighton and Hove Military Police
Exhibit "D"	Statement of cost of apprehension.

STATEMENT OF ACCUSED

I certify having received free of charge a copy of the Charge Sheet, Summary of Evidence, List of Witnesses, and a List of Exhibits.

I do/~~do not~~ desire the services of an officer to represent me at my trial.

A.11941 Pte. [illegible]

9 Dec 43.

charge

CRIME

C. Coy. 3 C.I.R.V.

SQUADRON, BATTERY OR COMPANY

CHARGE against No. A 119 412 Pte Enright P.R.

Place	Date of Offence	OFFENCE	Name of Witness	Punishment Awarded	By whom Awarded
Ian The Enlisted	7 Dec. 43	W.O.A.S. When in confinement, escaping in that he, at 20-15 hrs 7 Dec. 43. When in confinement barracks at 3 C.I.R.V. attempted to escape a.a. Sic 22	Pte Enright P.R.	EXI IWP	

Service years

Number of good conduct badges

Date of last entry in company conduct book

Character

Date of last entry for an act of drunkenness

Number of cases of drunkenness within the last twelve months

M.F.D. 204
60/FEB/[illegible]

recent 1 months as unsatisfy
on the charge to be added to
1 Court Martial charge

(Signature)

SUMMARY OF EVIDENCE

In the case of Regt. number A.11941, Pte. ENRIGHT, Paul Robert, Perth Regt., on strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS: Prosecution

Capt. W.E. Thorne, C.M.S.C., Records Officer, 3 CIRU, having been duly sworn, states:

I am Capt. W.E. Thorne, Records Officer, 3 CIRU, and have custody of the regimental documents of that Unit. I hereby produce a certified true copy of the original 3 CIRU D.O. Part II No. 238, d/9 Nov 43 (hereto attached and marked Exhibit "A" to this Summary), showing A.11941, Pte. Enright, P.R. to be absent from his quarters from 1030 hrs. 18 Oct 43. I further produce a certified true copy of the original 3 CIRU D.O. Part II No. 252 d/7 Dec 43 (hereto attached and marked Exhibit "B" to this Summary), showing A.11941, Pte. Enright P.R. to be apprehended from A.W.L. at 2000 hrs. 3 Dec 43.

W.E. Thorne
(W.E. Thorne) Captain
Records Officer, 3 CIRU

The evidence is read back to the accused.

The accused declines to cross-examine the witness.

2 OTHER WITNESS: Prosecution

Lt/Cpl. North, S., C.M.P., Brighton and Hove Military Police.

A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused and is hereto attached and marked Exhibit "C" to this Summary.

Having regard to the exigencies of the service, attendance of this witness cannot, in my opinion, be readily procured.

D.T. Harley
(D.T. Harley) Captain
Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

MM

THIRD WITNESS: Prosecution

A.822l4, L/Cpl. Doan, F.F. (R.C.R), R.M.P. of 3 CIRU, having been duly sworn, states:

I am A.822l4, L/Cpl. Doan, F.F. (R.C.R.), R.M.P. of 3 CIRU, and was on duty in No. 2 Guardroom on 7Dec 43.

At approx. 2015 hrs. 7 Dec 43, I was making my inspection of the outside of No. 2 Guardroom. I noticed two men in coveralls trying to hide behind a blast wall about thirty feet from the Guardroom. I immediately challenged them and found one of the men to be A.11941, Pte. Enright, P.M. The men were marched back into the room in which they were being detained. On arrival there, I noticed that two bars on the detention room window had been forced apart and the barbed wire removed from the bars. I then reported to A.37815, Cpl. Haines, C.D., the Corporal of the Guard.

A 822l4 L/Cpl. Doan F F
A.822l4, L/Cpl. Doan, F.F.

The evidence is read back to the accused.

The accused declines to cross-examine the witness.

FOURTH WITNESS: Prosecution

Capt. L.S. Grayson, No. 6 Area Provost Company, Canadian Provost Corps, London.

A written statement of the cost of apprehension, purporting to be signed by him, was read to the accused and is hereto attached and marked Exhibit "D" to this Summary.

Having regard to the exigencies of the service, attendance of this witness cannot, in my opinion, be readily procured.

D H Harley
(D.H. Harley) Captain
Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

The accused was cautioned as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

D.T. Harley

(D.T. Harley) Captain
Officer detailed to take the
Summary of Evidence.

EX A to
1 & 2 charges
DTH

9 Dec 43.

FIRST SHEET DESTROYED AS OF 18-7-41

No. 11941 Name ENRIGHT P.R. Sqn., Battery, or Company — Corps C.I.C. — Date of enlistment 18-1-41 — G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F. B.127) 40/P & /8156 (2965)

Date of last entry in Company Conduct Sheet 7-7-41 — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. I. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Goderich	21-8-41	Pte.		Convicted of Break-Enter & theft at Goderich Ont 21-8-41. Contrary to Sec 46 of the Criminal Code. Sentence of three months term in common Jail commencing 22 Aug 41		To forfeit all pay and allowances for period in prison			Total Forfeiture 69 dys pay
Goderich	30 Oct 41	Pte		Released fromCivil Custody at 1200 hrs 30-10-41					
Chatham	16-11-41	Pte.		AWL from 2359 hrs 16-11-41 to 0245 hrs 18-11-41	Sgt Morrison	7 dys C.B.	21 Nov 41	Maj Bingle	FOP 2 dys
Chatham	21-11-41	Pte		AWL from 2200 hrs 18-11-41 to 2250 hrs 20-11-41	" "		21 Nov 41	" "	FOP 3 dys
Chatham	29-11-41	Pte		AWL from 2200 hrs 29-11-41 to 0030 hrs 2-12-41	Sgt. Morrison	14 dys C.B.	2 Dec 41	Lt.Col. FW Ansell	FOP 3 dys

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	23 Jan 42	Pte		Absenting himself without leave from 0100hrs 16-1-42 until surrendering at Wolseley Bks,London, Ont at 0525 hrs 20-1-42.(Total 4 dys 4hrs 25mins)	Cpl LaBonty	10 dys C.B. 5 dys pay AA 46	23-1-42	Maj C Gooday	FOP 5 dys FR&I Cost of App $6.80
Kingston	14-3-	Pte.		Neglecting to clean his kit when instructed to do so.	Cpl. Smale	2 dys C.B.	16-3-42	Capt.	
Kingston	13-4-42	Pte		Improperly dressed wearing Cpl. badges.	Cpl. Smale	28 dys Detn.	24-4-42	MajSanderson for Lt.Col.	
Camp Borden	3-7-42	Pte.		Conduct to Prej GC and MO Etc. in that he had his quarters in an untidy condition. AA 40	Sgt. Cotton	2 dys C.B.	4-7-42	CaptMcBean	
Camp Borden	4-7-42	Pte		AWL from 1315hrs 4-7-42 until 0620 hrs 6-7-42 Total Abs. 1 day 17 hrs 15 mins. AA Sec 15(1)	Cpl. GibsonL Sgt Esson S. Documentary	5 dys pay AA 46	6-7-42	LtCol Mare MPA	FOP 2 dys FR&I
Camp Borden	7-7-42	Pte.		AWL from 0600 hrs 7-7-42 to 0715 hrs 9-7-42 (Abs 2dys 1hrs 15min) AA Sec 15(1)	Cpl. Mitts Cpl Gibson	7 dys C.B.	9-7-42	Capt LMace	FOP 3 dys FR&I

No. 11941 Name KNIGHT P.H. Sqn., Battery, or Company — Corps C.I.C. — Date of enlistment 13-1-41 — G.C. Badges — Service or Proficiency Pay

M.F.M. 6 (A.F. B.122) 40/F.& S/5136 (2955)

Date of last entry in Company Conduct Sheet 7-7-41 — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Camp Borden	12-7-42	Pte.		Failing to appear on defaulters parade at 1600 hrs 12-7-42 AA15(2)	L/Cpl Moreau	3 dys pay AA Sec 46	13-7-42	LtCol MPA Hare	
Camp Borden	15-7-42	Pte.		Failing to appear on defaulters parade 15-7-42 AA 15(2)	Cpl. Gibson	3 dys C.B.	16-7-42	LtCol MPA Hare	
Field	29-8-42	Pte.		WOAS ABL from 2200hrs 29-8-42 to 0600hrs 31-8-42 (Abs 1dy8hrs)15(1)	Cpl.McLeod	10 dys pay PRAI 149(2) 14 dys C.B.	31-8-42	Lt.Col. AD Morf 2 dys pay Noble PRAI 149(1)(a)	
Borden	2[illegible]-9-42	Pte.		ABL 2130/28-9-42 - 0600/29-9-42 8 hrs 30 mins (2)Conduct to prej etc. did urinate on the Bks room floor. AA Sec 46.	Cpl. Hadon Cpl. Hall	7 dys C.B.	29-9-42	Maj Stuart Morf 1 dy pay Robertson PRAI	
Field	7-12-42	Pte.		64.15(1). AWL from DR Crs from 1330hrs 7-12-42 To 1700 hrs 7-12-42 (Abs 3 hrs 30 Mins.)	Lieut.Twist	7 dys C.B.	18-12-42	R.M. Ranger Capt.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15-12-42	Pte		AA 15(1) AWL from defaulters from 1830hrs 15-12-42 til 2240 hrs 15-12-42 Abs 4 hrs 10 mins.	L/Sgt G.W. Martin	7 dys C.B.	10-12-42	28.R.Ranger Capt.	
Field	28-12-42	Pte.		AA 15(1) AWL from 1800 hrs 26-12-42 to 0130 hrs 27-12-42(7hrs30min) (2)AA 40 Conduct to the prej etc in that he failed to clean "C" Coy Mess hall when ordered to do so by L/Cpl McKay.	L/Cpl McKay	Forf 14 dys pay FR&I 149(2)	31-12-42	Maj R.L. Tindall	
Field	4-1-43	Pte.		WOAS AA 15(1)AWL from 0630 hrs 4-1-43 until apprehended at 2215 hrs 21-1-43(17dys 15hrs 45mins)	L/Sgt Rowe J.M.	28 dys F.P. & Stop of £3/7/7 Costs of apprch & return FR&I 172(8)	25-1-43	Lt Col JSH Lind	FOP 15 dys under FR&I 149(1)(a)

M.F.M. 6
(A.F. B.122)
40/P & /5136 (2968)

No. 11961 Name [redacted] P.R. Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 18-1-41 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 4-1-43 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11-4-43	Pte.		AA 15(1)AWL from 2359 hrs 10-4-43 to Apprehended by R.P's in Brighton Sussex at 1045 hrs 11-4-43(10hrs 45 mins) (2)AA 40 conduct to the prej etc in that he was in the street of Brighton Sussex improperly dressed without a hat Field Service	L/Cpl. C.W. Menzen Sgt. J.W. McIlwain	7 dys C.B.	13-4-43	M.E.Andrew Major	Forf 1 dys pay FRAI 149 (1)(a)
Field	18-4-	Pte.		(1)AA 15(1)AWL from 1200 hrs 18-4-43 til 0630 hrs 19-4-43 (Abs 18 hrs 30 mins) (2)AA Sec 10(4) Breaking out of Bks when a defaulter.	L/Sgt. Howe J.M. L/Sgt. Howe	7 dys C.B.	20-4-43	M.E. Andrew Major	FOPldys FRAI 149(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-5-43	Pte.		AA 15(1) WOAB AWL from 2230 hrs 1-5-43 until apprehended by the Military Police at Brighton Sussex at about 1100 hrs 7-5-43 (6 dys 12 hrs 30 mins)	Sgt McIlwain Lt Baker RJ Cpl Powell R L/Cpl Hyde R.E. Sgt. McColl JJ Pte. Allsop D.L.	180 dys Detn Confirmed on 19-5-43 by Brig H Harpe Comd 11 Cdn Inf Bde and promulgated on 19-5-43	14-5-43	FGCM	FOP 6 dys AFM 149 (1)(a)

ORIGINAL

CERTIFIED TRUE COPY OF AFM 6.

Roy H. Lunn

(ROY H. LUNN) Captain
D.C "A" COY
3 Cdn Inf Reinf Unit.

EXC

M.F.B. 355
22M—5-41 (373-0)
H.Q. 1773-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A.11941	Private	ENRIGHT, Paul Robert, Perth R., 3 CIRU.	

1. The following is a fair and true summary of the entries in the Service and/or General/Regimental and Squadron/Railway Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, or Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. 39 (2)	0	times	A.A. 18(2)	13 times
For A.A. Sec 40	0	times	A.A. 40	6 times
For A.A. Sec 40 (4)	1	times	A.A. 40 (4)	1 times
For		times	A.A. 40 (8)	3 times

Number of instances of gaol/entry or detention/restriction/confinement

Nil

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

Nil

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act and dispensations with trial under A.F.Act are set out in the Schedule Section 47 of the Army Act annexed to this statement.

3. The accused is not under sentence at the present time.

The accused is not under sentence at the present time

Nil

The accused at the present time is under stoppages

beginning on the

days

4. The accused has been in confinement awaiting trial on the present charges, for days in Air Force civil custody, and 9 days in military custody, making a total of 9 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is Born. 21 Mar 1922

6. The date of birth specified in his attestation paper is 28-1-41

7. The service which the accused is allowed on account of his discharge is

8. The accused is entitled to reckon service for the purpose of determining his position as

9. The accused is in possession of or entitled to no military decoration, or military reward [illegible] possession of or entitlement to). State any air force decoration or reward military.

10. If the accused is a warrant officer: The accused is to be granted a warrant of Air Force the undermentioned rank of:

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

~~Note.—If any matter in any of the above paragraphs cannot be stated from the Regimental books the paragraph must be struck through.~~

SCHEDULE

~~Attached~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A-11561 Rank Private Unit ~~Regiment~~

Name of Perth Regt., 3 CDN. INF. BDE.

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Court	Goderich	Theft	6 months in Common Jail	
F.S.G.M.	Field, 1-3-45	Conf. ANI from 180 days 2000 hrs. 1-3-45 Detn. until approx. at about 0300 hrs. 7-3-45 (6 days 10 hrs. 00 mins. Ans. 15 (2)		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~1st~~ 8th day of December, 1945

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(A.E. Thomas) Capt.
Records Officer, 3 CDN.

EX B

864.
Pte. Enwright, J.A.

Correspondence to be PINNED here.

86 11.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Sixteenth day of December, 1942.

Whereas it appears to me, the undersigned, an officer in T/ Command of Third Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial to enable it to be ordered by a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint —

*(1.) Three Officers to form the Court;

*(2.) A Field Officer as President;]

for the following reasons, namely:—]

* Omit if not applicable.

(86)

President.

Rank.	Name.	Regiment.
Major	J.A.G. Vallee	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	R.G. Sims	Carlt & York R
Lieut	A.J. McKenzie	Carlt & York R
~~Capt~~ Capt	~~S.D. Smith~~ A.W. Rogers pp	~~West N.S.R.~~ West N.S.R.

* [waiting]

Notes.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the rank, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

* L.P. Landry Lt.-Col
T/Commanding 3 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G/27410 Pte Thomas Andrew ENWRIGHT The Lorne Scots (P.D.& H Regt) 3 Cdn Inf Bde.	1st Charge:- Sec 15 (1) A.A.	not guilty	Guilty. To undergo detention for a period of 60 days. Gaston Dallie major president 17 dec 42	Finding and sentence Confirmed. 20 Dec 42 R.C. Belcher Lt.-Col. A/Bde. Comd. 3 C.I.B.
	See charge sheet attached			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"—
Answer (*to be recorded on separate sheet if necessary*):—
No

(Signed) R. Bernat Chas Lt.-Col (Signed) Gaston Dallie Major
T/Commanding 3 Cdn Inf Bde — 3 Bde R
Convening Officer (c) — President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of December, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
* (3. ~~The interpreter~~) —
* (4. ~~The others under instruction~~) —

were duly sworn.

* Omit if not applicable.

Signed this 17th day of December 1942

Gaston Dallie major
President of the Court Martial.

* See footnote (b) on page 7002 M.M.L. 1939.

C. Certificate in case of death sentence.

~~I certify that the terms of *A.C.I. 870 of 1918 have been complied with.~~

~~Signed this~~ ~~day of~~ ~~19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal/servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~* I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this twentieth day of December 1942.

R. Bernat Chas Lt.-Col
T/Confirming Officer. 3 Cdn Inf Bde

Promulgated and extracts taken in the case of G27410 PTE ENWRIGHT TA

(a) (Dated) 21 Dec 42 (Signed) Chester B. Beatty Lieut

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Dec. No. 28(6).1124 Dec. 1/43 W. & Co., Ltd. Gp. 745.2

CHARGE SHEET

In the case of G-27410 Pte Thomas Albert ENRIGHT
The Lorne Scots (P.D.& H. Regt), 3 Cdn Inf Bde Def Pl.

1st Charge
Sec 15 (1) A.A. ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field Absented himself without leave from 1600 hrs 12 Dec 42 until 1700 hrs 14 Dec 42

Total time absent - 2 days and 1 hour.

Chester D Beatty, Lieut
(Chester D Beatty, Lieut),
O.C. 3 Cdn Inf Bde H.Q. Def Pl.

In the Field
16 Dec 42

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

T/Comd.,
3 Cdn Inf Bde.

In the Field
16 Dec 42

President

MEDICAL OFFICER'S REPORT

Gardendallier major
President

I certify that No. G 27410 Pte. Enwright I.H.
of 3 C.I.B. D.P. is in a fit state of health,
and able to undergo Trial by Court martial.

A. Macaig Capt
Medical Officer
R.C.A.M.C.

Station Field

Date 1130 hrs 17-12-42.

M. F. B. 246

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Middle Field on the 7 day of Dec 1942 by order of ~~Maj~~ Lt Col J R E Bernatchez T/Commanding 3 Ord. Inf Bde dated the 16 day of December 1942

President.

Major J R A Vallee R22R

Members.

Capt R E Simms Cmdte 3 Inf Bty

Lieut A J Hawkesworth Cmdte 3 Inf Bty.

, Judge Advocate.

Trial of*

G 47410 Pte Thomas Andrew Cavanagh The Lorne Scots (Peel Dufferin & Halton Regt) 3 Ord Inf Bde.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor.† Capt D M Turnbull R CASC

Counsel‡ or defending officer† Capt C B Higgins WNSR

At 1400 o'clock the Trial commences.

The order convening the Court is read, and is marked R signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Gale & Polden, Ltd. Wellington Works, Aldershot. Forms A 9-26.

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers, under instruction, are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not Guilty. *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

~~The accused having pleaded Guilty~~ to ~~charge~~, the ~~provisions of Rule of Procedure 35 (B) are here complied with.~~

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty" until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 30 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [illegible] which is read, marked [illegible] signed by the President, and attached to the proceedings.

The prosecutor proceeds to call witnesses.

First witness for prosecution. C. S. M. F 84811 Power R. C. the Some Scouts (R.L. and H. Regt) 3 Coy. 1st Bde.

being duly sworn, is examined by the prosecutor.

In the hallway of ground billet we have a notice board, each day the guard is named by a notice put on this board as a rule the notice is posted at 1600 hrs the day previous to the guard mounting. If it is not posted at that time, this is done by 0830 hrs the following morning all personnel in the unit are aware of this method.

This practice has been in force since 1941. It was possible that at sometime it has been posted after 0830 hrs. It is not a practice to give a personal warning as well.

Accused has been on guard duty roughly 26 times in the last three months. Accused's name was posted on board each time.

Cross-examined

We do not publish part I orders ourselves.
All extras are posted as well as duties on the notice board.
It is not usual to have it posted in the morning as well as the day before. On the morning of 12th Dec I saw there was a guard list posted on the board. The accused name was on that list. The guard always mounts at the same time 1600 hrs.
I was present at 1600 hr at guard mounting. The accused was not present.
I made a mark for the accused at that time he was not in the camp area. I did not give him permission or a pass to be absent from duties by Defence.
I did not post this list myself. I inspected the board at 0930 hrs and the list was posted.
I do not know where that list is now. I cannot say it was ~~not~~ posted before 0830 hrs.
I don't know if the accused had been warned that morning or not. The duty N.C.O. would warn him if anyone ~~did~~ had. It is correct that the accused was outside the building some place in the area. The men are allowed out in B.A. area up until 2300 hrs without a pass. Lt Eastwell Capt
President

3 C

After duty a man can go to Stafford after duty without a pass. On Saturday if not detailed for duty 1200 hrs. is after duty.

Cannot discriminate by area of his never appeared in any part I ordered when the area was.

~~1 RB #3~~ R. 1983 B. She seen a complainant

2nd Witness F 34720 - Lt. Connolly R.D. Line South Reg. RDRL Reg. 3 CBA. 3rd Bde Being duty room state:

On Friday night 11 Dec 42 Pointed the names of the men for guard Saturday 12 Dec 42. Pointed his name on the duty roster but did not make out the list until next morning, between 0745 - 0800 & making up the guard list. The accused name was on the list & posted the guard list on the notice board. The accused was to report for duty at 1600 hrs. I don't know if accused was on the guard, as I was busy at the time. I next saw the accused at about 1630 hrs. 14 Dec 42 accused was in his room. At approximately 1700 I reported his presence to the duty W.C.O. I reported that at the request of the accused because he had not reported in. I did not give the accused permission to go as he had no pass.

Lieut Dallas Capt
Prosecutor

C 4

Question by defence:

There was a possibility that the Lone Tree of a misunderstanding because there was a rumour that the Carbon Yoke were taking over guard duty from the Lone Tree on Saturday, this is the reason I did not post the list until Saturday morning, until I checked up on it. The reason for this rumour was that we understood we were going on the ranges.

The morning before I posted the list on the Tower I heard someone holler that Jay Parade was going to be a bit early. I posted the list at 7 AM. of the 13th The men that were going on guard that day were not warned during Jay Parade.

The guard list of the 12th to 14th was destroyed I did this on the 14th between 1200 hrs and 1900 hrs.

R.P. 83 B. has been compiled with.

3rd Return for promotion.

B 51799 Pte Hawkins Reginald

The Lone Tree Hand K. Hy 1 COY 10 Inf Being duly sworn states.

That between 1800 hrs and 1900 hrs I heard my name called out when I looked on the Order board and my name was on it at 1930 hrs.

It was unusual for the NCO to call the names of the men on guard.

C 6

Cross examination LW

I take P.T. 0645 hrs in the morning. It was before I went on P.T. that my name was called ~~I do never even hear what my number was because we are not going on parade~~ LW

I went on guard 12 Dec 42. The ~~sound~~ sounds not on guard ~~I did not hear my name called~~ LW ~~the guard list~~.

I do not remember if I saw the sound name on the list or not. I do remember seeing the list. RPSOB has been complied with.

D

Defence

Do you apply to give witness yourself as witness: Yes

Do you intend to call any other witnesses in your defence? Yes

Witnesses are they on a charge sheet?

No.

1st Witness for defence: 6274170 Pte Thomas Andrew Cartwright Lowe A Coy Reg PDR H Reg 2 Con 5 Sec D 10 Long duty room state:

I did not know I was to be on guard duty in the morning 12 Dec 42.

Cadet Sallis says present

D 2

I was not detailed to go on duty that day.
I did not hear any one between the 0600 hrs and 0700 hrs call out the names of the personnel to go on guard duty that day.
I looked at the notice board that day between 0800 hrs and 0820 hrs
There was no guard list for Saturday posted.
I went to Leopard Saturday afternoon.
I venture to pronounce:
I looked at the notice board to see if I was on guard
This is the place the list is always posted unless we are in another station doing like that.
I went to Leopard at approx 1200 hrs and evening was still out. I was drinking. I was not sober.
On Sunday I went to Brighton.
I arrived back at my billet at approx 1630 hrs. where #2 I did not have permission to be absent.
R.P 83 B has been complied with.

Note. Before making the above statement the accused has been warned according to R.P 40 note 2.

Lieut Dallie Cuapa
President

D 3.

2nd Witness for defence:
G 32940 Pte M° Hugh. R. E.
The Lord God of Hosts R.P. Reg 3 CDA Inf. Bde
being duly sworn states:
On the morning of the 12 Dec 42
I did not hear anyone call out
the names of the men to go on
guard that day.
I came over in my room from
0615 hrs to 0730 hrs.
I do not sleep in the same room
with the accused.
R.P. 83 B has been complied with

3rd Witness for defence:
B 61865 Pte Sabatino. D Lord of Hosts
Reg. R.D and H. reg 3 CDN INF. Bde.
being duly sworn states
Between the hrs of 0630 and 0645
I did not hear anyone call out the
names of the men to go on
guard that day.
I was in my room at that time.
I do not sleep in the same room
as accused one Pte Burgdorf.
R.P. 83 B has been complied with

4th Witness for defence.
B 70671 Chubb J.J. The Lord God of Hosts
R.D. & H. Reg 3 Cdn Inf Bde. being duly
sworn states:
I did not hear anyone call out the
names of the men to go on guard
between 0630 and 0645 hrs 12 Dec 42.
I was in my room at that time and
remained there until 1000 hrs.

D 4

I do not sleep in the same room as the Engadine or the Sabotiers. or Mc Hugh. Pte.
R. P. 93 B. Has been complied with.

3rd Witness for defence:
F 69608 - Lt. Morrison R. K.
The K.O. 2 CDN. INF. BDE. duly sworn states:
On the morning of 12 Dec 42 I called up by County and told him my parade would be held earlier than they had been notified this was at 0925 hrs I am sure of this time
R. P. 93 B. Has been complied with.

The following closing address is made by the defence:
The charge read from 1600 hrs on the 12th till 1200 hrs on the 14th
For C S M. Reeves evidence he stated that he only marched the room up the billet for the accused, he said it was possible that the accused could have been in the Bde H Q. area.
He said although it was a practice to have orders posted before 0930 hrs, he could not state they were posted before that time. He said that passes were allowed in Liverpool on Saturday from 1200 hrs till 2300 hrs

D 6

without pass. Sgt. Conway stated that the defence solicitors thought they were going on the ranges on Saturday, and were to be relieved of guards by Corbett & Pte Reg. He said nobody was detailed for guard at pay parade and that he posted the list just before going on pay parade.

He said he remembered hearing somebody calling about pay parade being earlier than notified and he posted the list about 5 min. later.

Sgt Morrison stated that he was the one that called regarding pay parade and that it was at 0825 hrs.

Sgt Conway stated that the accused absconded his billets and asked it be reported in at 1630 hrs on the 14th

Pte. Burgden said it was announced for a N.C.O. to call out the names for guard duty, which shows that there must have been some reason. He further stated that he did not see the accused name on the guard list.

The accused Pte H. Hugh, Pte Solicitors and Pte Chubb were in different rooms did not hear anybody detailing guards.

The accused claimed he looked at the board in the morning and there was no list there and that he was not detailed.

Closing address by prosecution:

Lieut. Comdr. stated that orders were usually posted on the evening before the detail was requested. I submit that those orders are in fact part of orders. The mans duty is to read all orders and the fact that he received no personal warning it is no departure from a procedure which has been in force over a year. I submit that the ignorance is no excuse.

Gordon Dallis Major
President

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused *is Guilty of the charge as laid.*

Gaston Dallie major
president

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Lieut R.D. Beatty The Lorne Scots P.O.W.R. Regt 3 Div Inf Bde is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* *Yes*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked K, signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* *Yes*

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* *Yes*

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* *Yes*

~~Cross-examined by the accused.~~ *No*

Question to the accused. Do you wish to address the Court? *Answer.* *No.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused to 60 days detention. Sentence.

Gaston Dallie major
president.

Gordon Dallie major
Precedent

Summary of Evidence in the Case of
G 27410 private Thomas Andrew Enwright

First Witness for the Prosecution: T 34811 C.S.M. Melville Chester Peever. having been duly sworn States I am T 34811 C.S.M. Peever of Lorne Scots 3 Can Inf Bde Defence platoon.

The normal procedure in the warning of men for guard duties is as follows.

On the afternoon of the day preceding the guard in question a list of names of men comprising that guard is posted on the notice board in the defence platoon billets. On some occasions due to the pressure of work it is not possible to post the guard list the night before and in these cases the list is posted by 0830 hrs on the day of the guard. This procedure of posting the names of men warned for guard duties has been in operation since November 1941.

On the morning of the 12 Dec 42 at approx 0930 hrs I read the guard list of men who were to go on guard at 1600 hrs on the 12 Dec 42 and noticed that pte Enwright's name appeared there.

At approx 1500 hrs on the 12 Dec 42 the duty NCO ~~L/Cpl Thompson~~ advised me that he could not locate pte Enwright in the billets. I checked all the rooms in the defence platoon billets at that time and could not locate pte Enwright.

In view of the fact that the guard room is at present being repaired the procedure has been for the guard personnel to stay in their rooms from where they are called by the duty NCO to take over the post detailed to them. At 1600 hrs I went to the guard room along with the duty NCO. Pte Enwright was not in

his room. I then checked all the rooms and camp area but could not find pte Swinright. I detailed another man to take over the guard detail

At approx 1700 hrs on the 14 Dec 42 I again checked pte Swinrights room and found him present

Question by the accused: Did you not say about two days prior to the 12 Dec 42 that there would be no guards on Saturday, Sunday, Monday & Tuesday.
Answer: I said that there would be no guards on Sunday Monday & Tuesday but I do not recall saying that there would be none on the Saturday
question 2 by the accused: Is it possible that you might have included Saturday in your statement
Ans 2 - Yes it is posible.

M. L. Peters D & M.

The accused has no further questions

Next witness for the prosecution: J34730 Sgt Ralph Douglas Connolly, having been duly sworn states I am J34730 sgt R.D. Connolly of the Home Scots I Can Inf Bde Defence Platoon. On Friday evening approximately the 11 Dec I returned from 48 hr pass and found that the guard list for the 12 Dec 42 was not posted. I started to make up the list but as I understood that the Carleton & York Regiment were taking over the guard on Saturday I did not complete the list but waited until approx 0745-0800 hrs on 14 dec when I found out from the CSM that the C&Y were not taking over until Sunday. I completed the list and posted it on the notice board in the Defence platoon billets at ~~noon~~ between 0800 and 0830 hrs on the 14 Dec. On the evening of the 11 Dec I entered the names of the guard personnel in the duty Roster book. Pte Swinrights name was on the list and is entered in the duty roster.

~~at~~ Between 1630 and 1705 hrs on the 1st Dec 42
I had occasion to go to Pte Smiths room to see
another pte and found pte Smith in his
room. We talked for a while and he asked me
to check him in at the orderly Room. I came to the
orderly room and reported his presence to the duty
NCO.

Q1 by the accused: Is the guard list not always
posted on the night before the guard commences.
A1 - As a rule it is but on this occasion I had
to wait and find out whether or not the Coy were
taking over the guard duties
Q2 By the accused - Did you hear, Sgt Connolly,
about three days before the guard of Saturday 1st Dec
that the Coy were taking over guard duties and
that there would be no guards for the defence plan
on Saturday Sunday Monday & Tuesday.
A2 Yes but it was general rumour and I
did not hear it officially
Q3 - Was my name on the regimental list at the
start or was some one elses name crossed out
and mine put on.
A3 It was entered on the list ~~to~~ when the
list was made up.

F34930
Sgt R. D. Connolly

The accused has no further questions.

Third witness for the prosecution: B51995 pte Gordon Bugden
after having been sworn states: I am ~~pte~~ B51995 pte
G. Bugden of the Lorne Scots 3 Can Inf Bde Defence
platoon. On the morning of Saturday 1st Dec 42 just
shortly after reveille I heard one of the NCO's reading
out in the hallway of the billet, the names of the men who
were detailed for guard duty on the 1st Dec 42

Later on in the day I looked on the Order board in the billets and saw the guard list for Saturday 1st Dec. My name was down for the first shift.

Q1 by accused - What do you mean by "shortly after reveille"

A1 - Between 0630 hrs and 0700 hrs.

Q2 by accused: What N.C.O. was calling out the list of names

A2 - I do not know but I presume it was the duty N.C.O.

J37885 Pte. J. Coghlan

The accused does not wish to ask any further question.

The accused having been duly warned in accordance with R.P. 4(c) makes the following statement

On the night of the 11th Dec 42 it was generally being discussed in the billets that there would be no guard on Saturday Sunday Monday or Tuesday as I was planning to go out Saturday afternoon I came upstairs and looked to see if any guards or other duties had been posted. I looked again before going to bed and still there were none posted. I looked again in the morning sometime between 0800 and 0830 hrs and there were still no duties posted so I presumed the Corps were taking over the duties on Saturday and so I went out Saturday around 1300 hrs.

G27410 Pte J. A. Enwright

Certified that R.P. (4) (c) (d) (e) (f) complied with Taken down by me in the presence of and hearing of the accused, this 16th Day of December 42

B Cumbers Capt

In the field
16 DEC 42.

No. G2740 Name ENWRIGHT TA | Sqn., Battery, or Company: 3 Cdn Inf Bde HQ Bde Tp | Corps: The Lorne Scots (Peel Dufferin & Halton Regt) | Date of enlistment: 7 Sep 39. | G.C. Badges: No. | Service or Proficiency Pay: | Sheet No. 1 | Signature O.C. Company, etc.: | Date of last entry in Company Conduct Sheet: | No. and date of last drunk: | Period not reckoning towards freedom from extra fine: | Signature of Commanding Officer: [signature]

M.F.M. 67
A.F.B. 1327
(Revised 1940)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Superseding with brief)	Punishment awarded	Remarks
GUILLEMONT BKS	17 MAR 40.	PTE		W.O.A.S absented himself from duty without leave while Orderly Sgt. at 1830 hrs 17 Mar 40 he was absent until 0600 hrs 18 Mar 40.	Sgt Peters W/Cpl Andrews	Fg subsequent appt. of a/L/Cpl.	18 Mar 40	CAPT A.D. SWAN	
GUILLEMONT BKS	18 Apr 40.	PTE		W.O.A.S AWL from 0805 hrs 16 Apr 40 till 1630 hrs 16 Apr 40 (Total hrs absent 8 hrs 25 min)	Sgt Peters Sgt Hurst	Fine 1 days pay. 16s 8d hrs dat. from 1600 hrs 16 Apr 40	18 Apr 40	CAPT A.D. SWAN	8 days forf pay 3 Apr to 10 Apr
WOODSTOCK	28 JUN 40.	PTE		W.O.A.S AWL from 2230 hrs 28 JUN 40 to 1900 hrs 30 JUN 40 (Total 44 hrs + 30 mins)	Cpl Gates Sgt Peters	Fine 2 days pay under [illegible] 3 Sec 39 (Can) 1940 Sec 7 days under AA sec 15 (2)	1 JUL 40	CAPT A.D. SWAN	
EAST HORSLEY	9 JUL 40.	PTE		W.O.A.S Conduct to the etc was insolent to his superior officer	Sgt Peters Cpl Grant	Admonished	10 JUL 40	CAPT A.D. SWAN	
EAST HORSLEY	18 AUG 40.	PTE		W.O.A.S AWL from 2300 hrs 18 August to 0900 hrs 19 August 40 (Total 10 hrs)	Sgt Peters	Fine 1 day pay under 3 Sec 3 (Can) 1940	19 Aug 40	CAPT A.D. SWAN	
EAST HORSLEY	30 AUG 40.	PTE		W.O.A.S AWL from 1400 hrs 30 August to 2230 hrs 1 Sept 40 (Total 56½ hrs)	Sgt Peters Sgt Connors	Fine 3 days pay under 3 Sec 3 (Can) 1940 Sec 9 Regulation 104 (1) (a)	1 Sept 40	CAPT A.D. SWAN	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
EAST HORSLEY	8 Sep 40	Pte		AWL from 2300 hrs 8 Sep 40 to 2130 hrs 9 Sep 40 total 22½ hrs	Sgt Connors Cpl Andrews	7 days FP. forfeits 1 day's pay	9 Sep 40	CAPT A.D. Swan	
CATERHAM	1 DEC 40	Pte		AWL from 1800 hrs 30 Nov to 1100 hrs 1 Dec 40 (Total 17 hrs)	Sgt Andrews Sgt Connors	Defr. 6 days pay 3 Rnd Forfeits 1 day pay 3 Rnd		Capt A.D. Swan	
FIELD	29 SEP 41	Pte	1	Sec 19 AA. WOAS. drunkenness. Drunk on duty 2145 hrs 29 Sept 41.	Lieut Beatty CSM Andrews	10 days pay 3 Rnd 14 days (1)(a) 3 days CB	4 Oct 41	CAPT L.E. KENYON	
CATERHAM	31 OCT 41	Pte		Conduct to the prejudice etc. sleeping on the sidewalk while under the influence of liquor AA Sec 40	Lieut Beatty	3 hrs fack drill 3 days CB	17 Nov 41 29 Nov 41	LIEUT C.D. BEATTY LIEUT C.D. BEATTY	
FIELD	28 NOV 41	Pte		AWL from 1300 hrs 28 Nov 41 to 1515 hrs 28 Nov 41. Total 2 hrs 15 mins	CSM CONNORS	5 days stoppage pay FAD) 14 days CB 14 days forfeiture FAD) 14 days pay 3 Rnd	2 Dec 41	CAPT E.M. CROWSE	
FIELD	29 JAN 42	Pte		AWL from 1745 hrs 29 Jan 42 until 2030 hrs 2 Feb 42 (Total 4 days 2 hrs 45 mins) AA Sec 15(1)	Cpl Brooks JJ L/Cpl Spence W.G.	1 day stoppage pay 3 Rnd 14 days CB.	17 Apr 42	CAPT J.H. LAWTON	
FIELD	15 APR 42	Pte		(AWL from 1100 hrs 15 Apr 42 to 2310 hrs 15 Apr 42 (Total 12 hrs 10 mins) AA Sec 15(1)	CSM Connors Cpl Brooks.	7 days CB.			

No. G-27410 Name ENWRIGHT T.A. Sqn., Battery, or Company 3 Cdn Inf Bde HQ Def Pl Corps The Lorne Scots (P.Duffferin) Date of enlistment 7 Sep 39 G.C. Badges No. Service or Proficiency Pay

M.F.M. 5
A.F.B. (2)
Apr 43—5-20 (7752)
H.Q. 1773-49-10

Date of last entry in Company Conduct Sheet 15 Apr 42 No. and date of last drunk 15 Apr 42 (2) Period not reckoning towards freedom from extra fite — Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	15 APR 42	PTE	2	(a) CWOS drunkenness: AARec 19. was drunk in Shrivenham at approx 2230hrs 15 Apr 42	CSM Connors	$5.00 fine	17 Apr 42	CAPT H. LAPOINTE	
FIELD	12 Aug 42	PTE		AWL from 2300 hrs 12 August to 2140 hrs 16 August total (3 days 22 hrs 40 mins) AARec 15 (1)	Wgt Lewis C. Sgt (Connolly R.D.	14 days stopping from 3 Nov 1941 (b) 26 days F.P. total forfeiture 29 days pay.	17 August	CAPT H. LAPOINTE	

CERTIFIED that this is a true copy of the conduct sheet of G-27410 Pte Enwright, T.A., 3 Cdn Inf Bde HQ Def Pl. The Lorne Scots (P.D.& H.Reg't).

Chester Beatty Lieut
O.C. 3 Cdn Inf Bde H.Q. Def Pl.

SHORT STATEMENT AS TO PARTICULARS
OF SERVICE OF THE ACCUSED

G 27410 - Pte. ENWRIGHT, T.A.

Gaston Gallienne
President

(a) The accused has been in confinement awaiting trial on the present charges for ...Nil... days ...Nil.... hrs in Civil Custody and for ...Nil... days ...Nil.... hrs in Military Custody making a total of ...Nil... days ...Nil... hrs of which ...Nil... days ...Nil... hrs were spent in Hospital.

(b) The present age of the accused according to his attestation papers is ...24... yrs ....0.... mos and ...3.... days.

(c) The date of his attestation specified in his attestation papers is 7.Sep.39

(d) The accused is in possession of, or entitled to ...Nil... military decoration or military award.

I hereby certify that the forgoing particulars are true extracts from the Regimental books in my custody.

Chester D. Beatty, Lieut

(Chester D. Beatty, Lieut),
O.C. 3 Can. Inf. Bde. H.Q. Def. Pl.

In The Field
1400 hrs.
19 Dec 42.

This is to certify that I, G-27410 Pte Thomas Albert ENWRIGHT have received, free of charge, a summary of the evidence to be used in my trial by Court Martial.

Pte T.A. Enwright

16 Dec 42.

I desire to have Lieut. Prescott, S (N.S.) R., 5 Cdn Armd Div.
defend me at my trial by Court Martial.

Pte. J. A. Enwright

16 Dec 42.

Due to the fact that Lieut Prescott, 8 (N.B.) H., 5 Cdn Armd Div is not available, I would like Capt C.B.Higgins, West N.S.R. (att H.Q. 3 Cdn Inf Bde) as Defence Council for my Court Martial.

Pte J A Enwright

G-27410 Pte Enwright, J.A.

In The Field
17 Dec 42.

REVIEW SHEET

F.G.C.M. - Trial: G27410 Pte. Enwright, T.A. Def Pl 3 Cdn Inf Bde

Date of Trial: 17 Dec 42

President of Court: ~~Major J.A.G. Valles R 22e R~~

1. For the information of the officers asked to sign below, the following irregularities are noted:

(a) Description of accused on Charge Sheet not as prescribed.

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters.

C.C. ~~Def Pl 3 Cdn Inf Bde~~

Advt: ~~S.C. 3 Cdn Inf Bde~~

President

A.D.J.A. 1 Cdn Div

Staff Offr for Convening Offr

Staff Offr for Confirming Offr

for (G.M. Graham) Capt
A.D.J.A.
for AA & QMG 1 Cdn Div

50-19.

Pte. Epifano, A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-36518 - Pte Epifano A.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

K4D ~~He is or is under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to undergo detention for ninety days.

(Sgd) K. G. Dick. Capt. — Judge-Advocate, if any. — 4 June 45 — Date awarded. — (Sgd) [illegible] — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Recommended the

~~I direct that the accused be not committed to prison or detention barracks until further orders me~~

(1. AA 57A. Delete if not used.)

(Sgd) Harold Alexander Field

Date 5 June 45 — A/Commanding 5 Cdn Inf Bde, Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F36518 Pte Epifano A	6 JUN 45	[illegible] Capt Actg

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AE 168 5D-11

(Appendix to Part of AFASI 40-P & S/1944)

FIELD GENERAL COURT-MARTIAL

4/388

RECEIVED 26 JUN 1945 CMHQ

Convened by Order of Brig W.J. Megill Comd 5 C.I.B. dated 2 June 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F-36518	Pte	Anthony	Epifano	R.H.C.

PROCEEDINGS REVIEWED
29 June 45
[illegible] left.

PROCEEDINGS OF TRIAL.

~~REVIEWING~~ OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Germany on (date(s)) 4 June 45

33/101

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

K4D A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) K 4D The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1630 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) K 4D ~~The Prosecutor informs the Court that accused is stated to be tried by court-martial instead of being dealt with summarily by the CO.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ Ans ~~—~~

~~Interpreter is sworn.~~ ~~Do you object to~~ ~~as shorthand writer?~~ Ans ~~—~~

K4D ~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.N. Mathieu	R. de Hain
Member	Capt.	J.W.G. Donnelly.	H.Q. 5 C.I.B.
Member	Capt.	H.W. Mole.	17 L.A.D. RCEME
Judge-Advocate	Capt.	K.G. Dick.	Actg Dep Dir of Legal Services 21 Army Gp
Prosecutor	Lieut	S.L. Martin	R.H.C.
Defending Offr	Lieut	P.H. Mackenzie	R.H.C.

Questions by President: Is the Prosecutor a lawyer? Ans No: Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused F36518 Pte Epifano A before arraignment makes(s) (no) plea. (1)

K4D

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

K4D A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and ~~considers~~ the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, see Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M ML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 105; *duty of Prosecutor see RP* 69(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The ~~Prosecutor~~ JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which is your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No sir.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*); *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*b*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record entered on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

Do you intend to call witnesses on your behalf? Ans .....

Are they witnesses as to character only? Ans .....

(1. *RP* 115. 2. *RP* 60(*A*), *see* 60(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf AA*5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*b*). *See Notes in Part I of Schedule.* 2. *RP* 44(*B*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*f*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *The alternative commencement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form* E *or* G.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans Yes sir! Sgt Cobby.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)

(1. *MFB* 253 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 7.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes sir, by my defending Offr.(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, should be after Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and* 70, *governs, in so far as awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 130, 182, *RP* 48-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas* 80 *MR* 2323, *MML p* 60, 737-739. *As to sentences consigned for civil offences by the law of England see AA* 44(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(13), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1st BN THE BLACK WATCH (RHR) OF CANADA

MEDICAL OFFICER'S CERTIFICATE

I have this day examined F-36518 Pte EPIFANO A. 1st Bn The Black Watch (RHR) of Canad

and find him fit to undergo trial by Field General Court Martial.

Capt M.O.

4 Jun 1945

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-36518	Pte		Anthony	EPIFANO	R H C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[illegible] named above as the accused, being subject to military law, has committed the offence[s] set forth in the Charge Sheet[s] attached and on (date) 2 Jun 45 endorsed by me, [illegible], "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[s] should be tried by an ordinary General Court-Martial; (and that it is not practicable to hold the trial by Field General Court-Martial at any place within [illegible])

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[illegible] and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint [illegible] offrs to form the Court, (i) as I [illegible] as President for the reason [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J.N. Mathieu		R de Mais

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	W.G. Donnelly		Hq 5 Cdn Inf Bde
Captain	H.W. Mole		17 L.A.D., RCEME

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain	F.D. Bourcier		Hq 5 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Captain	K.Y. Dick		Cdn Sec 1 Kch 21 Army Gp

On Active Service in the Fd

in GERMANY (Country.)

Date 2 Jun 45

(Signed personally. RP 105 fn 2.)

(W.J. Megill)

Commanding 5 Cdn Inf Bde

Brigadier (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (AFAO 176 (Rev. of AFAO 40/39 & 67/39) 1945)

CHARGE SHEET

Charge against F-36518 Private Anthony EPIFANO, of 1st Bn The Black Watch (RHR) of Canada, a soldier of the Canadian Army Active Force is charged with:

FIRST CHARGE
Sec 15 (1)
Army A ct.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE,

in that he

at Huntlosen, absented himself from his Coy from 0630 hrs 22 A pr 45 until surrendering himself to the Corps of Military Police in NIJMEGEN at 2250 hrs 11 May 45.
(Absent 19 days 16 hrs 20 mins)

Signed "In the Field"

this 11 day of May 1945

[signature] Lt.-Col.
Officer Commanding
1st Bn The Black Watch
(RHR) of Canada.

To be tried by F.G.C.M.

Dumpell Brig
Comd 4 Cdn Inf Bde

2 Jun 45

F-36518. Pte Epifano

E-1. - Character witness.

First witness for defce - D-82219 - Sgt. H Gobby, A Cpl. R.H.C., having been duly sworn states:

"I am as above described. I have been plns Sgt. of Epifano's pln for about 1 month. All the time he was with my pln. (my plns Cmd. is in Eng. & I am senior N.C.O. in the pln). Pte Epifano was one of my best soldiers. He did his work to the best of his ability & ~~I do~~ I never had any complaints all the time I knew him. R.P. 83(B) complied with."

E3. - Plea in mitigation

Accused had been serving since Sept 44. wounded 13 Oct 44. On return from hospital. He reported to R.A.P. & he was put to A sch. for 2 days for purpose of settling his names. His mother, who

-2-

was a stud is very ill, had applied for the
return of his son at the time of the offence he
was awaiting confirmation for his return home.
He returned to his cry with these elements
on his mind:
Accused is not married. He assigns some of
his pay to his mother. He went to grade 8 in
school. He worked in a steel plant in
civilian life:

Summary of Evidence in the case of F. 36518 Pte Epifano, A.

The Commanding Officer orders that the evidence be taken on oath.

FIRST WITNESS B. 155608 A/Cpl Severn, E.T. having been duly sworn states:

I am B. 155608 A/Cpl Severn, E.T. Section Leader of 8 section 9 Pl, "A" Coy 1st Bn The Black Watch (RHR) of Canada and Pte Epifano is in my section. On 21 Apr 1945 Pte Epifano was turned over to me at the outskirts of Huntlosen by Capt H.B. Yuile, Platoon Commander. I told Pte Epifano to report to me after meal parade and that I would get him bedding for the night. On looking for him that evening Pte Epifano was missing. On checking my section the next morning at 0630 hrs 22 Apr 1945 Pte Epifano was not to be found. I searched the Coy Billets and he was nowhere in the area. I have not seen him since until his arrival back at Coy H.Q. yesterday, 18 May 1945.

Signature E.T. Severn Cpl.

The accused declines to cross examine the witness.

The certificate of surrender under AA Sec 163 purporting to be signed by Capt T.G. Bevan 613 Coy C.M.P. (VP), produced as documentary evidence, was read to the accused, marked as exhibit "A", signed by me and attached hereto.

Signature S.L. Martin Lieut

The accused is cautioned as follows:-

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have no statement to make.

I hereby certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E), (F) and (G) ~~(13)~~ have been complied with.

S.L. Martin Lieut

In the Field
19 May 1945.

(S.L. Martin) Lieut
1st Bn The Black Watch (RHR) of Canada

CERTIFICATE OF SURRENDER UNDER ARMY ACT
SECTION 163 (1) (j)

I CPL HOLMAN certify that No. F 36518 Rank PTE

Name EPIFANO A. of BLACK WATCH surrendered himself

to CPL HOLMAN of C.M.P. at NIJMEGEN

at approx. 22 30 hrs on MAY 11TH 1945 as absentee without leave.

He was dressed in uniform.

Date MAY 11TH 1945

F. L. Bevan Capt.
Officer Commanding
Unit 613 Coy. C.M.P. (V.F.)

NOTES.

1. If the surrender was made to an O.R., this certificate must be signed personally by his Commanding Officer.
2. If the surrender was made to an Officer, this certificate may be signed either by that Officer or by his Commanding Officer.
3. In no circumstances may it be signed by one Officer "for" another, or by anyone who does not hold commissioned rank.
4. In no circumstances should the place of surrender be described as "in the field" The actual place of surrender should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

S.L. Marshall Capt "A"

I DO/~~DO NOT~~ WISH TO HAVE AN OFFICER APPOINTED BY MY COMMANDING OFFICER TO DEFEND ME AT MY TRIAL BY FIELD GENERAL COURT MARTIAL.

A. Epifano. Pte
V-36518

~~Name of officer~~ If available

WITNESS:

Capt.
1st Bn The Black Watch (RHR) of Canada.

BE DETAILED AT TIME OF FGCM Staff Capt Adj.

LIST OF EXHIBITS

Exhibit "A" - Certificate of surrender under AA Sec 163 purporting to be signed by Capt. T.G. Bevan, 613 Coy CMP (VP)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F-36518	Pte	Epifano, A.	1st Bn The Black Watch (RHR) of Canada.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereinafter stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given for the most serious offences in each section of entries. If the charge is for drunkenness or absence without leave, the entries for circumstances of alleviation as the case may be, should be stated separately. Any recommended special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 1 times.
For ____ ____ times.
For ____ ____ times.
For ____ ____ times.
For ____ ____ times.

Date of first entry in Field Conduct Sheet 11 Apr 45

Date of last entry in Field Conduct Sheet 11 Apr 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. n/a

*3. The accused at the present time is under sentence for n/a beginning on the n/a day of ____

4. The accused has been awaiting trial on the present charges for n/a days in civil custody; and for 10 days in military custody, *i.e.*, nil days in open arrest, 10 ~~23~~ 25 days in close arrest; of which n/a days were spent in hospital.

5. The present age of the accused is ~~24~~ 21

6. The date of his attestation is 27 Dec ~~43~~

7. The service which the accused is allowed to reckon is 1 6/12

8. The accused is in possession of† n/a

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

		Date of Promotion.
In the substantive rank of	n/a	n/a
In the war substantive rank of	n/a	n/a
In the acting rank of	n/a	n/a

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

*Strike out if not available.

†State the military formations (if any) and to whom.

EX

(Printed by [illegible]) [illegible] 9.44 A.& E.W.Ltd. [illegible]

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted, or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of June ~~May~~ 1945

Capt. Adjt.
OIC Records 1 R.H.C.

No F.36518 Name EPIFANO, A | Sqn. Battery or Company | C.I.C. Corps R.C.A. | Date of enlistment 27 Dec 43 | GC Badges | Service or Proficiency Pay n/a | MFM 6 (AFB 122) 40/PAM/136 (3436)

Date of last entry in Company Conduct Sheet n/a. | No and date of last drunk n/a. | Period not reckoning towards freedom from extra fine n/a. | Sheet No One | Signature OC Company, etc T. Williams Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5/4/45	Pte		AA Sec 15(1) WOAS - AWL from 1130 hrs 5 Apr 45 to 1900 hrs 5 Apr 45 (Absent Time 30 mins)	L154227 Sgt FRANK G.H & D81993 C&M) HOOPER A	Awarded forf 1 days pay 28 days FP 28 " pay	11 Apr 45	R.MacDiff Maj 2IC	total forf 29 days pay.

Certified True Copy of Regtl Records held in my possession

ADJUTANT

Capt I.R.H.C.

(P19)

108 P

Pte (L/Cpl) ERASMUS, C.F

O. H. M. S.

M. F. B. 270

108 P

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this second day of October, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Military Headquarters, on active service, that the persons named in the annexed Schedule, being subject to Military Law, did commit the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder:-

* Omit if not applicable.

PROCEEDINGS REVIEWED

(W.A.T. Anglin) Colonel D.J.A.G., C.M.H.Q.

No illegalities or irregularities such as would warrant withholding confirmation.

(W.A.T. Anglin) Colonel D.J.A.G., C.M.H.Q.

President.

Rank.	Name.	Regiment.
Major	R.W. Lent, Lorne Scots	"N.S." C.M.H.Q.

Members.

Rank.	Name.	Regiment.
Capt	C.E. Kent, R.C.A.P.C.	"C.P.M." C.M.H.Q.
Lieut	C.H. Thornton, R.C.C.S.	"G" C.M.H.Q.
Lieut	W.I. Child, R.C.A.S.C.	"Q" C.M.H.Q.

Waiting Member

* Must be signed personally by the Officer actually in command at the time; and all alterations in the composition of the Court to be initialled by him

*Signed P J Montague
Commanding (P.J. Montague) Major-General
Senior Officer
Canadian Military Headquarters

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-11862 Private (L/Cpl) ERASMUS, Clifford Francis No 6 Cdn Provost Coy, Canadian Provost Corps	First Charge A.A. Sec 20(2) (See Charge Sheet attached)	Not Guilty	Guilty. Sentenced to Severe Reprimand (with automatic forfeiture of loss of Pay for period awaiting trial under Art 149 (1)(c)(i) A.R.s.D.) 9 Oct 42 R W Smith Major Pres.	Sentence and finding confirmed P J Montague

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— no.

R W Smith Major Pres.

(Signed) P Montague (Signed) ..... (Same Date)
(P.J. Montague) Major-General
Senior Officer Canadian Military Headquarters
Confirming Officer (d) A/Bdr. CMP

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Ninth day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*3. ~~The interpreter~~ Shorthand Writer
*4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 9th day of October 1942.

R W Smith Major
President of ~~the Court~~ (Senior)
A/Bdr. CMP

C. Certificate in case of death sentence.

* See footnote (b) on page 760 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~My decision that the soldier named in the margin be not committed to prison until further orders.~~ Mr

Signed this 16 day of Oct 1942

P Montague Major
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of Reg No. M.11862 Pte. (L/Cpl) Erasmus, C. F. No 6. Provost Coy. Can. Prov. Corps.

(Dated) 19 October 1942. (Signed) M. E. Byers Capt.
M. E. BYERS, OFFICER COMMANDING, No. 6 COY., CDN. PROV. CORPS.

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(a) When several cases are promulgated in one omit on the same day the Officer need only sign once.

CHARGE SHEET

The accused Reg. No. W-11962 Private (Lance Corporal) Clifford Francis ERASMUS, No 6 Provost Company, Canadian Provost Corps, a soldier in the Canadian Army (Overseas) is charged with, while on active service:

First Charge
Sec 20(2)
Army Act

WITHOUT REASONABLE EXCUSE ALLOWING TO ESCAPE A PERSON COMMITTED TO HIS CHARGE

in that he

In the Field on the 18th day of September, 1942 when on police patrol committed an unknown Canadian soldier committed to his charge by P.C. Ellis Harold Horner of the Metropolitan Police to escape without taking reasonable means to prevent it.

M. E. Pyne Capt.
Commanding No 6 Company
Canadian Provost Corps
Canadian Army Overseas

London
21 September 1942

"A"

R. D. Smith Major
President

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

F. Montague
(F.J.Montague) Major-General
Senior Officer
Canadian Military Headquarters
Convening Officer

London
2nd Oct 42

MEDICAL OFFICER'S CERTIFICATE

I certify that No. M11862 L-Cpl. Erasmus, C.F of No.6. Coy. Cdn.Provost Corps is fit to undergo trial by Court Martial.

Medical Officer.

9 Oct 42.

TRANSCRIPT OF EVIDENCE IN THE CASE OF M.11862 PTE (L/CPL) ERASMUS, C. P., NO. 6 CDN PROVOST COY, CDN PVST CPS, HELD AT CDN PVST CPS HEADQUARTERS, 30 HENRIETTA ST., LONDON, ENGLAND 9 OCT 42.

President - Major R. W. Lent, Lorne Scots, "M.S." C.M.H.Q.
Members - Capt. C. E. Kent, R.C.A.P.C., "C.P.M." C.M.H.Q.
Lieut. U. R. Thornton, R.C.C.S., "G", C.M.H.Q.

The order convening the court, the charge-sheet and the summary of evidence and medical certificate are laid before the court.

The Court satisfy themselves as provided by Rs.P. 22 and 23

The accused is brought before the court

Prosecutor - Lieut. J. Campbell, No. 6 Coy., Cdn Pvst Cps

Defending Officer - Lieut. S. Fidler, "M.S." C.M.H.Q.

At 1000 hours the trial commences

The order convening the court is read, signed by the President and attached to the proceedings

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names

Q. 1 - Do you object to be tried by me as President or by any of the officers whose names you have heard read over?
A. 1 - No, sir

The President, members as above are duly sworn

Q. 2 - Do you object to Sgt. Methercut as shorthand writer?
A. 2 - No, sir

The Court Reporter, B.26026 Sgt. Methercut, P.J., R.C.E., J.A.G. Branch, C.M.H.Q. is duly sworn

The following officers under instruction are duly sworn:

Lieut. J. Tweddle, No. 6 Coy, Cdn Pvst Cps,
Lieut. W. L. Child, R.C.A.S.C., "Q", C.M.H.Q.

The charge-sheet is signed by the President, marked "A" and attached to the proceedings

The accused is arraigned upon the charge in the above-mentioned charge sheet.

Q. 3 - Are you guilty or not guilty of the charge against you which you have heard read?
A. 3 - Not Guilty, sir
Q. 4 - Do you wish to apply for an adjournment on the grounds that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
A. 4 - No, sir

At this stage it is ruled by the Court, Defending Officer and Prosecutor agreeing, that the provisions of R.P. 83 (8) need not be complied with in respect of the witnesses

The Prosecutor makes the following opening address:

May it please the court I would like to read an extract from standing orders as an opening address - -

Court - I don't know if that is proper at the moment. That can be proved when the case comes on. As an opening address I think you should give the court an idea of what you intend to prove and what evidence you intend to adduce on behalf of the prosecution towards this charge. I have before me and have had for some days a summary of the evidence. I know what is going on. Presumably the members of the court do not. They have no idea what this whole thing is about. You can say what witnesses you are going to call and how you are going to prove this charge

Prosecutor - Well, on behalf of the prosecution I intend to call five witnesses in order to prove that the accused L/Cpl Erasmus was on duty on No. 5 beat on Coventry Street on the 18th of September and that he did have a soldier committed to his charge and without reasonable excuse let him get away.

1st Witness for the Prosecution, B.73546 Cpl. Hayes, S. G., No. 6 Pvst Coy., Cdn Pvst Cps., having been duly sworn is examined by the Prosecutor.

Q. 5 - Cpl. Hayes do you recognize the accused in this room?
A. 5 - Yes, sir
Q. 6 - Will you state his name please?
A. 6 - L/Cpl Erasmus, sir
Q. 7 - Cpl. Hayes, what was your duty on the 18th September 1942 - that is, in what capacity did you act?
A. 7 - I was then Orderly Corporal, sir. I took over the night parades and detailed them for duty, sir
Q. 8 - Did you detail the accused for any particular duty that night?
A. 8 - Yes, sir
Q. 9 - What was that duty?
A. 9 - I detailed L/Cpl Erasmus and L/Cpl Nelson, B. A. to No. 5 Beat, Coventry Street at 1845 hours
Q.10 - Who, in your opinion, was the senior of these two men?
A.10 - L/Cpl Erasmus, sir

Court - Just a minute now. "In your opinion" - I don't think that is proper. Who was the senior man?

Q.11 - Who was the senior of these two men?
A.11 - L/Cpl Erasmus, sir

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.12 - Corporal, from the time that L/Cpl Erasmus and his assistant went out would they have to report to anyone during the course of the evening?
A.12 - No, sir
Q.13 - Was there no check on the patrols at all?
A.13 - Yes, sir, we have visiting N.C.O's that go around and visit each patrol as they come to them on their own beats
Q.14 - Would it be a normal procedure for the patrol to state an approximate time when they might see the N.C.O's on duty again?
A.14 - No, sir, they just visit them when they can because sometimes they are held up and there is no specified time to visit them.
Q.15 - Would it be possible for some arrangement to have been made between the patrol and inspecting patrol?
A.15 - I wouldn't know that, sir

2nd Witness for the Prosecution, P.C. 233 Harold Horner, Metropolitan Police, West End Central Police Station, having been duly sworn is examined by the Prosecutor.

Q.16 - Mr. Horner, do you recognize the accused in this room?
A.16 - Yes
Q.17 - Will you state his name please?
A.17 - Erasmus - L/Cpl Erasmus
Q.18 - Will you tell me in your own words Mr. Horner what happened on the night of Sep 18th at approximately 2200 hours?
A.18 - I had arrested a soldier for robbery at about 1010 P.M. He

became violent and struggled and a Grenadier Guards Sergeant came to my assistance. Shortly after, L/Cpl Erasmus appeared with another patrol and offered his assistance. As I had to trace the loser in the case I turned over the prisoner to him and impressed on him the gravity of the charge and then went away to trace the loser. I was unable to trace him and on returning a few minutes later I found Erasmus and his companion and the prisoner was missing and the Grenadier Guard Sergeant said that he was waiting for me over the road. I searched the spot indicated and couldn't find any trace of Erasmus or the prisoner and a few minutes later I went into Lyon's Corner House and saw Erasmus with his companion seated at a table. They got up on my approach and I said to him "Where is the soldier?" and he said "He escaped". He then agreed to accompany me to the West End Central Police Station and away we went

Q.19 - What were these two lance-corporals doing at the table in Lyons Corner House?

A.19 - They were seated at the table as I entered

Q.20 - Were they eating or were they not?

A.20 - There was crockery on the table

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.21 - Constable, your first words when you began to give evidence were that you arrested a soldier. Is that correct?

A.21 - Yes, sir

Q.22 - Now, then after having arrested him what was your next move? What did you then do?

A.22 - After arresting him I passed him into the custody of Erasmus and his companion

Q.23 - Let us go back a bit. To begin I believe you said that this soldier ran away and you chased after him?

A.23 - Yes, sir, that did happen

Q.24 - And then you brought him back to the scene of the occurrence?

A.24 - Yes

Q.25 - Then when he arrived back at the scene of the occurrence what took place then?

A.25 - A man who was there said "He is the man; he stole my wallet". The soldierI was holding then became very violent saying "The dirty bastard - let me get at him" and it seemed to be a pretext to escape from custody

Q.26 - He was not violent, though, until he was confronted with the civilian was he?

A.26 - No, he was not violent. He struggled a little when I caught him. Until I got a grip on him he did struggle

Q.27 - But he didn't really become violent until he was confronted with the civilian?

A.27 - No

Q.28 - Is it possible that the words of the civilian might have had something to do with that condition of violence which began to take place at that particular time?

A.28 - That is the man from whom he took the wallet?

Q.29 - Yes

A.29 - It is possible, sir

Q.30 - Now, after the disturbance took place and you turned, as you say, the prisoner over to Cpl. Erasmus here did the prisoner make any statement concerning the statement of the complainant?

A.30 - I heard him addressing remarks about the conduct of the complainant

Q.31 - About the conduct of the complainant?

A.31 - Yes, sir

Q.32 - What were those remarks?

A.32 - Well, they inferred that the complainant - -

Court - Now, just a minute. Mr. Fidler asked you what the remarks were - not what they inferred

A.32 (con) - "The dirty bastard wanted me to mess about with him and this is what I get"

Q.33 - Now, you say that in the first instance you arrested this soldier?
A.33 - Yes, sir
Q.34 - Did you at any time subsequent to his arrest and up to the time that you turned him over to Cpl. Erasmus, did you tell Cpl. Erasmus that you had arrested him?
A.34 - Yes, sir, not in exact words but I said "I am taking this man to West End Central Police Station; he has committed a robbery" "He has had a man's wallet".
Q.35 - But you didn't actually tell Cpl. Erasmus or the corporal who was with him that you had placed him under arrest?
A.35 - Not in those words, sir
Q.36 - Would it be possible that you just said "Here, look after this chap while I go away for a minute"?
A.36 - No, sir
Q.37 - Now, you say that after you turned - - I believe your words here were that after you asked him to hold the soldier you proceeded away from the scene of the disturbance?
A.37 - No, sir, not from the scene
Q.38 - What was your reason for leaving the soldier in the first place?
A.38 - To trace the loser
Q.39 - Did it ever occur to you, constable, that any man having had his wallet taken on the street would be missing at the time when the alleged robber was brought back?
A.39 - He was not missing sir
Q.40 - Did you locate him?
A.40 - Yes, sir
Q.41 - When did you locate him?
A.41 - On my return with the soldier
Q.42 - But you said that after that you left again after you returned with the soldier?
A.42 - I lost sight of the loser then
Q.43 - And when you lost sight of him you went to look for him again did you?
A.43 - Yes, sir
Q.44 - Did you find him that time?
A.44 - No, sir
Q.45 - Didn't it occur to you, constable, that it was rather peculiar for one man charging another with robbery of a wallet particularly which would likely indicate some money in connection with it for him to be missing?
A.45 - Not under certain circumstances, sir
Q.46 - What circumstances would lead you to leave the scene of the incident?
A.46 - Well, if I had experienced shame at my conduct being revealed
Q.47 (Court) - You are referring now to the civilian chap who lost his wallet?
A.47 - Yes, sir, as an explanation of his not staying there
Q.48 - A person who has ordinarily lost a wallet would not have any sense of shame would he?
A.48 - No, sir
Q.49 (Court) - Now, then why did you say that?
A.49 - Well, it appeared from what was said at the scene that immoral relations had been going on or had been contemplated between the soldier and the civilian
Q.50 - The immoral relations were possible on whose part constable?
A.50 - Well I should say instigated - - Well, I couldn't say, sir
Q.51 - What was the indication given to you by the soldier?
A.51 - Resentment - he showed resentment
Q.52 - And you say that the civilian was missing finally?
A.52 - Finally, yes sir
Q.53 - Now, would it have been possible during the time that the statement was made by the soldier that Cpl. Erasmus would have overheard that statement?

Court - Now, let us get this clear. I don't want to interrupt. Have I got the story so far? The story is that a soldier and a civ-

ilian had some sort of a discussion and a squabble on Cranbourne Street near Leicester Square as a result of which this constable arrived on the scene of the scuffle and took in charge the soldier. He thought there was some need for arrest and he says that he was a prisoner. He arrested the soldier for robbery and then he handed him over to these two, Erasmus and this other soldier from the provost as a prisoner. Now, then in this charge the reason for the arrest or what went before it or any argument between a civilian and the soldier whoever he was has nothing whatever to do with this case I don't think. It is irrelavant. It is the fact that this was a soldier who had been arrested and taken in charge by the Constable - Horner and handed over to the Provosts Erasmus and his other man. Why or what preceded that I don't think has any effect on this charge at all. There may have been reason for this man being annoyed and the charge may have been false against him but I don't think that affects this charge. I am quite willing to allow you to continue your line of cross-examination but I thought I would warn you.

Q.54 - Very good, sir. I have one remaining question then constable or a couple of remaining questions. One is, did you tell Cpl. Erasmus that the soldier was under arrest?

A.54 - Yes, sir

Q.55 - Did you see subsequent to that time what happened between the soldier and Cpl. Erasmus?

A.55 - No, sir

QUESTIONS BY THE COURT

Q.56 - It may be irrelevant but was the wallet actually produced at any time?

A.56 - No, sir

Q.57 - It was never seen?

A.57 - No, sir

Q.58 - You were on duty in Leicester Square?

A.58 - Yes, sir

Q.59 - Were you alone?

A.59 - Yes, sir

Q.60 - And what directed your attention to this scuffle or whatever it was in Cranbourne Street?

A.60 - Well, I saw a lot of people, sir. They left the Gardens in Leicester Square and the crowd grew larger when they saw the struggle going on

Q.61 - In other words you thought it was a fight?

A.61 - A scuffle - yes, sir

Q.62 - Across the road?

A.62 - Yes, sir

Q.63 - How far from where you would be?

A.63 - The width of the road, sir, about 30' sir

Q.64 - It was dark?

A.64 - Moonlight, sir, but after blackout

Q.65 - One of those clear bright nights?

A.65 - It was not brilliant, sir

Q.66 - But anyway you saw this crowd?

A.66 - Yes, sir

Q.67 - And you found there in the midst of the crowd two struggling people?

A.67 - No, sir, I heard this voice "He has gotmy wallet - stop him"

Q.68 - You heard a shout?

A.68 - Yes, sir, then a soldier broke away from the crowd and ran into Leicester Square. I ran after him and caught him

Q.69 - How far did you have to run?

A.69 - About 100 yards, sir

Q.70 - And how was this chap dressed - in battle dress or kilts?

A.70 - Battle dress, sir

Q.71 - What type of headgear?

A.71 - Without a hat, sir. He had a Toronto Scottish shoulder flash

Q.72 - How did you know that?

A.72 - I put my light on, sir and he turned his shoulder. There was an arrow also. His hat was missing but it was subsequently found and handed to him but I would not say who by

Q.73 - Someone handed him his hat?
A.73 - Yes, sir, it was found in Leicester Square Gardens with the complainant's hat

Q.74 - Whereabouts?
A.74 - On a seat on the north side near this street - Cranbourne St.
Q.75 - Cranbourne Street is where?
A.75 - It runs from Leicester Square to Charing Cross Road
Q.76 - That is the little street on the southeast corner?
A.76 - No, sir, on the northeast corner passing the Hippodrome Theatre

Q.77 - Well, in any event this disturbance happened on Cranbourne Street. You went over and as you went over someone shouted "Stop him, he's got my wallet". What did he say?

A.77 - "Stop him, he has got my wallet"
Q.78 - Anyway a soldier broke away and you caught him in Leicester Square Gardens?
A.78 - Not in the Gardens, sir, - on the street around the gardens
Q.79 - How did you catch him?
A.79 - I jumped on him from the back
Q.80 - And you fell down?
A.80 - No, we didn't actually fall. I got a grip on him. He struggled a little and I got a grip on him and mastered him

Q.81 - Then what was said?
A.81 - I said "Come back with me until I see what is going on". He didn't reply to that; he was winded and I took him back to the scene and - -

Q.82 - Was the crowd still there?
A.82 - Yes, sir, the people were still there
Q.83 - 15 or 20 people?
A.83 - About 15 people, sir and a man there - -
Q.84 - Now, did you know this man?
A.84 - I had never seen him before. I heard his voice
Q.85 - But when you arrived there you had your flashlight I presume?
A.85 - Yes, and it was moonlight. You could discern features almost
Q.86 - Did you recognize this civilian at all?
A.86 - No, sir
Q.87 - Now, then, what was said?
A.87 - The civilian said "That is the man who has got my wallet" and the soldier became very violent

Q.88 - And what did he say?
A.88 - He said "Let me get at the bastard. He wanted me to mess about with him"and he became very violent and we struggled on the ground

Q.89 - Oh, you fell down?
A.89 - Yes, me and the Grenadier sergeant
Q.90 - When did he first appear?
A.90 - I had had dealings with him earlier. At the time, of course, I was standing on the pavement with a drunk. He was already assisting me and he was calling the wagon to pick up an America soldier

Q.91 - And you were standing with the Grenadier Guard Soldier?
A.91 - I was standing with this drunk and the Guards Sergeant was away calling a wagon

Q.92 - Then he came back and you were struggling on the ground with this Canadian soldier on Cranbourne Street?

A.92 - That's right, sir
Q.93 - That was immediately after or a short time after the civilian said "That is him. He got my wallet" and the crowd was still around?

A.93 - Yes, sir. The Guards Sergeant took hold of the other side of the soldier and we got to our feet and then Cpl. Krasmus and his companion came on the scene

Q.94 - Now, then, Krasmus and another provost came on the scene?
A.94 - Yes, sir
Q.95 - What was said and what was done right then?

A.95 - Erasmus said "What is this?" and I said "I am taking this man to West End Central Police Station; he has stolen a wallet from a man we found here. Will you hold him whilst I look around for the man?"

Q.96 - Now, wait a minute. At any time during this scuffle did you tell the soldier that he was put under arrest?

A.96 - Tell the soldier?

Q.97 - Yes

A.97 - Yes, sir

Q.98 - When did you do that?

A.98 - When I seized him and took him back I said to him "We will go back and see what this is about" and then when the civilian said "That is the man" I said "We are all going to West End Central Police Station"

Q.99 - Is that all you said?

A.99 - That is right, sir

Q.100 - Is that all that you said to him?

A.100 - Yes, sir

Q.101 - In other words you didn't say to this Canadian Soldier "You are under arrest charged with having stolen a wallet from this civilian" or anything like that?

A.101 - No, I didn't have time to put it formally as he commenced to struggle

Q.102 - Then in other words you hadn't told the soldier himself in so many words that he was under arrest?

A.102 - No, sir, not verbally

Q.103 - Well, you couldn't tell him any other way

A.103 - No, sir, but I could convey it

Q.104 - You either have to do it verbally or by a telegram or letter or something?

A.104 - Yes, sir

Q.105 - Therefore, we must let it go at that that the soldier had not been told he was under arrest although in your mind you chased him and caught him and heard some person shout "That is the man. He has got my wallet" and you had him under arrest?

A.105 - Yes

Q.106 - Well, you call him a prisoner here?

A.106 - Yes, sir, I considered him a prisoner and treated him as a prisoner

Q.107 - Well, now, Erasmus and Nelson came along. Just repeat again what happened then?

A.107 - Erasmus said "What is this?" or "What is going on?" and I said "This man has stolen a man's wallet"

Q.108 - You said to Erasmus "This soldier - -

A.108 - "Has stolen a man's wallet"

Q.109 - You didn't know that but that is what you told him?

A.109 - Yes, sir. "He will have to go to West End Central Police Station. Will you hold him whilst I find the man?"

Q.110 - Now what happened?

A.110 - Erasmus took hold of the prisoner - -

Q.111 - How do you mean "took hold of the prisoner"?

A.111 - Well, took hold of the prisoner's arm

Q.112 - How?

A.112 - Took hold of him by the left wrist and the Guard Sergeant was holding the other arm

Q.113 - Now, there was yourself, the Toronto Scottish chap, Erasmus and Nelson and the Grenadier Guard Sergeant - altogether five of you?

A.113 - Yes, sir

Q.114 - After you had said this to Erasmus, Erasmus took this Toronto Scottish man by the left wrist. How?

A.114 - With his right hand he took hold of the prisoner's left wrist

Q.115 - Was he still struggling violently?

A.115 - Well, he was not struggling at that time

Q.116 - Was he struggling to get away or to get at this civilian chap?

A.116 - Prior to that, sir. Well, sir, I couldn't say as to that,

sir.
Q.117 - Was he trying to escape from you or was he so annoyed that he was trying to get at this civilian chap to lick him?
A.117 - He gave me the impression, sir, that he was trying to escape
Q.118 - Now, then, you say the Grenadier Guard Sergeant took him by the left arm?
A.118 - He was holding the soldier's right arm
Q.119 - Now, then, what took place? If there was anything done or said I want you to tell us that?
A.119 - I said to Erasmus "This man has stolen a man's wallet in the crowd. Will you hold him? I mean to take him to West End Central Police Station" and he took hold of the prisoner and then I left to search for the loser
Q.120 - Now, where did you go?
A.120 - Well, we were just on the fringe of the people gathered there and I went among the people on the scene within a radius of 10 yards looking for this civilian
Q.121 - And it was still bright moonlight?
A.121 - Yes
Q.122 - Were you using your torch?
A.122 - Yes, I was
Q.123 - And you just went out in the crowd?
A.123 - Yes, sir
Q.124 - And how long were you away actually from Erasmus and the prisoner and the Grenadier Guard Sergeant?
A.124 - I would say four minutes, sir
Q.125 - How far would you go in that four minutes and where would you go?
A.125 - Just amongst the people, sir, within a radius of 30 yards, sir
Q.126 - And did you question any people?
A.126 - Yes, sir, I failed to find out where this man had gone by appealing to bystanders
Q.127 - And he had completely disappeared?
A.127 - Yes, sir
Q.128 - Then what did you do?
A.128 - I returned to where I had left the soldier with Erasmus and they were not there. The Grenadier Guard Sergeant was - -
Q.129 - Now, just a minute. When you left the group Erasmus had the Toronto Scottish prisoner by the left wrist and the Guard Sergeant by the right arm when you left him?
A.129 - Yes, sir
Q.130 - When you got back there you found the Guard Sergeant there?
A.130 - Yes, sir
Q.131 - Crowd still there?
A.131 - They had dispersed, sir
Q.132 - Then what happened? You said something to the Guard Sergeant. Now Erasmus was not there?
A.132 - No, sir
Q.133 - Then you can't repeat what the Guard Sergeant said
A.133 - No, sir, that's right.
Q.134 - Anyway as a consequence of what was said between you and the Guard Sergeant what happened?
A.134 - I searched the other side of the road
Q.135 - Was that in Cranbourne Street?
A.135 - Yes sir -- without results
Q.136 - How did you search? What did you do?
A.136 - I looked around the vicinity, the other side of the road and the vicinity and was unable to find Erasmus or the soldier arrested. About ten minutes or so later I went into Lyons Corner House
Q.137 - You went along past Leicester Square to Lyons Corner House in Coventry Street?
A.137 - Yes, sir, and saw Erasmus and Nelson seated at a table
Q.138 - On the ground floor?
A.138 - Yes, sir
Q.139 - Now, you usually go in that Lyons Corner House off Coventry Street?
A.139 - Yes, sir

Q.140 - And it is the first door on the right past the corner?
A.140 - Yes, sir
Q.141 - As you go along towards Piccadilly Circus it would be the first door on your right?
A.141 - Yes, sir
Q.142 - And as I remember there are tables on the right and right on through?
A.142 - Yes, sir
Q.143 - Where were they?
A.143 - Seated at a table on the right. It was an unused part of the restaurant at that time
Q.144 - Do you know of your own knowledge what time that portion of the restaurant closes?
A.144 - No, sir
Q.145 - Does it close at nine o'clock or ten o'clock or what?
A.145 - It closes in the evening, sir
Q.146 - Now, did they have their hats off?
A.146 - No, sir
Q.147 - Both Erasmus and Nelson were sitting at a table. Were other people sitting at tables too?
A.147 - No, sir
Q.148 - Were there chairs on top of some of the tables?
A.148 - No, sir, the tables were empty and it was not in a public part for the time being
Q.149 - Were there waitresses around?
A.149 - No, sir
Q.150 - In other words Erasmus and Nelson were sitting in a vacant part of the restaurant at a vacant table?
A.150 - Yes, sir
Q.151 - Something was said about crockery on the table. Any evidence of their having been drinking tea?
A.151 - No, sir, that was the only table with crockery, sir. There were quite a number of tables there
Q.152- Do you know of your own knowledge whether they had been eating and drinking or not?
A.152 - I couldn't say, sir
Q.153 - Now you and the Guard Sergeant came in and saw these two at the table and no waitresses around or anything?
A.153 - Yes, sir
Q.154 - Now, what was said by you in the presence of Erasmus?
A.154 - Erasmus got up and met me and I said to him "Where is the soldier?" and he said "He got away"
Q.155 - All four of you were there?
A.155 - Yes, sir
Q.156 - That is Nelson, Erasmus and the Guard Sergeant and yourself?
A.156 - Yes, sir. I said "This is a very unsatisfactory position and would require some explanation" and asked him if he would accompany me to the West End Central Police Station and he agreed to do so which we did
Q.157 - Where is West End Central Police Station?
A.157 - Saville Row, sir, just off Regent Street and we adjourned to West End Central Police Station
Q.158 - All four of you?
A.158 - Yes, sir
Q.159 - The Guard Sergeant too?
A.159 - Yes, sir, he agreed to go as a witness of the occurrence and there they were seen by the Station Officer
Q.160 - What was his name?
A.160 - Inspector Pitt
Q.161 - Were you there?
A.161 - No, sir
Q.162 - Now you have mentioned "This is a very serious thing" or something or other. What did you say to Erasmus at Lyons Corner House?
A.162 - I said to him "Where is the soldier?". He said "He got away" and I said to him "That is a very unsatisfactory state of affairs; I had him in custody for robbery" and he didn't make any reply to that, sir
Q.163 - Now, then, you went from there to away over on Saville Row?

A.163 - Yes, sir
Q.164 - Did you walk with Erasmus?
A.164 - Yes, sir
Q.165 - Was the Grenadier Guard Sergeant behind with Nelson or where were they?
A.165 - We sort of made our way through the people, sir. It was very crowded
Q.166 - Did you talk to Erasmus on the way or did you hear any conversation by Erasmus on the way?
A.166 - Not relevant to this occurrence, sir
Q.167 - Now, when you got to the Police Station what happened there?
A.167 - No, sir, he didn't make any statement beyond saying that he got away
Q.168 - But you made some statement didn't you?
A.168 - I made a written statement, sir
Q.169 - When you got there?
A.169 - I showed them into the waiting room
Q.170 - You simply said "Will you stay here?" or what?
A.170 - I directed them to the waiting room and said "Will you wait in here?"
Q.171 - Where did you go?
A.171 - I went to the office to report to the Station Officer, Inspector Pitt
Q.172 - Who was in an inner office, I presume?
A.172 - Yes, sir
Q.173 - What took place then?
A.173 - I explained to him - -
Q.174 - You explained to Inspector Pitt the whole question?
A.174 - Yes, sir. Then in consequence of a message an officer from the Provost Corps came. It was the R.S.M.
Q.175 - I thought you said Inspector Pitt talked to Erasmus
A.175 - Yes, he took his personal particulars, sir
Q.176 - Now, wait a minute. You were there when Inspector Pitt was talking to Erasmus weren't you? In the outer room?
A.176 - In the Interview Room, sir
Q.177 - Now, all I know is this, that you left him in the Waiting Room and went in to Inspector Pitt and told him of the event. Now what happened from there on? Were you with him?
A.177 - I was with him
Q.178 - What was said?
A.178 - Inspector Pitt took the particulars of - -
Q.179 - What was said please?
A.179 - Inspector Pitt said to Erasmus "What is your name and number and regimental particulars?" They were taken down by Inspector Pitt
Q.180 - Right there in the waiting room?
A.180 - Yes, sir
Q.181 - On what?
A.181 - In writing, sir
Q.182 - On a pad or book or what?
A.182 - On a pad, sir
Q.183 - Now, then, what else happened - anything else said then?
A.183 - Nothing was said then
Q.184 - By you or the Guard Sergeant or anybody?
A.184 - Not in the presence of Erasmus, sir
Q.185 - Merely Inspector Pitt said "What is your name and number" and did Erasmus say anything or produce his paybook?
A.185 - He produced his paybook, sir
Q.186 - He didn't say anything at all - just produced the paybook?
A.186 - Yes, sir
Q.187 - Now, what was done after that or what was said?
A.187 - Nothing else was said in my presence, sir - nothing relevant to the occurrence
Q.188 - If it was said in the presence of Erasmus or Erasmus said it before someone else we would like to hear it because we might think it was relevant
A.188 - Well, Inspector Pitt took his particulars and left
Q.189 - Then there was just the four of you?
A.189 - Yes, sir, then I also left
Q.190 - Where did you go?

A.190 - I left to make my report, sir. I left the waiting room
Q.191 - Leaving the three of them still there?
A.191 - That's right
Q.192 - Then what happened?
A.192 - Subsequently the sergeant-major arrived
Q.193 - What Sergeant-major?
A.193 - From the Provost Corps
Q.194 - Do you know his name?
A.194 - S/M McCallum I think the name was, sir. He arrived and left with the two Provost men
Q.195 - Were you there?
A.195 - I saw him there, sir
Q.196 - Were you talking to him at all?
A.196 - No, sir
Q.197 - Did you hear any conversation between the sergeant-major and Erasmus or any conversation in Erasmus' presence?
A.197 - Not apart from directions, sir, as to leaving the Station - "This way" and "All right"
Q.198 - Then you made out your written statement?
A.198 - I made it out, sir, and handed it to Inspector Pitt
Q.199 - Now, do you know anything else about it?
A.199 - That is all, sir
Q.200 - Did you ever discover this civilian?
A.200 - No, sir, I never
Q.201 - Now, you mentioned somewhere that you found their hats in Leicester Square Gardens?
A.201 - Their hats were found sir
Q.202 - Did you see them?
A.202 - Yes, sir
Q.203 - Any markings of identity on them?
A.203 - Well, the soldier's hat was of the regulation type and I think it was restored to the soldier
Q.204 - Well, tell us all about that?
A.204 - Well, some person - I don't know who it was - produced the hat while Erasmus was there and said he had found it on a seat in the Gardens
Q.205 - Where?
A.205 - At the time of Erasmus' arrival - about the same time
Q.206 - After the scuffle?
A.206 - Yes, sir, after Erasmus had arrived a Policewoman, sir, came with the soldier's hat and the civilian's hat
Q.207 - She said?
A.207 - She said "I found these on the seat in the Gardens"
Q.208 - And she handed them to?
A.208 - It was handed to - - I think Erasmus took the hat
Q.209 - This Provost took the soldier's hat?
A.209 - Yes, sir
Q.210 - And gave it to the Toronto Scottish chap?
A.210 - Yes, sir
Q.211 - Then was the hat examined as to identity?
A.211 - No, sir, I just saw that it was a black bonnet, Scots type
Q.212 - Was it a glengarry like this or a balmoral, Tam-O'Shanter?
A.212 - A balmoral
Q.213 - Did you make any inquiries as to whether the hat had been examined for identification marks?
A.213 - No, sir
Q.214 - You didn't examine it?
A.214 - No, sir
Q.215 - How about the civilian's hat?
A.215 - The civilian's hat was found and it was taken to the Station and there were no means of identifying the owner
Q.216 - It was found at the same time?
A.216 - Yes, sir

3rd Witness for the Prosecution, 2614279, Sgt. E. J. Hackling, Q. M. Stores, Holding Terminal, Grenadier Guards, Wellington Barracks, S. W. 1, London, having been duly sworn is examined by the Prosecutor.

The witness identifies himself

Q.217 - Sergeant, do you recognize the accused in this room?
A.217 - Yes, sir
Q.218 - Where were you, sergeant, at about 2200 hours on the 18th of September 1942?
A.218 - I was walking down Coventry Street from Leicester Square to Piccadilly Circus
Q.219 - Will you tell us what happened?
A.219 - I saw a commotion at the top of Cranbourne Street in which a police constable and a Canadian soldier were involved. The police constable was having considerable difficulty with the Canadian soldier and I went to the police constable's assistance, sir, and together we overpowered the Canadian soldier and after we had got him more or less under control, sir, Cpl. Erasmus and another Canadian Provost came up and asked if they should take the prisoner. The police officer said that he was in custody and that they could take him and they took him and Cpl. Erasmus told me they would hold him and wait on the other side of the road until the police officer had made his inquiries and at that point he could see them. About five minutes later or perhaps a little more than five minutes, sir, the policeofficer and myself crossed the road to where we thought Cpl. Erasmus and the other Provost should be and there was noone there. We then walked around for another five minutes, sir, and we saw no trace of either the Provosts or the prisoner so we walked towards Piccadilly Circus and we saw another two Provosts. So I described what I thought Cpl. Erasmus looked like and one of these Provost recognized it as Cpl. Erasmus and thought he could find him and that he knew where he would be so we went to Lyons Corner House at Piccadilly Circus and saw Cpl. Erasmus together with the other Provost Chap. The police officer asked him where the prisoner was and they informed us that he had got away from them and the police officer asked if he would accompany him to West End Central Police Station and asked me too and we went there. The R.S.M. later attended and I made a statement and that is all.
Q.220 - As you were entering Lyons Corner House did you find L/Cpl Erasmus there?
A.220 - Yes, sir
Q.221 - What was he doing there?
A.221 - I couldn't say, sir. He was apparently on patrol there
Q.222 - Was he sitting at a table?
A.222 - No, sir, he came out of Lyons' Corner House to us, sir

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.223 - Sergeant, in connection with this disturbance which was taking place at the time, when you first got there and noticed this thing going on were the constable and the soldier then struggling?
A.223 - They were, sir
Q.224 - And you went to the assistance of the police constable?
A.224 - Yes, sir
Q.225 - Did anyone else appear on the scene at that particular time other than you?
A.225 - There was another Canadian soldier there but I took him to be an accomplice of the prisoner they were trying to arrest
Q.226 - An accomplice?
A.226 - Well, he appeared to be a friend of the prisoner
Q.227 - Was there anyone else - a civilian?
A.227 - A big crowd, sir
Q.228 - And when the two Provosts came along just what happened?
A.228 - Well, they asked me if I was holding the prisoner and if they should take him away from the crowd
Q.229 - They asked you that question?
A.229 - Yes, sir
Q.230 - Do you know of any conversation between these two Provost Corporals and the police constable?
A.230 - When they asked me that, sir, I told them it was up to the civilian policeman

Q.231 - What action did they take then?
A.231 - Cpl. Erasmus, if I remember rightly, approached the police officer and asked him
Q.232 - Can you remember what the police officer said to Cpl. Erasmus?
A.232 - No, I didn't hear that, sir
Q.233 - Well, what actually happened then?
A.233 - Well, Cpl. Erasmus said to me that he would take the prisoner across to the opposite side of the road away from the crowd and would wait for us there
Q.234 - I would just like to refresh your memory, sergeant. I think you have said earlier on that at the request of the police officer the two corporals took this soldier into custody?
A.234 - Well, they asked me if they should take him and I said it was naturally up to the police officer, sir
Q.235 - Yes, but I believe you said. Here are your words in the Summary "The two Canadian Provost patrols approached and at the request of the police officer took the soldier into custody"?
A.235 - Well, they asked if they should take him and the police officer said "Yes, he is in custody for robbery"
Q.236 - They asked you and then the police officer?
A.236 - Yes
Q.237 - Did you hear what his words were to them?
A.237 - He told them he was in custody for robbery
Q.238 - Did he use any other words besides that he was in custody for robbery?
A.238 - Not to my knowledge, no sir
Q.239 - Was there anything said between this soldier and the Provosts Corporals after they arrived? Did you hear any talk between them?
A.239 - No, apart from the fact that he wanted to fight everybody and they told him to keep quiet
Q.240 - Did they take any action to restrain him?
A.240 - Yes, they were helping to hold the fellow down
Q.241 - They were helping to hold him?
A.241 - Yes, sir
Q.242 - Was he so violent?
A.242 - Yes, sir, up to the time the Provost Corporals arrived
Q.243 - Up to the time they arrived?
A.243 - Yes, sir
Q.244 - At the time of their arrival did he appear to be satisfied? Did they appear to calm him down somewhat?
A.244 - The prisoner did yes
Q.245 - Following that who suggested that they go across the road?
A.245 - Cpl. Erasmus, sir
Q.246 - And at the time that he left how was he holding?
A.246 - Well, the prisoner was walking between Cpl. Erasmus and the other Provost
Q.247 - Were they holding him at all?
A.247 - I couldn't see that, sir. It was dark
Q.248 - Now, you don't know any more about what Cpl. Erasmus had to do with this prisoner and you don't know anything further of Cpl. Erasmus until you saw him later on at some time I believe
A.248 - I don't know anything at all about Cpl. Erasmus until the time we saw him in the foyer of Lyons Corner House
Q.249 - Did you by any chance - - Just give me the details in connection with your visit to Lyons Corner House
A.249 - Well, we met two other Provost fellows. I don't know who they were. They were Canadian Provosts. I described Cpl. Erasmus to them, sir, and they immediately hit on Cpl. Erasmus and said they thought they could find him and they took us to him
Q.250 - You went right inside?
A.250 - Yes, into the foyer, sir, by the lift. I think the grill is down in the basement there - just by those steps
Q.251 - Were Cpl. Erasmus and the other corporal sitting at a table or standing up or what?
A.251 - I didn't see them at all. They were fetched from the back of Lyons' place by the corporal
Q.252 - Who fetched them?
A.252 - A corporal who is not present here sir

Q.253 - Then you didn't see - - Excepting for them coming down the back part of Lyons' Corner House you didn't see them at all?
A.253 - No, sir
Q.254 - Was the constable with you all this time?
A.254 - Yes, he was standing at the top of the steps with me
Q.255 - And you, yourself, couldn't see where they had come from? Or whether they were sitting down, standing up or drinking tea or what they were doing?
A.255 - No, sir
Q.256 - And following their arrival on the scene what was said then by anyone present?
A.256 - To the best of my recollection the police officer asked them where the prisoner was and Cpl. Erasmus replied that he had got away
Q.257 - Did he enlarge on that at all?
A.257 - Well, he just said they walked across the street and a crowd gathered around them there and the prisoner made a dive and there was a woman in front of Cpl. Erasmus - -

QUESTIONS BY THE COURT

Q.258 - What is all this? Let us start fresh again. What further discussion took place in Lyons' Corner House following the arrival of Cpl. Erasmus and the other corporal on the scene after they had been fetched by the other two corporals? And just where did this conversation take place?
A.258 - Inside Lyons Corner House in the foyer
Q.259 - Just at the head of the stairs going down to the grill?
A.259 - Yes, sir
Q.260 - Just where you go out the door?
A.260 - Yes, sir
Q.261 - Who were there?
A.261 - The police officer, Cpl. Erasmus and the other corporal who was with him, the other patrol, another full corporal (I think that was the fellow who fetched Cpl. Erasmus) a gray-haired fellow
Q.262 - Did the police officer go with the corporal to fetch Cpl. Erasmus?
A.262 - As far as I can remember he waited with me
Q.263 - Now, there was yourself, the constable, the newly arrived corporals, Cpl. Erasmus and the man with him. What statements were made at that time if any?
A.263 - Well, the police officer asked Cpl. Erasmus what had happened to the prisoner. Cpl. Erasmus replied that the prisoner had got away and the police officer then wanted to know the whys and wherefores. Cpl. Erasmus said they had walked across the road with him and the prisoner had made a dive for it and a woman was in front of Cpl. Erasmus which impeded his getting a start and the other provost was in the same position so the prisoner escaped
Q.264 - Now following this up what next happened?
A.264 - Well the police officer said that this robbery had taken place and that he would have to report it and would Cpl. Erasmus and the other Provost corporal and myself accompany him to the police station
Q.265 - Was there any objection by Cpl. Erasmus?
A.265 - He said he would come willingly
Q.266 - And on the way down to the police station did you have any conversation? Did you or the constable or this other corporal Cpl. Nelson or Cpl. Erasmus have any conversation on the way down together?
A.266 - Well, not apart from ordinary things
Q.267 - Nothing that had any bearing on the escape at all?
A.267 - No, sir
Q.268 - And then your arrival at - where was it?
A.268 - Saville Row Police Station
Q.269 - What happened then?
A.269 - Well, the police constable stated his case to the Inspector on night duty, sir
Q.270 - Did he state his case in the presence of Cpl. Erasmus?

A.270 - No, sir
Q.271 - Well, you went in and then what happened?
A.271 - Cpl. Erasmus and Cpl. Nelson (I think it is, sir) and myself, we had to wait in the Waiting Room there, sir and the policeman stated his case I presume to the Inspector, sir and later I was sent for and asked to make a statement which I wrote down
Q.272 - You didn't make any statement, though, in the presence of Cpl Erasmus?
A.272 - Nothing at all. The only thing I made in the police station I wrote down on paper, sir
Q.273 - Did you see Cpl. Erasmus questioned in any way or hear him being questioned in any way when you were there?
A.273 - Only I saw the Provost Sergeant-Major go in to him but I didn't hear any questions
Q.274 - During the time that you and Cpl. Erasmus and Cpl. Nelson were all together in the waiting room did anyone come out?
A.274 - There were two plainclothes detectives came in, sir, and asked a few questions who I was and who they were
Q.275 - And what did Cpl. Erasmus have to say?
A.275 - I can't remember, sir
Q.276 - Were they asking him to identify himself?
A.276 - I can't remember about that, sir. I walked out. I remember the police detectives coming in there sir and I walked out into the charge room and don't remember the detectives asking anything
Q.277 - As far as you know, then, there was no request made by anyone for Cpl. Erasmus to identify himself or Cpl. Nelson?
A.277 - No, sir, there was not
Q.278 - Following your statement to the police you were finished?
A.278 - Yes, I returned to barracks
Q.279 - Going back to the time when Erasmus and Nelson took charge of or took over the actual body of this Toronto Scottish chap, did you go with Erasmus and the others across the road?
A.279 - I remained with the police officer, sir
Q.280 - Well, the police officer in his evidence told us he went out among the crowd looking for the loser. Did you go with him?
A.280 - No, sir, I hung on the fringe of the crowd, sir, because some of my fellows came along and thought I was in trouble and I was explaining to them
Q.281 - How long were you there?
A.281 - About four or five minutes
Q.282 - Then what happened? The police officer asked you something or other and then went looking for the two Provosts and the Toronto Scottish chap?
A.282 - Yes, sir
Q.283 - Now, sergeant, you said you were walking down Coventry Street in the first place and then what did you do? Were you alone?
A.283 - On my own, yes sir
Q.284 - About 10 o'clock at night?
A.284 - Yes, sir
Q.285 - You came down to Leicester Square Gardens?
A.285 - Yes, sir, some gardens on the left hand side beside the picture place
Q.286 - Then what happened?
A.286 - I just went to the edge of the crowd
Q.287 - Now, wait a minute. You were all alone?
A.287 - Yes, sir, I had seen an American soldier lying out on the pavement and I had fetched a police officer
Q.288 - To this fellow?
A.288 - Yes, sir
Q.289 - Then what?
A.289 - Well, P.C. Horner stayed with this soldier, sir, while I went to the Eagle Club and rang the American Army Police Headquarters
Q.290 - Anyway you got a wagon for this fellow?
A.290 - Yes, sir
Q.291 - Then you came back?
A.291 - Yes, sir, I went back to where I had left this drunk lying,

sir, and the police officer was across the road in this scuffle

Q.292 - Then what did you do?
A.292 - Well, I saw the prisoner was very violent and I went to the assistance of P.C.Horner
Q.293 - What happened after that? You didn't hear the civilian make any accusation?
A.293 - No, sir, all I could hear was the prisoner wanting to fight the civilian
Q.294 - What did he say?
A.294 - He was trying to get away altogether, I think, sir
Q.295 - Was he trying to get away or was he trying to get away to fight the civilian?
A.295 - Well, he was trying to get away from the police officer to fight the civilian, sir
Q.296 - His main object was not to get away from the police officer but to get away and fight the civilian who said he had pinched his wallet?
A.296 - Yes, sir
Q.297 - What was he saying?
A.297 - He just said "I will fight the bastard. I will fight the bastard if I get court-martialled"
Q.298 - He didn't get away though?
A.298 - Not from us, no sir
Q.299 - Then Erasmus and Nelson came along and didn't the civilian police officer tell Erasmus and Nelson that this Toronto Scottish chap was under arrest?
A.299 - He said he was in custody for robbery, sir
Q.300 - They took him over?
A.300 - Yes, sir
Q.301 - How did they take him over?
A.301 - Well, they just walked across the road with him between them
Q.302 - Did they lay hands on him?
A.302 - I couldn't say that, sir; it was dark
Q.303 - Had you?
A.303 - I had previously, sir. I had held him down
Q.304 - When he got up he was handed over to the Canadian Provost and did you do anything about it?
A.304 - Well, I just went around with the police officer to see if he could get the names of any witnesses in the crowd
Q.305 - You went with him?
A.305 - No, sir, I just hung around
Q.306 - We have been told here that you had the Toronto Scottish chap by the right arm?
A.306 - No, sir, his left arm
Q.307 - Then did you hand that body over?
A.307 - No, sir, when I could see there was going to be no more trouble I just let go. He quieted down a lot when the two Provosts came along
Q.308 - Did you see any hats?
A.308 - No, sir
Q.309 - Did you see them handed back?
A.309 - No, sir, I didn't see the actual hats at all. The only hat I saw was the civilian hat
Q.310 - Then you hung around until Constable Horner came back and you went looking for the Canadian Provosts and the prisoner and you couldn't find them and went along to Lyons Corner House?
A.310 - Yes, sir
Q.311 - And outside Lyons Corner House you met a full corporal?
A.311 - No, sir, it was on that street near the Mapleton Hotel
Q.312 - One was a full corporal?
A.312 - I think he was, sir
Q.313 - And you described Erasmus and his pal Nelson and they said "Perhaps we can find him" so they went over to Lyons Corner House and you went along with them? Did this corporal go in first?
A.313 - They went in together
Q.314 - And you followed on with the civilian Constable, Horner?
A.314 - Yes, sir
Q.315 - And you waited inside the door?

A.315 - Just at the top of the steps, sir
Q.316 - And the full corporal went away someplace?
A.316 - Yes, sir
Q.317 - Where did he go - do you know?
A.317 - Well he went almost straight in front I think, then to the left, sir
Q.318 - And the police constable was with you all the time?
A.318 - As far as I can remember, sir, the police constable was with me all the time but I would not be sure
Q.319 - In any event where did Erasmus and this corporal come back from?
A.319 - From the opposite way from where wewere facing, sir
Q.320 - You think the civilian police constable was with you all the time?
A.320 - I think to the best of my memory he was with me all the time but I won't swear to that, sir
Q.321 - Did you see Erasmus and Nelson seated at a table at any time with crockery on it as if they were having tea or anything like that?
A.321 - No, sir

Court is adjourned for lunch 1155 hours

Court as enumerated on page 4 is re-opened at 1315 hours

4th Witness for the Prosecution, F.49920 L/Cpl Nelson, B.A., No. 6 Coy., Cdn Pvst Cps., having been duly sworn is examined by the Prosecutor.

The witness is identified to the court

Q.322 - Cpl. Nelson do you recognize the accused?
A.322 - Yes, sir
Q.323 - Who is the accused? State his name
A.323 - L/Cpl Erasmus, sir
Q.324 - Were you on duty on the night of the 18th September?
A.324 - Yes, sir
Q.325 - What was that duty?
A.325 - To patrol Coventry Street, sir
Q.326 - Who were you on duty with?
A.326 - L/Cpl Erasmus, sir
Q.327 - Will you tell us what happened at 2200 hours on the 18th?
A.327 - Well, sir, we left Charing Cross Underground and we went on the right hand side of the road and there was a scuffle over near Leicester Square and we went over and found a civilian policeman holding a Canadian soldier. L/Cpl Erasmus took possession of the soldier and we went across the street, across the roadway and he ran away. We gave chase and went as far as the Corner House and went in there to see if the visiting patrol was there
Q.328 - How did you get this soldier in the first place?
A.328 - He was turned over to L/Cpl Erasmus by the civilian policeman
Q.329 - Was he their prisoner?
A.329 - Well, he said he wanted him. He didn't say he was under arrest
Q.330 - Why did the police officer turn this man over to you?
A.330 - He wanted us to hold him I guess so that he could get after the person who lost the purse
Q.331 - Was this man you had in your custody, was he supposed to have stolen somebody's purse?
A.331 - Yes, sir

Court - Now, I don't think that is just the proper way of putting it. That is what we call a "leading question"

Q.332 - I will put it another way. Why did the civilian policeman have this man in the first place?
A.332 - Well, they picked him up on the square?
Q.333 - On the Square?
A.333 - Leicester Square, sir and we came along and a sergeant of the Grenadier Guards and a police constable were holding the man.

They said they wanted him and we told them we would take him across the street and wait for them over there

Q.334 - Told who?
A.334 - Told the police constable and the sergeant of the Grenadier Guards

Q.335 - What did you do after this man got away?
A.335 - Well, a crowd was there and I kind of dropped back and Cpl. Erasmus started across and we just took about two steps and the man made a break

Q.336 - Did you make any attempt to go after him?
A.336 - Yes, we did
Q.337 - What did you do?
A.337 - We chased him as far as the corner house, sir
Q.338 - Why didn't you go further than that?
A.338 - It was dark and we couldn't see what was ahead of us
Q.339 - What did you do after that?
A.339 - We went in to see if anyone else was around
Q.340 - Do they go in there?
A.340 - Yes, sir
Q.341 - When the police constable and the other sergeant saw you what were you doing?
A.341 - Sitting down, sir
Q.342 - Is it the custom to sit down on duty?
A.342 - Yes, sir

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.343 - When you started out that night and were attracted by this disturbance in Leicester Square what was the first thing that you noticed when you arrived on the scene?
A.343 - I noticed the sergeant of the Grenadier Guards and the police-man holding a Canadian soldier
Q.344 - What was his - - How was he conducting himself at that time?
A.344 - Well, he was questioned by Cpl. Erasmus and he said - -
Q.345 - How was he behaving - violently or struggling?
A.345 - He had been struggling but had quieted down
Q.346 - What do you mean "he had been struggling"? Did you see him as you came up?
A.346 - No, sir
Q.347 - But the sergeant of the Grenadier Guards and the Police con-stable were holding him were they?
A.347 - Right, sir
Q.348 - Then during the time that you were there did you hear him make any statement at all?
A.348 - Only the statement that the man made and the statement that the police constable said he wanted the man but he didn't say he was under arrest
Q.349 - What did the man himself say first?
A.349 - He said while he was standing on Leicester Square this man came along and, in his own words he wanted to get down on him. He refused and the fight started
Q.350 - Did he say anything more than that?
A.350 - He said the police had accused him of stealing a purse
Q.351 - The police had accused him?
A.351 - Yes, sir
Q.352 - Did he indicate to you whether he had been told he was under arrest?
A.352 - No, sir
Q.353 - He didn't?
A.353 - No, sir
Q.354 - During the time that you were there did you hear the police constable mention that he was under arrest?
A.354 - It was never mentioned. He said he wanted the man
Q.355 - And did he ask you to take any action in connection with that?
A.355 - No, sir
Q.356 - Did he ask you to hold the prisoner?
A.356 - We told him we would take him across the road
Q.357 - But before that did he ask you to hold the soldier? Did he ask you or Cpl. Erasmus?

A.357 - He didn't ask me
Q.358 - Did he ask Cpl. Erasmus?
A.358 - I couldn't swear to that, sir
Q.359 - Did Cpl. Erasmus actually hold the man?
A.359 - Yes and started across the street
Q.360 - But before he started across the street did he hold him for any length of time or did he start immediately across the street?
A.360 - He started immediately across the street
Q.361 - Can you give any reason why he would immediately walk across the street?
A.361 - He wanted to get him out of the crowd, sir
Q.362 - Were there any instructions given to him?
A.362 - Only that we go across the street and wait at the other side of the road
Q.363 - Who instructed you to do that?
A.363 - The police constable, sir
Q.364 - The police constable suggested that to you? Now look, corporal, I want you to get this story quite straight and go back to the beginning again. In the first place now I want to get clear in my mind whether it was a suggestion on the part of the police constable or an instruction on the part of the police constable to go across the street or whether you and in this case Cpl. Erasmus decided on your own to go across the street. Which was it?
A.364 - He said we would hold him and would go across the street and wait there
Q.365 - Cpl. Erasmus said that?
A.365 - Yes, sir
Q.366 - Then it was not the police constable who suggested it?
A.366 - No, sir, he agreed with it
Q.367 - Are you sure you didn't mention it to the Grenadier Guards Sergeant rather than to the police constable?
A.367 - He was talking to the policeman, sir
Q.368 - Who was?
A.368 - Cpl. Erasmus
Q.369 - Did you hear exactly what he said?
A.369 - No, sir, I didn't
Q.370 - You are only assuming that then?
A.370 - Yes, sir
Q.371 - Then after you started across the road what actually happened?
A.371 - Well, we got into quite a crowd standing there and I kind of dropped back and he made a jump and got away. Erasmus and I made after him
Q.372 - You say you dropped back. Were you holding him going across the street?
A.372 - No, sir, Erasmus had him by the arm
Q.373 - And you were on the other side were you?
A.373 - Yes, sir
Q.374 - What made you drop back behind?
A.374 - The crowd, sir. It was very crowded
Q.375 - You thought he was going quietly at the time did you?
A.375 - Yes, sir
Q.376 - In spite of that, though, Cpl. Erasmus continued to hold him by the arm did he?
A.376 - Yes, sir
Q.377 - As you say it was rather dark at the time?
A.377 - Yes, sir
Q.378 - How far did you chase him?
A.378 - From Leicester Square Park, sir, to Coventry Street Corner House
Q.379 - That would be the Southeast corner of Leicester Square park?
A.379 - The top corner, sir
Q.380 - The Mapleton Hotel corner or the Hippodrome?
A.380 - The Hippodrome corner, sir
Q.381 - And you chased him from there to Lyons Corner House?
A.381 - Yes, sir
Q.382 - When you say you chased him there were you chasing him while actually seeing him?

A.382 - No, we only saw him a short while sir
Q.383 - When did you first actually lose sight of him then?
A.383 - It was within 100 yards we lost sight of him, sir or less than that because you couldn't see; it was dark
Q.384 - Then you would lose sight of him in 100 yards between the time you left the corner closest to the Hippodrome and the other corner which was the closer end to the Mapleton Hotel. Is that right?
A.384 - Yes, sir, we couldn't see him at all on the sidewalk
Q.385 - There was quite a crowd on the sidewalk?
A.385 - Yes, sir
Q.386 - Then did you take any other action other than to just chase him for this 100 yards?
A.386 - We walked down as far as -- We passed the Corner House and came back and Cpl. Erasmus said we would go in and see if any N.C.Os were there
Q.387 - Did he indicate to you any particular reason why he should see if he could see the N.C.Os?
A.387 - They said they would be calling there about 10.30
Q.388 - What time would it be when you gave up your search?
A.388 - I would say about 15 or 20 minutes after 10
Q.389 - When you went in the Corner House where did you go?
A.389 - Just inside and sat at the table there to the right of the door
Q.390 - That is the main entrance where you went in?
A.390 - Yes
Q.391 - How far back did you go?
A.391 - It is a vacant room they don't use there. The first table in the corner
Q.392 - Do they as a general rule serve refreshments there in the neighbourhood of 10.30?
A.392 - Well, sir, we get refreshments there at 12 o'clock
Q.393 - Did you have any in the neighbourhood of 10.15 or 10.20?
A.393 - No, sir, we didn't
Q.394 - How were you dressed at the time? Were you wearing your hats? Did you consider yourself as still being on duty?
A.394 - Oh, yes, sir, still on duty
Q.395 - And you were both wearing your hats?
A.395 - Yes, sir
Q.396 - Now, when the two N.C.Os arrived. No, what next happened while you were waiting in the Corner House?
A.396 - Next Cpl. Heeney came and said the police constable wanted to see us about this man
Q.397 - Did the police constable himself come down?
A.397 - No, sir
Q.398 - Where did you find the police constable when the corporal came to you and asked you to go with him?
A.398 - Just in front of the elevator, sir
Q.399 - Now could you in the position that you were see this gathering of the three N.C.Os and the police constable?
A.399 - No, sir
Q.400 - You were hidden from them or they were hidden from you?
A.400 - Yes, sir, I didn't see them until Cpl. Heeney came in there
Q.401 - What was said at that time by anyone present?
A.401 - Well, the police constable asked us to go up to the police station with him and make a statement
Q.402 - Did he ask you to make a statement at that time?
A.402 - He asked us what happened and we told him he got away from us crossing the street
Q.403 - Was there anything further - how he got away from you?
A.403 - We explained that he got away going across the street
Q.404 - Who explained that?
A.404 - Cpl. Erasmus, sir
Q.405 - And you did proceed to the police station?
A.405 - Yes, sir
Q.406 - Who went?
A.406 - Cpl. Erasmus and I and the Grenadier Guard Sergeant and the police constable, sir

Q.407 - Was there any discussion about this incident on the way down to the police station?
A.407 - Well, we checked two soldiers on the way down and thought perhaps it might have been the same chap and he questioned us again as to how it happened
Q.408 - He questioned you when?
A.408 - On our walk down. He asked us again how it happened and we explained it again
Q.409 - What did Cpl. Erasmus say do you remember?
A.409 - He said that on the way across the street that the man took him by surprise. He thought he was coming quietly and he got away
Q.410 - When you arrived at the police station what happened then?
A.410 - Well, they took us to a room there and took our names and numbers and we waited there until the R.S.M. came down for us
Q.411 - Was there any discussion regarding this case during the time you were at the police station?
A.411 - No. There were two plainclothes men came in and asked us how it happened and that is all. They never questioned us at all
Q.412 - Was the police constable with you at this time in the waiting room?
A.412 - No, sir, he left after we arrived
Q.413 - And did you see anything further of him after that time?
A.413 - I didn't see him again unless it was going out the door
Q.414 - And then S/M McCallum came down and you came back down to Headquarters here?
A.414 - Yes, sir

QUESTIONS BY THE COURT

Q.415 - When you are on regular duty and patrol in the evening do you carry handcuffs?
A.415 - No, sir
Q.416 - Corporal, prior to the 18th September how long had you been with this company?
A.416 - Pretty near a month, sir
Q.417 - And where had you been before that?
A.417 - I just came from Depot
Q.418 - Where?
A.418 - Provost Depot, sir
Q.419 - How long have you been in this country?
A.419 - Just over two years, sir
Q.420 - Have you been in the Provost Corps all that time?
A.420 - No, sir, W. N. S. R.
Q.421 - When did you transfer from them?
A.421 - 21.6.42 (after referring to paybook)
Q.422 - You were with them in the field all the time with them?
A.422 - Yes, sir
Q.423 - And then you went down to the Depot and got some training and came up here. About a month ago?
A.423 - Yes, sir
Q.424 - Had you been on patrol previously before this evening?
A.424 - Yes, I had been on about two or three weeks, sir
Q.425 - With Cpl. Erasmus mostly?
A.425 - All the time, sir
Q.426 - You had been teamed off together?
A.426 - Yes, sir
Q.427 - Had you been taught any regulations as to what precautions you were to take at any time in handling people?
A.427 - Well, on escorts we were taught to use the handcuffs and always watch the man but so far as anything else was concerned we were not told
Q.428 - Has anything ever been brought to your knowledge verbally or otherwise in a case like this in getting hold of a man who is drunk or obstreperous or anything like that? Were you taught how to handle a situation like that?
A.428 - We were always to work together as a team
Q.429 - Were you to catch him by the arm or wrist to see that he didn't get away from you? What are your rules?

A.429 - To hand on by the arm, sir
Q.430 - Where were you taught that?
A.430 - Well, as far as I know that was taught me by Cpl. Erasmus
Q.431 - He told you that?
A.431 - Yes, sir
Q.432 - At your Depot or here in your orders are there any regulations advising you what to do in a case like that?
A.432 - I have not seen anything since I came up here
Q.433 - Anything in the Depot?
A.433 - They tell us a lot about conduct down there and how to hold onto a prisoner
Q.434 - Now you were with Cpl. Erasmus this night weren't you?
A.434 - Yes, sir
Q.435 - Now, have you been charged with any offence in connection with this matter?
A.435 - Yes, sir, I got a severe reprimand from the O.C.
Q.436 - Under Section 20?
A.436 - I couldn't say the section, sir
Q.437 - When was this?
A.437 - About three weeks ago now, sir
Q.438 - By Capt. Byers?
A.438 - Yes, sir
Q.439 - Now, getting down to this night in question, it was dark was it not?
A.439 - Yes, sir
Q.440 - How dark would you say?
A.440 - Well, the visibility was very poor. You couldn't see beyond 20 yards, sir
Q.441 - Someone has suggested that it was moonlight
A.441 - I don't think it was, sir
Q.442 - But you did see some 20 yards away - that would be 60'?
A.442 - You could see across the road all right
Q.443 - And when you went over there you found the police constable, Horner, and the Guards Sergeant manhandling or holding a Canadian soldier?
A.443 - Yes, sir
Q.444 - And the police constable -- Was the soldier saying anything at all?
A.444 - Well, Cpl. Erasmus questioned him, sir, and he told him - -
Q.445 - You didn't have anything at all to do with that. Cpl. Erasmus spoke to this soldier and what did he say?
A.445 - Well he said that while he was sitting in Leicester Square Park this civilian came up and wanted to get down on him and he refused and started to fight with the civilian and was accused of stealing his purse
Q.446 - That was in Leicester Square Gardens. How did they get away down on whatever street it was?
A.446 - Well, the soldier was running away when the police constable picked him up
Q.447 - How old was this soldier?
A.447 - From the look of him I think he was only a young fellow, sir
Q.448 - Did you see the civilian?
A.448 - No, sir
Q.449 - Then the constable said he wanted to hold him and take him away?
A.449 - He said he wanted him
Q.450 - Did you or Erasmus volunteer to hold him or what?
A.450 - Well Erasmus said we would take him across to the other side of the road
Q.451 - Meaning the two of you?
A.451 - Yes, sir
Q.452 - Did you take hold of this chap at all?
A.452 - Well I was kind of - - There was a little bit of a crowd and I was pushing my way through and Erasmus got ahead of me
Q.453 - Did Erasmus have a hold on him at all?
A.453 - Yes, sir, through the arm
Q.454 - How do you mean through the arm?

Witness demonstrates by putting his right hand under the left elbow of the court orderly

Q.455 - And you didn't put your hand on him at all?
A.455 - No, sir
Q.456 - And Erasmus merely put his right hand under the left elbow of the soldier and guided him through the crowd?
A.456 - Yes, sir
Q.457 - Now you got out to the edge of the curb and went across the street. Where were you?
A.457 - I was directly behind, sir
Q.458 - And did you get through all the crowd before the man bolted or not?
A.458 - We were just stepping off the curb, sir
Q.459 - Was the crowd dispersed then?
A.459 - There was still a crowd
Q.460 - Then what did this soldier do?
A.460 - He ran down the street, sir
Q.461 - How did he get away fror Erasmus?
A.461 - He apparently jumped sidewars and ran
Q.462 - He pulled his arm away suddenly did he?
A.462 - Yes, sir
Q.463 - Were there people impeding the progress or what?
A.463 - People on the other side of the sidewalk, sir and we started down the road and lost sight of him
Q.464 - He yanked free from Erasmus and you were right behind. How far were you from him?
A.464 - A matter of 6' or 7'
Q.465 - You couldn't reach forward and stop him or tackle him? If you had made a rugby dive at him could you have caught him?
A.465 - No, sir
Q.466 - He pulled away from Erasmus suddenly and away he bolted. Where?
A.466 - Across the road, sir
Q.467 - From the direction you had started to go?
A.467 - Yes, sir
Q.468 - And was there a crowd on the other sidewalk?
A.468 - Yes, sir, quite a crowd
Q.469 - Did he go in the crowd or what happened?
A.469 - Yes, sir
Q.470 - Did you go right after him running or walking or what?
A.470 - Running, sir
Q.471 - You and Erasmus?
A.471 - Yes, sir
Q.472 - Anybody else?
A.472 - No, sir
Q.473 - And you lost him right then?
A.473 - Yes, sir, we never saw him again, sir
Q.474 - You went in the crowd or down the roadway to see if you could find him?
A.474 - Yes, sir
Q.475 - So you went down to the Corner House where you went in?
A.475 - Yes, sir
Q.476 - And 10 or 15 minutes later in came Cpl. Keeney and Sgt. Crowe with the Grenadier Guard and the police constable?
A.476 - Yes, sir
Q.477 - And you say that was your meeting place for your patrols?
A.477 - Yes, sir, we used to meet the visiting patrols
Q.478 - How often did they meet you?
A.478 - Well mostly once a night and sometimes twice a night
Q.479 - Any particular time?
A.479 - They said they would meet us around there at 10.30 because we were breaking off that night at 12o'clock
Q.480 - Was that a regular rule that they would meet you at 10.30?
A.480 - No, sir, it is not regular but they said they would that night
Q.481 - So you went there at 10.30?
A.481 - Well, it was hardly 10.30 sir
Q.482 - Is there anything you or Cpl. Erasmus should have done to prevent his getting away. Now, you are punished and are all finished with this thing. What could Erasmus and you have done to prevent him getting away?

A.482 - Not much we could have done. Erasmus had hold of him and when he got away we chased him
Q.483 - Now, suppose he had been a murderer or a dangerous lunatic, how would you have prevented that?
A.483 - Well, he was going so quiet that Erasmus started off first to get him out of the crowd and if it was a lunatic I guess both of us would have had hold of him
Q.484 - Now, you knew he had been struggling with the police constable and the Grenadier Guards Sergeant. They had been on the ground and their clothes would be dishevelled?
A.484 - I couldn't see much wrong with their clothes
Q.485 - Wasn't the police constable all dirty and didn't he have his helmet off?
A.485 - Yes, sir
Q.486 - But did you expect him to try and break away?
A.486 - No, sir
Q.487 - Is that the reason why you didn't take more precautions?
A.487 - Well it was by reason of the crowd kind of pushing back and I never thought he would break away. He was very quiet and never argued with us or anything
Q.488 - But in the Provost Corps you are the police of the Canadian Army are you not?
A.488 - Yes, sir
Q.489 - And it is your duty and you are trusted as such to take care of military offenders to see that they don't break away. That is your first job. It doesn't matter to you whether the charge is good, bad or indifferent does it?
A.489 - No, sir
Q.490 - If you find a chap committing an offence you arrest him and bring him here to a senior authority and they deal with the matter to see if he is guilty or not guilty, don't you?
A.490 - Yes, sir
Q.491 - So that your first duty is to keep control of or custody of people until you have handed them over to superior authority?
A.491 - Yes, sir
Q.492 - And if you fail in that duty or fail in keeping custody of a chap until you have turned him over then there is something wrong isn't there unless there is reasonable excuse?
A.492 - Yes, sir
Q.493 - Now, then, is there any reasonable excuse why you and Erasmus both of you together, two big husky chaps should have let this chap away from you that night?
A.493 - Well, the darkness and the crowd is the only explanation I can see
Q.494 (Defending Officer) - When you cut across the road to the other side and you were walking directly behind Cpl. Erasmus and the soldier did you see anyone bump into or interfere with Cpl. Erasmus in any way?
A.494 - Yes, some civilian woman bumped Cpl. Erasmus
Q.495 (Defending Officer) - Did you hear her say anything?
A.495 - She said something about us holding someone. I couldn't make out what it was about

Court - I want to get that clear

A.496 (con) - Some civilian woman bumped Cpl. Erasmus
Q.496 - After he started out she bumped Cpl. Erasmus and - go on
A.496 - I just couldn't hear what she said exactly but she said something at the time
Q.497 - Something to Erasmus?
A.497 - Yes, sir
Q.498 - And in relation to that bumping with the woman when did the chap break away?
A.498 - Just a second after
Q.499 (Defending Officer) - Could it possibly have been as a result of the bump?
A.499 - It could have been a great help to it anyway.

5th Witness for the Prosecution, C.41965 R.S.M. Hugh McCallum, No. 6 Coy., Cdn Pvst Cps., having been duly sworn is examined by the Prosecutor.

Q.500 - Will you state your name and number please?
A.500 - R.S.M. H. McCallum, C.41965
Q.501 - Sergeant-Major, do you recognize the accused?
A.501 - Yes, sir
Q.502 - On the night of the 18th September, Sergeant-Major, about 2315 hours did you receive any telephone call?
A.502 - Yes, sir
Q.503 - Who was that telephone call from?
A.503 - I received the telephone call from Sgt. Chester of the S.I.S. to go to West End Central Police Station, sir
Q.504 - And what was the need for calling you down there?
A.504 - It was reported, sir, that two lance-corporals from this Company had allowed a prisoner to escape on Coventry Street, sir
Q.505 - And who were those two lance-corporals please?
A.505 - L/Cpl Erasmus and Nelson, B.A., sir
Q.506 - Do you recognize this, sergeant-major?
A.506 - Yes, sir
Q.507 - What is it, sergeant-major?
A.507 - That is a copy of standing orders.

There being no objection from the Defence true copy of Standing Orders No. 3 issued for No. 6 Pvst Coy H.Q. Cdn Pvst Cps dated 3 Sep 42 which are posted on the board and are distributed and are common knowledge to the Provost Coy are signed by the President, marked "B" and attached to the Proceedings. Particular reference is made to para 2 "Escorts" marked by a X "On escort duty" down to the end of the paragraph.

A.507 (con) - A copy of these are handed to each corporal, sir
Q.508 (Court) - To this lance-corporal?
A.508 - No, each corporal in charge of a section and there are six lance-corporals in a section
Q.509 (Court) - Is there any reason why L/Cpl Erasmus or L/Cpl Nelson should have been cognizant of the terms of that order?
A.509 - These have been read over to every lance-corporal here, sir
Q.510 - Why were you called to West End Central Police Station?
A.510 - Well, it was reported from West End Central Police Station that the two lance-corporals had allowed a prisoner to escape from them. I arrived at the West End Police Station and I was met there by a Sgt. Hackling of the Grenadier Guards and P.C. (I forget his name at the moment) - Horner, of the Metropolitan Police. I received from them information to the effect that a prisoner - a Canadian soldier, had been handed over to them - -
Q.511 - Was Erasmus there?
A.511 - Yes, sir
Q.512 (Court) - He heard this statement?
A.512 - Not at that time, sir
Q.513 (Court) - Then you can't say it
A.513 - All I wanted to say was that I heard a statement
Q.514 - You arrived there and Erasmus and Nelson were there?
A.514 - Yes, sir
Q.515 - And Horner and the Grenadier Guard Sergeant?
A.515 - Yes, sir. I placed them under arrest, sir, and brought them back to these Headquarters

CROSS-EXAMINATION BY DEFENDING OFFICER

Q.516 - Sergeant-Major, you have no doubt as a sergeant-major had a good deal of knowledge of the acting of troops under escort?
A.516 - Yes, sir
Q.517 - In the event of a prisoner indicating violence what steps do you take immediately, what action would you take? Suppose he was struggling?
A.517 - Well, you would take every action necessary to hold him, sir
Q.518 - To what extent would you go? Supposing he were unarmed and were striking at you?

A.518 - Well, you would grip him by the arms and hold him, sir
Q.519 - Now, in the event of your coming upon a scene where there had been evidence of some violence but at the time of your arrival the man to be escorted was showing signs of being calm then what action would you take after he were turned over to you to ensure his safety?
A.519 - Well, you would keep a strict eye on him and keep right close up to the prisoner, sir
Q.520 - Would you necessarily hold his arms?
A.520 - If it was necessary I would hold his arms
Q.521 - If the man showed every intention of going quietly with the escort or with you as escort would you necessarily hold tight onto his arm?
A.521 - Well, it would all depend upon whether I would consider the man would make a break
Q.522 - But if he were quiet you would not necessarily hold tightly to him?
A.522 - Not necessarily, sir
Q.523 - It would be a matter of opinion, would it not?
A.523 - Yes, sir
Q.524 - Do you know the regulations laid down in R.O.2246 concerning conduct of persons under escort?
A.524 - I couldn't tell you right offhand, sir

QUESTIONS BY THE COURT

Q.525 - Mr. McCallum, you know pretty well the story of this affair don't you?
A.525 - Yes, sir
Q.526 - You have probably read the summary. You have not heard the evidence here but you probably heard the evidence in the case of Nelson when he was tried by Capt. Byers so you pretty well know the circumstances surrounding the whole thing?
A.526 - Yes, sir
Q.527 - This charge is a very serious charge. It is without reasonable excuse allowing a person committed to his charge to escape? You have been in the R.C.M.P. back home?
A.527 - Yes, sir
Q.528 - How long?
A.528 - Ten years, sir
Q.529 - That is prior to the war?
A.529 - Yes, sir, about seven years prior to the War
Q.530 - And three years overseas now?
A.530 - Yes, sir
Q.531 - What rank did you hold in the Northwest Mounted?
A.531 - First Class Corporal, sir
Q.532 - So for 10 years you have been very familiar with what to do in instances of this type. You have had instances of it to do yourself and have heard and seen a lot of other people being arrested haven't you?
A.532 - Yes, sir
Q.533 - How long have you been in London?
A.533 - A little over a year, sir
Q.534 - And I presume you have been out nine-tenths of the nights around the streets knowing what was going on here in your section of the No. 6 Provost Company?
A.534 - Yes, sir
Q.535 - Now, then, as I say you know the story about this thing. What in your opinion - you are an expert - in your opinion what did Erasmus not do that he should have done?
A.535 - Well, sir, if it is a professional opinion, sir, it was possible to lose that prisoner, sir, but there was a certain amount of laxness in not being on the alert
Q.536 - Was there any reasonable excuse for letting him escape under the circumstances as you know them? You heard the evidence and all the rest. We know a woman bumped him. Nelson tells us now that just prior to the time this man made the break to get away Nelson tells us that Erasmus had his hand around the left elbow of the prisoner and they were going through the

Rest

crowd and as they got to the curb some woman bumped Erasmus and said something to him in the dark and the man made a break

A.536 - Yes, sir
Q.537 - And he got away
A.537 - Yes, sir
Q.538 - They chased him in the crowd and he got away
A.538 - Yes, sir. The professional opinion of that, sir, is that he should not have got away
Q.539 - That is being pretty hard-boiled, though, isn't it. What would happen back home in the Northwest Mounted?
A.539 - I would be placed under charge right away, sir
Q.540 - I suppose once a person has been put into your hands you have to place him under superior authority no matter what happens?
A.540 - No matter what happens, sir, you have to bring him to trial
Q.541 - That same principle is being taught by you here in this Provost Corps, is it?
A.541 - Yes, sir. Unless there is some very good excuse they are placed on charge here when a prisoner escapes

The Prosecution is closed

R.P. 40 is complied with as follows by the President to the accused:-

I am going to tell you what takes place now. All the evidence is in so far as evidence against you produced by the Prosecution is concerned. You may, if you wish, give evidence as a witness but if you do you are liable to be cross-examined on your evidence on matters which may not pertain directly to this case but you may be cross-examined on anything the Prosecutor feels he would like to ask you. You may call witnesses as to character only. Now, in this case you will not be allowed to call further witnesses or to produce any evidence as to facts except of course your own evidence in extenuation of the offence or otherwise. You may call witnesses as to facts of the case in addition to your own evidence and bear in mind that every witness except a witness as to character is a witness as to the facts. You are defended by an officer, Mr. Fidler, who is quite capable and you have to chose between either giving evidence yourself or making a statement. You can't be compelled to make a statement or give evidence and you are not allowed to do both. Therefore, if you do not wish to give evidence as a witness on your own behalf you may, if you wish, make a statement giving your account of the subject of the charge against you. You may give this statement orally or you may write it out and hand it to me but you will not be sworn and no questions will be put to you. That means this; - that if you submit yourself to giving evidence on oath on which you may be cross-examined you may do so or you may make a statement orally or in writing and you will not be on oath in which case you can't be cross-examined. It is only fair to say to you though that a sworn statement will be given much more weight to than merely an oral or written statement in which you won't allow the officers of the court or the Prosecutor to cross-examine you. Do you think you understand all that?

Accused - Yes, sir, I understand, sir

PRESIDENT TO ACCUSED:

Q.542 - Do you apply to give evidence yourself as a witness?
A.542 - Yes, sir
Q.543 - Do you intend to call any other witness in your defence?
A.543 - Yes, sir
Q.544 - Is he a witness as to character only?
A.544 - Yes, sir,

1st Witness for the Defence, the accused, M.11862 Pte (L/Cpl) Erasmus, C.F., No. 6 Coy., Cdn Pvst Cps., having been duly sworn is examined by the Defending Officer.

Q.545 - Cpl. Erasmus, will you go back to the night of the 18th of September and give your complete story as you know it of the incidents which took place from the time you went on duty that night until the time that you were placed under arrest by the R.S.M.?

A.545 - Sir, at 1845 hours on the 18 Sep 42 I was detailed for duty on Coventry Street in company with L/Cpl Nelson. I went out on duty and being a Friday night - a week-end - there were a number of soldiers and we were kept fairly busy. About, I should say, 2030 hours we were visited by the two visiting N.C.Os who happened to be that night Sgt. Crowe and Cpl. Keeney. As I was not feeling too well I asked Sgt. Crowe then if it was all right to step down to B.C. House or B.C. Canteen for a cup of coffee to clear my throat. He said "Yes but don't be too long getting back on the beat and we will meet you again at 2215 or 2220 hours up in Lyons Corner House" I said "All right". We went down to B.C. house possibly for 10 minutes, walked back up and instead of feeling better I just started to feel worse so I said to L/Cpl Nelson "Let's go down to the Leicester Square Tube Station and have a smoke" being out of sight and at the same time see if anyone is laying around drunk as it is part of our beat anyhow. We went in there and stayed there until 2200 hours and started to walk down Coventry Street. On walking up the street we passed the Hippodrome and coming to the corner directly across the street and on the Northeast corner of Leicester Square Gardens I stopped. I noticed somebody standing in the shadows on my right as I was walking towards Piccadilly Circus. I stepped over there and found it was an American soldier who was drunk and was helpless. I stepped over there as there were two or three other American soldiers there and said "Will you look after this chap?" and as I spoke to these chaps I heard a noise and someone shouted "Let me up you son-of-a-bitch". Well, I figured it was a fight. I went over there quickly and when I got there there was quite a crowd collected and I sees a civilian police constable and a soldier I didn't notice at that time it was a Grenadier Guards Sergeant holding onto a Canadian soldier who appeared to be in a fighting and drinking mood. I walked up and said "What is the matter Canada?" and he said "Are you a provost?" and I said "Yes" and he said "Get me away from these sons-of-bitches". I didn't say anything and walked to the constable and said "What are you going to do with him?" He said "I want him". I didn't say anything to that and he said to someone in the crowd - that is, the civilian constable (I can't be sure if it was a Grenadier Guard sergeant or someone else with him) but he said "Where is the chap that lost his wallet?". Someone said it was over here and the Canadian soldier said "I will tell you the whole story. I was sitting in the park by myself and a civilian came up to me and the dirty so and so said he wanted to go down on me and started to unbutton my clothes and how he has accused me of robbing him of his wallet", I didn't say anything; the constable had him and it was not a case for me to look after and I just said to the constable "What are you going to do?". He said "I want him" and repeated it a couple of times and finally when he decided to go after the complainant he said "Hold this man". I didn't make a move at first to comply with his order and he said "Here, hold him" and shoved his arm out and I took hold of his arm as L/Cpl Nelson said and also took his left arm with my right arm. I guess he didn't notice that but this Grenadier Guard Sergeant was also still holding onto him and I said "We will go across the street" as I intended to check him for his pass and paybook to see if he was on leave or not and all this time the soldier was pleading for me to take

him away from the police constable and I didn't make any effort to touch the soldier or anything and just once told him to keep quiet. He was handed to me and I did take him and he quieted right down and went limp and I noticed then it was not drink and that he was just grieved over this man attempting to do an indecent act. I started to go across with him and some civilian woman said "I will look after him". I took one arm from him and brushed her away and said "I will look after him myself" and I didn't expect he would run. But I used my own discretion at the time and I didn't think he would go and it was one of those cases that beat us to the punch. I gave chase but he darted in amongst people on the street and when he got 60' or more ahead of me I couldn't make him out because he was in amongst the people. When I got up to the corner of Lyons Corner House there is a street going up towards Soho District and I couldn't be sure whether he turned there or went directly on into Piccadilly Circus, anyhow, we looked around there and followed up to see if we could see anyone and as I didn't have a good look at him I was not certain if I could recognize his features although he had a Toronto Scottish Glengarry on - -

Court - Balmoral

A.545 (con) - No, sir, a Toronto Scottish Glengarry and then I went - - I was feeling sick and miserable and mad at the time and disgusted with myself and went in to see the patrol sergeants if they were in Lyons Corner House. They were not in there so I went to the east side of the building and just sat down at a table and we were not there any more than a couple of minutes or so and Cpl. Keeny came walking in and said "The police constable wants you" and I said "Yes" and walked over and he said "What happened to the soldiers" and I said "He escaped from me" so the police constable took my particulars and also L/Cpl Nelson's and he asked if I would go with him up to the Police Station as there would have to be a statement made and I said "Certainly I will go". We went up to the police station, arrived at the police station and he took us into a small waiting room possibly the size of this one or not that big and said "Wait here". A minute or two later an Inspector came in. Pardon me. While we were waiting - - No, the Inspector came in and he had a sheet of ordinary paper something like what you have on your desk there with writing on it and took our names and numbers and then walked out and the Grenadier Guard sergeant stayed there for a few minutes too so two civilian detectives walked in and asked me if I knew the chap and I said no I didn't know him. They said "Can you identify him?" and I said "No, I can't". That was all that was said. After a time the Grenadier sergeant was called out of the room and there was just the two of us there and we stayed in there until I don't know how long - at any rate I presume it was midnight and S/M McCallum walked in. He said "Erasmus, what happened?" I said "He got away". He said "You two will be under arrest, go back to barracks". He took us out of there and put us in the van in front of the door and we were under open arrest

Prosecutor declines to cross-examine this witness

QUESTIONS BY THE COURT

Q.546 - How long have you been in the Army, Erasmus?
A.546 - I enlisted on the 21st of May, 1940, sir
Q.547 - In what Unit?
A.547 - Calgary Highlanders
Q.548 - Come over with them?
A.548 - With the reinforcements, sir
Q.549 - Where did you go to?
A.549 - 103, Witley

Q.541 - That is 2 C.D.I.R.U.?
A.541 - Yes, sir
Q.542 - Did you go into the field with them?
A.542 - No, sir, I was only approximately eleven days in the Holding Unit and then I put in a transfer for the Provost. Well, the 2nd of March I went in 103, Witley, and the 13 March, the same month, I was in Aldershot - Badajos Barracks, that is the Canadian Provost Training Unit
Q.543 - You transferred over to the Provost then?
A.543 - Yes, sir and came up here on the 3 May 41
Q.544 - Have you been here ever since?
A.544 - No, sir, I have been out on detachment for 11 months
Q.545 - Where was that?
A.545 - Glasgow, sir and came back here on the 18 July
Q.546 - How old are you?
A.546 - 26 on my last birthday
Q.547 - Married?
A.547 - Yes, sir
Q.548 - Children?
A.548 - One, sir
Q.549 - Where do they live?
A.549 - Calgary, sir
Q.550 - What did you do in civilian life?
A.550 - I was a labourer, sir
Q.551 - In Calgary?
A.551 - NB, east of Edmonton, sir
Q.552 - Any experience in police work before the War?
A.552 - No, sir, none at all
Q.553 - Since you have been in the Army have you had any trouble at all?
A.553 - Well, I didn't, get in when I should have on a week-end once and lost two day's pay. That is all. This is my first serious offence
Q.554 - Anything else besides this two hours a.w.l. How long was it?
A.554 - I should have been in Saturday midnight and didn't get in until Monday morning reveille
Q.555 - Extended week-end?
A.555 - Yes, sir
Q.556 - This is a very serious charge isn't it?
A.556 - Yes, sir, as far as my work goes it is
Q.557 - From what I can gather from Mr. McCallum, the sergeant-major, the motto of the Northwest Mounted or the Mounted Police in Canada has been passed on down to the Cdn Pvst Cps that you get your man and once you get him you don't lose him. Is that the motto of the Provost Corps?
A.557 - It seems to be, sir
Q.558 - You think it is right too, don't you?
A.558 - Oh, yes, I will admit that that is right
Q.559 - Now, we come to the charge here "Without reasonable excuse allowing to escape a prisoner committed to your charge". Now, there is no doubt about it this chap escaped is there?
A.559 - No, sir
Q.560 - And no doubt about it that he was committed to your charge?
A.560 - He was given into my custody
Q.561 - You took him over?
A.561 - Yes, sir, I did take him over
Q.562 - And when he got away, as you said yourself, you went back to the Corner House very disgusted with yourself?
A.562 - Yes, sir
Q.563 - That doesn't answer the question
A.563 - It is something I couldn't understand sir, because - -
Q.564 - Were you disgusted with yourself for letting him get away?
A.564 - It was a let-down for me for the simple reason that I have escorted a lot of men from Glasgow down to London and they were from cat burglars to robbery while armed and I never put handcuffs on them and got through with them and any man I thought would give me any trouble I just said "Well, I have a pistol here and if I do 28 days you will do the same in hospital".

This man seemed to be very glad to see me come on the scene and was pleading for me to take him off from the hands of the civilian policeman and when he came along with me I just thought he would not make a break

Q.565 - A mistake in judgment on your part?
A.565 - Too big a mistake, sir
Q.566 - How long have you been awaiting trial?
A.566 - From the 18th, sir
Q.567 - In close custody?
A.567 - I was in close custody and then through the generosity of the sergeant-major I was allowed to work in the kitchen during the day but I did sleep in detention at night
Q.568 - Well, to all intents and purposes you were under close arrest. You were awaiting trial under detention?
A.568 - Yes, sir. I won't be extra sorry because I could more or less blame that on my slackness on patrol, lack of exercise. I really felt sick. I am not using that as an excuse because I should have gone to the M.O.

Court - Well, it is a tough break corporal

1st Character Witness, Capt. M.E.Byers, O.C., No. 6 Coy., Cdn Pvst Cps., having been duly sworn is examined by the Defending Officer

Q.569 - Capt. Byers, can you give your name and unit to the court stenographer please?
A.569 - Maurice Edward Byers, O.C., No. 6 Pvst Coy
Q.570 - Capt. Byers would you tell the court what you know of the character of the accused, his conduct and his behaviour as a Provost during the time you have known him?
A.570 - Well, the accused has been under my command for about fifteen months and ever since I have known him he has carried out his duties faithfully, honestly and has been a good soldier
Q.571 - You are quite willing at any time to have him back under your command are you, Capt. Byers?
A.571 - Oh, yes

QUESTIONS BY THE COURT

Q.572 - Are there any regulations laid down as to the handling of prisoners under circumstances that you know existed in this particular case?
A.572 - No, sir, there is no definite regulation laid down but there are regulations laid down for the safe-keeping of a man delivered into our custody
Q.573 - That is for escorts
A.573 - Escorts, yes
Q.574 - We have here filed as an exhibit a copy of your standing order issued September 3rd signed by you and apparently as has been pointed out by the Prosecutor the only reference in that order is under the heading "Escorts" which deals entirely with the conduct of escorts particularly on train duty and doesn't deal with the conduct of your Provost personnel in effecting arrests on the street
A.574 - Yes, escort duty to men handed over in custody
Q.575 - Yes, but it refers particularly to train duty
A.575 - Yes, it was made up particularly for train duty but it also says there "Men handed over for custody"
Q.576 - Where?
A.576 - Where it says "Taking over prisoners"
Q.577 - I don't remember seeing it. That is drawn up for train escorts. By inference it may be regarded for other purposes
A.577 - It is
Q.578 - But looking at it in a strict legal sense it only refers to escort duty by train, doesn't it?
A.578 - Yes, sir
Q.579 - And the only way you could drag that into action on one of your personnel on the street in Leicester Square would be by inference only?
A.579 - Yes

Q.580 - So that insofar as actual regulations in connection with the conduct of your Provost personnel there aren't any?
A.580 - No, not regarding taking custody of a man being handed over
Q.581 - Now, you are an expert in this business and it is natural to assume that you are to maintain discipline in your unit but knowing the circumstances of this case is there any reasonable excuse that this should have happened that this chap would get away from Cpl. Erasmus?
A.581 - The fact that a prisoner escaped showed that he was not quite on the job but under the circumstances he is not an experience policeman, it was blackout, there was a big crowd of people on the street and the prisoner could have got away even if he was an experienced man. There is an awful crowd on that street at night. I know that
Q.582 - Now, the other N.C.O., Nelson, who was with Erasmus you tried him?
A.582 - Yes, sir
Q.583 - Under Section 20?
A.583 - No, I had him up; I didn't make a charge against him
Q.584 - I have been going through the Criminal Code and K.R. & O here and Routine Orders and it would appear that you have the power if you so desire to try your own personnel?
A.584 - Only limited power, sir
Q.585 - So that you did exercise that power in fact with Nelson?
A.585 - Yes, sir. The fact that he was a green man and had just come to the Company - I think he had only been here a week when this happened - I think he had only been in this country about two months before that.

THE DEFENDING OFFICER MAKES THE FOLLOWING CLOSING ADDRESS:

For this particular case I would like to bring to the attention of the court that when I took this case over and agreed to defend Cpl. Erasmus my first instructions to him were that he tell his story truthfully, not leaving out any details which would be of any assistance to the court. I believe today before the court he has demonstrated the fact that he has followed that out to the letter. Listening to the other witnesses we have had a good deal of confusion regarding the circumstances that surrounded this case in the disturbance that took place at Leicester Square. Firstly, we had the evidence of the police constable and then that of the sergeant and that of Cpl. Nelson none of which were totally in agreement. I am not going to labour the point about whether or not the man was under arrest, whether he was handed over in custody or whether he was just given to Cpl. Erasmus to hold but it seems to me that the whole case boils down now to the interpretation of the words "reasonable excuse" - whether or not there was reasonable excuse.

Cpl. Erasmus started on his patrol duties that night, as he has told you, not feeling quite up to the mark but still continuing out on duty. He was no doubt confused as we can all see by the evidence that has been brought out today by the conditions that existed at Leicester Square at the time of this disturbance. The police constable himself is very much confused in his evidence and I see no reason why Cpl. Erasmus should not have been the same. Further he did hear and other witnesses did hear the statement made by the soldier who escaped to the effect that certain conditions had existed in Leicester Square, that he had been approached by some unknown individual - unknown by reason of the fact that he ran away - and was asked to commit some indecent act. Naturally the soldier was put out about the whole thing and in talking it over with Cpl. Erasmus it seems reasonable to assume that Cpl. Erasmus also took a poor view of the whole thing and as he says as soon as - and it has been substantiated to my Cpl. Nelson and by the sergeant of the Grenadier Guards - everyone had reason to believe that the soldier who was committed to

Cpl. Erasmus' charge was quiet and willing to listen to reason and the whole affair was over as far as he was concerned. Cpl. Erasmus took him across the street away from the crowd which was a normal, natural thing to do and in doing so had a grip on him by the arm which he indicated to the court this afternoon. When they reached the other side the evidence is from both Cpl. Erasmus and Cpl. Nelson there was a certain amount of interruption from some woman who bumped into them and some certain words were exchanged between Cpl. Erasmus and the woman in which he told her to leave and in doing so removed one hand from the prisoner in order to motion her to one side. The time that he made that motion, the evidence is, the prisoner made a sudden jerk and ran away. In the blackout, in the dark and in the crowds given a start of a few yards it would be practically impossible for the accused to follow up and find the man if he really was intent on escaping as we see he was.

Cpl. Erasmus is not an experienced policeman. S/M McCallum who gave evidence this afternoon upon being questioned by me said that in his dealings with an accused or a man under escort he would use his own discretion as to the extent to which he would go to restrain him. First I asked him to what extent he would go in the case of violence being used and then to what extent he would go in the event of to all intents and purposes a man going quietly. He even went so far as to state that in his opinion there might be times when it would not even be necessary to hold a man's arm. Now, in this particular case the evidence indicates that Cpl. Erasmus went so far as to do that, that he held his arm and was holding it up to the time of the interference. Cpl. Erasmus, as I say, has not the ten years' experience that the sergeant-major has and although the sergeant-major's opinion is also that there might not be reasonable excuse I think under the circumstances there is some reasonable excuse in this particular case.

Cpl. Erasmus has been up to this time a good chap. His character record is clear. He is spoken well of by his commanding officer and during the time that he has been under arrest he has been working and shall we say to some extent given certain privileges by the sergeant-major himself. He has now been awaiting trial I believe about 21 days. In this particular case I think if Cpl. Erasmus were lost to the Army as a result of a conviction by being placed in detention it might possibly do some harm. I am quite sure it would do some hard as far as Cpl. Erasmus is concerned. He has endeavoured at all times to do his job and he has now had a lesson in that aside from anything else he has been up on court-martial. We all know how serious a charge must be for it to reach a court-martial stage but in this particular instance I do feel that some consideration should be given to Cpl. Erasmus and I would ask under the circumstances that the words "reasonable excuse" -- I would say that there was some reasonable excuse in this case and on that basis the court find the accused Not Guilty.

THE PROSECUTOR MAKES THE FOLLOWING CLOSING ADDRESS:

In summing up, sir, I have very little to say. The accused was charged with a certain charge, that is, allowing to escape a prisoner without reasonable cause to which he pleaded Not Guilty and during his own evidence under oath he admitted that he did have a prisoner committed to his charge and that this soldier did get away from him or he did, in other words, permit a soldier to escape without reasonable cause

Court is closed to consider the finding

Court is re-opened

Capt. M..E. Byers, Officer Commanding, No. 6 Coy., Cdn Pvst Cps., having been reminded that he is still under oath is examined by the Court.

Q.586 - Have you any evidence to produce as to character and particulars of service of the accused?
A.586 - I produce A.F.B. 296 and M.F.M.6

A.F.B.296 and M.F.M.6 are read, signed by the President, marked "C", and attached to the proceedings

Q.587 - Is the accused the person named in the statement you have heard read?
A.587 - Yes, sir
Q.588 - Have you compared the contents of the above statement with the regimental books?
A.588 - Yes, sir
Q.589 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A.589 - Yes, sir

Defending officer declines to cross-examine this witness

Court - Do you wish to address the court?
Accused - I presume that you have found me guilty in this. That is my own conclusion and I intend to take whatever you consider I should get for this, shall I say neglect of duty. As I have a wife and child it is not me that would suffer if I refused to soldier after this. I will carry on and soldier as if nothing hadhappened. I have just been a victim of circumstances and after it is all over I will just carry on and do all I can and not make any more mistakes if I possibly can help it.
Court - Corporal, this court is in a tough spot and you are in a tough spot too. It is our duty to carry out the dictates of military law as laid down. Oftentimes we have to do things we don't want to do. We sympathize with you in the spot you find yourself in and will give due consideration to what you have said, to our knowledge of what the consequences will be to you and to your Corps and hope that whatever sentence we have to impose that you will truly do what you have already undertaken when you addressed the court. We want good soldiers and we want good soldiers like you. We are going to need every ounce of effort to win this War in whatever job we are given and I know that you will take whatever punishment is meted out to you as a good soldier and will come back with chin up. The court will now close to consider the sentence.

Certified to be a true transcript of the shorthand notes taken by me at the F.G.C.M. described on page 1.

(F.J.Hathercut) Sgt.
Court Reporter
C.M.H.Q.

Rwt

R.W. Mott Major
Pres.
"A" Branch
CMHQ

Summary of Evidence in the Case of Reg.No. M-11862 Pte.(L/Cpl.) ERASMUS,Clifford Francis,No.6 Provost Company,Canadian Provost Corps,Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

Witness No.1 Prosecution

B-73546 Cpl.Hayes S.G.,No.6 Company,Canadian Provost Corps having been duly sworn states:

On the 18th September,1942 at 1900 hrs. I was on duty as night Orderly Corporal at No.6 Provost Company H.Q.. I detailed all the patrols for that evening.
On No.5 Beat which is Coventry Street,I detailed L/Cpls.Erasmus and Nelson B.A.. As the senior man is in charge of any patrol L/Cpl.Erasmus was therefore in charge of Coventry Street patrol. The tour of duty for the Coventry Street patrol on the 18 September,1942 was from 1900 hours to 2359 hours.

The accused declines to cross examine the witness.

London
22 September,1942

----------Cpl.
B-73546 (S.G.Hayes)
No.6 Provost Company.

Owing to the exigencies of the service and loss of time involved,the attendance of the witnesses (P.C.233c Harold Horner,Metropolitan Police and Sgt.Ernest John Hackling, Grenadier Guards) cannot in my opinion be readily procured. Written statements of evidence purporting to be signed by them have been read to the accused and included in the Summary of Evidence.

The accused declines to cross examine the witnesses.

H.F.Germen ----------Lieut.
(H.F.Germen)
No.6 Provost Company

Rwh

METROPOLITAN POLICE

STATEMENT OF WITNESS

West End Central Station "C" Division

Harold Horner
P.C. 233c

18 September,1942

Witness No.2
Prosecution

On 18th September 1942 at 10.5 p.m. I saw a scuffle taking place in Cranbourne Street and heard a man shout "He has got my wallet". A soldier then broke away and ran away towards Leicester Square . I ran after him and caught him in Leicester Square. I then took him back to the scene of the disturbance where a civilian said "That's him.He took my wallet". The soldier then became very violent and a Grenadier Guards sergeant came to my assistance.We were then holding the soldier who wore a Canada,Toronto Scottish shoulder flash,when two patrols of the Canadian Provost Corps arrived and offered their assistance. After impressing on them the importance of holding the soldier I handed him over to them and went to seek the complainant. I was unable to trace him and learned from the Grenadier Guards sergeant that the Provost patrols had taken the soldier away saying they would wait with him across the road. Together we searched the vicinity but were unable to trace either the Provost patrols or the soldier in custody.
At 10.20 p.m. I went to Lyons Corner House,Coventry Street where I saw the two Provost patrols,Lance Corporal No.M11862 Clifford Francis ERASMUS,6 Canadian Provost Corps and Lance Corporal Burtus Allen NELSON No.F49920,same unit,respectively, seated at a table. I asked them what had happened to the soldier in custody and Erasmus replied "He got away from us".

(Signed) Harold Horner P.C.233

STATEMENT OF WITNESS

Western Central Station "C" Division

Sergeant Ernest John Hackling
Holding Ba Grenadier Guards
Wellington Barracks,London S.W.1

18 September,1942

Witness No. 3
Prosecution

On 16th September 1942,at about 10 p.m. I was near Cranbourne Street when I saw a disturbance in which I saw a Policeman holding a Canadian soldier, the soldier became very violent and I went to the assistance of the Police Officer. The two Canadian Provost Patrols approached and on request of the Police Officer took the soldier into custody. The Police Officer then went away saying he would get the person who had complained of being robbed. The two Provost patrols told me they would escort the Canadian soldier to the opposite side of the road and await for the return of the Constable with the complainant. The Police Officer returned and accompanied by me searched for the Provost Patrols,we were unable to trace either them or the Canadian soldier. A little later we went to "Lyons Corner House" where we saw the two Provost Patrols. When asked where the Canadian soldier was,the older one of the two replied "He got away from us".

(Signed) E.J.Hackling Sgt.

Witness No.4 Prosecution

F-49920 L/Cpl.Nelson B.A.,No.6 Company,Canadian Provost Corps, having been duly sworn states:

At 2200 hours on the 18 September,1942 I was on duty on Coventry Street,London with L/Cpl.Erasmus of No.6 Provost Company. We were across the Street from Leicester Square Park from where we saw a struggle across the Street.
Going over we found a Canadian soldier being held by a Police Constable of the Civil Police.The policeman asked us to take the man into custody for questioning as it was suspected that he had stolen a purse from a civilian.He wanted us to hold the Canadian soldier until he had found the civilian and questioned him.We said that we would take the soldier across the street and wait for him on the other side.
As we started across the street the Canadian soldier made a sudden dash and before we could stop him he was gone.We gave chase as far as we could see where he was going but as it was dark he gave us the slip.
We then went into Lyon's Corner House to see if the Visiting N.C.O.s had been around.

Q.1 What did the soldier say when we approached him?

A.1 The soldier said he had been sitting in Leicester Square Park and a civilian had approached him and tried to perform an indecent act with him.He had refused to do this and they had quarreled and fought.The civilian had then accused the soldier of stealing his purse.

Q.2 Where was the civilian?

A.2 The civilian must have disappeared as soon as the policeman arrived on the scene.

No further questions.

London
22 September,1942

----------L/Cpl.
F-49920 (B.A.Nelson)
No.6 Provost Company

Witness No.5 Prosecution

C-41965 R.S.M. McCallum H.,No.6 Provost Company,Canadian Provost Corps,having been duly sworn states:

On the night of the 18th September,1942 at about 23.15 hours I received a telephone call to the West End Central Metropolitan Police Station,London to the effect that two L/Cpls.from No.6 Provost Company,while on patrol duty at Coventry Street had allowed a prisoner to escape.
I proceeded immediately to this Police Station by Police Van and on arrival there I received statements from P.C.Horner and Sgt.Hackling,Grenadier Guards,to this effect. I found L/Cpls Erasmus and Nelson B.A. at the Police Station. I placed them under arrest and returned with them to our barracks.

The accused declines to cross examine the witness.

London
21 September,1942

---------- R.S.M.
C-41965 (H.McCallum)
No.6 Provost Company
Canadian Provost Corps.

The accused having been duly cautioned in accordance with Rule of Procedure 4(E),Reserves his Defence.

Certified that Rule of Procedure 4(E) c,d,f,and g,have been complied with.

Taken down before me in the presence and hearing of the accused and completed this 22nd day of September,1942 at 1100 hours.

H.F.Germen

.....Lieut.
(H.F.Germen) No.6 Company
Canadian Provost Corps

Summary of Evidence in the Case of M 118621 Pte (L/Cpl) Erasmus, Clifford Francis, No 6 Provost Coy, Cdn Provost Corps. Cdn Army (Overseas).

By direction of the Commanding officer the Summary of Evidence is taken on oath.

Witness No 1 Prosecution

B73546 Cpl. Hayes, S.G., No 6 Coy, Cdn Provost Corps having been duly sworn states.

On the 18th Sep 1942 at 1900 hrs as I was on duty as night Orderly Cpl. at No 6 Provost Coy A. A. I detailed all the patrols for that evening.

On No. 5 Beat which is Coventry Street I detailed L/Cpls Erasmus and Nelson, BA. As the senior man is in charge of any patrol L/Cpl Erasmus was therefore in charge of Coventry Street patrol.

The tour of duty for the Coventry Street patrol on the 18 Sep 42 was from 1900 hrs to 2359 hrs.

The accused declines to cross-examine the witness.

22 Sept. 1942.

S G Hayes Cpl

Rwb

METROPOLITAN POLICE.

No. 902.

STATEMENT OF WITNESS.

West End Central Station. "C" Division.

Name Harold Horner 18th September 1942.

Address PC 233C

Age . Occupation

Statement: On 18th September 1942 at 10.5 pm I saw a scuffle taking place in Cranbourne Street and heard a man shout "He has got my wallet" a soldier then broke away and ran away towards Leicester Square. I ran after him and caught him in Leicester Sq. I then took him back to the scene of the disturbance where a civilian said "Thats him. He took my wallet" The soldier then became very violent and a Grenadier Guards sergeant came to my assistance. We were then holding the soldier who wore a Canada, Toronto Scottish shoulder flash, when 2 patrols of the Canadian Provost Corp arrived and offered their assistance. After impressing on them the importance of holding the soldier I handed him over to them and went to see the complainant. I was unable to trace him and then learned from the

Signature

Signature witnessed by

W.P.-19168/200,000 Oct.-1939 46 (8)

Grenadier Guards Sergeant that the
provost patrol had taken the soldier
away saying they would wait with
him across the road. Together we
searched the vicinity but were unable
to trace either the provost patrol
or the soldier in custody.

At 10:20 pm I went to Lyons
corner House Coventry Street where
I saw the 2 Provost patrols A seated
at a table. I asked them what
had happened to the soldier in
custody and Erasmus replied
"He got away from us"

Harold Horne. PC 233

A Lance Corporal No M 11862 Clifford Erasmus 6 Canadian Provost Corps and
Lance Corporal Pmla. Allan Nelson
No F 409 20 same unit respectively

Harold Horne. PC 233

Witness H Fox Sergt.

METROPOLITAN POLICE.

No. 992.

STATEMENT OF WITNESS.

Western Central Station. "C" Division.
18th September 19 42.

Name Sergeant Ernest John Hacking.
Address Holding 2a Grenadier Guards.
Wellington Barracks, London S.W.1.

Age 26. Occupation Sergeant Army.

Statement: On 18th September 1942, at about 10 p.m. I was near Cranbourne Street when I saw a disturbance in which I saw a Policeman holding a Canadian Soldier, the soldier became very violent & I went to the assistance of the Police Officer. The two Canadian Provost Patrols approached and on request of the Police Officer took the Soldier into custody. The Police Officer then went away saying he would get the person who had complained of being robbed. The two Provost Patrols told me they would escort the Canadian Soldier to the Opposite side of the road & await for the return of the Constable with the complainant. The Police Officer returned & accompanied by me searched for the Provost Patrols, we were unable to trace either them or the Canadian Soldier A little late we went to "Lyons Corner House" where we saw the two Provost Patrols, when asked where the Canadian Soldier was, the Elder one of the two replied "He got away from us"

E. J. Hacking Sgt.
Signature

Signature witnessed by

W.P.-19165/200,000 Ord./1939 46 (8)

Witness No 1.
PROSECUTION

F49920 L/Cpl Nelson, B.A., No 6 Coy, Cdn Provost Corps, having been duly sworn states:

At 2200 hrs on 18 Sep 1942 I was on duty on Coventry Street, London with L/Cpl Erasmus of No 6 Provost Coy. We were across the street from Leicester Square Park from where we saw a struggle across the street.

Going over we found a Cdn soldier being held by a police constable of the civil police. The policeman asked us to take the man into custody for questioning as it was suspected that he had stolen a purse from a civilian. He wanted us to hold the Cdn soldier until he had found the civilian and questioned him. We said that we would take the soldier across the street and wait for him on the other side.

As we started across the street the Cdn soldier made a sudden dash & before we could stop him he was gone. We gave chase as far as we could see where he was going but as it was dark he gave us the slip. We then went into Lyons Corner House to see if the missing NCO had been around.

Question - What did the soldier say when we approached him?

Answer - The soldier said he had been sitting in Leicester Square Park and a civilian had approached him and tried to perform an indecent act with him. He had refused to do this + they had quarrelled + fought. The civilian had then accused the soldier of stealing his purse.

Question Where was the civilian?

Answer The civilian must have disappeared as soon as the policeman arrived on the scene.

No further questions.

Sept 22, 1942 B.G. Nelson

Witness No 5.
Prosecution

C 41956 RSM McCallum, H No. 6 Provost Coy., Cdn Provost Corps, having been duly sworn states:

On the night of the 18th Sep, 1942 at about 2315 hrs I received a telephone call to the West End Central Metropolitan Police Stn., London to the effect that two R/Cpls from No 6 Provost Coy, while on patrol duty at Coventry Street had allowed a prisoner to escape.

I proceeded immediately to this Police Stn by Police Car and on arrival there I received statements from P. C. Harmer, and Sgt Hackling Grenadier Guards, to this effect. I found R/Cpls Erasmus and Nelson, BA. at the Police Stn. I placed them under arrest and returned with them to our barracks.

The accused declines to cross-examine the witness.

21 Sept 1942 H. McCallum RSM

1st sheet destroyed 31/11/40

M.F.M. 6 (A.F.B. 122)

No. M-11862 Name ERASMUS Sqn., Battery, or Company

Corps Calgary Highlanders Date of Enlistment 31-5-40 G.C. Badges

Date of last entry in Company Conduct Sheet

Clifford Fine and (No. of last drunk)

Period not reckoning towards freedom from extra fine

Sheet No. 1

Signature O.C. Company, etc.

Service or Proficiency Pay

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Currie Barracks	26-12/40	L/Cpl.		AWL from 2400 hrs.26-12-40 until 0600 hrs.30-12-40 (1 day 6 hrs)	Cpl.Mills TG	Reprimanded	30-12-40	W.J.Gibson Forf.2 days pay. Capt.	

CERTIFIED TRUE COPY

M.E.Byers, Capt.

(M.E.Byers) O.C. No.6 Coy.,

Canadian Provost Corps

(P.T.O.)

9/Lt "E" Army Form B.2195.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
M-11662	Pte.(L/Cpl.)	ERASMUS Clifford Francis	No.6 Provost Company

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—If a trial by field general court martial this summary may be completed from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement, but not annexed to the proceedings.

Two pars. ATI. K.R., 1930.

† The conduct sheets should be produced with the statement of service, or the conduct sheets, produced being given to the court without delay and to each prisoned, special acts of gallantry, if any, to be mentioned.

Instructions as to the matter to be entered on the conduct sheets are given in the regulations stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL Sec.15-1 A.A.	times	One times.
For	times	times.
For	time	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted, or~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 23 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time, or The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been in continuous custody awaiting trial on the present charges, for NIL days in civil custody, and 21 days in military custody, making a total of 21 days, of which NIL days were spent in hospital.

~~V 21 mb~~

5. The present age of the accused according to his ~~record of service~~ attestation paper is 26 years 6 months

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 31 May,1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~he is in possession of or entitled to claim any military decoration or reward~~ †

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated

and in his regiment (or corps or department) the rank of dated

~~Signed at [illegible] this [illegible] day of [illegible] 19[illegible]~~

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. M-11862 Rank Pte.(L/Cpl.) Name ERASMUS E.F. of No. 6 Prov. Coy Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of September, 1942

M E Byers CAPT.
(M. E. BYERS) OFFICER COMMANDING,
No. 6 COY., CDN. PROV. CORPS.

If The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... years,

In the rank of ..... years,

In the rank of ..... years,

Date of Promotion.

(Insert name) ..... has not, to my knowledge, been convicted by any civil or military authority of any offence since the date of the above-mentioned conviction [or dispensation with trial] except as stated below.

(Insert particulars of any civil conviction, or of any military conviction which is not recorded in the regimental books, the particulars must be given whether the accused was or was not punished in respect thereof, and the manner in which the punishment was to be carried out, and the date when carried out or remitted, or the reason why it was not carried out, as the case may be.)

4K14.

Fe. Erasmus W.G.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 106026 Pte William Granville ERASMUS LER

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st SEC 12(1) A.A.	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) ~~Ignore deletion~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

1 years detention

(Sgd) ..... Judge-Advocate, if any. Dated 21st 1944 Date awarded. (Sgd) C Wolfenden President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 766.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the court

~~I direct that the accused be not committed to prison or detention barracks and further orders~~ Nil.

(1. AA 57A. Delete if not used.)

Date 28 Nov 44 (Sgd) W. Bogert Lt Col Commanding 2 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
M106026 Pte Erasmus WG	29 Nov 44	F.L. Engle Capt & Adjt

The Royal Edmonton R

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 JAN ... AG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. 4K-17

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA2) 40-P.S.R. 1698 (3904)

Convened by Lt-col M.P. Bogert A/Comd 2 Cdn Inf Bde dated 17 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-106026	Private	William Granville	ERASMUS	L.E.R.

PROCEEDINGS REVIEWED Capt Kan Attorney at Law

MAY

REVIEWING OFFICE AG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) Nov 21st 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-34

A1. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Can ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (3) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter? Ans ~~The Interpreter is sworn.(1) Do you objects to~~ as shorthand writer? Ans ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 28, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	F.D. GRIFTON	R.C.A.
Member	CAPT	E.D. MCPHAIL	R.C.A.
Member	LIEUT	S.T. CAMPBELL	3 CAF OPS
Judge-Advocate	N/A		
Prosecutor	LIEUT	W.A. KITCHING	R.C.S.
Defending Offr	LIEUT	F.T. MIDDLETON	L.E.R.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instrs will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused M106026 Pte ERASMUS WG, before arraignment makes (no) ~~a~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

F97 B2/62.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see* RP 35(C). *No other charge can be withdrawn for any reason without assthy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see* RP 35(A). *As to plea when sentence may be death see* RP 35(D).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p* ■ 3.

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see* RP 37 (A) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see* RP 59, 60(C) ; *powers and duties of JA see* RP 103 ; *duty of Prosecutor see* RP 60(A) (B) ; *duty and privileges of accused and Defending Offr see* RP 60(C), 87(C), 91, 92 ; *swearing and withdrawal of witnesses from Court see* RP 81, 82 ; *questioning of accused see* RP 80, 87(C), 92(B), *and of witnesses see* RP 83-85 ; *calling or re-calling of witnesses by Court etc see* RP 75-79, 86, 116 ; *use of Summary of Evidence at Trial see* RP 17(E) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see* RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your pleas. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your pleas and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 27(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (D).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B4 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

~~D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ABOVE STATEMENT ON OATH. Do you intend to call witnesses on your behalf ? Ans YES. Are they witnesses as to character only ? Ans YES.
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding.(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1) ~~(or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith,(2) and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(3))~~
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ? Ans by our Admin Offr.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. *AFB 255 or AFB 256.* 2. *AF 84.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 128, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED M106026 Private William Granville ERASMUS, of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, On Active Service, is Charged With:

WHEN ON ACTIVE SERVICE

First Charge
Sec 12(1)
Army Act

DESERTING HIS MAJESTY'S SERVICE.

in that he

in the field, on the 21st day of October 44, when serving with his platoon in a forward area, with intent to avoid such service, absented himself from his platoon from 2130 hrs 21st October 44 until surrendering himself to #3 Provost Company at Santarcangelo at 1900 hrs 28 Oct 44.

TOTAL ABSENCE - ~~X~~ 6 DAYS 21 HOURS 30 MINUTES.

In the Field
Date 1st Nov 44

J R Stone
.....
(J.R.Stone) Lt-Col
Comd The L Edmn R

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
Date 17 Nov 44

M P Bogart
.....
(M.P. Bogart) Lt-Col
T/Comd 2 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Can Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 109. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M-106026	Private		William Granville	ERASMUS	LER

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 NOV 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to bring the said accused to a superior qualified offr)~~ N/A

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~And I direct that the said Court shall assemble at the office of the Convening Officer, President, Capt E.D. McPhail~~ N/A

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~And I direct that a Judge Advocate attend the Court on the date mentioned hereunder.~~ N/A

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.D. Crofton	PPCLI

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	E.D. McPhail	PPCLI
Lt	S.T. Campbell	Seaf of C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	G.D.M. Nicholson	Seaf of C

~~JUDGE ADVOCATE~~ N/A

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

(Signed personally. RP 105 fn 2.) (M.F. Bogert) Lt-col (Rank.)

Date 17 Nov 44

Commanding 2 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAO6 (1st Impl of AFA3) 40-9 & 8/1945 (8851)

(See overleaf for oaths and notes for use on trial.)



Fol

MEDICAL CERTIFICATE
(KR (can) para 557)

This is to certify that I have today examined
No M106026. Rank Pte. Name Erasmus W.O.
of The Loyal Edmonton Regiment and in my opinion
he is fit/~~unfit~~ to stand trial by F.G.C.M.

In the Field
Date 21.NOV.44

(R.M. Levine) Capt & M.O.
Medical Officer i/c The L Edmn R.

Fol

D

Pte 026 Pte Cranmer N3

Pleads not guilty in answer to the charge of deserting his Majesties service

Lst witness prosecution 14107352 Cpl Carron CE serving Crime

duly sworn states

on the night of oct. 21/44 at approx 2130 hrs while on the approach marsh to assault the Savio river we were under enemy shell fire. During a halt Pte Cranmer took cover in a house along with some of the other boys. When we got ready to move on I ordered Pte Cranmer to join the rest of the platoon he refused to go on saying he couldn't stand the shelling I immediately reported the matter to sgt Kerr who was acting as my platoon commander.

quest Have you known Pte Cranmer for long

ans For some time

quest Do you ordered pte Cranmer out

ans yes

quest Did you recognise his voice in reply

ans yes

quest What was your position on platoon

ans I was acting Cpl sgt

quest What position was occupied in Pl.

ans No 1 on PIAT

quest At this time had you received orders for the pending operation

ans Yes

Ques In those orders were you given the coy objective ~~and the~~

Ans Yes

Ques Were you given the location of the R.A.P.

Ans No

Ques Did you inform the accused of these matters

Ans The objective yes not the R.A.P.

Ques Do you often go into a moving action not knowing the exact location of R.A.P.

Ans yes

Ques In the action was the R.A.P. later established right with tactical H.Q

Ans I'm not positive I believe it was 2 or 300 yds ahead of B H.Q

(R.O. 836 emptied out)

The private pocket book exhibit 1 remanded marked EX "A"

RC

Pros. Court. ans. Was accused physically fit (3) V.

ans. Yes

Court asks When you gave orders how far was objective?

ans Objective was changed on reaching river. Original objective was approx 1000 yds beyond the river

Court asks On what basis did you conclude he was physically fit?

ans I could not see him but he was alright when he entered the house and he answered me quite normally

(R.P. 83(b) complied with)

2nd witness 13,000 sgt Powell R.C.N. having been duly sworn states on the night of 21 Oct 44 I was acting P.S. com. of 12 platoon Coy R.C.R. at approx 2130 hrs Pte Carson who was my acting P.S. got reported to me while I was checking my platoon before moving off that Pte Erasmus was missing from Platoon H.Q. Proceeding on to my recce. who were taking shelter in a house I found Pte Erasmus there I told him to return to Pl H.Q. as we were moving off immediately but he refused as he said he couldn't take it any more not having time to argue with him or explain to him what he would risk action would mean I left him behind

Court asks When you ordered Pte Erasmus to go back to Pl H.Q did he give you any other reason than that he couldn't take it

ans No

R (2) K.C.

Quest. Pros — would you say he was physically fit at that time

ans — Yes

Quest Def — How long have you been with 12 pb

ans — 5 days at that time

Quest Pros — Can you Identify the Accused in this Court

ans — Yes

Quest Pros — is that the man you ordered out that night

ans — Yes (R.P. 83(1) complied with)

Pros. closed

1st witness for Defence — 4/12/46 Pte Cull R.C. LER having been duly sworn states.

Quest Def — Do you recognize the Accused

ans — yes

~~Quest Def — How long have you known him~~

Quest Def — What association in battle have you had with accused

ans — I have been in battle with him

Quest Def. — During periods of shelling did you notice anything about the Accused conduct

ans — he was quite nervous

~~Quest Def — could you be more specific~~

~~ans~~

~~Quest~~

M106026 (5)

Pte Cranmer N 3 having been duly
sworn Flatly

on the night of 21 oct 44 there
was a lot of shelling around our
area I took shelter in a house
his dugout there 7 days during
those 3 days he was shelling
steady I couldnt go across
the river I was scared to
go alone and I dident know
where the coy was or the regt.
one of the boys suggested the
regiment was out of the line
out of the line.

Query 2 day at the time you were in this house
were you affected by the shelling
Ans I was

Query How?

Ans by never ever you.

Query at this time did you have any token
to when the R.A.P. was

Ans no

Query after you left the house did you
have your weapons and equipment
with you

Ans I had my equipment no weapon
(lying a RAP in the house)

Query How long had you served with
the regt on active prior to this

Ans I took part in the battles since attack
crossed the [illegible] river was in
every action from the 27 aug 44

Cpl
Quest
Pros

ans No more Dougal

Quest Was this house close to where your coy
Pros route was to the river

ans I didn't know anything about it as I
didn't know the route or where the coy was

Quest Did you see any of the two coys
Pros that passed very close to your house
after you had taken shelter

Cpl

ans Yes

Quest How steady was this shelling for
Pros 3 days

ans about 1 shell every five minutes

Quest ~~Would you say then that for 3 days~~
Pros ~~and nights after our boys~~
~~had arrived at or 2000 yds~~
~~from the river a shell was~~
~~falling every five minutes for~~
~~3 days and night after your~~
~~arr~~

Quest Was your only reason for not
Pros leaving the house the fact that
your never ever got

ans No that was not my only reason

Quest ~~Except that~~ what was the reason
Pros

ans One of the boys heard the regiment
was pulling back out of the line
and we decided to rejoin them.

Quest
Pros When

ans Around 25 Oct when we heard that

(R.O 13 b continued)

RC

~~Prosecutor~~
2nd witness for defence 416798 pte Olson N.E. having been duly sworn states

~~Prosecutor~~ Witness identifies accused

~~Prosecutor~~ Def In my opinion the accused has been a good soldier and one who I have always considered quite efficient in his work

quest Def what connection have you had with accused

ans I have been 2 i/c PLATOON in the platoon and many action which we were in together I have always kept up and I never had to call him or had reason to doubt his ability to be there when he was wanted

Prosecutor quest were you in the Savio river crossing

ans no

Prosecutor quest were you with the accused on the Fortunato Ridge

ans no

The defending officer asks permission of court to recall the accused

Def quest You entered the house at 2130 hrs 21 you heard on the 25 oct the rest was pulling back, between the ~~two~~ times ~~you~~ not hearing ~~could~~ there any other reason for ~~staying~~ other than yours nerves were gone

ans Yes

Prosecutor quest what was it

ans shelling

The defending officer desires to make a closing address

EXHIBIT "D"

CERTIFICATE OF SURRENDER

Under Army Act Sec 153 (1)(

I, the undersigned certify that No. M106026 Rank Pte

Name ERASMUS, W.G. of Loyal Edmonton Regt., 1 Cdn Inf D

surrendered himself to No. C11834 Rank Cpl Name Sangster, G.A.

of No. 3 Cdn Provost Coy., at Santarcangelo at 1900 hrs

28 Oct 44

_____ 1944, as a soldier absent without leave/as a deserter.

R.P. Hamilton Capt
No. 3 Cdn Provost Coy.

Orderly Room
Stamp

Signature of Officer into whose custody
the soldier was taken upon surrender

EXHIBIT "D"

E & C 102

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

E & C 78

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M106026	Pte	ERASMUS, W.G.	The Loyal Edmonton Regt

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be inserted in the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 40 ..... two times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 25 October 1943

Date of last entry in Field Conduct Sheet 14 April 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for

days in civil custody; and for N.I days in military custody, *i.e.*,

days in open arrest, days in close arrest; of

which days were spent in hospital.

5. The present age of the accused is 20 years

6. The date of his attestation is 14 Jan 43

7. The service which the accused is allowed to reckon is 1 yr 11 mos

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM:Clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of N/A

In the war substantive rank of

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(2) [illegible] W1.26570/896 100,000 4/42 A.& E.,W.Ltd. Gp.698
(2) [illegible] W1.22520/1871 60,000 9-42 Forms.B.296(W.)(2).

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Eleventh day of November 1944

E L Boyd Capt & Adjt
The Loyal Edmonton Regt.

"Old Sheet destroyed 13 Oct 43" F.K. Stone Lt.

MFM 6
(AFB 122)
40/PAS/136 (3438)

No M106026 Name ERASMUS W.G. Sqn, Battery or Company — Corps C.I.C. — Date of enlistment 14 Jan 43 — OC Badges — Service or Proficiency Pay — Character

Company Conduct Sheet — Date of last entry in 11 Jul 43 — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc F.K. Stone Lt 1 C.I.R.U.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
1 CIRU	25 Oct 43	Pte	nil	Neglect to the prejudice of good order and military discipline in that he at 1 CIRU while on duty as Hut Orderly left his hut A.A. Sec 40	K69514 Cpl McHallam P.B.	7 days C.B.	28 Oct 43	A/Major W.B. McQueen	
Field	14 Apr 44	Pte	nil	AA Sec 40 Conduct to the Prejudice Sleeping on Sentry Post.	Lieut R.W. Hayter	4 days C.B.	15 Apr 44	Capt C.B. Irwin	

"Certified True Copy of the Original"

Capt -
The Loyal Edmonton Regt.

(P10

Summary of Evidence in the case of M106026 Pte ERASMUS, William Granville of the Royal Edmonton Regiment, a soldier of the Canadian Army Overseas C.M.F.

By order of the Commanding Officer evidence is taken on oath.

1st WITNESS M107352 A/Cpl. Carson, C.E. 'B' Coy. the Royal Edmonton Regt. having been duly sworn states:-

"I am M107352 A/Cpl. Carson, C.E. 'B' Coy, the Royal Edmonton Regt. On the night of 21 Oct 44 at approximately 2130 hrs. while our platoon was halted in the assembly area before crossing the Savio River, we were under shell-fire from the enemy. M106026 Pte. Erasmus, W. G. whom I now recognize, took cover in a house. When we got ready to move off I ordered him out but he refused to go on because he said he couldn't stand the shelling. I immediately reported his refusal to M31000 Sgt. Vowell, H.C.W. who was acting Platoon Commander at that time."

The accused declines to cross-examine this witness. M107352 C.E. Carson.

RJC RJC

2 NP WITNESS M31000 Sgt. Powell, H.C.W. 'B' Coy the Loyal Edmonton Regiment having been duly sworn states:-

"I am M31000 Sgt. Powell, H.C.W. 'B' Coy, the Loyal Edmonton Regt. At approximately 2130 hrs, 21 Oct 44 I was acting Platoon Commander of No 12 platoon 'B' Coy, the Loyal Edmonton Regt. We were moving forward to attack the enemy across the Savio river and were halted ~~on six~~ ~~or three~~ ~~guns~~ hundred yards short of the way. M107352 A/Cpl. Carson, C.E. who was ~~acting~~ platoon Sgt. reported to me, while I was checking my platoon before moving off, that M.C.C.26 Pte. Erasmus, W.G. was missing from Platoon H.Q. I then proceeded on, to my rear section who were taking shelter from mortar and shell fire in a house. I found Pte. Erasmus, W.G. whom I had ~~recognized~~ there. I told him to rejoin Platoon H.Q. as we were moving off immediately but he refused as he said he couldn't take it any more. Not being able to force him to come we moved off without him. I had not heard of or seen him since until he surrendered to No 3 Provost Coy at ~~Lonigno~~ Forli 29 Oct 44."

Sworn to and signed

The accused declines to cross-~~examine~~ this witness.

M31000 Sgt. Thos. Powell.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused on 9 Nov 44 and that Rules of Procedure 4 (C) (D) (E) (F) and (G) were complied with.

In the Field
9 Nov 44

Geo Fox Capt.
Officer taking Summary

PAC

Additional Summary of Evidence in the case of M106026 Pte EVANS W. William Granville of the Royal ~~Edmonton Regiment~~ a soldier of the Canadian Army (overseas) CMF.

By order of the Commanding Officer, evidence is taken on oath.

3RD WITNESS:- Lieut. H. Remple, the Royal Edmonton Regt., having been duly sworn states:-

"I am Lieut H. Remple, 41098, the Royal Edmonton Regt. I present the certificate of surrender of M106026 Pte EVANS W.G. whom I now recognise."

The accused declines to cross-examine this witness.

I certify that the additional Summary of Evidence consisting of one (1) page was taken down by me in the presence of the accused on the 10 Nov 44 and that Rules of Procedure 4 (C)(D)(E)(F) and (G) were complied with.

In the Field
10 Nov 44

Geo Gff Capt.
Officer taking Summary

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : M 106026 Pte William Granville ERASMUS L&R

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 18(1)[illegible]	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 752, and in lieu of s/s see RP 44 fn 8.)

~~At present under sentence for :~~ (Beginning on (date)) "Ignore deletions PDC"
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of NIL days, of which NIL days were spent in hospital.(1) "PDC"
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

1 years detention.

(Sgd) ..... Judge-Advocate, if any. Nov 21st 1944. Date awarded. (Sgd) ?????????? Major President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I confirm the finding and sentence of the court.

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567 577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 572. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence of the court.

~~I direct that the accused be not released after the expiry of detention hereinbefore until further ordered.~~ (1. AA 57A. Delete if not used.)

Date 26 Nov 44 (Sgd) "M.P.Rogert" Lt Col Commanding 2 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
M.106026 Pte. ERASMUS, W.G.	29 Nov 44	"H. Boyd" Capt & Adjut The Loyal Edmn R.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

"PDC" 4K-17

FIELD GENERAL COURT-MARTIAL

CFAMS (to level of AFA3) 40/P&S/1606 (1670) 4/388

(D.M.Dvet) Capt Cdn Sec GHQ 2 Echelon AAI

Convened by Order of Lt.-Col M.P. Rogert A/Comd 2 Can Inf Bde dated 17 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M-106026	Private	William Granville	ERASMUS	L & R

Proceedings Reviewed "W.P.Taylor" Maj 16 Dec 44 AJA Cdn Sec GHQ 2 Ech AAI

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) "PDC" Nov.21st 1944.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which insets are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 118, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) as attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CA(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 34(b). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~ "PDC"
~~The interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 22, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	P D Crofton	P.P.C.L.I.
Member	Capt	E D McPhail	P.P.C.L.I.
Member	Lieut.	C T Campbell	Seaf of C.
Judge-Advocate	N/A.		
Prosecutor	Lieut.	W A Kitching	R.C.C.S.
Defending Offr	Lieut.	J T Middleton	L.S.R.

Questions by President : Is the Prosecutor a lawyer ? Ans. No Is the Defending Offr a lawyer ? Ans. No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused M 106026 Pte. ERASMUS, W.G. before arraignment make(s) (no) ~~in~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), (GB), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or as to date of trial (RP 26), or as to accused's mental fitness to stand trial (AA 120, RP 37), or by one of several accused charged jointly to be tried separately (RP 13, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cont. Insert in All rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~each~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 7 of Instrs p 2. Where more than one Charge Sheet see RP 42 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A94 to record proceedings. 2. RP 22, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~in closed~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PGT/ ES, GS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*II*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to that Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No.(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (his) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Make a statement on oath. Do you intend to call witnesses on your behalf ?
Ans Yes. Are they witnesses as to character only ? Ans Yes.
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if to his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding.(1) The finding of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 42, 105(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
And The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 42, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy extract of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 14(3)(*f*) (*g*) (*h*), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ....., ... and ..... respectively.(2)
(*1. MFJ* 253 *or AFB* 196. 2. *MFM* 6. 3. *RP* 46, *KR Con* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No.(2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 64, *128, 182, RP* 46-50, 69, *118, 119(A), KR Can* 308, 330, 363-366, *Overseas RO* 309, 1323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MOML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"DDC"

CHARGE SHEET

THE ACCUSED M16602 Private William Granville ERASMUS, of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, On Active Service, is Charged With:

WHEN ON ACTIVE SERVICE

First Charge
Sec 1(1)
Army Act

DESERTING HIS MAJESTY'S SERVICE

in that he

In the field, on the 21st day of October 44, when serving with his platoon in a forward area, with intent to avoid such service, absented himself from his platoon from 2130 hrs 21st October 44 until surrendering himself to his Provost Company at Santarcangelo at 1900 hrs 28 Oct 44.

TOTAL ABSENCE - 6 DAYS 21 HOURS 30 MINUTES.

In the Field

Date 14 Nov 44

"R.J.Stone"
(R J Stone) Lt-col
Comd The L Edmn R

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field

Date 17 Nov 44.

"M.F. Bogert"
(M.F. Bogert) Lt-col
T/Comd 7 Cdn Inf Bde

"PDC"

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AFA5)
40/P&S/1097 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-106026	Private		William Granville	ERASMUS	IER

CONVENING ORDER.

"MPB"

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Nov 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not practicable to delay the trial for reference to a superior qualified offr.] "MPB"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "MPB"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge Advocate to prosecute the Offr mentioned hereunder.~~ "MPB"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	P.D. Crofton		FPCLI

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	E.D. McPhail		FPCLI
Lt	S.T. Campbell		Seaf of C

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt	G.D.M. Nicholson		Seaf of C

JUDGE-ADVOCATE "MPB"

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

"W.P. Bogert" (Signed personally. RP 105 fn 2) Lt-col (Rank.)

Date 17 Nov 44

(W.P. Bogert)
Commanding 2 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"PDC"

"PDC"

M E D I C A L C E R T I F I C A T E

(KR (can) para 557)

This is to certify that I have today examined

No M106025 Rank Pte Name Erasmus, W.C.

of The Loyal Edmonton Regiment and in my opinion

he is fit to stand trial by F.G.C.M.

In the Field "Rolst M Levine"
(R.M. Levine) Capt & R.C.
Date 21 Nov 44 Medical Officer i/c The L Edmn R

"PCD"

(1) "POC"

W-106026 Pte Erasmus, W.G.

Pleads Not Guilty in answer to the charge of deserting His Majesties Service.

1st Witness Prosecution M107352 Cpl Cereda, C.E., having been duly sworn states:

On the night of Oct 21/44 at approx 2130 hrs while on the approach march to assault the Savio River we were under enemy shell fire. During a halt, Pte Erasmus took cover in a house along with some of the other boys, when we got ready to move on I ordered Pte Erasmus to join the rest of the Platoon, he refused to go on saying he couldn't stand the shelling, I immediately reported the matter to Sgt Powell who was acting as my platoon commander.

Quest Have you known Pte Erasmus for long.
Ans For some time.

Quest Did you ordered Pte Erasmus out.
Ans Yes.

Quest Did you recognize his voice in reply.
Ans Yes.

Quest (Def) What was your position in Platoon.
Ans I was acting Pl Sgt.

Quest What position was accused in Pl.
Ans No 1 on FIAT.

Quest At this time had you received orders for the Pending operation.
Ans Yes.

"POC"

(2)

Quest In those orders were you given the coy objective.
Ans Yes.

Quest Were you given the location of the RAP.
Ans No.

Quest Did you inform the accused of these matters.
Ans The objective yes not the RAP.

Quest(Pros) Do you often go into a moving action not knowing the exact location of RAP.
Ans Yes.

Quest(Pros) In this action was the RAP later established right with tactical P.C.
Ans I'm not positive I believe it was 2 or 300 yds ahead of HQ.

(R.P. 83 (P) complied with)

The prosecutor produces certificate of surrender marked Ex "A".

"POC"

"POC"

Quest. Was accused Physicaly fit.
Ans. Yes.
Quest. When you gave orders how far was objective.
Ans. Objective was changed on reaching river. Original objective was approximately 1000 yrds beyond the river.
Quest. On what basis did you conclude he was physicaly fit.
Ans. I could not see him but he was alright when he entered the house and he answered me quite normally.

(R.P. 83 (b) complied with)

The WITNESS. M 31000 Sgt Powell F CW. having been duly sworn states:
"On the night of 21 Oct 44 I was acting Pl Com of 1F Platoon B Coy LER at approx 2130 hrs Cpl Carson who was acting Pl Sgt reported to me while I was checking my platoon before moving off that Pte Erasmus was missing from Platoon HQ. Proceeding on to my rear sec. who were taking shelter in a house I found Pte.Erasmus there. I told him to return to Pl. H.Q. as were moving off, immediately but he refused as he said he couldn't take it any more.. Not having time to argue with him or explain to him what his action would incur I left him behind.

QUEST BY PROS when you ordered Pte.Erasmus to return to Pl HQ did he give you any other reason than that he couldn't take it

ANS No.

Quest. would you say he was physicaly fit at that time.
Ans. Yes.
Quest. How long have you been with 1F pl.
Ans. 5 days at that time.
Ques.. Can you Identify Pte.Erasmus in this room.
Ans. Yes.
Quest. Is that the man you ordered out that night.
Ans. Yes.

(R.P. 83(b) complied with)

Pros Closed

At WITNESS FOR DEFENCE. 1 12176 Cpl Cull R.C. 1ER having been duly sworn states.

Quest. Do you recognize Pte. Erasmus.
Ans. Yes.
Quest
Def. What association in battle have you had with accused.
Ans. I have been in battle with him.
Quest
Def. During periods of shelling did you notice anything about Pte.Erasmus conduct.
Ans. he was quite nervous.

M-106026 Pte. Erasmus W.G. having beenduly sworn states:

"On the night of 21 Oct 44 there was a lot of shelling around our area I took shelter in a house. We stayed there 3 days, it was shelling Steady I couldnt go across the river. I was scared to go alone and I couldn't didn't know where the coy was or the regt. One of the boys suggested the regiment was falling back out of the line.

during the 3 days

Quest
Def. at the time you were in this house were you affected by the shelling.
Ans. I was
Quest
Def. How?
Ans. My nerves were gone.
Quest
Def. at this time did you have any Idea where the R.A.P. was.
Ans. No.
Quest
Def. When you left the house did you have your weapons and equipment with you.
Ans. I had my equipment, no weapon (being a PIAT I had no other weapon)

Quest
def. How long had you served with the regt in action prior to this.
Ans. I took part in the Hitler line attack crossed the river was in every action from the 27 Aug 44.

"PDC"

Ques
Pros. Who else was in this house with you.
Ans. Pte MacDougal
Quest
Pros. Was this house close to where your coy route was to the river.
Ans. I didn't know anything about it so I didn't know the route or where the coy was.

Quest
Pros. Did you see any of the two boys that passed very close to your house after you had taken shelter.
Ans. No.
Quest. How steady was the shelling for S day.
Pros. about 1 shell every five minutes.
Ans.
Quest. Was your only reason for not leaving the house the fact
Pros. your nerves were gone.
Ans. No that was not my only reason.
Ques.
Pros. what was the reason.
Ans. One of the boys heard the regiment was pulling back out of the line and we wanted to rejoin the regt.

Quest
Pros. when
Ans it was around 25 Oct when we heard that

(R.P. 83(b) complied with).

2nd WITNESS FOR DEF. M15798 Sgt. Olson N.E. having been duly sworn states:

Witness identifies accused.

In my opinion the accused has been a good soldier and on who I have always considered quite efficient in his work.

Quest
def. What connection have you had with accused?
Ans. he has been No.1 PIAT man in the platoon and many actions which we were in to-gethers has always kept up and I've never had to call him or had reason to dout his ability to reason- be there when he was wanted.

Quest. Were you in the savion river crossing.
Pros.

Ans. No.
Quest
Pros. Were you with the accused on the Fortunento Ridge.

Ans. No.

The defending officer asks permission of Court to recall the accused "PDC"

Quest.
def. You entered the house at 2130 hrs 21 you heard on the 25 Oct the regt was pulling back between these times was there any reason for not leaving other than your nerves were gone.
Ans. Yes.
Quest what was it.
Ans. Shelling.

The defending officer and Pros. declines to make a closing address "PDC"

"PDC"

CERTIFICATE OF SURRENDER Under Army Act Sec 163(1)(f)

I, the undersigned certify that No. M106086 Rank Pte. Name ERASMUS, W.G. of LoyalEdmonton Regt., 1 Cdn Inf Div. surrendered himself to No. C11834 Rank Cpl Name Sangster G.A. of No.3 Cdn Provost Coy., at Santercangelo at 1900 hrs, 28 Oct 44 as a soldier absent without leave/as a deserter

[redacted]
No. 3 Cdn Provost Coy.

Orderly Room Stamp

Signature of officer into whose custody the soldier was taken upon surrender

"E X "A" "PDC"

"Ex "G" "PDC"

"Ex "G" "Upon"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or at the case may be).*
M106026	Pte.	ERASMUS W.G.	The Loyal Edmonton Regt.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the more serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA Sec 40 two times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 25 October 1943.

Date of last entry in Field Conduct Sheet 14 April 1944.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for Nil days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which ..... days were spent in hospital.

5. The present age of the accused is 20 years

6. The date of his attestation is 14 jan 43

7. The service which the accused is allowed to reckon is 1 yr 11 mos

†State the military decorations (if any) held by accused.

8. The accused is in possession of† GVE&Clasp

9. *(If the accused is a warrant officer or N.C.O.).* The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of	

"ELD"

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 18000/1402 25,000 3/44 41-4761. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

"ELB"

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Eleventh day of November 1944.

"EL Boyd" Capt & Adjt
The Loyal Edmonton Regt.

M106026 | Name ERASMUS W.C. | Sqn, Battery, or Company | Corps | Date of enlistment 14 Jan | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 61-PAM-100 (3438)

"Old Sheet destroyed 13 Oct 43" F.K. Stone Lt.

Date of last entry in Company Conduct Sheet 11 Jul | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 43. | Signature OC Company, etc "Ex "D" F.K. Stone Lt. | Character 1 C.I.B.D.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
1 CIRU	25 Oct 43	Pte	nil	Neglect to the prejudice of good order and military discipline in that he at 1 CIRU while on duty as Hut Orderly left his hut A.A. Sec 40	K69514 Cpl McMellam P.S.	7 days C.B.	28 Oct 43	A/Major W.B Jacquesh	
Field	14 Apr 44	Pte	nil	AA Sec 40 Conduct to the Prejudice Sleeping on Sentry Post.	Lieut R.W. Hayter	4 days C.B.	15 Apr 44	Capt C.B. Irwin	

"Certified True Copy of the Original"

"J Boyd" Capt & Adjt "FD"
The Lobel Edmonton Regt.

(PTO)

AM-135.
Pl6. Erickson E.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M58815 Pte E.E. Erickson R. Regt C

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in case of kit see RP 44 fn 8.)

~~As present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two (2) years and to be discharged with ignominy from his Majestys Service.

(Sgd) ..... Judge-Advocate, if any. 7 Dec, 44 Date awarded. (Sgd) H.W.P. Thomspn, Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA (72 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~

(1. AA 57A. Delete if not used.)

(Sgd) F.MCabeldu) Brig

Date 9 Dec 44 Commanding 4 Cdn Inf Bde.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
M58815 Pte Erickson, E.E	11 Dec 44	A.H. Krieger, Lt. 1 Bn Regt C., C.A.(O's).

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4M-135

FIELD GENERAL COURT-MARTIAL

CFA96 (1971)(in lieu of AFA3) 4/38B

Convened by Order of Lt-Col JEC Pangman Comd 4 Cdn Inf Bde dated 5 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, Ins, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M58815	Pte	Emil Edon	ERICKSON	R Regt C

Certified true copy
W.P. Thompson Capt
A.D.J.A.
Cdn Sec G.H.Q. 2 Echelon

Cdn Sec G.H.Q. 2 Echelon Army Gp
PROCEEDINGS RECEIVED 20 DEC 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 7 Dec. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 15/84

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn HQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1520 hours trial commences.

~~A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter? Ans:~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans:~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 56(6). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H. W. P. Thomson	Essex Scot
Member	Capt	R. E. Bolt	R. H. L. I
Member	Lieut	D. P. Melville	11 Cdn Fd Amb
Judge-Advocate			
Prosecutor	Lieut	A. H. Krieger	R. Regt C
Defending Offr	Capt	T. R. Wilcox	R. Regt C

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2nd p 3.)

A8. The accused M58815 Pte E. E. Erickson before arraignment make(s) (has) (no) pleas in bar.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 5.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. Do you intend to call witnesses on your behalf ?

Ans. Are they witnesses as to character only ? Ans. .

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 88(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(2) (d), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP 37(C) fn 4, 40 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)

(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes .(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove an oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 120. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No M-58815 Pte ERICKSON, Emil Edon, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

- in that he -

Sec 15 (1) Army Act

In the Field, absented himself without leave from 2300 hrs, 7 Nov 44, and remained absent until apprehended at 1345 hrs, 18 Nov 44, by the Canadian Military Police in the city of Antwerp. (Total Time Absent: 10 days, 14 hrs, 45 mins.)

IN THE FIELD
28 Nov 44.

Signed:
(R.M. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

TO BE TRIED BY FIELD GENERAL-COURT-MARTIAL.

Signed:
(JEC Pangman) Lt-Col
A/Comd 4 Cdn Inf Bde.

IN THE FIELD
5 Dec 44

(Sgd) H.W.P. Thomson.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M58815	Pte	Emil Edon	ERICKSON	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 Dec 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	HWP Thomson	Essex Scot

MEMBERS.

A Capt to be detailed by OC RHLI

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt to be detailed by OC 11 Cdn Fd Amb		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
A Capt to be detailed by OC R Regt C		

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

Date 5 Dec 44

Sgd: (JEC Pangman) Lt-Col (Rank.)
(Signed personally. RP 105 fn 2.)

A/ Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use at trial.)

4/38A (FORMS (1st ISSUE OF AFAs) AG 2 & G 1897 (400))

Sgd: HWP Thompson (Major)

MEDICAL OFFICER'S CERTIFICATE

I certify that No M-58815 Pte Erickson, E.E., R Regt C is fit to undergo trial by Court-Martial today.

IN THE FIELD

7 Dec. 44

Sgd:.....
Medical Officer.....Capt

MEDICAL OFFICER'S CERTIFICATE

I certify that No M-58815 Pte Erickson, E.E., R Regt C

● is fit to undergo trial by Court-Martial today.

IN THE FIELD

7 Dec. 44

Sgd:.....Capt
Medical Officer

SUMMARY OF EVIDENCE

Summary of Evidence in the case of No M-58815 Pte ERICKSON, Emil Edon, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas:-

The accused is infm of his rights.

By Direction of the Commanding Officer the Summary of Evidence is taken on oath.

FIRST WITNESS — F-54670 Sjt Urquhart, W.A., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am F-54670 SJT Urquhart, W.A., Pl Sjt, 15 Pl, "C" Coy, 1 Bn The Royal Regiment of Canada, and the accused, M-58815 Pte Erickson, E.E., whom I now recognize, was a member of my pl. At 2300 hrs, 7 Nov 44, I called the roll of 15 pl personnel and Pte Erickson, E.E., failed to answer his name. I checked the billets but was unable to locate him, and marked him absent. He has not appeared with the pl since that date.

The accused declines to cross-examine this witness.

Sgd.
(W.A. Urquhart) Sjt.

SECOND WITNESS — H-204107 L/Cpl Metner, A.J., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

For the Prosecution

I am H-204107 L/Cpl Metner, A.J., section leader, 8 section, 15 pl, "C" Coy, 1 Bn The Royal Regiment of Canada, and the accused, M-58815 Pte Erickson, E.E., whom I now recognize, was a member of my section. On the 8 Nov 44, I noticed that Pte Erickson, E.E., was absent from the section. I have not seen him again until today.

The accused declines to cross-examine this witness.

Sgd:
(A.J. Metner) L/Cpl

THIRD WITNESS — Lt G.H. James, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, states

For the Prosecution

I am Lt G.H. James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I present herewith Army Form B 252 and Certificate of Apprehension in accordance with Sec 163 (1)(ii) AA, which show that the accused, M-58815 Pte Erickson, E.E., whom I now recognize, was apprehended by the Canadian Military Police in the city of Antwerp, and are hereto annexed and marked as Exhibits "A" and "B" respectively.

The accused declines to cross-examine this witness.

Sgd.
(G.H. James) Lt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of TWO pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) (f) and (g) have been complied with.

IN THE FIELD
28 Nov 44

Sgd:
(A.H. Krieger) Lt,
Officer Detailed to Take Summary.

CHARGE

Army Form B 252
(See King's Regulations)

R.R. of CANADA — Regiment

"C" Coy. — Battery / Squadron / Troop or / Company

CHARGE against No. M-58615 Rank Pte

Name ERICKSON, E.E.

Place ANTWERP Date of Offence 18 Nov 44

OFFENCE W.O.H.S: Absent without leave from? until apprehended by the CSM Pro Corps on Kerfulei Antwerp at about 1345 hrs on the 18 Nov 44.

Names of Witnesses:—

Legault, 7 Cdn L of C Pro. Sec.

Russell 2 Cdn L of C Pro. Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

30188. Wt.W21374/196.1 2,000,000 10/42. K. & H., Ltd. G627/42.

Statement of **EVIDENCE** in the case of
M-58815 Pte. Erickson, E.E.
C" Coy. R.H. of Canada

Sir:

At about 1345 hrs on the 18 Nov 44 I was on patrol duty on Keysulei Antwerp and in company with L/C Russell when I saw the a/m soldier. I asked him for his pass. He could not produce one. He was AWL I placed him under arrest and escorted him to the Guard room to be detained.

Antwerp
18 Nov. 44

Sgd:
Legault, R L/Cpl

Sir:

I have read over & corroborated the above statement.

Antwerp
18 Nov. 44

Sgd:
Russell H.W. L/C

REMARKS

EXHIBIT "B"

CERTIFICATE UNDER SECTION 163 (1) (ii) OF THE ARMY ACT.

I certify that No M-58815 Rank Pte Name ERICKSON, E.E. of Coy R.R. of Canada Regiment was arrested in the field at 1345 hrs hours on (date) 18 Nov. 44 and at the time of his arrest he was wearing Military uniform (plain clothes).

Signature of Provost Marshal, D.P.M
A.P.M.,D.A.P.M. or other officer
into whose custody the above named
person was taken on arrest.

NOTE This certificate must be signed by the Officer into whose custody the person was taken and not by someone for him.

Sgd:

Exhibit "E"

No. M.58815 Name ERICKSON, E.E. Sqn, Battery, or Company — Corps R.C.A.S.C — Date of enlistment 2-12-42 — QC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 132) 40/1[illegible] (5413)

Date of last entry in Company Conduct Sheet — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc J.H. Orme, Capt — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completion of 6 months service on 2-6-43 in accordance with Overseas R.O.319 Last Entry-Nil. Cases of Drunkenness-Nil. Awarded C.V.S.M. and Clasp wef 10-10-44 CERTIFIED TRUE AND CORRECT COPY OF ORIGINAL DOCUMENT IN MY POSSESSION: Sgd: (G.H. James) Lt. Officer IC Records, 1 R Regt C.									

(PTO)

Ex "D"

M.F.B. 355
22M—5-41 (172-5)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M-58815	Pte	Erickson, E.E.	1 R Regt C

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	NIL times	NIL times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under A.F.A. 73 / Air Force Act Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 10 & 9 days in Air Force military custody, making a total of 19 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is 23 yrs

6. The date of his commission specified in his record of service is attestation / attestation paper 2 Dec 42

7. The service which the accused is allowed to reckon towards discharge is 1 yr 11½ mos

8. The accused is entitled to reckon 1 Yr 11½ mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military possession of or entitled to). State any air force decoration or reward. 1 yr 11½ mos military / military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of NA years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		-NIL-		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of Nov 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked (G.H. James) Lt signed by the president, and annexed to the proceedings. Officer IC Records, 1 R Regt C.

STATEMENT IN MITIGATION OF SENTENCE OF PTE ERICKSON, E.E.

Age 23-enlisted 2 Dec 42 - came to England Jul 43. Came to Bn in Oct 44. Was in R.C.A.S.C. in holding unit in meantime. Was re-allocated to inf against his wish. Single No Dependents: Civilian Occ Farmer.

Has only one drunk charge on sheet.

He went A.W.L. from Malines while Bn was resting. Says he got "fed up."

The accused does not wish to call witness as to character.

Sgd:
(T.R. Wilcox) Capt.
Defending Officer

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M58815 Pte E.E. Ericksen R. Regt C

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 submitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labour for two (2) years and to be discharged with ignominy from his Majestys Service.

(Sgd) ..... Judge-Advocate, if any. 7 Dec. 44 Date awarded. (Sgd) H.W.P. Thomson, Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 739-761; KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~

(1. AA 57A. Delete if not used.)

Confirmed

(Sgd) F.K.Babeldu) Brig

Date 9 Dec 44 Commanding 4 Cdn Inf Bde.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M58815 Pte Ericksen, E.E	11 Dec 44	A.H. Krieger, Lt. 1 Bn Regt C., C.A.(O's).

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

4M-135.

FIELD GENERAL COURT-MARTIAL

CF A36 (To face of AFA3) 4/38B

Convened by Order of Lt-Col JEC Pangman Comd 4 Cdn Inf Bde dated 5 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M58815	Pte	Certified true Copy W.H.Thomson Capt AD J.A.	Emil Edon	ERICKSON	R Regt C

Con... 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 7 Dec. 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to gen'l provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1520 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ ~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer?~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member resigns. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H. W. P. Thomson	Essex Scot
Member	Capt	R. E. Bolt	R. H. L. I
Member	Lieut	D. P. Melville	11 Cdn Fd Amb
Judge-Advocate			
Prosecutor	Lieut	A. H. Krieger	R. Regt C
Defending Offr	Capt	T. R. Wilcox	R. Regt C

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused M58815 Pte E. E. Ericksen before arraignment makes(s) (no) (a) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 1 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement(1): The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 15(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex C, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under RR such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive on Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A85. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1, *Bd*(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RR* 42, 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.
and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 34(2) (*d*), *RP* 45, 120(*A*). 2. *AA* 34(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex E respectively.(3)
(1. *MFB* 265 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 338. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 34(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Oversea HD* 309, 2323, *RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Oversea HD* 309, 2323, *MML p* 66, 757-759. *As to sentences consigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 347. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No M-58815 Pte ERICKSON, Emil Edon, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

- in that he -

Sec 15 (1) Army Act

In the Field, absented himself without leave from 2300 hrs, 7 Nov 44, and remained absent until apprehended at 1345 hrs, 18 Nov 44, by the Canadian Military Police in the city of Antwerp. (Total Time Absent: 10 days, 14 hrs, 45 mins.)

Signed:
(R.M. Lendrum) Lt-Col,
Officer Commanding,
1 Bn The Royal Regt of Canada.

IN THE FIELD
28 Nov 44.

TO BE TRIED BY FIELD GENERAL-COURT-MARTIAL.

Signed:
(JEC Pangman) Lt-Col
A/Comd 4 Cdn Inf Bde.

IN THE FIELD
5 Dec 44

(Sgd) H.W.P. Thomson.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
M58815	Pte		Emil Edon	ERICKSON	R Regt C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 5 Dec 44 endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major	HWP Thompson	Essex Scot
(Rank.)	(Must be named. RP 106.)	(Unit.)

MEMBERS.

A Capt to be detailed by OC RHLI

A Capt to be detailed by OC 11 Cdn Fd Amb

(Rank.) (Named or detailed. RP 106.) (Unit.)

WAITING MEMBER.

A Capt to be detailed by OC R Regt C

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in HOLLAND
(*Country*)

Sgd:
(JEC Pangman) Lt-Col
(*Signed personally. RP 105 fn 2.*) (Rank.)

Date 5 Dec 44

A/ Commanding 4 CDN INF BDE
Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (To DHQ of AFAS) AD. F. & S. 6/1945 (4651).

(*See overleaf for oaths and notes for use on trial.*)

Sgd:
HWP Thompson(Major)

MEDICAL OFFICER'S CERTIFICATE

I certify that No M-58815 Pte Erickson, E.E., R Regt C

is fit to undergo trial by Court-Martial today.

IN THE FIELD

7 Dec. 44

Sgd:.....Capt
Medical Officer

For the Prosecution

I am F-54670 SJT Urquhart, W.A., Pl Sjt, 15 Pl, "C" Coy, 1 Bn The Royal Regiment of Canada, and the accused, M-58815 Pte Erickson, E.E., whom I now recognize, was a member of my pl. At 2300 hrs, 7 Nov 44, I called the roll of 15 pl personnel and Pte Erickson, E.E., failed to answer his name. I checked the billets but was unable to locate him, and marked him absent. He has not appeared with the pl since that date.

The accused declines to cross-examine this witness.

Sgd.
(W.A. Urquhart) Sjt.

SECOND WITNESS

For the Prosecution

H-204107 L/Cpl Metner, A.J., 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states:

I am H-204107 L/Cpl Metner, A.J., section leader, 8 section, 15 pl, "C" Coy, 1 Bn The Royal Regiment of Canada, and the accused, M-58815 Pte Erickson, E.E., whom I now recognize, was a member of my section. On the 8 Nov 44, I noticed that Pte Erickson, E.E., was absent from the section. I have not seen him again until today.

The accused declines to cross-examine this witness.

Sgd:
(A.J. Metner) L/Cpl

THIRD WITNESS

For the Prosecution

Lt G.H. James, 1 Bn The Royal Regiment of Canada, an officer of the Canadian Army Overseas, having been duly sworn, state

I am Lt G.H. James, Asst-Adjt, and in charge of all regimental documents for 1 Bn The Royal Regiment of Canada. I prese herewith Army Form B 252 and Certificate of Apprehension in accordance with Sec 163 (1)(JJ) AA, which show that the accused, M-58815 Pte Erickson, E.E., whom I now recognize, was apprehended by the Canadian Military Police in the city of Antwerp, and are hereto annexed and marked as Exhibits "A" and "B" respectively.

The accused declines to cross-examine this witness.

Sgd.
(G.H. James) Lt.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to give evidence on oath or to call witnesses in his defence at this point.

I certify that the foregoing Summary of Evidence, consisting of TWO pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) (f) and (g) have been complied with.

Sgd:
(A.H. Krieger) Lt,
Officer Detailed to Take Summary.

IN THE FIELD
28 Nov 44

CHARGE

Army Form B 252
(See King's Regulations)

R.R. of CANADA — Regiment

"C" Coy. — Battery / Squadron / Troop or / Company

CHARGE against No. M-58615 Rank Pte

Name ERICKSON, E.E.

Place ANTWERP Date of Offence 18 Nov 44

OFFENCE W.O.H.S! Absent without leave from? until apprehended by the CSM Pro Corps on Kerfulei Antwerp at about 1345 hrs on the 18 Nov 44.

Names of Witnesses :—

Legault, 7 Cdn L of C Pro. Sec.

Russell 2 Cdn L of C Pro. Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of EVIDENCE in the case of

M-58815 Pte. Erickson, E.E.
C" Coy. R.R. of Canada

Sir:

At about 1345 hrs on the 18 Nov 44 I was on patrol duty on Keysulei Antwerp and in company with L/C Russell when I saw the a/m soldier. I asked him for his pass. He could not produce one. He was AWL I plac him under arrest and escorted him to the guard room to be detained.

Sgd:
Legault, A L/Cpl

Antwerp
18 Nov. 44

Sir:

I have read over & corroborated the above statement.

Sgd: Russell H.W. L

Antwerp
18 Nov. 44

REMARKS

EXHIBIT "B"

CERTIFICATE UNDER SECTION 163 (1) (JJ) OF THE ARMY ACT.

I certify that No M-58815 Rank Pte Name ERICKSON, E.E. of Coy R.R. of Canada Regiment was arrested in the field at 1345 hrs hours on (date) 18 Nov. 44 and at the time of his arrest he was wearing Military uniform (plain clothes).

Signature of Provost Marshal, D.P.M
A.P.M., D.A.P.M. or other officer
into whose custody the above named
person was taken on arrest.

NOTE This certificate must be signed by the Officer into whose custody the person was taken and not by someone for him.

Sgd:

Exhibit "E"

3/17 MFM 6 (AFB 122)

No. M.58815 Name ERICKSON, E.E. Sqn, Battery, or Company — Corps R.C.A.S.C — Date of enlistment 2-12-42 — RC Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc J.H. Orme, Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Original sheet destroyed on completion of 6 months service on 2-6-43 in accordance with Overseas R.O.319
Last Entry-Nil. Cases of Drunkenness-Nil.

Awarded C.V.S.M. and Clasp wef 10-10-44

CERTIFIED TRUE AND CORRECT COPY OF
ORIGINAL DOCUMENT IN MY POSSESSION:

Sgd:
(G.H. James) Lt.
Officer IC Records, 1 R Regt C.

(PTO)

Ex "D"

M.F.B. 555
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M-58815	Pte	Erickson, E.E.	1 R Regt C

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	NIL times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / Section 47 of the Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 10 & 9 days in military / Air Force custody, making a total of 19 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is

6. The date of his commission specified in his record of service is / attestation / attestation paper

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon 1 Yr 11½ mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward. / military / military / military

1 yr 11½ mos

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of / Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of NA years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Unit ..... Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		-NIL-		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 28th day of Nov 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked (G.H. James) Lt signed by the president, and annexed to the proceedings. Officer IC Records, 1 R Regt C.

STATEMENT IN MITIGATION OF SENTENCE OF PTE ERICKSON, E.E.

Age 23-enlisted 2 Dec 42 - came to England Jul 43. Came to Bn in Oct 44. Was in R.C.A.S.C. in holding unit in meantime. Was re-allocated to inf against his wish. Single No Dependents: Civilian Occ Farmer.

Has only one drunk charge on sheet.

He went A.W.L. from Malines while Bn was resting. Says he got "fed up."

The accused does not wish to call witness as to character.

Sgd:
(T.R. Wilcox) Capt.
Defending Officer

5 T - 9

Gr. Erickson, Pl.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M1148 Gnr Henry Robert ERICKSON - 2 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (Date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 74 days, of which 34 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all Ordinary Pay for a period of sixty (60) days.

(Sgd) ..... 13 SEP 45 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

Date 14 Sep 45 (Sgd) H.R. Brownfield Brig
Commanding "C" Group, Can. Reinforcement Units.
Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

M 1148 Gnr Erickson H.R. 15/9/45 J Smith MAJOR
ADMIN. OFFR. 2 C.G.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED A. CMHQ IN AG 10[illegible] 5T-9

REVEIVED 8 SEP 1945 JAG Br... C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA31) 40/P & R/1698 (H144) 4/38B

Convened by Order of Brig H.C.N. Brownfield, CBE, MC Comd "C" Group, CRU dated 10 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M1148	Gnr	Henry Robert	ERICKSON	2 CGRU

PROCEEDINGS REVIEWED 21 Sept 45 [illegible] JAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 13 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1140 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KX Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.~~(1) Do you object to ~~Sgt Lt Col Brownfield~~ as shorthand writer? Ans NO The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NOT SO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D.L. REDMAN	HQ CRU
Member	CAPT	T.H. ORR	1 CGRU
Member	LIEUT	O.P. QUINN	1 CGRU
~~Judge Advocate~~			
Prosecutor	LIEUT	S.D. WHITE	2 CGRU
Defending Offr	LIEUT	N.A. CONSTANTINE	2 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or in one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is sworn and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon punctuates by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*E*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 71 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.
Do you intend to call witnesses on your behalf?
Ans.
Are they witnesses as to character only? Ans.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*d*), *RP* 42, 120(*A*). 2. *AA* 54(3), *RP* 43, 117. *This alternative pronouncement is not applicable when there are* ~~pleas~~ *of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - 2 IC
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 2 and Ex C respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. NOTE A 2C
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also JA, if any.~~(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas Act* 209, 222(3), *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*C*), (*E*), 68(*C*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, M1148 Gnr Henry Robert ERICKSON, Royal Canadian Artillery, on the strength of No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE WHEN ON ACTIVE SERVICE

A.A.Sec 15(1) ABSENCE WITHOUT LEAVE

in that he,

in the Field, did absent himself without leave from 2200 hrs 8 May 45 from his Unit, until surrendering himself at 2200 hrs 1 Jul 45 at 24 Cdn Gen Hospital.

(Absent 54 days)

Dated at Bordon, Hants, this 6th day of Sep. 1945.

(W.A. TOWNSLEY) Col RCA
Commanding Officer
No. 2 Cdn Gen Rft Unit

To be tried by Field General Court Martial

Brigadier
Commanding 3rd Group, Cdn Reinforcement Units
(Convening Officer)

Bordon, Hants
10 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M1148	Gnr		Henry Robert	ERICKSON	2 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) this date endorsed by me, "I am of opinion, &c." To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [AND THAT BY REASON OF THE DISTANCE OF ACCUSED FROM A SUPERIOR COMPETENT AUTH.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [I DO HEREBY APPOINT CAPTAIN OFFICER TO FORM THE COURT, (2) A FD OFFR AS PRESIDENT, AND THE REMAINING THREE OFFRS AS MEMBERS.] (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [I HEREBY APPOINT CAPTAIN OFFICER TO BE JUDGE-ADVOCATE THEREOF.] (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Colonel	D.L. Redman VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO	1 CGRU
Lieut	to be detailed by CO	1 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dat 10 Sep 45

Harry Brownfield (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Commanding "C" Group, Cdn Reinforcement Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

4/38A CFA 66 (In lieu of AFA 2; AO/F & S/1691 (61-43))

I CERTIFY THAT I HAVE THIS MORNING EXAMINED

M1148 Gnr Erickson H R and in my opinion
Number rank name

he is fit to undergo trial by Court Martial

Field
(station)

13-9-45
(date)

(signed) [signature]
RCAMC att to No. 2 CGRU

Gentlemen of the Court, in plea of Mitigation of Sentence for the Accused, M1148 Gnr Erickson H.R., I wish to submit the following evidence.

The Accused landed in France with the 6th Cdn Fd Regt RCA as an FOO "Driver Operator" on 7th Jul 44. He was in almost continuous action through France, Belgium and Holland, until he was severely wounded in Germany on 28 Feb 45 by a sniper's bullet through the stomach. He spent 14 days in a Fd Surgical Hosp where he was operated on. He was then evacuated by air to England, and here spent two months in bed at 24 CGH. He was then permitted to wear hospital "Blues", and it was shortly after this that his offence of being AWL began.

During the entire campaign Gnr Erickson had no leave whatsoever, and his nerves after 8 fairly continuous months in the lines were in a ragged condition. He was wounded just two weeks before he was to proceed on 9 days' privilege leave to the UK. As soon as he was in "Blues" he applied for a pass because his wife and two children lived within travelling distance of the hospital, and it was almost a year since he had been at home with them. However, this was refused, and his MO informed him that he was to be evacuated to Canada in a short time, and consequently no passes could be issued. The next time his wife visited him he asked her how soon she thought that she and the children could follow him to Canada. It was only then that she informed him that she had not made any application to travel, because she did not wish to go to Canada. She was influenced this way by letters received from her sister, who had also married a Canadian, gone to Canada, was hating the life there and was wishing to return to England. This came as a great shock to him, because the whole time that he was on the continent he believed his wife was looking after her own and the childrens' interests in their repatriation to Canada. Naturally this provoked a disagreement between Erickson and his wife during which she requested him to get his discharge in, and settle down, in England. She left him with this on his mind, and told him that she would not come and see him again until he complied with her wishes. She was good in her promise and paid him no further visits.

Gentlemen, I want you to picture Erickson and the problem that confronted him. There he was in hospital, his nerves ragged as I've already mentioned, still weak from his severe wound and with all his plans for the future falling around him. He knew that he would probably be on his way to Canada before he had come to an agreement with his wife, and once there would never get anywhere with her through correspondence. He also knew that it was impossible to get leave to straighten the matter out. As he saw it, there was only one thing to do and that was to see his wife immediately. This is exactly what he did, and in doing so became AWL.

E-3
MH

At first, on seeing his wife, she still wouldn't listen to reason, and acted very stubbornly. After a considerable length of time, and with the help of her parents, Erickson finally convinced her that it was her duty to follow him to wherever he was in the best position to work and maintain a family; and so she agreed to go with him. By then the Accused was realizing just how serious the offence

was that he had committed, and that he would have to return to the hospital and face the consequences. At first he was afraid to return as the thought of a term in detention was not a pleasant thing to think about, particularly after what he had been through in the past months. Although he knew that he had to go back, he kept putting it off, until he finally decided that the only thing he could do was return to the hospital and take his punishment. I might add that his wife and herpeople had a lot to do with this decision. Upon his return to hospital he was sent to "West Wing" Detention Hospital, Bramshott, where he was held until fit to stand trial.

Gentlemen, the Accused has pleaded guilty, and he is willing to take any punishment that you see fit to award him. I have given you a rough outline of the Accused's actions leading up to, and during the offence. I sincerely believe that most men in his position would have done the same thing to preserve the security and happiness of their families. However, there are a number of pertinent points relevant to this case which I think merit your consideration when deciding upon the sentence.

1. The Accused is 26 years old this month; enlisted Sep 13th, 1939 (today is his 6th anniversary in the Army)

2. He came overseas in Sep 1940, and has 227 points for a Repat score.

3. His last privilege leave was in Jan 44. It is very probable that had he been granted a privilege leave when due, this trouble may have been thrashed out then, thus doing away with the necessity of going AWL.

4. He was AWL for 54 days. He gave himself up 1 Jul 45. This means that he has been held under close arrest for 75 days.

5. He was ill at the time of going AWL, and knew that by so doing he would probably delay his recovery. Is it likely that a man would wilfully do this, knowing the consequences, unless he had a good reason? As it so happened his condition was affected by the offence.

6. His MPM 6 looks quite black; but if you will study it closely you will see that it is not as bad as it looks. The crimes are all for being AWL for very short periods. A year had elapsed between each of the first 4 and 6 months between the 4th and 5th, and 5th and 6th. Only once was he AWL on the continent, and that during a long rest period.

7. His civilian occupation was farming. After his discharge he intends to buy a farm under the Govt scheme and use his Gratuity and Rehab grants im doing so.

In summing up the above few points I feel that Gnr Erickson by serving 75 days under arrest has served much of his punishment for his offence. I think that he should be given a chance to get home as soon as possible to make a start on his farm. He has had trouble with his wife over her going to Canada, and I believe that the longer he has in

Canada to prepare their home before she and the children arrive there, the greater chance he has of making a success of his marriage. Due to his long service in the Army, his Repat points are such that he should be leaving for home almost immediately his sentence is served. With this, Gentlemen, I rest my case.

SUMMARY OF EVIDENCE in the case of M1148 Gnr Henry Robert ERICKSON, on the strength of "D" Wing, No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

Lieut C. D. Underhill, RCA, Asst Adjutant of "D" Wing No. 2 Canadian General Reinforcement Unit, Canadian Army Overseas, having been duly sworn, states:-

I am Lieut C. D. Underhill, RCA, of No. 2 Canadian General Reinforcement Unit, Asst Adjutant of "D" Wing, and as such I produce from the Wing Orderly Room files the following documents, which have been shown to the Accused:

The first document, which is marked Exhibit "A", is a Certified True Extract from "Y" List No. 1 Canadian Reception Depot Part II Orders No. 99, dated 9 Jun 45, which declares in Section "B", Para 7, sub-para (e), that M1148 Gnr Erickson, H.R., was declared by a Court of Inquiry to have absented himself without leave at 2200 hrs 8 May 45 from his Unit.

The second document, which is marked Exhibit "B", is a Certificate in Accordance with Order in Council P.C. 2797 of 10 Apr 42, signed by Colonel F.B. Bowman, RCAMC, Commanding Officer 24 Cdn Gen Hospital, RCAMC, dated 2 Jul 45, which declares that M1148 Gnr Erickson H.R. surrendered himself at 2200 hrs 1 Jul 45 to M40767 S/Sjt Cross E. I. at 24 Cdn Gen Hospital, RCAMC.

...C.D.Underhill.....
(C.D.Underhill) Lieut RCA

The Accused declines to cross-examine this Witness.

...H.R.Erickson.....
(M1148 Gnr Erickson H.R.)

The Accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given as evidence.

The Accused declines to make a statement and reserves his defence.

...H.R.Erickson.....
(M1148 Gnr Erickson H.R.)

I certify that the foregoing Summary of Evidence, consisting of one (1) page and two (2) Exhibits, was taken down by me in the presence and hearing of the Accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Bordon, Hants
6 Sep 45

...C.E.Ennis.....
(C.E. Ennis) Lieut RCA
Officer detailed to take the Summary of Evidence.

EAA
my

EXHIBIT "A"

Certified True Extract from No. 1
Canadian Reception Depot Part II
Order No. 99 dated 9 Jun 45.
("Y" List).

"Y" LIST

NO 1 CANADIAN RECEPTION DEPOT
PART II ORDERS
ISSUED BY

Last Order
No. 98
8 Jun 45

Lt. Col. R.H.F. BACK, E.D. (CAC)

This Order
No. 99
9 Jun 45

SECTION "B"

7. STRENGTH DECREASE

(e) SOS as a deserter wef 31 May 45. Having been declared illegally absent by a Court of Inquiry from 22.00 hrs 8 May 45. Deficiencies in kit to the value of $21.47.

M1148 Gnr ERICKSON H.R. (Arty Sigs "C") 5 CFR

(Sgd) "J.J. DUFFY Lieut"
for (A.E. FORTH) Major
A/Officer Commanding
No. 1 Cdn Reception Depot

CERTIFIED TRUE EXTRACT FROM ORIGINAL DOCUMENT HELD IN MY POSS ESSION.

4 Sep 45

(J.H.STEPHEN) Capt RCA
Records Officer, No. 2 CGRU
Officer having custody of
the original document.

EXHIBIT "B"

CERTIFICATE IN ACCORDANCE WITH ORDER IN COUNCIL P.C. 2797 dated April 10th, 1942, as published in Routine Order 1877, and in General Order No. 127, 1942.

(APPREHENSION BY OR SURRENDER TO SERVICE AUTHORITIES)

I, COLONEL F.B. BOWMAN, Commanding 24 Cdn Gen Hosp RCAMC
(Number) (Rank) (Name) (Unit)

hereby certify that M.1148 GNR. ERICKSON Henry Robert
(Number) (Rank) (Name in Full)

of the 5th Fld Regt RCA (1 CAMD) #1 Cdn Reception Depot,
(Unit and attachment, if any)

surrendered to M.40767 S/SGT.
(Number) (Rank)

CROSS, E.I., 24 Cdn Gen Hospital RCAMC, C.A.O.
(Name) (Unit or appointment)

at 24 Cdn Gen Hospital RCAMC, The Field, U.K. 2200 hrs.
(Place) (hour)

on the First day of July 19 45.

as a deserter (or absentee without leave) and that at the time of his arrest he was wearing military uniform.

Dated at 24 Cdn Gen Hosp. Field, U.K. this 2nd day of July 1945.

F.B. Bowman

(F.B. BOWMAN) COLONEL, RCAMC.
COMMANDING 24 CDN GEN HOSPITAL RCAMC.
(Signature, Number, Rank, Unit or Appointment)

NOTE. Where the soldier, on surrender or apprehension, has been taken into the custody of a unit or formation, this certificate must be signed by the officer commanding such unit or formation and not by an officer "for" him.

1877

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M1148	Gnr	ERICKSON H H	No 2 C G R U

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15 (1) AWL ..... 6 ..... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet 22 Feb 41

Date of last entry in Field Conduct Sheet 29 Jan 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*[illegible]

4. The accused has been awaiting trial on the present charges for [illegible] 74 days in military custody, *i.e.*, no days in open arrest, 74 days in close arrest; of which 56 days were spent in hospital.

5. The present age of the accused is 25 yrs 11 Mos 21 days

6. The date of his [illegible] attestation is 13Sep 39

7. The service which the accused is allowed to reckon is 6 yrs

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp

[illegible]

Date of Promotion.

EYB

[illegible]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(73072) Wt.30721/3701 30,000 8.44 A & E W Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of September, 1945

[illegible] Smith [illegible]

No. M1148 Name ERICKSON, H.R. Sqn. Battery, or Company | Corps RCA | Date of enlistment 13-9-39 | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	13 Feb 41	Gnr.		A.A. Sec. 15 (1) Absent from 13 Feb 41 until 19 Feb 41.		Awarded 21 days detn. & forf. 28 days pay under FR&I	22-2-41		
FIELD	28 Jan 42	Gnr.		A.A. Sec. 15 (1)(a) AWL. 11 hrs 15 mins.		Awarded 14 days CB and forf 1 days pay under FR&I	2-3-42		
FIELD	[illegible]			A.A. Sec. 15 (1) AWL 3 days 8 hrs, 45 mins.		6 days CB forf 4 days pay FR&I	23-12-42		

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if under remand along with trial	By whom awarded	Remarks
FIELD	6 Dec 43	Gnr		A.A. Sec. 15 (1) AWL. from 6 Dec 43 until 0830 hrs 7 Dec 43. Total time absent 24 hrs.		Forf 5 days pay and awarded 14 days CB.	7-12-43		
FIELD				A.A. Sec. 15 (1)		27 Days F.P. forf 27 Days pay Under FR&I	7-6-44		
FIELD	29 Jan 45			A.A. Sec. 15 (1) Time absent 1 day 18 hrs. 30 mins.		Forf 5 days pay FR&I 149 (2) forf 2 dp forf FR&I 149 (1)(a)	29-1-45		

CERTIFIED TRUE COPY OF EXTRACTS FROM ORIGINAL MFM 4 HELD IN MY POSSESSION

6 Sep 45

(J.E. STEPHEN) Capt RCA
Records Officer No. 2 CGRU

6 Sep 45

Received from Lieut C. E. Ennis, RCA, Officer detailed to take the Summary of Evidence, one copy of the Summary of Evidence and one copy of the charge sheet, in the case of M1148 Gnr Erickson H.R.

H.R. Erickson
(M1148 Gnr Erickson H.R.)

LIST OF WITNESSES

PROSECUTION

Lieut C. D. Underhill, RCA, No. 2 Canadian General Reinforcement Unit

DEFENCE

Nil

LIST OF EXHIBITS

"A" Certified True Extract from "Y" List No. 1 Cdn Reception Depot Part II Order No. 99 d/9 Jun 45 concerning the absence of M1148 Gnr Erickson H.R.

"B" Certificate in Accordance with Order in Council P.C. 2797 of 10 Apr 42 signed by Col F.B. Bowman RCAMC CO 24 CGH dated 2 Jul 45 concerning the surrender of M1148 Gnr Erickson H.R.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH R P 14 (b)

I, M1148 Gnr Erickson H. R., of No. 2 Canadian General Reinforcement Unit, consent to have an Officer appointed by the Convening Officer to represent me at my trial by Court Martial.

H.R. Erickson

(M1148 Gnr Erickson H.R.)

4 P-5

Gnr. Erickson L.E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 51174 Gnr. Erickson L.E. 4 Fd Regt RCA

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

Shall be [strikethrough] as pervent under sentence for ____ beginning on (date) ____ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: to suffer Field [illegible] Punishment for a period of twenty-eight days and to forfeit all pay and any pay for a period of twenty-eight days.

(Sgd) Ewd K McDonald 25 NOV 44 (Sgd) R. C. Lucy Mjr
Judge-Advocate, if any — Date awarded. — President — (RP 45, 56)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding ____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 45. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the court

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

Date 24 Nov 44 (Sgd) [illegible] Brigadier
Commanding 1 C.A. 2 CDN. DIV.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
K51174 Gnr Erickson L.E.	25 Nov 44	[illegible] Capt

CR 213 d/29 Nov 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 p 4P-5
PROCEEDINGS REVIEWED 25 JAN 1945 JAG BRANCH C.M.H.Q.
PROCEEDINGS REVIEWED 2 CDN. INF. DIV. JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

(CF AMS 3 in lieu of AFB21 CF/P 26 B/1608 (3804))

Convened by Order of Brig H D Law CRA 2 Cdn Inf Bde dated 21 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K51174	Gnr.	Leroy Emr	Erickson	4 Fd Regt RCA

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

Held in the [illegible] Country on (date(s)) 23 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 14/17-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto. The Court is satisfied that it is properly convened and constituted(2), accused is [illegible] amenable to military law, and each charge discloses an offence.(3) DRH IAH

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1410 hours trial commences. DRH

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ____ as interpreter?~~ Ans ~~____~~ DRH

~~The Interpreter is sworn.(1) Do you object to ____ as shorthand writer? Ans ____~~

~~The shorthand writer is sworn.(1)~~ DRH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 116. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court:

President	Major	R. C. Lucy	6 Cdn Inf Bde RCA
Member	Capt	J. M. Bugh	5 Cdn LAA Regt RCA
Member	Lieut	J. H. M. Low	5 Cdn LAA Regt RCA
Judge-Advocate	Capt	E. F. McDougall	HQ 2 Cdn Inf Div
Prosecutor	Capt	S. G. M. Strange	4 Fd Regt RCA
Defending Offr	Capt	G. S. Lamont	4 Fd Regt RCA

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (8) and fn 2 were not followed. See [illegible] p 2.)

A8. The accused K 51174 Gnr. Erickson, L.E before arraignment makes(s) (no) (a) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is [illegible] arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ CAH not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is absent each~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

WBeo Red Vol II Fol 97

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D4 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir (1)
(1. If "yes", see RP 29(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (his) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 45 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Do neither Do you intend to call witnesses on your behalf ? Ans No
Ans Yes Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty~~, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. AA 54(7) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Character evidence.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(1. MFB 133 or MFB 296. 2. MFB 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans There are my Defending Officer.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences: see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-344, Overseas RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 347. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. K51174 Gnr Lorenz Miner Erickson, 26 Fd Bty, 4 Fd Regt RCA, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

In the Field, on 8 Nov 44, without proper authority opened a mail bag and extracted mail therefrom.

(Mcd Young) Lt-Col.,
Comd., 4 Field Regt RCA

In the Fd
12 Nov 44

In the Field
21 Nov 44
To be tried by FGCM

(F.D. Lace) Brig
CRA 2 Cdn Inf Div

FIELD GENERAL COURT-MARTIAL

CFA/G (In lieu of AFA2)
40/PAS/1697 (2662)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K51174	Gnr		Lorenz Einer	ERICKSON	4 Fd Regt RCA

R.C. Lucy Mjr
Commdt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (date) 21 Nov 44 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~[redacted]~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

~~[redacted]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R.E. Lucy (Must be named. RP 106.)	6 Fd Regt RCA (Unit.)

MEMBERS.

Capt	J.H. Buck	3 LAA REgt RCA
Lieut (Rank.)	J.F.M. Ross (Named or detailed. RP 106.)	3 LAA Regt RCA (Unit.)

WAITING MEMBER.

Lieut (Rank.)	L.E. Ross (Named or detailed, if any. RP 106.)	6 Fd Regt RCA (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	E.K. McDougall (Must be named, if any. RP 104.)	2 Cdn Inf Div (Unit.)

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 21 Nov 44 Commanding CRA 2 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can) Para 557

I certify that I have this morning examined No. K51174 Gnr Erickson, L.E. of the 26 Bty - 4 Pd Regt RCA and that in my opinion he is fit to undergo trial by court-martial.

Station: In the Field
Date: 23 Nov 44

Capt
Medical Officer
4 Pd Regt R.C.A.

1st Pvt Kit A17281 Gnr. Hillis C. J. 4 Fd Regt RCA
duly sworn deposes:-

I identify Rec here to-day. On 8 Nov 44 I was lying down in barracks which was issued to a pub. The Rec entered the room from the pub & passed me about 10 ft. away. He took a slight look around the room & started into a slow walk across the room towards stairs leading to balcony. He went up & then onto the balcony & the mail bag was there. He reached in and pulled out a parcel of 200 cigarettes. Gnr Silverton entered the room as the Rec dropped the cigs back into the bag & stepped back from the bag a few steps. Silverton was about nearly under the balcony by now. Rec whispered something to Silverton who raised up his hands. Rec then reached into bag again & picked out 200 cigs & threw them over the rail to Silverton who caught them. Rec. then started down the balcony to the steps. I let out a yell for them to put them back. Silverton then threw the carton of cigs up but they hit the rail & fell back down. He swore at them & the second time threw them over. Rec had now come down the stairs & told him to put the cigs back in bag which he then did. Silverton left the room. Rec. then came down again. He said he had let some cigs & that that was the way he put them back. He then left the room back into the pub

Cross Ex. When I was lying down I was replacing the man who was usually in the room as I was substituting for him. I was lying down as I wanted to be down. Rec passed within 2 ft of me. Room was well lit. He could see me. I don't think he did but I could say for sure ~~then~~. He started to walk in a slow manner. Started to walk quietly - if he hadn't I would have spoken to him. I thought he was trying to do something so didn't speak to him. I hadn't been in the pub I wouldn't say the walk was that of a man indulging in alcohol

The mail bag - I saw him put his hand in & take cigs out. Didn't see him untie it or anything. The second

had been given out. Acc. said he had lost 600 cigs. Said he could get his own back this way as he had lost his from the bag in a similar manner. We couldn't have been that he himself had had cigs stolen & known how bad it was & therefore wouldn't take them. I have never looked into [illegible] mail by myself yet.

No Re Ex

Court - I was on ground floor. I saw it all happen on the balcony. There is a picket railing around the balcony. Can see there it. I live in that room.

Sgt. Prulier is the mail clerk from my troop. No one else is allowed to touch the bag but the mail clerk.

Don't think Acc knew I was there or may be he thought I was asleep but really no. Acc slept underneath balcony

83(b) complied with

2nd Pte in T. A/1725 Sgt. Prulière, M 76 Bty 4 Fd Regt. duly sworn deposes :-

On 8 NOV 44 the mail bag was delivered to me about 1630. I took it up to balcony, sorted the mail and distributed it all but 2 parcels of 200 cigs & a few papers. Parcels were for Sgt Russell & Gnr. Bafour. No one was allowed up there but myself, Sgt Maj Scott, Sgt. Braxton, Bdr Hawkes. There were no articles in the mail for Acc nor was there anything of his on the balcony. I had told the Tp all the mail for the troop had been distributed. There was no other bag on the balcony that could contain cigs.

Cross Ex. - I opened bag that day. I closed it just by folding the top over. I put it beside the balcony rail. I didn't tie it up as it had been when I got it. I have issued no orders forbidding people to take the mail themselves. Don't know if people do take a look in it themselves. I gave instructions that mail had been sorted. I delivered this down to the troop. I am not sure that the whole troop got them in 30". There was 4 troop. Acc has been getting letters regularly. Don't know about parcels. Acc driver a Canadian Officer now at the O.P. As far as I know people at O.P get mail regularly

I saw Acc re the evening in question. Detailed him to help put on a job. We were moving that night. Bag cannot locked. M was folded over.
No Re Ex. -

Court. - Always has been a mail orderly in Troop. Parcels always handled by B.H.Q. Rec'd them from Bde. Rice. This night we got parcels too as we were moving. Ordinarily we on a Troop don't get mail bag. Rec had no right to put his hand into a mail bag of any kind.

83 (h) complied with.

3rd Pers Wit. Capt. S S M Sprowle 4 Fd Regt duly sworn deposes. -

On 12 Nov I took a statement in the case. At the end of the evidence for the Pros. the Acc was cautioned as set out in the S of E. I gave him the caution personally. He answered that he wished to give evidence on oath. He was sworn. He made the statement voluntarily when cautioned. He said as follows: -

"I walked from the gate, into the billets, cross the floor and up the stairs to the balcony. I walked around for the mail bag, took out one carton of cigarettes and seeing that there was another package in the bottom of the bag, dumped the whole contents on the floor and examined the other parcels. Seeing that it did not belong to me, I returned the contents of the mail bag and walked to me, I returned the contents of the mail bag and while I was doing so, Gilbertson entered the room. I told him that one carton of cigarettes in my hand, and [illegible] now carrying the parcels over the rail I got to Gilbertson "now a swipe, all with me" and then the parcels me to over the rail and it fell to the floor. In the meantime Gilbertson had taken the cigarettes from my hand and told me to put the cigarettes back across the floor and back into the mail bag. I did this and I did not attempt to steal the cigarettes. I never had any intention of stealing the cigarettes. I did not receive. I did this because I was afraid to steal the cigarettes for repayment for the ones going to steal the cigarettes for repayment for the ones I had taken myself. This was as far as I was concerned, was certainly that no intention of stealing

1st Def Wit. Capt. A.E. Adams ~~W~~ Regt duly sworn deposes:-

Acc. has been with me 8 months the day in my company. I usually have about 90 cups there. Acc knows this. He could help himself to them any time. The Bty. was resting at the time in question. While in rest his behaviour was rather haphazard. He maintained the company but I did not see as much of him. Cant say if he was drinking but while at rest everybody was.

Cross Ex. - Acc could take my cups at any time. He had no permission to take any of the troop cups

Re Ex - Nil

Cont - Nil

Sgd Adams

Pros. Makes Closing Address (Admd)
Def " " (Admd)
J.A Summs Up. (Admd)

1st Char. Wit. Capt. AE Adams a former oath deposes :—

I've known Acc for 3 yrs. Has carried out all orders. Has given me no trouble at all. He's very willing and always ready to co-operate. This charge came as a great surprise to me. I consider him a very good soldier in all respects.

No Cross Ex.
Court.

83(h) complied with.

In Mitigation

Ask Ct to consider part I record of the Acc & the conditions under which the happened. Acc. has not done any thing with the intent to steal. At the time a lot of canvassing was going on & he did his share. Probably he was a little off balance at the time. Ask Ct to be lenient.

Closing addresses for Prosecution.

1. Evidence of Sec Wills and accused shows Exclusion des Take mail from mail bag.

2. Evidence of opt Pratchi and Sec Wills shows accused had no authority to be seized in mail bag

3 Evidence of Capt Rhind can be taken as to finding of the use towards more free circulation of letter than mail

22 Nov-44

Officer for Defense of
Gen. Erickson
submits

The mail bag had been opened before there seemed to have been interference with mail

Limit of net area is much that one is in

Accused had no reason to think they would plenty of cigs

Accused statement explains statement of Gen. Miller in that he intended to extract

D. Lewis Capt

J A Summing up

Must decide if particulars of charge proved. Then decide if the proved facts constitute offence charged. Little law involved

Must decide if Acc had proper authority

On question of opening. Evidence shows bag not locked but flap folded over so that it was closed. For you to decide whether or not this constitutes a sufficient opening of the bag.

Conduct must be considered to both good or bad character.

Onus rests throughout on Pros. Pros must prove guilt beyond any reasonable doubt — every Acc innocent till contrary proved.

Reasonable doubt defined & explained

Pros Are there any other matters you wish me to address Ct further? No
Mr " " ? No
Acc. " " ? No.

(Substitute for AFB 1295)
of MFB 385

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICES OF THE ACCUSED

NO. K51174 NAME Erickson, L.E. UNIT 4 Cdn Fd Regt RCA

AGE 29 MARRIED OR SINGLE M NO OF DEPENDENTS 3

DATE OF ATTESTATION

NO OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL MILITARY HOSPITAL TOTAL Nil

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS OF RANK, IF ANY

A CERTIFIED TRUE COPY OF MFH 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

Dated at Aurich
this 23 day of Nov 1944
(To be dated and signed as of date of trial)

MFM 6
(AFB 122)
40/PAS/136 (6438)

No K51174 Name ERICKSON, L.E. Sqn, Battery or Company n.a. Corps R.C.A. Date of enlistment 28Apr43 GC Badges n.a. Service or Proficiency Pay n.a.

Date of last entry in Company Conduct Sheet n.a. No and date of last drunk n.a. Period not reckoning towards freedom from extra fine n.a. Sheet No 1 Signature OC Company, etc ??????????Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Sheet destroyed 28 Oct 43: Last entry NIL ??????????Capt					
Field	5Nov 44	Gnr		AA Sec 15(1) WOAS "AWL", from 2300 hrs 5 Nov 44 until 0900 hrs 6 Nov 44. (Absent 10 hrs)	TESM Scott, K.E.	7 days CB 7 days forf pay PR&I 149 (2)	6Nov44	Lt-Col McG. Young DSO	1 days forf of pay PR&I 149(1)(a)

Certified true copy of original

(PTO)

Summary of evidence in the case of No K51174 Gnr Erickson, L.E., 26 Cdn Fd Bty, 4 Cdn Pd Regt RCA, CAC, charged with stealing (AA Sec 18(4)).

By direction of the Commanding Officer, the evidence is taken on oath.

First Witness

A17281 Gnr Willis, C.J., 26 Cdn Fd Bty, 4 Cdn pd Regt RCA, sworn, states:-

"In the billets of F tp, 26 Bty, 4 Cdn pd Regt at Rumpst at 2115 hrs 8 Nov 44 where I was lying down, Gnr Erickson whom I recognize came through the door from the adjoining pub, came past me and went at a slow walk to the stair steps going up to the balcony about eight feet above the ground floor where I was. He walked down the balcony about halfway, opennned up the mail bag and pulled out one package of 300 cigarettes and took three of four paces from the mail bag. He then heard Gnr Gilbertson entering the room from the pub through the same door, so returned to the mail bag and replaced the cigarettes in the bag and took two or three steps away. Gnr Gilbertson entered the room and walked three quarters of the way through the room. Gnr Erickson said something to Gilbertson in a low voice which I could not hear, then Gilbertson walked over underneath the balcony and raised both hands in motion to catch. Erickson returned to the mail bag and pulled out 300 cigarettes, threw them to Gilbertson who caught them. Erickson then started down the balcony towards the steps. I then hollered for them to put the cigarettes back. Gilbertson immediately threw the cigarettes towards the balcony, but hit the rail so he recaught them and threw them back over the rail. He then left by the side door into the street. Erickson at the time was coming down the steps. I asked him to put the cigarettes which were lying on the balcony, back into the bag which he did. He then came back down the stairs from the balcony and claimed that he had lost 600 cigarettes in a simular way and that was one way of getting what belonged to him back. He then left the room through the pub. I later reported the whole incident to Sgm Scott."

Cross-examined by Gnr Erickson.

Q When I entered the room, are you sure that I tiptoed across the room?

A You walked in a soft walk fashion.

Q How did you know I took only one package of cigarettes out of the bag and not more?

A I saw you reach in and take one package out.

Q What proof have you got that I was trying to steal cigarettes and not looking to see if there were any for myself?

A You walked in so slow a manner that it drew my attention and caused me not to speak to you but to watch and see what happened. I saw you take the package of cigarettes from the bag, step back, and when you heard a noise, return to the bag and drop them in again.

C.J. Willis

(C.J. Willis) Gnr
26 Bty, 4 Cdn Fd Regt RCA

Second Witness

A17259 Sjt Pruliere, M., 26 Cdn Pd Bty, 4 Cdn FA Regt RCA, sworn, states:-

"At F tp billets in Rumpst, the mail bag for F troop was delivered to me on 8 Nov 44 at about 1630 hrs. In the mail bag was two parcels of 300 cigarettes belonging to Sjt Russell and Gnr Dufour. I put the mail bag up on the balcony close to my bed. That was the only mail bag up there and the only one that could have contained cigarettes. The only other articles in the mail bag were newspapers. There were no articles belonging to either Gnr Erickson or Gnr Gilbertson in the mail bag nor were there any articles belonging to them on the balcony. There was no lock on the mail bag."

Cross-examined by Officer taking summary.

Q Had you made any issues of articles before 2100 hrs?
A Yes, I had issued all the mail out of the bag other than the two parcels belonging to Sjt Russell who was away at workshops and Gnr Dufour who was absent without leave.

Q Was ~~xxxxx~~ the accused present when you made the issue?
A I do not know.

Q Did you give the accused reason to believe there was mail for him?
A No.

The accused declines to cross-examine.

M. Pruliere
(M. Pruliere) Sjt
26 Bty, 4 Cdn F,
Regt RCA

The accused was cautioned as follows:-

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
A Yes Sir, I wish to give evidence on oath.

The accused, sworn, states:-

"I walked from the pub, into the billets, across the floor and up the stairs to the balcony. I searched around for the mail bag, took out one carton of cigarettes and seeing that there was another package in the bottom of the bag, dumped the whole contents on the floor and examined the other package. Seeing that it did not belong to me, I returned the contents of the mail bag and while I was doing so, Gnr Gilbertson entered the room. I still had the one carton of cigarettes in my hand and tossing the package over the rail I said to Gilbertson "have a smoke", at which he threw the package back over the rail and it fell to the floor. In the meantime Gnr Willis ran across the floor and told me to put the cigarettes back into the mail bag. I also told him that I did not intend to steal the cigarettes because I had 600 taken myself which I did not receive. I did not tell him that I was going to steal the cigarettes for repayment for the ones I had taken myself. As far as Gilbertson or I was concerned, we certainly had no intention of stealing".

L.C. Erickson
(L.F. Erickson) Gnr
26 Bty, 4 Cdn F, Regt RCA

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused and that pp 4 (C), (D), (E), (F), have been complied with.

In the Field
12 Nov 44

(S.G.M. Grange) Capt
4 Cdn Fd Regt R.C.A.

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

3 X - 24

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Em Erickson, P.E.

Prisons

1/14 CMHC 421
(Rev. 87-12)
(Starts at 43)

40-116

Pte Erickson W. A.

O. H. M. S.

M. F. B. 270

RECORDED AT CMHQ IN AS 160. 40-116.

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Order of Brig B.H. Kneller Comd 6 Cdn Inf Bde dated 24 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname	Unit
[illegible]	Pte	WILFRED A	ERICKSON	Cdn. Sec. 21 Army Gp R.C.A.

J. Kellington Capt 13 Feb 45

RECEIVED 16 FEB 1945 CMHQ REVIEWED

GENERAL OFFICERS' BRANCH CMHQ

PROCEEDINGS BEING FORWARDED TO ADJT GEN'L 2 Echelon 16 Dec 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland. on (date(s)) 23 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 15|40

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and the each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused:~~ Do you object to as interpreter ? Ans .....
~~The Interpreter is sworn.(1)~~ Do you object to as shorthand writer ? Ans .....
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N.C.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 23, 71, 72, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	W.A. Williams	R. Tank R
Member	Capt	A.A. Pearson	Cam H.C.
Member	Lt	R.A. Bowlin	Fus M.R.
Judge-Advocate			
Prosecutor	Maj	G.B. Buchanan	R. Tank R
Defending Offr	Lt	D.M. Clyde	R. Tank R.

Questions by President: Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
Q. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 81 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused Pte E.W.A. Erickson W.R. 1 before arraignment makes (no) (a) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 119(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF 4/64 as record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is cleared and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

VOL II page 40

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: [illegible] Pte WERICKSON, W.A.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) ~~of~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: One (1) year Detention

(Sgd) ..... Judge-Advocate, if any. 29 Nov 44 Date awarded. (Sgd) W.A. Williams Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: One (1) year Detention

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) ~~Nil~~

(1. AA 57A. Delete if not used.)

(Sgd) ..... Date 29 Nov 44 Commanding 6 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
[illegible] Pte Erickson W.A.	29 Nov 44	[illegible] Lt-Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NIL (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 2 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. .....
Do you intend to call witnesses on your behalf?
Ans. .....
Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes address, statement, evidence and any summing up by the JA under RP* 42, 103(*m*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative commencement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NIL
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by *AA* 163(1) (*g*) (*h*), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 7.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes
(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *Give sentence only, comprised of the punishments or punishments laid down in AA* 43, 44 *and its powers, it to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 130, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 938, 326, 343-346. *Overseas RO* 309, 2323, *MML p* 460, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 98(7), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of records after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, No J106397, Pte ERICKSON, WILFRED ARVID, South Saskatchewan Regiment, a soldier of the Canadian Army Overseas, is charged with :

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE
in that he

FIRST CHARGE
A.A.Sec 15(1)

In the Field, at WILLOEBROOK, Belgium, Absented Himself Without Leave from 2230 hrs 6 Nov 44 until he was apprehended in Antwerp at 1800 hrs 17 Nov 44.

Absent-10 days, 19 hours, 30 minutes.

In the Field
22 Nov 44.

(V.STOTT)Lt-Col.
Commanding Officer
South Saskatchewan Regt.
Cdn. Army Overseas.

To be tried by Field General Court Martial

In the field
24 Nov 44

(B.H. Keefler), Brig,
Comd 6 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
L 106397	Pte.	WILFRED ARVID	ERICKSON	S. SASK R.

K Williams maj

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 24 NOV 44 endorsed by me, (~~or by an offr of my staff for~~ me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons~~ I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereof, the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

MAJOR. (Rank.)	K.A. WILLIAMS (Must be named. RP 106.)	S. SASK R. (Unit.)

MEMBERS.

CAPT.	W.C. PEARSON	Can of C.
LT (Rank.)	R.A. ASSELIN (Named or detailed. RP 106.)	FUS. M.R (Unit.)

WAITING MEMBER.

LT (Rank.)	R.W. MIDGELEY (Named or detailed, if any. RP 106.)	Can of C (Unit.)

JUDGE-ADVOCATE.

CAPT. (Rank.)	~~E.A. MCDOUGALL~~ (Must be named, if any. RP 106.)	~~AG R CDN INF BDE~~ (Unit.)

On Active Service in the Fd

in HOLLAND (Country.)	(Signed personally RP 105 fn 2.)	Brig (Rank.)

Date 24 NOV 44 Commanding 6 CDN INF BDE Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

SOUTH SASKATCHEWAN REGIMENT

25 Nov 44

L-106397 Pte. Erickson, W.A.

I hereby certify that I have this day examined L-106397 Pte. Erickson, W.A. and in my opinion he is fit to undergo trial by Court Martial.

(C.M. Ballem) Captain,
R.M.O. S.Sask.R. C.A.(O).

In Mitigation

I Served with the Regt. joined at Caen, was taken prisoner at the Seine held four days and released by the British. Also the fact that he is nineteen years old and ~~pup~~ in my opinion irresponsible and I believe he realizes the seriousness of the offence and also the consequences should the Court recommend discharge. He knows, now he has learned his lesson and is willing to go back to the Coy & soldier after his sentence the court may award.

On these grounds I ask a lenient sentence.

"A"

SUMMARY of EVIDENCE in the case of L 106397 Pte Erickson, W.A.,
A soldier of the Cdn. Army Overseas.

The accused is informed of his rights.

The Commanding Officer does not direct that evidence be taken on oath.

FIRST WITNESS for the PROSECUTION :
Maj. G.B.BUCHANAN? S.Sask. R. states :

I present a Certified True Copyof Army Form W3011A, casualty return, showing the accused, L106395 Pte Erickson W.A. whom I recognize, as being Absent Without Leave from 2230 hrs 6 Nov 44.
(attached as exhibit "A".)
I also present a Certificate of Apprehension under sec 163(1)(jj) of the Army Act, purporting to be signed by the O.C. of No. 7 Cdn. L. of C. Pro. Sec., stating that L106397 Pte Erickson W.A. was arrested in Antwerp at 1800 hrs 17 Nov. 44.
(attached as exhibit "B")

The accused declines to cross examine witness.

(G.B.Buchanan) Major.
S.Sask.R.
C.A.O.

The accused having been duly warned in accordance with R.P.(4)(e) says :
"I do not wish to make a statement"

L 106397Pte Erickson, W.A.

Certified R.P. 4 has been complied with,

(A.P.W.Watkinson) Lieut.
Officer detailed to take the summary.

In the Field
22 nov 44.

List of Witness. NIL. (Documentery)

List of Exhibits. A- Certified True Copy Army Form W3011A.
B-Certificate of Apprehension.

The accused wishes an officer to defend him at his trial.

(Margin for filing purposes)

Army Form W.3011A.

Serial No. 162

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS)—OTHER RANKS.

Number of sheets to this return

Army No.	Rank	Name and Initials	Corps or Regt.	Casualty: Nature of Casualty	Casualty: Date	Remarks
ABSENT WITHOUT LEAVE AWL from 2230 hrs 5 Nov 44. L-106397	Pte.	Erickson W.A.		Still absent 2230 hrs 14 Nov 44.		(8th Day).

CERTIFIED TRUE COPY

(A.P.W. Watkinson) Lieut.
Adjutant, S.Sask.R. C.A.(C).

SOUTH SASKATCHEWAN REGIMENT (Unit)

6 Cdn Inf Bde, 2 Cdn Inf Div.
(Bde., Div., Area, etc., unit which unit is serving)

(Date) 15 Nov 44 194

Signature and appointment of Officer.

CHARGE

Army Form B 252
(See King's Regulations)

S. S. P.

Regiment

"D" Coy.

Battery / Squadron / Troop or / Company

CHARGE against No. 2-106 392 Rank Pte

Name ERICKSON, W. H.

Place ANTWERP Date of Offence 12 Nov. 44

OFFENCE W.A.W.O. Absent overstayed leave from 7 until apprehended by the Can. Pro. Corps in the Maple Leaf Club Antwerp at about 18 hrs on the 17 Nov. 44

Names of Witnesses:—

Lt. LEGAULT, 7 CDN. Inf. C. Pro. Sec.

" BOWERING, 2 " Inf. C. Pro. Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

SGT 1/C.
7 CDN. L. OF. C PRO SEC.
2 CDN. L. OF. C. PRO COY.

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of.
L-106 372 Pte ERICKSON, W.H.
S. S. R. "C" Coy.

Sir,

At about 1800 hrs. on the 17 Nov. 44 I was on duty in the Mapale Leaf Club Antwerp & in company with H/C. Bowering when I saw the accused soldier. I asked him for his pass, he could not produce one. I placed him under arrest & escorted him to the guard room.

H/Antwerp
17 Nov 44

Lt Garrison a.
LEBAULT. H. I/C.

Sir,

I have read over & corroborate the above statement.

H/Antwerp.
17 Nov. 44

R Bowering
A7605 R. BOWERING R I/C.

REMARKS

[illegible]
DIARY
[illegible]

CERTIFICATE UNDER SECTION 163(1)(11) OF THE ARMY ACT.

I certify that No. L106392 Rank Pte Name ERICKSON, W.H. of "C" Coy 5 S R Regiment was arrested in the field at 1600 hrs hours on (date) 12 March 44 and at the time of his arrest he was wearing Military uniform (plain clothes).

Signature of Provost Marshal, D.P.M., A.P.M., D.A.P.M. or other officer into whose custody the above named person was taken on arrest.

W M Ennis SGT 1.C.
7 CDN. L. OF. C PRO SEC.
2 CDN. L. OF. C. PRO COY.

NOTE This certificate must be signed by the officer into whose custody the person was taken and not by someone for him.

Substitute for AFB2339
or NFB355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. 1106327 Rank. Pte. Name. Erickson W.A. Unit. S. Sask. R.

Age. 19 Married or Single. Single No of Dependents. Nil

Date of Attestation. 5 Jul 43

Number of days in close arrest awaiting trial. 7 days

Civil. Military. 7 days Hospital. Total. 7 days

Dates of appointments, promotions, etc., (if any)

Nil

In the Field

Date. 24 Nov 44

W.A. Atkinson Lt.
Officer i/c Records

South Saskatchewan Regt., C.A.

NOTE: Certified true copy of NFW 6 must accompany this form.

From Temporary Sheet

No 406897 Name ERICKSON W.H. Sqn, Battery or Company — Corps C.I.C. — Date of enlistment — OC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P&S/136 (3438)

C" Coy. — Company Conduct Sheet Date of last entry in — No and date of last drunk — Period not reckoning towards freedom from extrs fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Sep 44	Pte		W.O.A.S. AWL. from 1930 hrs 20 Sept 44. until 1430 hrs 27 Oct 44. (about 36 days 19 hrs) AA Sec. 15(1).	347 WADDELL F.F	Forf. 25 days pay. PR#1.149(2)	1400 4/4	Capt. W.H. Good	Of. forf. 37 days pay. PR#1.149.VI(2) Total forf. 62 days pay.

Certified true Copy. (temp Sheet)

(PTO

4P-89

Kyle Erickson K.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K182 ERIKSON KO R Wpg Rif

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 12 (1)	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 (n 6.))

As present under restraint for ~~beginning on (date)~~ [illegible] (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 22 days, of which 0 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for eighteen months

(Sgd) ..... Judge-Advocate, if any. Date awarded 8 Jan 45 (Sgd) A.V. Pugh President. Major
(See back of Convening Order as to assembly and disposal of record after trial.) I C Scots R

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I ~~withhold my confirmation~~ Confirmed (1. AA 57A. Delete if not used.)

Date 10 Jan 45 (Sgd) [illegible] Commanding 7 [illegible] Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
K182 A. Erikson KO	11 Jan 45	[illegible] Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ in No 100 4P 89.

FIELD GENERAL COURT-MARTIAL

CPA98 (To Beg of AFA37, 40/P & R/1668) (20/2) 4/38B

Convened by Order of: Brig JG Spragge Comd 7 Cdn Inf Bde dated 7 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K182	Pte		Karl Olos	ERIKSON	R Wpg Rif

PROCEEDINGS REVIEWED [illegible] JUDGE ADVOCATE, JAG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 8 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-12, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1550 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~
~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans N/O (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	D.V. Pugh	1 C Scots R
Member	Capt	R.A. Conche	HQ 7 Cdn Inf Bde
Member	Capt	A.C. Lemaire	1 C Scots R
Judge-Advocate			
Prosecutor	Lt	G Richardson	R Wpg Rif
Defending Offr	Lt	C.H. Dyson	R Wpg Rif

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 1 were not followed. See [illegible] p 1.)

A8. The accused K182 Pte ERIKSON KO before arraignment make(s) (no) plea(s) as to (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Blessed Form: D E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (ii) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 89, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pros to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (and) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Yes : Sworn Statement. Do you intend to call witnesses on your behalf ?
Ans No Are they witnesses as to character only ? Ans No
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. Also(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(A)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(A) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 315 or MFB 296. 2. MFW 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(A) and Conduct Sheet(A), and in mitigation of punishment ?(1) Ans Yes by my defending Offr Lt D.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(3), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-55, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 309, 2323, MML p 60, 751-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(i), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K162 Rifleman Karl Olos ERIKSON, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, is charged with:

First Charge
Army Act
Sec 12 (1)

WHEN ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

while his unit was engaged on active operations against the enemy, absented himself without leave with intent to avoid such operations, from 1900 hrs 10 Oct 44 until apprehended by the Military Police at 1720 hrs 27 Nov 44.

Total Time Absent: 47 days, 22 hours, 20 mins.

In the Field

24 Dec 44

(J T CARVELL) Major.
A/OC, THE ROYAL WINNIPEG RIFLES

To be tried by Field General Court Martial:

Date:

7 Jan 1945

.....
Convening Officer

.....Brigadier.
7 Canadian Infantry Brigade.

Accd

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/ronk or A/oppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K182	Rfn		Karl Olos	ERIKSON	R Wpg Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Jan 45 endorsed by me, (~~or by my predecessor in command~~) " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable before the trial for evidence to be procured with~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I also appoint as Officer to Keep the Peace, or a Person to Prosecute for the Accused the Offr~~ attached hereto. (AA 49, RP 106(5), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	D V Pugh	1 C Scot R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A C Lundie	1 C Scot R
Lieut	J H Rooney	Regina Rif

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R A Couche	HQ 7 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

Date 7 Jan 45

(Signed personally. RP 105 (n 2.)

Brig
Brigadier (Rank.)

Commanding 7 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CPA 98 (In lieu of AFA 3) 40/P A S/1697 (6148)

(See overleaf for oaths and notes for use on trial.)

THE ROYAL WINNIPEG RIFLES (AF)
(LITTLE BLACK DEVILS)
IN THE FIELD

Def

6 Jan 45

I have this date examined K162 Rfn ERIKSON, K.O.,

and I find him fit to undergo trial by Court Martial.

.....
Medical Officer

Lieut J.H. Rooney Regina Rif was unable to get
out of the line due to military exigencies
and Capt R.A Cauchi H.Q 7 Cdn Inf Bde
the waiting number was called

p/Witness for the Prosecution

#1936770 Sgt Aitken W.A. R Wpg Rif
having been duly sworn states
I am pl Sgt 13pl R.Wpg Rif. On the 10th
Oct 1944 I was Sec Comd 8 Inf 15pl C Coy
R. Wpg Rif. I recognize the accused.
On Oct 10th 1944 the accused was
posted to my section. At 1300 hrs
I warned him for guard duty for
that night. At 1700 hrs I warned
the accused for a patrol for that
night. At 1800 hrs he asked
permission to visit a friend Rfn
Aguanee. Rfn Erickson was
present at supper at 1730. At 1900
hrs he was not present for his
guard. I enquired at 14pl and
with Cpl Mackie searched the area
but could not locate the accused.
I did not see Rfn Erickson again
that night. We went on the patrol
without the accused and I was
vaccinated late but he had not
returned at that time.

← Questioned by the Defence
I called the section together and
warned them as a whole. The accused
was then I saw him

← Questioned by the Court
I told the section that the whole platoon
was going on patrol at approx 2100 hrs

The whole section was warned.
Every man did his turn at guard
and Pte Erickson was placed on guard
from 1900 hrs to 2000 hrs. He was on
meal parade. Although a re-inforcement
I knew him well because he had
previously been in the pl.
R.P 83(2) complied with.

2nd Witness for the Prosecution

B 45175 A/Sgt C.J. R Wpg Rif having been duly sworn states
I am pl sgt of 15 pl 'C' Coy R Wpg Rif
and have been pl sgt since Oct 20 1944.
Since taking over the pl I have
checked the pl daily and Pte
Erickson has not been present at
any time.

3rd Witness for the Prosecution

Major C.J. Watts OC 'C' Coy R Wpg Rif
having been duly sworn states
On Oct 1944 the Bn was
engaged in the battle of fighting over
the Leopold Canal. On the 11 Oct my
Coy had been ordered to patrol
the enemy strongpoint of Bruges with
a view to accompany it. I had
three patrols out. ~~Two were a certain~~
~~number of people~~ No Questions by the Accused.
Questions by the Court.
There was no Court held to declare
the man a deserter. As OC 'C' Coy
I warned a pl for the patrol. The
pl sgt was sgt McEachern sgt
The R Wpg Rif were right forward Bn
of the base and my Coy was left
forward Coy of the Bn. We were

Across the Canal Page 3 ... Accd

R.P. 83(B) Complied with.

The Prosecuting Officer — Lieut J. Richardson having been duly sworn produced the Certificate of Apprehension marked Exhibit 'A'

Defence Submits — Paragraph 4 Record form a Prima Facie case not made out against the accused. — Because there is no proof of intent

Prosecution Submits — Accused had no intention of returning and that he tried to award a particular service.

The Court is closed and considers the submission

The Court is reopened and the President announces that the submission is disallowed on the charge.

Def Witness for the Defence — K 182 Rfn Erickson K.C. R Wpg Rif being duly sworn states:

On 10 Oct 1944 I joined 15 pl just after they had finished the noon meal. We fell back to the Canal until our artillery had put us a barrage and then moved up to a new position. I was warned for guard duty from 1900 hrs. I had one guard duty that afternoon. I was not warned for a patrol. I saw Rfn Adams after supper and not before. The first time I left the limit was at Elbrus for Hygiene. I have been with the unit

for some time and my nerves are shot. When I left I was listed as a dysentery case when it should have been battle exhaustion. When I came back I could not stand the shelling so I left.

Questioned by the Association

I have been in the Army since Sept 13 1942. I joined the unit at Carpiquet Airport. I joined 1 Pl there and was with unit until I left at Elbeuf about 2½ months. I was out for about 1 month. I was there only for the one attack. After I left I hated like to France. I did nothing much in France but I had a little money which lasted until I was apprehended.

Questioned by the Court

I have been on sick parade before. I did not ask permission to go to the R.A.P. on the 10 Oct 44 nor did I report to my pl Sgt or pl Comd. I did not report to any military authority during my absence.

R.P. 83(b) complied with.

Summing up by Prosecution Exhibit E
Evidence - Prosecution Doc

The question is whether or not the accused intended to desert. The Prosecution has made out a Prima Facie case of desertion and that is ready in the evidence of the accused to rebut the assumption of intention to desert

CERTIFICATE IN ACCORDANCE WITH SECTION 165 (1)(iv) [illegible]

I certify that No. R. 182 Rank RFM. Name ERIKSON, K.

of ROYAL WINNIPEG RIFLES, 3rd.CANADIAN DIVISION.

Unit.....

was arrested at ROUEN at 1720 hrs. on Twentyseventh

day of NOVEMBER 1944.

Signature of Provost Marshall or any other officer into whose custody the above named person was taken on arrest.

Capt.
Commanding.
243 H.Q.Provost Coy. C.M.Police.

DATED.
27/10/1944.

This is Exhibit "A" referred to in the Summary of Evidence in the case of K182 Rfn ERIKSON, KO, dated 24 December 1944.

.....
Officer taking Summary

Ex 13
Draft

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K182	Rfn	ERIKSON K O	R Wpg Rif

The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not attached to the proceedings.

† See para. 671, K.R., 1940.

* The previous service stated should correspond with the number of entries in the conduct sheets, punishments being given in the order in which they were awarded, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[redacted]

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

[redacted]

3. The accused is not under sentence at the present time, [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 22 days in military custody, making a total of 22 days, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 20 yrs

6. The date of his attestation specified in his attestation paper is 13 Sep 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr, 3 mos

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr, 3 mos service.

9. The accused is entitled to reckon 1 yr, 3 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [redacted]

11. [redacted]

12. [redacted]

[redacted]

(**[illegible]**) W1.34/38/1750 20,000 10/43 A.& E.W.Ltd. Gp.698
(**[illegible]**) W1.32/38/1429 12,000 8/44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K182 Rank Rfn Name ERIKSON K O of R Wpg Rif Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of January 1945

(W F AITKEN) Capt.,
Adjt., R Wpg Rif

13. [illegible]

Date of Promotion

To be rank of ..... years .....

To be rank of ..... years .....

To be rank of ..... years .....

[illegible]

Ex C MFM 6
(AFB 122)
W/PAS/136 (5438)

No K182 Name ERIKSON K O Sqn. Battery or Company | Corps Infantry | Date of enlistment 13 Sep 43 | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified True Copy D. Erikson capt. adjt. Officer having custody of Regimental documents					

(PTO

CANADIAN LEGION WAR SERVICES Inc.

CANADIAN KNIGHTS OF COLUMBUS WAR SERVICES

ON ACTIVE SERVICE

Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

G.W.D. 10 Nov

Re an Application on the case of L 182
Pte Ericksen, K.O.

The accused has been in action since September and has seen some
severe fighting. He was hospitalized
at the Seine Base for dysentery, but
says that prior to his trial he was much
as before admission.

When questioned by the Adjt
at the Depot the shooting and men
tality affected him in such a manner
that he could suggest no reason
why he was incapable of reasoning clearly. He
could write an article with his platoon
in the afternoon and the shock to
his nerves was sufficient to make
him act as he did. He first he had to
get drunk and the only way he could
was to go AWOL.

As is seen by his AB 116 the
accused is not a bad soldier and it
is hoped by the court to be lenient when
considering sentence.

PLEASE WRITE ON BOTH SIDES

Adjutant
Depot

Summary of Evidence in the case of K182 Rfn ERIKSON, K.O., 1st Battalion, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, charged with deserting His Majesty's Service. (AA Sec 12) (1).

By direction of the Commanding Officer the evidence is taken on oath.

1st Witness

H195670 A/Sgt Aitkens, W.A., R Wpg Rif, having been duly sworn states:

I am Pl Sgt of 13 Pl, C Coy, R Wpg Rif. On 10 Oct 44 I was sec comd of 7 Sec, 15 Pl, C Coy, R Wpg Rif and the accused, Rfn Erikson, whom I now recognize, was a member of my sec. At about 1400 hrs 10 Oct 44 I was warned that my sec would be on a fighting patrol that night. I called the sec together and warned them of the fighting patrol. Rfn Erikson was present at the warning. At about 1300 hrs 10 Oct 44 I warned Erikson personally that he would be on guard from 1900 hrs to 2000 hrs that evening. At 1900 hrs Erikson was not present in the sec position. I searched for him and could not find him. I remained in comd of 7 sec, 15 Pl, C Coy until 29 Oct 44. I checked my sec each day and Rfn Erikson was not there. I did not see or hear of Erikson again until I gave evidence against him when he was brought before the Bn Comd on 16 Dec 44.

The accused declines to cross-examine this witness.

W. A. Aitkens
Signature of Witness

2nd Witness

B45175 A/Sgt Brown, C.J., R Wpg Rif, having been duly sworn states:

I am Pl Sgt of 15 Pl, C Coy, R Wpg Rif. I have held this position since 20 Oct 44. I have checked the Pl daily since that time and Rfn Erikson, the accused, whom I recognize, has not been present.

The accused declines to cross-examine this witness.

Sgt Brown C.J.
Signature of Witness

3rd Witness

Major C.S. Platts, OC "C" Coy, R Wpg Rif, having been duly sworn states:

I am Maj C.S. Platts, OC "C" Coy, R Wpg Rif. On 6 Oct 44, 7 Cdn Inf Bde assaulted across the Leopold Canal. From that date until we withdrew and moved to the Scheldt we were fighting almost continually. It was general knowledge that the fighting over the canal was very bitter. On 10 Oct 44 I was told to send out fighting patrols and to maintain particularly alert guards. Every member of my coy had a job to do. Later in the evening several men were reported to me as being missing, among them Rfn Erikson. Some of the men were subsequently found but not Rfn Erikson.

The accused declines to cross-examine this witness.

C.S. Platts Maj
Signature of Witness

Accd

The Certificate of Apprehension, produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

.....
Officer taking Summary

The accused was cautioned as follows:

Question: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer: I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (C), (D), (E) and (F) have been complied with.

(G Richardson) Lt.,
R Wpg Rif

In the Field
24 Dec 44

I, K182 Rfn Erikson, K.O., Royal Winnipeg Rifles, request an officer to conduct my defence at Field General Court Martial, in connection with Charge Sheet dated 24 December 1944.

I desire the services of Lt C.H. Dyson, R Wpg Rif.

Signed.. K.O. Erikson.

Witnessed.. [illegible]...

Witnesses for the Prosecution:

H196670	A/Sgt Aitkens, W.A.,	R Wpg Rif
B45175	A/Sgt Brown, C.J.,	R Wpg Rif
	Major C.S. Platts,	R Wpg Rif

Witnesses for the Defence:

The accused declines to summon witnesses for his defence.

List of Exhibits:

Exhibit "A" - Certificate of Apprehension.

4D.89 4289

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-182 Rfn ERIKSON K. O. R Wpg Rif

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 12 (1)	Not guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 46; special findings see RP 44 and MML p 753, and in lieu of 44 see RP 44 fn 6.)

~~As Tpr.~~ ~~serve sentence for~~ ~~imprisoning etc (date)~~ (1) DVP

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for eighteen months.

(Sgd) ..... Judge-Advocate, if any. 8 Jan 45 Date awarded. (Sgd) "D.V. Pugh" Major President. (RP 45, 50) 1 C Scot R.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison or detention or barracks until further orders.~~(1) JGS

(1. AA 57A. Delete if not used.)

(Sgd) "J. G. Spragge" Brig

Date 10 Jan 45 Commanding 7 Canadian Infantry Brigade. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused K-182 Rfn Erikson K.O. Date 13 Jan 45 Signature of Offr "L.R. Fulton" Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Brig J.G. Spragge Comd 7 Cdn Inf Bde dated 7 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/B or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-182	Rfn	Karl Olos	ERIKSON	R Wpg Rif

CERTIFIED TRUE COPY
[signature illegible] Major
D.J.A.
Cdn Sec G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date) 8 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. XVIII-152

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for words and instrs as how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto (2). The Court is satisfied that it is properly convened and constituted(3), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3) DVP DVP

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1330 hours trial commences. DVP

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) DVP

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the C.O.(2)~~ DVP

(1. KR Con 557. 2. AA 46(B), RP 90 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~an interpreter? Ans~~ DVP

~~The interpreter is sworn.(1) Do you object to~~ ~~entertainment within 4 hrs~~ DVP

~~The interpreter is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 102. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71. 3, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. V. Pugh	1 C Scot R
Member	Capt	E. A. Couske	HQ 7 Cdn Inf Bde
Member	Capt	A. C. Lundie	1 Scot R
Judge-Advocate			
Prosecutor	Lt	A. Richardson	R Wpg Rif
Defending Offr	Lt	C.E. Dyson	R Wpg Rif

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 2a, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros is lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused K-182 Rfn Erikson K.O. before arraignment makes(s) (no) (a) plea DVP (2).

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 28, 33(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (~~immediately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ DVP not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.) When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings.

A10. The Court (~~adjourns~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D. E. DVP

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 letters 2, MML p 54 para 47.* 4. *See paras E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing on Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (ii).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are used as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1) DVP
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s). The Court is closed, and considers the submission.(2) The Court is reopened, and the President announces that the submission is disallowed on the charge(s) and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)~~ DVP
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Yes sworn statement Do you intend to call witnesses on your behalf? Ans NO Are they witnesses as to character only? Ans NO
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, desirable. Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(c).*)

D7. The Court is closed to consider the finding.(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened. DVP
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) DVP
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(7) (a), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form E or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3) DVP DVP
(1. *MFB 255 or MFB 294.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If citizen documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes by my defending officer Capt D.(2) DVP
(1. *RP 37(C), 44(D).* 2. *Address, if any, recorded per Notes. Court should prevent accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(5), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 343-346, Overseas RO 309, 2373, MML p 60, 757-759. As to sentences consigned for civil offences to the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3)(b), 68(1), KR Con 346.* 2. *RP 52. As to release from arrest by Confirming Offr see KR Con 347. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

DHP

CHARGE SHEET

The accused K-182 Rifleman Karl Olos ERIKSON, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, is charged with:

FIRST CHARGE
Army Act
Sec 12 (1)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

in that he

while his unit was engaged on active operations against the enemy, absented himself without leave with intent to avoid such operations, from 1900 hrs 10 Oct 44 until apprehended by the Military Police at 1720 hrs 27 Nov 44.

Total time absent 47 days, 22 hours, 20 mins.

In the Field
24 Dec 44

"J. T. Carvell"
(J. T. Carvell) Major
A/OC THE ROYAL WINNIPEG RIFLES

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

DATE
7 Jan 1945

"J.G. Spragge"
Convening Officer Brig.
7 Canadian Infantry Brigade.

DHP

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-182	Rfn		Karl Olos	ERIKSON	R Wpg Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". JGS

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ JGS
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. JGS

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ JGS
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. V. Pugh	1 C Scot R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A. C. Lundie	1 C Scot R
Lieut	J. E. Rooney	Regina Rif

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R. A. Coughe	HQ 7 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

Dat 7 Jan 45

"J. C. Sprague" (Signed personally. RP 105 fn 2.)
(J.C. Sprague)

Brigadier (Rank.)

Commanding 7 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 66. (In lieu of AFA 3) 40-7 to 8-1697 (81AS) (See overleaf for oaths and notes for use on trial.)

THE ROYAL WINNIPEG RIFLES (AF)
(LITTLE BLACK DEVILS)
IN THE FIELD

8 Jan 45

I have this date examined K-182 Rfn ERIKSON K.O., and I find him fit to undergo trial by Court Martial.

"S.Glick" Capt.

Medical Officer

DOP

Lieut Rooney J. H., Regina Rif was unable to get out of the lines due to Military expediency and Capt. R.A. Couche, HQ 7 Cdn Inf Bde the [illegible] member was called.

FIRST WITNESS FOR THE PROSECUTION H-195670 A/Sgt Aitkens, W.A., R Wpg Rif having been duly sworn states:

I am pl sgt 13 Pl R Wpg Rif. On the 10th Oct 1944, I was Sec Comd 8 Sec 15 Pl "C" Coy R Wpg Rif. I recognize the accused. On Oct 10th, 1944 the accused was posted to my section. At 1300 hrs I warned him for guard duty for that night. At 1400 hrs I warned the accused for a patrol that night. At 1600 hrs he asked permission to visit a friend Rfn Squance. Rfn Erickson was present at supper at 1730. At 1900 hrs he was not present for his guard. I enquired at 14 pl and with Cpl Machie searched the area but could not locate the accused. I did not see Rfn Erickson again that night. We went on the patrol without the accused and I was evacuated later but he had not returned at that time.

QUESTION BY THE DEFENCE

I called the section together and warned them as a whole. The accused was there. I saw him.

QUESTION BY THE COURT

I told the section that the whole platoon was going on patrol at approx 2100 hrs. The whole section was warned. Every man did his turn at guard and Rfn Erickson was placed on guard from 1900 hrs to 2000 hrs. He was on meal parade. Although a re-inforcement I knew him well because he had previously been in the pl.

R.P. 83 (b) complied with.

SECOND WITNESS FOR THE PROSECUTION B-45175 A/Sgt C.J. Brown, R Wpg Rif, having been duly sworn, states:

I am pl Sgt of 15 pl "C" Coy, R Wpg Rif and have been pl Sgt since Oct 10, 1944. Since taking over the pl I have checked the Pl daily and Rfn Erickson has not been present at any time.

THIRD WITNESS FOR THE PROSECUTION Major C.S. Platts, OC "C" Coy, R Wpg Rif having been duly sworn, states:

On Oct 1944 the Bn was engaged in the bitter fighting over the Leopold Canal. On the 10 Oct 44 my Coy had been ordered to patrol the enemey strongpoints of Biezere with recce patrols out.

NO QUESTIONS BY THE DEFENSE

QUESTIONED BY THE COURT

There was no court held to declare this man a deserter. As O.C. "C" Coy I warned a pl for the patrol. The pl Sgt was Sgt. McGeachie 13 pl. The R Wpg Rif were right forward Bn of the Bde and my Coy was left forward Coy of the Bn. We were across the canal.

R.P. 83 (b) complied with.

THE PROSECUTING OFFICER Lieut G. Richardson having been duly sworn produced the Certificate of Apprehension marked Exhibit "A".

DEFENCE SUBMITS Paragraph D-4 Record form D Prima Facie case not made out against the accused. Because there is no proof of intent.

PROSECUTION SUBMITS Accused had no intention of returning and that he tried to avoid a particular service.

The Court is closed and considers the submission.

The Court is reopened and the President announces that the submission is disallowed on the charge.

FIRST WITNESS FOR THE DEFENCE K-162 Rfn Erickson K.D., R Wpg Rif being duly sworn states:

On 10 Oct 1944 I joined 15 pl just after they had finished the noon meal. We fell back to the canal until our artillery had put over a barrage and then moved up to a new position. I was warned for

DLP

guard duty from 1900 hrs. I had done guard duty that afternoon. I was not warned for a patrol. I saw Rfn Squance after supper and not before. The first time I left the unit was at Elbeouf for dysentry. I had been with the unit for some time and my nerves were shot. When I left I was listed as a dysentry case when it should have been battle exhaustion. When I came back I could not stand the shelling so I left.

QUESTIONED BY THE COURT PROSECUTION

I have been in the Army since Sept 13, 1943. I joined the unit at Carpequet Airport. I joined 15 pl there as Rfn and was with unit until I left at Elbecuf about 2½ months. I was out for about 1 month. I was there only for one attack. After I left I hitch hiked to France. I did nothing much in France but I had a little money which lasted until I was apprehended.

QUESTIONED BY THE COURT

I have been on sick parade before this time. I did not ask permission to go to the R.A.P. on the 10 Oct 44 nor did I report to my pl sgt or cpl, or pl Comd. I did not report to any military authority during my absence.

R.P. 83 (b) complied with.

DVP

SUMMING UP BY PROSECUTION. Exhibit "E"

ERICKSON - PROSECUTION.

The question is whether or not the accused intended to desert. The prosecution has made out a Prima Facie case of desertion and there is nothing in the evidence of the accused to rebut the assumption of intention to desert.

PLEA IN MITIGATION IN THE CASE OF K-182 RFN ERIKSON K.O.

The accused has been in action since Carpiquet and has seen some tough fighting. He was hospitalized at the Seine River, for dysentry, but says that wasn't his trouble so much as battle exhaustion.

When he returned to the unit at Leopold the shelling and war noises affected him in such a manner that I would suggest he wasn't capable of reasoning clearly. He went into an attack with his platoon in the afternoon and the shock to his nerves was sufficient to make him act as he did. He felt he had to get out and the only way he could was to go A.W.L.

As is seen by his M.F.M. 6 the accused is not a bade soldier and I would beg the court to the lenient when considering sentence.

"C.E. Dyson"

(C. E. Dyson) Lieut
Defending Officer.

See Above reverse

DLC

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (1) (11)

I certify that K-192 Rfm ERIKSON K.O. of Royal Winnipeg Rifles, 3rd Canadian Division was arrest at ROUEN, at 1720 hrs 27 day of Nov 44.

Signature of Provost Marshall or any other officer into whose custody the above named person was taken on arrest.

"E. Vernor" Capt.
Commanding
243 H.Q. Provost Coy, C.M.Police.

FIELD
27/10/1944.

This is exhibit 'A' referred to in the Summary of Evidence in the case of R v Erickson R.D. dated 21st December, 1977.

Cpl Richardson Pilot
Officer taking Summary

D.W.P.

Ex B Bdp ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K-182	Rfn	ERIKSON K.O.	R Wpg Rif

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereto stated should correspond with the number of Entries in the Field Conduct Sheet, precautions being given to the exact entry, if the charge is for drunkenness or absence without leave, the entries for misdemeanours also may be stated separately. Any recorded acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For _____ _____ times.
For _____ _____ times.
For _____ _____ times.
For _____ _____ times.

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. [redacted]

*3. [redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for _____ days in civil custody; and for 22 days in military custody, *i.e.*, _____ days in open arrest, _____ days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 20 yrs

6. The date of his attestation [redacted] is 13 Sep 43

7. The service which the accused is allowed to reckon is 1 yr 3 mos

8. The accused is in possession of: N/A

Enter the military qualifications (if any) held by accused.

9. *If the accused is a warrant officer or N.C.O.*, the accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(72672) W1.30721/3761 30,000 3-44 A & E W Ltd Gp.685

No. K-182 Name ERIKSON K.O. Sqn. Battery or Company | Corps **Infantry** | Date of enlistment 13 Sep 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 1122) 40/PAB/126 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY "W.F. Aitken" Capt & Adjt Officer having custody of Regimental documents.					

CP10

Summary of Evidence in the case of K-182 Rfn ERIKSON K.C., 1st Battalion, Royal Winnipeg, Rifles, a soldier of the Canadian Army Overseas, charged with deserting His Majesty's Service.(AA Sec 12(1)

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS H-195670 A/Sgt Aitken W.A., R Wpg Rif having been duly sworn states:

I am Pl Sgt of 13 Pl, C Coy, R Wpg Rif. On 10 Oct 44 I was sec comd of 7 Sec 15 Pl, C Coy, R Wpg Rif and the accused Rfn ERIKSON, whom I recognize, was a member of my sec. At about 1400 hrs 10 Oct 44, I was warned that my sec would be on a fighting patrol that night. I called the sec together and warned them of the fighting patrol. Rfn Erikson was present at the warning. At about 1300 hrs 10 Oct I warned Erikson personally that he would be on guard from 1900 hrs to 2000 hrs that evening. At 1900 hrs Erikson was not present in the sec position. I searched for him and could not find him. I remained in comd of 7 sec, 15 pl C Coy until 29 Oct 44. I checked my sec each day and Rfn Erikson was not there. I did not see or hear of Erikson again until I gave evidence against him when he was brought before the Bn Comd on 16 Dec 44.

The accused declines to cross examine this witness.

"Wm. A. Aitkens"
Signature of Witness.

SECOND WITNESS B-45175 A/Sgt Brown, C.J. R Wpg Rif, having been duly sworn, states:

I am Pl Sgt of 15 Pl, C Coy, R Wpg Rif. I have held this position since 20 Oct 44. I have checked the Pl daily since that time and Rfn Erickson, the accused, whom I recognize, has not been present.

The accused declines to cross examine this witness.

"Sgt Brown, C.J."
Signature of Witness

THIRD WITNESS Major C.S. Platts, OC "C" Coy, R Wpg Rif. ~~XXXXXXXXX~~, having been duly sworn, states:

I am Maj C.S. Platts OC "C" Coy, R Wpg Rif. On 6 Oct 44 7 Cdn Inf Bde assaulted across the Leopold Canal. From that date until we withdrew and moved to the Scheldt we were fighting almost continually. It was general knowledge that the fighting over the canal was very bitter. On 10 Oct 44 I was told to send out fighting patrols and to maintain particularly alert guards. Every member of my coy had a job to do. Later in the evening several men were reported to me as being missing, among them Rfn Erickson. Some of the men were subsequently found but not Rfn Erikson.

The accused declines to cross examine this witness.

"Chas Platts" Major
Signature of Witness.

The Certificate of Apprehension, produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

"G. Richardson" Lieut.
Officer taking Summary.

The accused was cautioned as follows:

QUESTION Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (C)(D) (E) and (F) have been complied with.

"G. Richardson"
(G. Richardson) Lt.,
R Wpg Rif.

In the Field
24 Dec 44.

I, K-182 Rfn ERIKSON, K.O. Royal Winnipeg Rifles, request that an officer to conduct my defence at Field General Court Martial, in connection with Charge Sheet dated 24 Dec 44.

I desire the services of Lt. C. H. Dyson, R Wpg Rif.

"K.O. Eriksen"

Witnessed "N.P. Donugh"

Witnesses for the Prosecution:

R-195670	A/Sgt Aitkens, W.A.	R Wpg Rif
B-45175	A/Sgt Brown, C.J.	R Wpg Rif
	Major C.S. Platts	R Wpg Rif

Witnesses for the Defence:

The accused declines to summon witnesses for his defence.

List of Exhibits.

Exhibit "A" - Certificate of Apprehension.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-182 Rfn ERIKSON K. O. R Wpg Rif

Charge. (Insert " alternative " where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 12 (1)	Not guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kill see RP 44 fn 6.)

~~As to punish service misdemeanour for~~ ~~beginning was taken~~ (1) DVP

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for eighteen months.

(Sgd) _____ 8 Jan 45 (Sgd) "D.V. Pugh" Major
Judge-Advocate, if any. Date awarded. President. (RP 43, 50.) 1 C Scot R.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to penitentiary, barracks until further orders.~~(1) JGS

(1. AA 57A. Delete if not used.)

(Sgd) "J. G. Spragge" Brig

Date 10 Jan 45 Commanding 7 Canadian Infantry Brigade.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.
K-182 Rfn Erikson K.O. 13 Jan 45 "L.B. Fulton" Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT HQ IN AS 168 ☆

4P-8940 87

FIELD GENERAL COURT-MARTIAL

CFA89 (In lieu of AFA3) 40/P & G/1608 (44956) 4/38B

Convened by Order of Brig J.G. Spragge Comd 7 Cdn Inf Bde dated 7 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-182	Rfn		Karl Olos	ERIKSON	R Wpg Rif

CERTIFIED TRUE COPY
D. J. Adg
Cdn Sec G.H.Q. 2 Echn. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date) 8 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. XVIII-152

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto. DVP
The Court is satisfied that it is properly convened and constituted(2), accused is ~~was~~ amenable to military law, and DVP
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~was~~ brought before the Court. At 1330 hours trial commences. DVP

A4. The Prosecutor produces a Medical Certificate that accused is ~~was~~ fit to undergo trial by court-martial.(1) DVP
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ DVP

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President, to accused: Do you object to~~ ~~an interpreter I Ans~~ DVP
~~The Interpreter is sworn.(1) Do you object to~~ ~~a shorthand writer I Ans~~ DVP
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 46(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. V. Pugh	1 C Scot R
Member	Capt	R. A. Couche	HQ 7 Cdn Inf Bde
Member	Capt	A. C. Lundie	1 Scot R
Judge-Advocate			
Prosecutor	Lt	A. Richardson	R Wpg Rif
Defending Offr	Lt	C.E. Dyson	R Wpg Rif

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (2) and fn 2 were not followed. See DA p 32.)

A8. The accused K-182 Rfn Erikson K.O. before arraignment makes(s) (no) ~~(~~ plea. DVP
(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~was~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~did~~ DVP
not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A9s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~has heard and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro- DVP
ceedings are continued on Record Form D. E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*D*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-88; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3, *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

DVP

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

DVP

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. NO .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 85(*C*).)

DVP

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114. *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

DVP

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Yes I wish to make a statement. Do you intend to call witnesses on your behalf? Ans. NO Are they witnesses as to character only? Ans. NO
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1. 80(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*c*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 107(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

DVP

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [illegible] of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

DVP

DVP

(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46. *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment?(1) Ans. Yes by my defending offr C.O.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

DVP

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused "tried" separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 46, 47 *and its jurisdiction, is to be awarded to cover all charges or all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 46, 47(*B*), 48, 49, 116, 119(*A*), *KR Con* 308, 330, 560-566, *Overseas KO* 309, 2323, *RP* 48. *As to sentences of imprisonment see AA* 46, 47(*B*), 48(*1*), 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 560-566, *Overseas KO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K-182 Rifleman Karl Olos ERIKSON, Royal Winnipeg Rifles, a soldier of the Canadian Army, Overseas, is charged with:

FIRST CHARGE
Army Act
Sec 12 (1)

WHEN ON ACTIVE SERVICE DESERTING HIS MAJESTY'S SERVICE

In that he

while his unit was engaged on active operations against the enemy, absented himself without leave with intent to avoid such operations, from 1900 hrs 10 Oct 44 until apprehended by the Military Police at 1720 hrs 27 Nov 44.

Total time absent 47 days, 22 hours, 20 mins.

In the Field
24 Dec 44

"J. T. Carvell"

(J. T. Carvell) Major
A/OC THE ROYAL WINNIPEG RIFLES

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

DATE
7 Jan 1945

"J.G. Spragge"

Convening Officer Brig.
7 Canadian Infantry Brigade.

DVP

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-182	Rfn		Karl Olos	ERIKSON	R Wpg Rif

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". JGS

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ JGS
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. JGS

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a F/L Offr as President, for the reasons I have attached hereto.~~ JGS
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D. V. Pugh	1 C Scot R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	A. C. Lundie	1 C Scot R
Lieut	J. H. Rooney	Regina Rif

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R. A. Couche	HQ 7 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland
(Country.)

Dat 7 Jan 45

"J. G. Sprague" Brigadier
(Signed personally. RP 105 fn 2.) (Rank.)

(J.G. Sprague)
Commanding 7 Canadian Infantry Brigade
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 3) Ad/F & S/1897 (81,43).

(See overleaf for notes and notes for use on trial.)

THE ROYAL WINNIPEG RIFLES (AF)
(LITTLE BLACK DEVILS)
IN THE FIELD

8 Jan 45

I have this date examined K-182 Rfn ERIKSON K.O.,
and I find him fit to undergo trial by Court Martial.

"S.Glick" Capt.

Medical Officer

DVP

Lieut Rooney J. H., Regina Rif was unable to get out of the lines due to Military expedisency and Capt. R.A. Couche, HQ 7 Cdn Inf Bde the writing member was called.

FIRST WITNESS FOR THE PROSECUTION H-195670 A/Sgt Aitkens, W.A., R Wpg Rif having been duly sworn states:

I am pl sgt 13 Pl R Wpg Rif. On the 10th Oct 1944, I was Sec Comd & Sec 15 Pl "C" Coy R Wpg Rif. I recognize the accused. On Oct 10th, 1944 the accused was posted to my section. At 1300 hrs I warned him for guard duty for that night. At 1400 hrs I warned the accused for a patrol that night. At 1600 hrs he asked permission to visit a friend Rfn Squance. Rfn Erickson was present at supper at 1730. At 1900 hrs he was not present for his guard. I enquired at 14 pl and with Cpl Machie searched the area but could not locate the accused. I did not see Rfn Erickson again that night. We went on the patrol without the accused and I was evacuated later but he had not returned at that time.

QUESTION BY THE DEFENCE

I called the section together and warned them as a whole. The accused was there. I saw him.

QUESTION BY THE COURT

I told the section that the whole platoon was going on patrol at approx 2100 hrs. The whole section was warned. Every man did his turn at guard and Rfn Erickson was placed on guard from 1900 hrs to 2000 hrs. He was on meal parade. Although a re-inforcement I knew him well because he had previously been in the pl.

R.P. 83 (b) complied with.

SECOND WITNESS FOR THE PROSECUTION B-45175 A/Sgt C.J. Brown, R Wpg Rif, having been duly sworn, states:

I am pl Sgt of 15 pl "C" Coy, R Wpg Rif and have been pl Sgt since Oct 10, 1944. Since taking over the pl I have checked the Pl daily and Rfn Erickson has not been present at any time.

THIRD WITNESS FOR THE PROSECUTION Major C.S. Platts, OC "C" Coy, R Wpg Rif having been duly sworn, states:

On Oct 1944 the Bn was engaged in the bitter fighting over the Leopold Canal. On the 10 Oct 44 my Coy had been ordered to patrol the enemy strongpoints of Biezere with recce patrols out.

NO QUESTIONS BY THE DEFENSE

QUESTIONED BY THE COURT

There was no court held to declare this man a deserter. As O.C. "C" Coy I warned a pl for the patrol. The pl Sgt was Sgt. McGeechie 13 pl. The R Wpg Rif were right forward Bn of the Bde and my Coy was left forward Coy of the Bn. We were across the canal.

R.P. 83 (b) complied with.

THE PROSECUTING OFFICER Lieut G. Richardson having been duly sworn produced the Certificate of Apprehension marked Exhibit "A".

DEFENSE SUBMITS Paragraph D-4 Record form D Prima Facie case not made out against the accused. Because there is no proof of intent.

PROSECUTION SUBMITS Accused had no intention of returning and that he tried to avoid a particular service.

The Court is closed and considers the submission.

The Court is reopened and the President announces that the submission is disallowed on the charge.

FIRST WITNESS FOR THE DEFENCE K-192 Rfn Erickson K.G., R Wpg Rif being duly sworn states:

On 10 Oct 1944 I joined 15 pl just after they had finished the noon meal. We fell back to the canal until our artillery had put over a barrage and then moved up to a new position. I was warned for

DVP

guard duty from 1900 hrs. I had done guard duty that afternoon. I was not warned for a patrol. I saw Rfn Squance after supper and not before. The first time I left the unit was at Elbeouf for dysentry. I had been with the unit for some time and my nerves were shot. When I left I was listed as a dysentry case when it should have been battle exhaustion. When I came back I could not stand the shelling so I left.

QUESTIONED BY THE COURT PROSECUTION

I have been in the Army since Sept 13, 1943. I joined the unit at Carpequet Airport. I joined 15 pl there as Rfn and was with unit until I left at Elbeouf about 2½ months. I was out for about 1 month. I was there only for one attack. After I left I bitch hiked to France. I did nothing much in France but I had a little money which lasted until I was apprehended.

QUESTIONED BY THE COURT

I have been on sick parade before this time. I did not ask permission to go to the R.A.P. on the 10 Oct 44 nor did I report to my pl sgt or cpl, or pl Comd. I did not report to any military authority during my absence.

R.P. 83 (b) complied with.

SUMMING UP BY PROSECUTION.

Exhibit "E"

ERICKSON - PROSECUTION.

The question is whether or not the accused intended to desert. The prosecution has made out a Prima Facie case of desertion and there is nothing in the evidence of the accused to rebut the assumption of intention to desert.

PLEA IN MITIGATION IN THE CASE OF K-182 RFN ERIKSON K.O. Ex D Dlp

The accused has been in action since Carpiquet and has seen some tough fighting. He was hospitalized at the Seine River, for dysentry, but says that wasn't his trouble so much as battle exhaustion.

When he returned to the unit at Leopold the shelling and war noises affected him in such a manner that I would suggest he wasn't capable of reasoning clearly. He went into an attack with his platoon in the afternoon and the shock to his nerves was sufficient to make him act as he did. He felt he had to get out and the only way he could was to go A.W.L.

As is seen by his M.F.M. 6 the accused is not a bade soldier and I would beg the court to the lenient when considering sentence.

"C.H. Dyson"

(C. H. Dyson) Lieut
Defending Officer.

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (1) (11)

I certify that K-1[illegible]2 Rfm ERIKSON K.O. of Royal Winnipeg Rifles, 3rd Canadian Division was arrest at ROUEN, at 1720 hrs 27 day of Nov 44.

Signature of Provost Marshall or any other officer into whose custody the above named person was taken on arrest.

FIELD
27/10/1944.

"E. Venuor" Capt.
Commanding
243 H.Q. Provost Coy, C.M.Police.

This is exhibit 'B' referred to in the Summary of Evidence
in the case of K 142 Pte Brecken dated 24th December 1947

Leo Richardson Lieut
Officer taking summary

DHP

Army Form B.296 (War).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K-182	Rfn	ERIKSON K.O.	R Wpg Rif

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers here printed should correspond with the marking of Part(s) in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For _____ _____ times.
For _____ _____ times.
For _____ _____ times.
For _____ _____ times.

Date of first entry in Field Conduct Sheet _____

Date of last entry in Field Conduct Sheet _____

2. [redacted]

*3. [redacted]

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for _____ days in civil custody; and for 22 days in military custody, *i.e.*, _____ days in open arrest, _____ days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 20 yrs

6. The date of his attestation is 13 Sep 43

7. The service which the accused is allowed to reckon is 1 yr 3 mos

8. The accused is in possession of† N/A

†State the military qualification in which last so classed.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*23672) Wt.30752/3261 30,000 8/44 A.&E.W.Ltd. Gp.698

NZ-182 Name ERIKSON K.O. | Sqn, Battery or Company | Corps Infantry | Date of enlistment 13 Sep 43 | OC Badges Eric 2NZEF | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY "W.F. Aitken" Capt & Adjt Officer having custody of Regimental documents.					

(PTO

DUP

Summary of Evidence in the case of K-182 Rfn ERIKSON K.O., 1st Battalion, Royal Winnipeg, Rifles, a soldier of the Canadian Army Overseas, charged with deserting His Majesty's Service.(AA Sec 12(1)

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS H-195670 A/Sgt Aitken W.A., R Wpg Rif having been duly sworn states:

I am Pl Sgt of 13 Pl, C Coy, R Wpg Rif. On 10 Oct 44 I was sec comd of 7 Sec 15 Pl, C Coy, R Wpg Rif and the accused Rfn ERIKSON, whom I recognize, was a member of my sec. At about 1400 hrs 10 Oct 44, I was warned that my sec would be on a fighting patrol that night. I called the sec together and warned them of the fighting patrol. Rfn Erikson was present at the warning. At about 1300 hrs 10 Oct I warned Erikson personally that he would be on guard from 1900 hrs to 2000 hrs that evening. At 1900 hrs Erikson was not present in the sec position. I searched for him and could not find him. I remained in comd of 7 sec, 15 pl C Coy until 29 Oct 44. I checked my sec each day and Rfn Erikson was not there. I did not see or hear of Erikson again until I gave evidence against him when he was brought before the Bn Comd on 16 Dec 44.

The accused declines to cross examine this witness.

"Wm. A. Aitkens"
Signature of Witness.

SECOND WITNESS B-45175 A/Sgt Brown, C.J. R Wpg Rif, having been duly sworn, states:

I am Pl Sgt of 15 Pl, C Coy, R Wpg Rif. I have held this position since 20 Oct 44. I have checked the Pl daily since that time and Rfn Erickson, the accused, whom I recognize, has not been present.

The accused declines to cross examine this witness.

"Sgt Brown, C.J."
Signature of Witness

THIRD WITNESS Major C.S. Platts, OC "C" Coy, R Wpg Rif. [redacted], having been duly sworn, states:

I am Maj C.S. Platts OC "C" Coy, R Wpg Rif. On 6 Oct 44 7 Cdn Inf Bde assaulted across the Leopold Canal. From that date until we withdrew and moved to the Scheldt we were fighting almost continually. It was general knowledge that the fighting over the canal was very bitter. On 10 Oct 44 I was told to send out fighting patrols and to maintain particularly alert guards. Every member of my coy had a job to do. Later in the evening several men were reported to me as being missing, among them Rfn Erickson. Some of the men were subsequently found but not Rfn Erikson.

The accused declines to cross examine this witness.

"Chas Platts" Major
Signature of Witness.

The Certificate of Apprehension, produced as documentary evidence, was read over to the accused, marked Exhibit "A", signed by me and attached hereto.

"G. Richardson" Lieut.
Officer taking Summary.

The accused was cautioned as follows:

QUESTION Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER I do not wish to make a statement.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence consisting of two pages, was taken down by me in the presence of the accused and that RP 4 (C)(D)(E) and (F) have been complied with.

"G. Richardson"
(G. Richardson) Lt.,
R Wpg Rif.

In the Field
24 Dec 44.

D40

I, K-182 Rfn ERIKSON, K.O. Royal Winnipeg Rifles, request that an officer to conduct my defence at Field General Court Martial, in connection with Charge Sheet dated 24 Dec 44.

I desire the services of Lt. C. H. Dyson, R Wpg Rif.

"K.O. Erikson"

Witnessed "N.P. Donugh"

Witnesses for the Prosecution:

H-195670	A/Sgt Aitkens, W.A.	R Wpg Rif
B-45175	A/Sgt Brown, C.J.	R Wpg Rif
	Major C.S. Platts	R Wpg Rif

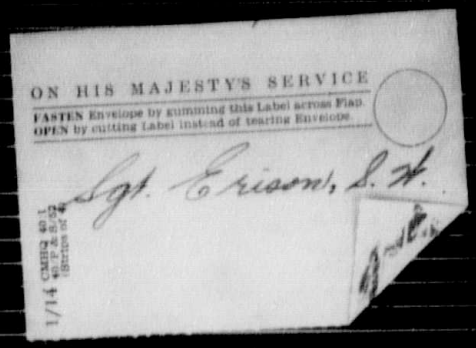
Witnesses for the Defence:

The accused declines to summon witnesses for his defence.

List of Exhibits.

Exhibit "A" - Certificate of Apprehension.

2X-69


ON HIS MAJESTY'S SERVICE
FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.
Sgt. Ericson, L. H.
1/14 CMHR 40 L
40-P 2-5-52
(Series of 4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A.37247 Sjt Sherman Walter ERISON, HLI of Cda 7 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 752, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence of~~ (1) beginning on (date)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 4 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To forfeit all ordinary Pay for a period of Twenty (20) days.

(Sgd) Judge-Advocate, if any. 19 DEC/45 Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and dispose of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 746.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(3), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I withhold that the accused be not committed to the prison or detention barracks named in the order.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) Blackader Brig.

Date 20 Dec 45 Commanding DSO CRV Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

A37247 Sgt ERison SW 20 DEC 45 [illegible] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 1946 C.M.H.Q.

RECORDED AT CMHQ IN AB 169 1 5X-69

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AFA81) 40/F & B/1608 (A44) 4/38B

Convened by Order of Brigadier K.G. BLACKADER Comd D Gp CRU dated 18 Dec 45
DSO, MC, ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A.37247	Sjt	Sherman Walter	ERISON	HLI of Cda 7 Cdn Repat Dep

PROCEEDINGS REVIEWED

RBR. Lieumore 11 Jan 46 Capt

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 19 DEC/45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr,~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 485, for extra and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ ~~the interpreter ?~~ Ans

~~The interpreter is sworn.~~) Do you object to F/SGT O'S CPL O'NEILL WF as shorthand writer ? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT-COL	D.L. KEENAN VD	HQ CRU
Member	CAPT	H. YOUNG	11 CDN REPAT DEP
Member	LIEUT	E.K. MILLER	10 CDN REPAT DEP
~~Judge-Advocate~~			
Prosecutor	LIEUT	C.M. McARTHUR	7 CDN REPAT DEP
Defending Offr	MAJ	E.F. KLEIGMAN DSO	7 CDN REPAT DEP

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 33.)

A8. The accused before arraignment make(s) (no) ~~a~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(C), RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 485 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 90(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - SIR (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans..... Do you intend to call witnesses on your behalf ?

Ans..... Are they witnesses as to character only ? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 65, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans Own evidence & Call character wit NOTES - ALL

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFB 255 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Any Addr. Offr NOTE-ALL (2)

(*1. RP 37(C), 44(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)

(*1. When several accused tried separately see RP 71 (G). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, KR 1118, 1179(A), KR Can 308, 336, 563-565. Overseas RG 309, 1223, MML p 160, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 30. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, A37247 Sjt Sherman Walter ERISON, HLI of Cda, a soldier of the Canadian Army Overseas, is charged with

First Charge
AA Sec 15

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, absented himself without leave from 2359 hrs 10 Dec 45 until 2000 hrs 14 Dec 45.

2359 10 Dec
2000 14 Dec
3 - 20 - 1

(G.F.P. BRADBROOKE) Lt Col
T/Comd
7 Cdn Repat Dep

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(K G Blackader) Brig
Comd D Gp CRU

IN THE FIELD
18 Dec 45

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40(FA8)/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptnt, A/R or A/Apptnt.	Full Christian Names.	Surname.	Unit.
A.37247	Sjt		Sherman Walter	ERISON,	HLI of Cda 7 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 15 Dec 45 endorsed by me, (~~each~~ ~~one~~ of ~~whom~~ ~~is~~ ~~are~~ ~~to~~ ~~be~~ ~~tried~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reasons connected with~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.

4. ~~I also appoint as Judge-Advocate the Offr named thereunder.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate the Offr named thereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D L REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	11 Cdn Repat Dep
Lieutenant	to be detailed by Comd	10 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieutenant	to be detailed by Comd	11 Cdn Repat Dep

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 44)

Brigadier
(Rank.)

(K G Blackader) Brig
Commanding D Gp CRU

Date 18 Dec 45

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that A.37247 Sgt. ERISON S.W., The Highland Light Infantry of Canada is fit to undergo trial by Court-Martial.

(J.A.D. Paul) Capt
Med Offr
"3" Wing - 7 Cdn Repat Depot

Time of Signature 1615 hrs

Date 18 Dec 45.

CANADIAN WARTIME YMCA

ON ACTIVE SERVICE E-3 MM

Plea in mitigation of punishment in the case of A-37241 Sgt Erisen S. W.

I respectfully suggest to the court that in consideration of sentence, the following pertinent factors be carefully weighed and considered.

Sgt Erisen's military career is all but finished. That it has been spotted by misdemeanors during the long training period before the fighting, and since the fighting has ceased, is admitted, but I draw the courts attention to his brilliant record in action. Fighting in a rifle coy as a junior NCO, during all the major operations winning an immediate award of the MM, certainly stamps Erisen as possessing the highest qualities of a Canadian soldier. I suggest to the court that these proven qualities of leadership, courage, and military ability far outweigh his tendency to irresponsibility when on leave.

I respectfully remind the court of the changed effect of punishment on the last days of a soldiers career. I submit that the trivial circumstances of this offence does not warrant a punishment that will affect reinstatement in civil life. I further submit that Sgt Erisen has more than earned the maximum rehabilitation benefits by his meritorious service in action.

CANADIAN YMCA

ON ACTIVE SERVICE

The court will, I know, consider the effect of this offence on discipline within the accused' Unit. I would remind the court that the Unit is on the verge of disbanding. There only remains the voyage home, and the Unit, as presently constituted, will cease to exist. I submit, therefore, that this offence, or its punishment, will have no effect on discipline within the Unit, nor will leniency reflect on the discipline during the final weeks of the battalion.

I therefore recommend to the court, in the light of these factors, that a most lenient view be taken of this offence.

TRIAL OF

A.37247 Sgt ERISON, S.W. ---- HLI of Cda, 7 Cdn Repat Depot

WITNESS AS TO CHARACTER

A.37394 RSM Spencer, N.R.C., Highland Light Infantry of Canada, sworn, states:-

Q. What is your appointment?
A. RSM for the Highland Light Infantry of Canada.

Q. How long have you known the accused?
A. Since Jun 40 when he enlisted.

Q. During the early days of your military career what were your relations with the accused?
A. I was his CompanySgt Major for over eight months.

Q. During that time what rank did Erison hold?
A. He was a Cpl.

Q. Did the accused ever cause any trouble that would require disciplinary action, during those early days?
A. Not while he was on parades. During parade hours and around the barracks he was never in trouble.

I went to France in Jun 44 and Erison was there at the time. During the period of fighting I was his CSM and put him in charge of platoons to take over jobs and he always came through without any trouble. He served in Northwest Europe for the entire period of the fighting there. On one occasion a fighting patrol had to go out and Sgt Erison assisted two of our boys back who were badly wounded. At that time he won the MM.

Q. When was that, approximately?
A. Jan 45.

Q. What were your relations with him during the period you served as his RSM?
A. He has always done his work well and was one of our very best Sgts. If there had of been another opening he would have been a WO II.

TRIAL OF

A.37247 Sgt ERISON, S.W. --- HLI of Cda, 7 Cdn Repat Depot

The accused, sworn, states:

I enlisted withe the Canadian Army on Jun 6 1940 and I have served continuously with the HLI.

Q. During the early days of training in Canada and England what rank did you hold?
A. I joined as a Pte and was promoted to Cpl.
Q. Were you ever in trouble during those early days?
A. No, sir.
Q. What was the cause of any trouble you have had since?
A. Drinking and not getting back from leave.
Q. What rank did you hold when you went to France?
A. Cpl.
Q. When did you go?
A. On D Day
Q. What ranks did you hold?
A. I went in as a Pte, then to Cpl and then to Sgt.
Q. What sub unit of the Bn did you fight with?
A. A rifle platoon for the whole period of the fighting.
Q. Were you wounded during the fighting?
A. I was wounded in France one month after we went in and I was slightly wounded in Boulogne and in Germany.
Q. Can you tell the court, briefly, what occurred on the night in January when you were awarded the MM.
I was a Cpl (A/Sgt) on a patrol whose job it was to get prisoners and clear out a house so another company of the Bn could go through in the following morning. This was about three o'clock in the morning. On the way out we ran into a mine. One fellow had his leg blown off and myself and another fellow fixed him up and tried to get him out. The other fellow then stepped on a mine too and I had to evacuate both of them for a distance of five hundred yards.
Q. What rank did you hold at the conclusion of hostilities?
A. I was made a Sgt just before hostilities ended.
Q. Since hostilities have you been in any trouble apart from the present charge?
A. There was a night in Utrecht when there had been clashes between the Dutch people and some of the Canadian troops. I was at a Sgts Club with a couple of other fellows and we got slightly drunk. After the club closed we came out and started singing and making a bit of noise. The Provost jumped us as they thought we were part of the riot. That was in September 45.
Q. What are your future plans with respect to the Army?
A. I would like go get out of the Army into civilian life. I worked in the dye business before enlistment and am not married.
Q. What schooling have you had?
A. Public school.

SUMMARY OF EVIDENCE

in the case of

No. A37247 Sjt ERISON, S.W. a soldier of the Highland Light Infantry of Canada, placed on Active Service.

CHARGE: 1. "Absenting himself without leave, in that he absented himself without leave from 2359 hrs 10 Dec 45 until 2000 hrs 14 Dec 45 (absent 3 days, 20 hrs).

AA Sec 15 (1)

By direction of the Commanding Officer, this evidence is taken on oath.

FIRST WITNESS: A49629 Sjt FRAIN, A.D., HQ Coy of the Highland Light Infantry of Canada, having been duly sworn states:-

On the night of 14 Dec 45, I was on duty as Bn Orderly Sjt; Sjt Erison reported to me at 1945 hrs and produced his pass from which I derived that he had been AWL. I took his name and number, and Sjt Erison went to his quarters. On being relieved at 0800 hrs 15 Dec 45, I turned Sjt Erison's pass over to my relief Sjt Harvey. Sjt Erison to my knowledge had not been drinking.

(Sjt Alex FRAIN)

The accused declines to cross-examine the witness.

SECOND WITNESS: AB6911, CQMS McGILL, L.C., "A" Coy of the Highland Light Infantry of Canada, having been duly sworn states:-

On the morning of 11 Dec 45, I called the roll of "A" Coy at 0845 hrs and Sjt Erison failed to answer his name; he was not present. I reported this to my Coy Comd and I also turned his name as on absentee into the Bn Orderly Room. The next time I saw Sjt Erison was at 2200 hrs on the night of 14 Dec 45.

L. McGill

(Lorne McGILL)CQMS

The accused declined to cross-examine the witness.

QUESTION TO THE ACCUSED

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINES TO MAKE A STATEMENT OR TO CALL ANY WITNESSES.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that R.P. 4(c)(d)(e) and (f) were complied with.

E&A

(C.M. McARTHUR)Lieut
B Coy, HLI of C.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A37247	Sjt	Sherman Walter KELSON	HLI of Cda

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered in the proceedings. The numbers hereto stated should correspond with the numbers of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or, absence without leave, the entries for breaks in case of absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	Conduct to the Prejudice, etc	no identification	1 time~~s~~
For	Conduct to the Prejudice, etc	created a disturbance	1 time~~s~~
For	Resisting arrest		1 time~~s~~
For			times.

Date of first entry in Field Conduct Sheet 16 Sep 45

Date of last entry in Field Conduct Sheet 16 Sep 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. Good conduct pay forfeited as follows:—~~

~~4. Good conduct pay restored as follows:—~~

4. The accused has been awaiting trial on the present charges for 0 days in civil custody, and for 4 days in military custody, *i.e.*, 4 days in open arrest, 0 days in close arrest; of which 0 days were spent in hospital.

5. The present age of the accused is 25 yrs, 1 month, 7 days

6. The date of his attestation is 6 Jun 40

7. The service which the accused is allowed to reckon is 5 yrs, 6 months, 12 days

8. The accused is in possession of Military Medal

Enter the military decorations he may hold or receive.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Sjt	3 Jul 45

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(PRINTED) WT.34171/3701 M.1500 9.44 A.&E.W.Ltd. Gp.698

No A37247 Name ERISON S.W. Sqn, Battery, or Company — Corps CIC — Date of enlistment 6 Jun 40 — GC Badges — Service or Proficiency Pay N/A — 3/17 MFM 6 (APB 122) 40/PAS/136 (7010)

Date of last entry in Company Conduct Sheet 5 Dec 40 — No. and date of last drunk Nil — Period not reckoning towards freedom from extra fine N/A — Sheet No. 2 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensed with trial	By whom awarded	Remarks
Zeist	16 Sep 45	Sjt	(1)	AA Sec 40 WOAS Conduct to the prejudice etc in that he was unable to produce proper identification when questioned by a Provost Sgt.		Reprimanded	26 Sep 45	Lt Col R.D. Hodgins	
			(2)	AA Sec 40 WOAS, Conduct to the prejudice etc, in that he in the field created a disturbance.					
			(3)	AA Sec 10(1) WOAS, in that he in the field resisted arrest by a Provost Sgt.					

CERTIFIED TRUE COPY
18 Dec 45
(P.H. MASH) Maj
Offr having custody of original

(PTO)

LIST OF WITNESSES IN THE CHARGE AGAINST A37427 SJT ERISON S.W.

A49629 Sjt FRAINE, A.D., HQ Coy, HLI of Cda

A86911 CQMS McGILL, L.C., "A" Coy, HLI of Cda

Comd 7 Cdn Repat Dep

I desire to have an Offr assigned by the Convening Offr to represent me at my trial.

S.W. Erison

(A37427 Sjt Erison S.W.)

TRIAL OF

A.37847 Sgt ERISON, S.W. ---- HLI of Cda, 7 Cdn Reput Depot

WITNESS AS TO CHARACTER

A.37394 RSM Spencer, N.R.C., Highland Light Infantry of Canada, sworn, states:-

Q. What is your appointment?
A. RSM for the Highland Light Infantry of Canada.

Q. How long have you known the accused?
A. Since Jun 40 when he enlisted.

Q. During the early days of your military career what were your relations with the accused?
A. I was his CompanySgt Major for over eight months.

Q. During that time what rank did Erison hold?
A. He was a Cpl.

Q. Did the accused ever cause any trouble that would require disciplinary action, during those early days?
A. Not while he was on parades. During parade hours and around the barracks he was never in trouble.

I went to France in Jun 44 and Erison was there at the time. During the period of fighting I was his CSM and put him in charge of platoons to take over jobs and he always came through without any trouble. He served in Northwest Europe for the entire period of the fighting there. On one occasion a fighting patrol had to go out and Sgt Erison assisted two of our boys back who were badly wounded. At that time he won the MM.

Q. When was that, approximately?
A. Jan 45.

Q. What were your relations with him during the period you served as his RSM?
A. He has always done his work well and was one of our very best Sgts. If there had of been another opening he would have been a WO II.

TRIAL OF

A.37247 Sgt ERISON, S.W. --- HLI of Cda, 7 Cdn Repat Depot

The accused, sworn, states:

I enlisted withe the Canadian Army on Jun 6 1940 and I have served continuously with the HLI.

Q. During the early days of training in Canada and England what rank did you hold?
A. I joined as a Pte and was promoted to Cpl.
Q. Were you ever in trouble during those early days?
A. No, sir.
Q. What was the cause of any trouble you have had since?
A. Drinking and not getting back from leave.
Q. What rank did you hold when you went to France?
A. Cpl.
Q. When did you go?
A. On D Day
Q. What ranks did you hold?
A. I went in as a Pte, then to Cpl and then to Sgt.
Q. What sub unit of the Bn did you fight with?
A. A rifle platoon for the whole period of the fighting.
Q. Were you wounded during the fighting?
A. I was wounded in France one month after we went in and I was slightly wounded in Boulogne and in Germany.
Q. Can you tell the court, briefly, what occurred on the night in January when you were awarded the MM.
I was a Cpl (A/Sgt) on a patrol whose job it was to get prisoners and clear out a house so another company of the Bn could go through in the following morning. This was about three o'clock in the morning. On the way out we ran into a mine. One fellow had his leg blown off and myself and another fellow fixed him up and tried to get him out. The other fellow then stepped on a mine too and I had to evacuate both of them for a distance of five hundred yards.
Q. What rank did you hold at the conclusion of hostilities?
A. I was made a Sgt just before hostilities ended.
Q. Since hostilities have you been in any trouble apart from the present charge?
A. There was a night in Utrecht when there had been clashes between the Dutch people and some of the Canadian troops. I was at a Sgts Club with a couple of other fellows and we got slightly drunk. After the club closed we came out and started singing and making a bit of noise. The Provost jumped us as they thought we were part of the riot. That was in September 45.
Q. What are your future plans with respect to the Army?
A. I would like go get out of the Army into civilian life. I worked in the dye business before enlistment and am not married.
Q. What schooling have you had?
A. Public school.

AA-25

GNR ERSKINE J.E.

O. H. M. S.

M. F. B. 270

AA-25

Correspondence to be PINNED here

4 FEB 1943
RECEIVED
Dir. Med. Branch
R.C.A. (CD)

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 23rd day of February, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Arty Gp, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [illegible]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [illegible]

*Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	M.G. Archer	4 Cdn Med Regt

Members.

Rank.	Name.	Regiment.
Lieut.	T.W.N. McGrath	4 Cdn Med Regt
Lieut.	P.L. Cote	4 Cdn Med Regt.

*Signed (B.J. Leach) Brigadier

Commanding 1 Cdn Arty Gp.

Convening Officer.

Proceedings Received 29 Jan 43

Registered Office

NOTE.—The President and members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the officer actually convening the Court, or by the officer in the temporary command of the Unit to be specified by him.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D118254 Gnr. ERSKINE, J.E. 3 Cdn Med Regt	FIRST CHARGE A.A.Sec 15(1) Absenting himself without leave. (See Charge Sheet attached)	Guilty	45 days Detention 25 Feb 43	Confirmed

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) (R. J. Leach) Brigadier
Comd 1 Cdn Arty Gp.
Commanding Convening Officer (e)

(Signed) [illegible]
A Mid Regt RCA
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first three columns of the Schedule to be initialled by him.

CHARGE SHEET
in the case of
D-118254 Gnr. Erskine, (John, Edward)
5th Bty., 3rd Cdn. Medium Regiment

First Charge: The accused No. D-118254 Gnr. Erskine, (John, Edward) of the 5th Bty., 3rd Cdn. Medium Regiment, a soldier of the Canadian Army Overseas, placed on active Service, is charged with:

Army Act Section 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, absented himself without leave from 2245 hrs. 16 Jan 43, until 0100 hrs 6 Feb 43. (20 days 2 hrs 15 mins)

W. J. Brigger

(W. J. Brigger) Lt.-Col.
Commanding: 3rd Cdn. Medium Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(R. J. Leach) Brigadier
Comd. 1 Cdn Arty Gp.
First Cdn Army

IN THE FIELD
23 Feb 43

W. Lambert Maj.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. D118254 Gnr. Erskine, J.E.

of 5th Battery 3rd Medium Regiment and in my opinion he

is fit to undergo Trial by Court Martial.

Station Field

Date 25 Feb 43

D.C. Carruthers Capt. RCAMC
Medical Officer

PAGE 1

Accused D118259 Gnr. J E ERSKINE 3 Cdn Mod Regt.
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in ENGLAND on 25 Feb 43
(Country) (Date)

	Rank	Name	Unit
PRESIDENT:	MAJ.	M.G ARCHER	4 Cdn Mod Regt
MEMBERS:	Lieut.	T.W.N. McGRATH	3 Cdn Mod Regt
	Lieut	P.L. Cote	4 Cdn Mod Regt.

JUDGE ADVOCATE: —
(If any)

OFFICER UNDER INSTRUCTION: —

PROSECUTING OFFICER: Lieut K.M. Beckett lawyer and Yes

DEFENDING OFFICER: Lieut. C.C. Locke Yes

The Court proceeds with the trial.

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Pro P 17(1), R.P.C.).

The Prosecutor, in Court (R.P.C. fn 1), reads the Convening Order and the Charge Sheet(s) to the accused; R.P.106) and if necessary that it is properly convened (s.--); R.P.107) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (are) brought before the Court, and at 0910 hrs. hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under R.A. (Gen)957 (See this Circular Letter 17) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: — as interpreter and —
Do you object to —

The interpreter is duly sworn.

Do you object to — as shorthand writer? —

The shorthand writer is duly sworn. (Forms of Oath on Page 'D'.

The Convening Order is read in the hearing of the accused. The Convening Order is read to the members of the Court are read to the accused. R.P.106)

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have just heard? and No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.26-27 (Forms of Oath on Page 'D')

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(2))

(If special plea/s in/re made for separate trial on one or more charges (Rs P 62(2), 308); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A. 124, R.P.67), record such plea and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked to each charge in turn whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	Guilty	Fifth Charge	N.A
Second Charge	N.A	Sixth Charge	—
Third Charge	—	Seventh Charge	—
Fourth Charge	—	Eighth Charge	—

(For procedure on alternative charges, see R.P. 37, (2))

Further proceedings are recorded on Pages hereto attached.

Wly

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (in 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
a. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(a)). Ans. Yes (made by defending officer)

(Statement, if any, not on oath is recorded on paper to sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon).

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination to continue that sufficient evidence be taken on the record on separate sheet, initialled by the President and attached to the proceedings (R.P.37(b)).

4. President to accused:
a. Do you wish to make any statement in mitigation of punishment? (R.P.37(c)). Ans. Yes (By defending officer)

(Statement, if any, is recorded on paper to sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
a. Do you wish to call any evidence as to character? I call any witnesses as to character? (R.P.37(c)). Ans. No

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto.)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (A.F.B.6), signed in the manner required by s.....19(1)(a) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked "A", and "B", initialled by the President and attached to the proceedings. (A.C.I. 46; Overseas R.O. 3131)

7. President to accused:
a. Do you wish to produce the Court any further statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(2)). Ans. No (no cross-examination)
(Record evidence, if any, on paper to sheet, initialled by the President and attached hereto.)

8. The Court is now closed to consider sentence. (Record on page 2 of A.F.....)
(Punishments, s.....44, K.R.(Con)563 - 566; one sentence only awarded, R.P.46). Sentence should be stated)

The sentence is not announced to the accused by the Court.

[signature]

Para II /Page "A".

The Defending Officer adresses the Court, that Gnr Erskine, D. 118254, 3 Cdn. Med. Regt, R.C.A. is in his troop. The accused is only 19 years old. He was a draughtsman in Canada who left his job to join up in August 1941. He got married in September 1941, left for overseas in May 1942. Had a child born that he never saw. The accused did not hear from his wife for a while and was very worried. Went A.W.L. and stayed with his aunt. Came back and since then, domestic problems have been readjusted.

The Defending Officer asks the Court to take those circumstances into consideration, in giving out the sentence.

Para IV, Page "A".

The Defending Officer adresses the Court, stressing the fact that the accused 's crime sheet shows only minor offences. This is the first and only serious one. The accused has already spent 18 days in detention pending Court Martial. He has a brother who is Sergeant in his Battery. He is actually in a period of depression in his life and he is ready to start all over again. The accused is only 19.

SUMMARY OF EVIDENCE
in the case of
D-118254 Gnr. Erskine, J.E.
3rd Cdn. Medium Regiment,
taken under oath by order of
Lt.-Col. W. J. Brigger,
Commanding Officer.

First Witness: M-66655 L/Bdr McLaughlin, G.E. of the 5th Medium Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 16th January at 2245 hrs I called the Tattoo Roll Call, and Gnr. Erskine was absent, and then I turned in his name on my report that he was absent to the Orderly Room. I have neither heard of, nor seen him until the night of 6 Feb 43. 7 Feb

M66655 L/Bdr McLaughlin G.E.
(M-66655 L/Bdr McLaughlin, G.E.)

The accused declines to cross-examine this witness.

Second Witness: K-15216 L/Bdr Clark, N.B., of the 5th Medium Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 6 Feb 43, I was Guard N.C.O. At 1700 hrs ~~xx~~ 6 Feb 43, Gnr. Erskine entered the Guard Room. I knew he was absent without leave, and placed him under close arrest and detained him in the Guard Room.

K15216 N. B. Clark
(K-15216 L/Bdr Clark, N.B.)

The accused declines to cross-examine this witness.

Third Witness: ~~xxxxxx~~ K-75179 Bdr. Hopper, W.E. of the 5th Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 16 Jan 43, at 2245 hrs. L/Bdr. McLaughlin, G.E. reported to me that Gnr. Erskine was absent on calling Tattoo Roll Call. I marked him on the Tattoo Absentee Report as being absent without leave. I have neither seen or heard of him until the night of 7 Feb 43.

W.E. Hopper
(K-75179 Bdr. Hopper, W.E.)

The accused declines to cross-examine this witness.

..... to sheet No. 2

Fourth Witness: L-59570 BSM Arthurs, J.D. of the 5th Bty., 3rd Canadian Medium Regiment, having been duly sworn, states:-

On 16 Jan 43 Gnr. Erskine, J. was reported to me as being absent from his quarters at 2245 hrs, and I have neither seen nor heard of him until 1700 hrs 6 Feb 43 when he was reported as being placed in the Bty. Guard Room.

L-59570 BSM Arthurs, J.D.)

The accused wishes to cross-examine this witness:

Q.1. Did you not know that I had reported into Farmile Camp at 2359 hrs on 5 Feb 43?

A.1. No, I had no knowledge of it.

- - - - - - - - - - - - - -

FIFTH WITNESS: P-4410 BSM Coulter, A.R., of the 87th Bty., 3rd Canadian Medium Regiment, having been duly sworn, states:-

I was acting R.S.M. of Rear Party, whilst the regiment was at Practice Camp. On taking over, Gnr. Erskine was reported and shown as absent without leave. Gnr. Erskine did not return or report himself in at the rear party camp whilst I was acting in the above capacity, which was up to the afternoon of 3 Feb 43. On the afternoon of 3 Feb 43, I departed for the new Bty. quarters.

(P-4410 BSM Coulter, A.R.)

The accused declines to cross-examine this witness.

- - - - - - - - - - - - - - - - - -

SIXTH WITNESS: H-54610 Sgt. Cheney, A.G. of R.H.Q., 3rd Cdn. Medium Regt. having been duly sworn states:

I was N.C.O. in charge of rear working party, and at 1 A.M. on Saturday morning, 6 Feb 43, Gnr. Erskine, who I recognised and knew as being A.W.L. reported in. He was detained and turned over to Mr. Falcon at 1700 hrs. 7-2-43 WFD

(H-54610 Sgt. Cheney, A.G.)

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE
in the case of
D-118254 Gnr. Erskine, J.E.
3rd Cdn. Medium Regiment,
taken under oath by order of
Lt.-Col. W. J. Brigger,
Commanding Officer.

First Witness: M-66655 L/Bdr McLaughlin, G.E. of the 5th Medium Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 16th January at 2245 hrs I called the Tattoo Roll Call, and Gnr. Erskine was absent, and then I turned in his name on my report that he was absent to the Orderly Room. I have neither heard of, nor seen him until the night of 6 Feb 43.

(M-66655 L/Bdr McLaughlin, G.E.)

The accused declines to cross-examine this witness.

Second Witness: K-15216 L/Bdr Clark, N.B. of the 5th Medium Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 6 Feb 43, I was Guard N.C.O. At 1700 hrs ~~xx~~ 6 Feb 43, Gnr. Erskine entered the Guard Room. I knew he was absent without leave, and placed him under close arrest and detained him in the Guard Room.

(K-15216 L/Bdr Clark, N.B.)

The accused declines to cross-examine this witness.

Third Witness: ~~xxxxxx~~ K-75179 Bdr. Hopper, W.E. of the 5th Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 16 Jan 43, at 2245 hrs. L/Bdr. McLaughlin, G.E. reported to me that Gnr. Erskine was absent on calling Tattoo Roll Call. I marked him on the Tattoo Absentee Report as being absent without leave. I have neither seen or heard of him until the night of 7 Feb 43.

(K-75179 Bdr. Hopper, W.E.)

The accused declines to cross-examine this witness.

..... to sheet No. 2

SUMMARY OF EVIDENCE
in the case of
D-118254 Gnr. Erskine, J.E.
3rd Cdn. Medium Regiment,
taken under oath by order of
Lt.-Col. W. J. Brigger,
Commanding Officer.

First Witness: M-66655 L/Bdr McLaughlin, G.E. of the 5th Medium Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

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M66655 L/Bdr McLaughlin GE
(M-66655 L/Bdr McLaughlin, G.E)

The accused declines to cross-examine this witness.

Second Witness: K-15216 L/Bdr Clark, N.B., of the 5th Medium Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 6 Feb 43, I was Guard N.C.O. At 1700 hrs ~~xx~~ 6 Feb 43, Gnr. Erskine entered the Guard Room. I knew he was absent without leave, and placed him under close arrest and detained him in the Guard Room.

K/15216 N B Clark.
(K-15216 L/Bdr Clark, N.B.)

The accused declines to cross-examine this witness.

Third Witness: ~~xxxxxx~~ K-75179 Bdr. Hopper, W.E. of the 5th Bty., 3rd Cdn. Medium Regiment; having been duly sworn states:-

On 16 Jan 43, at 2245 hrs. L/Bdr. McLaughlin, G.E. reported to me that Gnr. Erskine was absent on calling Tattoo Roll Call. I marked him on the Tattoo Absentee Report as being absent without leave. I have neither seen or heard of him until the night of 7 Feb 43.

W E Hopper
(K-75179 Bdr. Hopper, W.E.)

The accused declines to cross-examine this witness.

..... to sheet No. 2

Question to the accused:

Do you wish to may any statement or to give evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by the accused.

I wish to reserve my defence sir.

- - - - - - - - - - - - - - - - -

Rules of Procedure No.4 (c), (d), and (e) have been complied with.

Taken down by me in the presence of the accused, at Field, this 8 day of February, 1943.

W. F. Davey Lt

(W. F. Davey) Lieutenant
O.C. - 3rd Cdn. Medium Regiment.
Officer directed to take Summary by
the
Commanding Officer.

Fourth Witness: L-59570 BSM Arthurs, J.D. of the 5th Bty., 3rd Canadian Medium Regiment, having been duly sworn, states:-

On 16 Jan 43 Gnr. Erskine, J. was reported to me as being absent from his quarters at 2245 hrs, and I have neither seen nor heard of him until 1700 hrs 6 Feb 43 when he was reported as being placed in the Bty. Guard Room.

J.D. Arthurs

(L-59570 BSM Arthurs, J.D.)

The accused wishes to cross-examine this witness:

Q.1. Did you not know that I had reported into Fairmile Camp at 2359 hrs on 5 Feb 43?

A.1. No, I had no knowledge of it.

- - - - - - - - - - - - - - -

FIFTH WITNESS: P-4410 BSM Coulter, A.R., of the 87th Bty., 3rd Canadian Medium Regiment, having been duly sworn, states:-

I was acting S.S.M. of Rear Party, whilst the regiment was at Practice Camp. On taking over, Gnr. Erskine was reported and shown as absent without leave. Gnr. Erskine did not return or report himself in at the rear party camp whilst I was acting in the above capacity, which was up to the afternoon of 3 Feb 43. On the afternoon of 3 Feb 43, I departed for the new Bty. quarters.

A.R. Coulter

(P-4410 BSM Coulter, A.R.)

The accused declines to cross-examine this witness.

- - - - - - - - - - - - - - -

SIXTH WITNESS: H-54610 Sgt. Cheney, A.G. of R.H.Q., 3rd Cdn. Medium Regt. having been duly sworn states:

I was N.C.O. in charge of rear working party, and at 1 A.M. on Saturday morning, 6 Feb 43, Gnr. Erskine, who I recognised and knew as being A.W.L. reported in. He was detained and turned over to Mr. Falcon at 1700 hrs. 6 Feb 43

A.G. Cheney Sgt

(H-54610 Sgt. Cheney, A.G.)

The accused declines to cross-examine this witness.

Lieut K. M. Beckett. is recommended

Field this 15 day February 19 1.

Lynn Lodine J. C. D 1118254

1/Sgt. Vean, L. H.

I, D118254 Gnr. Erskine, J.E. acknowledge that I have been warned that the prosecuting officer at my Court Martial on 25 February 1943 is a barrister by profession in civilian life.

Dated 24th day of February 1943.

SIGNATURE Erskine J.E.

SIGNATURE OF WITNESS B.6694. Sgt Masters R.C.

I, D118254 Gnr. Erskine, J.E. hereby request that Lieut. C.C. Locke be appointed my defending officer.

Date 24th day of February 1943.

SIGNATURE Erskine J.E.

SIGNATURE OF WITNESS B44.94. Sgt Masters R.C.

"B"

No. D118254 Name ERSKINE J.E. Sqn., Battery, or Company 1 HyAA Corps R.C.A. Date of enlistment 24/2/41 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) (25M—7-41 (1319-39)) H.Q. 1772-39-1652

Sheet No. 2 Signature O.C. Company, etc. H.Turner Lt. Character

Date of last entry in Company Conduct Sheet	No. and date of last drunk	Period not reckoning towards freedom from extra fine

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
SHEET DESTROYED 24-8-41.....Last Entry....7-8-41.....NO. OF CASES OF DRUNKENNESS.....NONE.....									
Petawawa	12-9-41	Gnr		AWL 0700 hrs 12 Sep to 2030 hrs 12 Sep	Sgt Parker T	7 dys C.B.	13 Sep41	Major Fisher	Ffts 1 dys pay FRI 149(1)a
Blackdown	9-11-41	Gnr		Failing to appear on afternoon parade 1400 hrs 9 Nov	TSM Tingle L	7 dys C.B.	10-11-41	Capt.Hyde, A/O.C.	J.R.
Blackdown	19-11-41	Gnr		Not present at meal parades	L/Bdr Lebeau E	6 dys C.B.	19-11-41	Capt.Hyde	A/O.C.
Blackdown	28-11-41	Gnr		AWL 0800 hrs 28 Nov to 1000 28 Nov	L/Bdr Norcott F	5 dys C.B.	29-11-41	J.R.Hyde,	Capt
In the Fld	15-2-42	Gnr		AWL 1200 hrs 13 Feb to 1100 hrs 15-2-42	Sgt Parker T	15 dys F.P.	20 Feb42	LtColA.E. McB Bell-Irving	2dysauto.fft pay-15 dysfftr pay
Field	12-10-42	Gn.		Neglecting to obery Regt. Orders #152 para 728 (Sec.11 AA)	Sgt.Margh,H.	3 da C.B.	14-10-42	Maj.Mapler	see below

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22 Dec 42	Gnr	-	A.A.15(1) A.W.L. from 2230 hrs 22 Dec 42 till 0030 hrs 23 Dec 42. (Absent 2 hrs)	L/Bdr Namtu	7 days C.B.	23-12-42	Major Marler	

CERTIFIED TRUE COPY:

(B.S. Saunders) Captain,
Offr i/c Regtl Records,
3 Cdn Medium Regiment.

25 Feb 43

M.F.S. 385
40/P & S/675

"A"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number D-118254 Rank Gnr. Name. Erskine, (John, Edward) Regiment (or unit) 3rd Can. Medium Regt.

1. The following is a fair and true summary of the entries in the Regimental Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L.	2 times	1 times
For Neglecting to Obey Regt'l Orders	1 times	times
For	times	times
For	times	

~~Number of instances of gallantry or distinguished conduct~~

~~There are no entries in the conduct sheets of the accused.~~

or,

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a Court Martial or a civil court, of summary awards under section 47 of the Army Act and dispensations for trial under A.F.A. 72 are set out in the Schedule annexed to this statement.~~

or,

3. The accused is not under sentence at the present time.

~~The accused at the present time is undergoing~~ beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 19 days in military custody, making a total of 19 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 24 Feb 41

7. ~~The service which the accused is allowed to reckon towards discharge or~~

8. ~~The accused is entitled to reckon~~ service for the purpose of determining his position, &c.

9. ~~The accused is in possession of or entitled to~~ military military

~~in possession of or entitled to. State any air force decoration or reward~~

10. ~~If the accused is a warrant officer. The accused before he was made a warrant officer had held the regimental rank of~~

Lt Col

11. ~~(In the case of an officer.) The a~~/Lgd/ Adds in the Royal Canadian Air Force the ~~rank of~~ Permanent Force unit dated ; ~~and in his regiment (or corps), the rank of dated.~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of ~~A/W/D~~ years.

In the rank of ~~A/W/D~~ years.

In the rank of ~~A/W/D~~ years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D-11629 Rank Gnr.

Name Erskine (John Edward) of 3rd Cdn. Medium Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

NIL A/W/D

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of February, 1943.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25 day of Feb. 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. *The ~~Interpreter~~) nil
4. *The ~~officers under instruction~~) nil

were duly sworn.

*Omit if not applicable.

Signed this 25 day of Feb 19 43

M Cowley Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (k) on page 767 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 26th day of February 1943.

R. J. Leach
Brigadier
Confirming Officer.
Comd. 1 Can. Arty Gp.
First Cdn Army

D 118254 Pte Erskine J. F.

Promulgated and extracts taken in the case of

(a) (Dated) 28 Feb 43 (Signed) [illegible] Capt/Lieut.
3rd Cdn. Med. Regt., R.C.A. (A)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.A.F.W.Ltd. Gp.A.88

PPP-51

TPR ERWIN T.H.

Certified true Copy
R Cordeau Capt
(R. Cordeau)

Spare copy - PPP 51

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K.19035 Tpr. Thomas, Hilary, ERWIN 5 Bn. 2 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for one years detention beginning on (date) 21 Jan 1944 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.) ($ as above) "END"

Sentence Awarded by the Court:

To undergo detention for one year.

(Sgd) _____ Judge-Advocate, if any. 23 May 1944 Date awarded. (Sgd) "E.W. Day" President. (AA 35, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be sent for trial before a~~ (1. AA 57A. Delete if not used.) "END"

(Sgd) "E.W. Haldenby" Brig. COMMANDER

Date 25 May 44 Commanding 1 Cdn Base Rft Group Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
K.19035 Tpr. ERWIN, T.H.	26 May 44	"J.G. Vining" Lt.Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CPA96 (In lieu of AP53) 40/P & S/1606 (1864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. E.W. Haldenby Comd 1 CBRGp dated 22 May 1944

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.19035	Tpr	Thomas, Hilary	ERWIN	5 Bn 2 CBRD
		(otherwise known as Thomas, Henry	ERWIN)	

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 23 May 44 "END"

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

"END" A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

"END" A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the (CO)(2).~~

(1. KR Con 557. 2. AA 46(B), RP 80 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans _____

The Interpreter is sworn.(1) Do you object to _____ as shorthand writer? Ans _____

The shorthand writer is sworn.(1) "END"

(1. RP 34—Oaths, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc:

President	Major	E.W. Day	CIC HQ 1 CBRGp
Member	Capt	D.O. Matthews	CAC 5 Bn. 2 CBRD
Member	Lieut	S.D. Beaton	CIC 38 CBR Coy
Judge-Advocate			
Prosecutor	Capt.	D.F.A. Graham	CAC 5 Bn. 2 CBRD
Defending Offr	Lieut.	J.P. Moore	CAC 5 Bn. 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Cases Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment unless RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused Tpr. T.A. Erwin before arraignment make(s) (tenders) plea "END" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.) "END"

A9. The accused is (are) arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.) "END"

A10. The Court ~~adjourns~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 , and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s)[1]. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans Yes [5]

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on first charge. The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex F, initialled and read aloud by the President.[1]

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans [1]

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will necessarily with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans [5] Do you intend to call witnesses on your behalf ? Ans Are they witnesses as to character only ? Ans

(*1. RP 155. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record the Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(*1. RP 43, 114(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]

(*1. AA 54(3) (5), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 40 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy of Conduct Sheet(s)[1], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex G and Ex H respectively.[2]

(*1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans Yes in mitigation [2]

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]

(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 98, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 3/59, 7323, 3/60, p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MOME p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"END"

CHARGE SHEET

The Accused Number K.19035 Trooper Thomas Hilary ERWIN, a soldier of the Canadian Army, Overseas, on strength of 5 Battalion, 2 Canadian Base Reinforcement Depot, is charged with:

FIRST CHARGE
A.A. Sec 15(1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, undergoing sentence, absented himself without leave from 25 Field Punishment Camp at 2040 hrs 27 Mar 44 until 0035 hrs 6 Apr 44 when he was apprehended by American M.P.'s at Naples.

In the Field
In Italy
20 May 44

"J.C. Vining"
(J.C. Vining) Lt.-Col.
Commanding
5 Battalion 2 C.B.R.D.

To be tried by Field General Court Martial.

"E.A. Haldenby"
(E.A. Haldenby) Brigadier
Commander
1 Can Base Brt Group
Can Army CMF

In the Field
In Italy
22 May 44.

"EWD"

FIELD GENERAL COURT-MARTIAL

CFAO (In lieu of AFAO) 40/PAR/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 61, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
K.19035	Tpr.	Thomas, Hilary	ERWIN	5 Bn. 2 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 May 44 endorsed by me, ~~or by an officer my chief of staff~~, "To be tried by Field General Court-Martial". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the said for reference to a superior qualified offr~~ "EWH"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint the three Offrs to form the Court, (b) only (b) (b) or President, for the reasons I have attached hereto.~~ "EWH"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the next the Offr mentioned hereunder.~~ "EWH"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E.W. DAY (CIC)		HQ 1 CBRGp

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	D.C. MATTHEWS (CAC)		5 Bn 2 CBRD
Lieut	S.D. BEATON (CIC)		38 Cdn Base Rft Coy 1 CBRGp

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 5 Bn 2 CBRD			

~~HOLDER A DIVORCEE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

"E.W. Haldenby" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 22 May 44

(E.W. Haldenby)
Commanding 1 Cdn Base Rft Group-CA-CMF
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"EWD"

MEDICAL OFFICER'S CERTIFICATE

(K.R. Can) Para 557

I certify that I have this morning examined K.19035 Tpr ERWIN T.H. on strength of 5 Bn 2 C.B.K.D. and in my opinion he is FIT to undergo trial by Court-Martial.

Station - Field

Date 23 May 44

"Y.R. MacRae" Capt
(Medical Officer's Signature)
RCAMC

B2

STATEMENT OF ACCUSED :-

~~Exterminating~~ Extenuating circumstances for breaking out. Always believed sentence received last Jan. out of proportion to offence. Sentence one year sent to 25 Fd Pun. Camp. First week there over 25 broke out Camp badly run food bad guards smoked on duty, sanitation bad. My plea is to ask for suspended sentence that I may be allowed to go to the front.

B3 STATEMENT BY DEFENDING OFFICER

Accused voluntsered almost on outbreak of war at age of 18 - while at detention barracks 5 Bn. he had opportunity to escape but did not do so. He was detail of 4 men on fatigue and 2 of them made attempted get away. Accused and one other returned and reported getaway. Travelled a quarter of mile without escort. This action of man wanting to serve his country - he now realizes his responsibilities. Tpr Erwin states provocation at FP Camp.

Exhibit F
"EWD"

Summary of Evidence in the case of No. K.19035 Tpr. Erwin, T.H. of 5 Bn. 2 CBRD Cdn Army, C.M.F.

On directions of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for prosecution — 2613573 Sgt. Lofts, L.J. of 25 F.P.C. being duly sworn states:

I am No.2613573 Sgt. Lofts L.J. of 25 F.P.C. On the 27 of March 1944 No. K.19035 Tpr. Erwin T.H. the accused, was in 25 F.P.C. as a soldier undergoing sentence. He was quartered in room No. 10 - I was, on the night of March 27/44 N.C.O. i/c night watch patrol. At approx 2015 hrs I visited the landings and saw all was in order and all S.U.S. were present. The Battle Dress Blouses, Trousers - Greatcoats and Boots of all long term S.U.S. were in the landings outside their rooms. Tpr. Erwin's clothing was amongst them. At approx 2040 hrs that night I ordered the two L/Cpls of the night watch patrol to check all S.U.S. in their rooms - At approx 2045 hrs they reported to me that some S.U.S. were missing from room 10.I immediately reported to the R.S.M. and then proceeded to check the S.U.S. in room No. 10 myself. On calling the roll I found that No. K.19035 Tpr. Erwin T.H. was among those missing - I next saw Tpr. Erwin, the accused on 28th day of April 1944.

The accused declines to cross examine this witness.

"L.J. Lofts" Sgt.

2

SECOND WITNESS for Prosecution — 5572079 L/Cpl. Bartlett L.F. of 25 F.P.C. being duly sworn states:

I am No.5572079 L/Cpl. Bartlett L.F. of 25 F.P.C. The accused, No. K.19035 Tpr. Erwin T.H. was in 25 F.P.C. on 27 March 44 as a soldier under sentence. On the night of March 27/44 I was on night watch patrol. At approx 2040 hrs the night of March 27/44 I was detailed by the N.C.O. i/c night watch patrol, Sgt. Lofts, to patrol the building.On arriving in No 10 room I found the wood of the door had been pried open I immediately reported to Sgt. Lofts who called the roll of room No 10 and reported to the R.S.M. The accused Tpr. Erwin was on the roll of S.U.S. in Room No 10 and on the Sgts calling the roll at approx 2100 hrs the night of March 27/44 the accused failed to answer. I have not seen the accused from March 27/44 until today April 28/44.

The accused declines to cross examine this witness.

"L.F. Bartlett" L/C.

THIRD WITNESS for Prosecution — A.S.N. 32554425 Pvt. D'Angelo Joseph, P on the strength of Co. A 803 M.P. Bn. American Army.

I certify in my opinion the attendance of this witness is, owing to this person being employed at a considerable distance

from this H.Q. not readily procurable and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "A"

"J.M.L. Prescott" Capt.
Officer detailed to take
Summary of Evidence

I do not require the attendance of ASN 32554225 Pvt. D'Angelo Joseph D at the summary of evidence for the purpose of cross examination.

"T.H. Erwin"
R.19035 Tpr. Erwin, T.H.

FOURTH WITNESS for Prosecution — A.S.N. 32715822 Pvt. Kee Clark M. Jr on the strength of Co A 803 M.P. Bn American Army.

I certify that in my opinion the attendance of this witness is, owing to this person being employed at a considerable distance from this H.Q., not readily procurable and a written statement signed by him has been read to the accused and is attached hereto as Exhibit "B".

"J.M.L. Prescott" Capt
Officer detailed to take Summary
of Evidence.

I do not require the attendance of ASN 32715822 Pvt. Kee Clark, M Jr. at the Summary of Evidence for the purpose of cross examination.

"T.H. Erwin"
R.19035 Tpr. Erwin, T.H.

The accused was cautioned as follows:

"Do you wish to make any statement or give any evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence. The accused declines to call witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of 2 typewritten pages was taken down by me in writing in the presence and hearing of the accused and that rules of procedure 4(c)(d)(e)(f) and (g) have been complied with.

In the Field this
3 day of May 1944.

"J.M.L. Prescott" Capt.
Officer detailed to take the
Summary of Evidence.

Exhibit "A"
3 May 44.

"JHP"

I, ASN 32554425 D'Angelo, Joseph D. on the strength of Co.A.803 M.P. Bn. being duly sworn, state I am Private D'Angelo, Joseph D. on the night of April 5th, I was on duty on the inner gate No. 1, Naples Dock at 0030 hrs 6 Apr 44, I was taking a French Morrocan to a fellow M.P., two Carabinieris ran to me and said in Italian "Two soldiers pushed us aside and rushed into the alley". I left the Morrocan with the M.P. and with the Carabinieri ran into the alley. I flashed my light and saw the two fellows dressed in British uniforms. The taller one had a bed roll which he threw behind some wood. I approached them and questioned them. The taller one refused to say anything. The shorter one kept saying "Give him a break" Since they could give me no satisfaction, I ordered them to march towards the gate. They refused at first but finally came with me to where my other prisoner was. Here again, I asked them for their story. The taller one refused to say anything, so I told them I would take them in. The taller man then started to run, I ordered him to halt but he kept on running. I then fired over his head to stop him, he kept on going. I fired again and he ran towards a truck for protection. Two of our M.Ps. caught him and brought him back to me. I asked him "why did you run?" He replied: "you would too!" One of our M.Ps. who brought the accused back was ASN 32715822 Pvt. Lee, Clark M. Jr. The accused's name is Tpr. Erwin, Thomas Hilary R.19035. He was the taller one of the two I apprehended and he was the one who had the sleeping bag in his possession.

"Joseph D. D'Angelo"

Exhibit "B"
3 May 44

"CLP"

I, ASN 32715822, Pvt. Lee, Clark M. Jr. on the strength of Co. A803 M.P. Bn. being duly sworn state I am Pvt. Lee, Clark M. Jr. On the night of April 5th, 1944, I was on duty at the outer gate No. 1 Naples Dock, at approximately 0035 hrs 6 Apr 44, I saw a soldier running past my post. I apprehended him and returned with him to the inner gate No. 1 and turned him over to Pvt. D'Angelo, Joseph D. one of our M.Ps. on duty. The name of the accused, the man I apprehended, is Tpr. Erwin, Thomas Hilary, R.19035 of 5 Bn. 2 C.B.R.D. I am of the opinion that I can recognize Tpr. Erwin.

"Clark M. Lee Jr."

No K19035 Name ERWIN, Thomas Henry | Sqn, Battery, or Company | Corps | Date of enlistment 11-9-39 | GC Badges | Service or Proficiency Pay | MFM 6 (A.Fo. 122) 40/PAS/536 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Exhibit R | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Forfeits 34 days pay while in civil custody undergoing sentence 20							20 Nov 41		
Sentence 6 weeks imprisonment in Porterfield Prison. Placed under stoppage of pay for period 2200 hrs Oct 1/41 to 0700 hrs Nov 4/41(33 days 9½ hrs) WOAS; A.W.L. from 0730 hrs 2/12/41 to 1445 hrs 4/12/41 (absent 2 days 7 hrs 15 min) awarded 28 days det effective 11/12/41. In close arrest from 1400 hrs 11/12/41. Remission of sentence 4 days. Total forfeiture 3 days pay									
FR&I Can.1(a)149 6 days pay FR&I Can. 1(c)i149. 23 days pay FR&I (can)1(b) 149. 32 days forfeiture - 30-1-42. Total forfeiture: 3 days pay (FR&I)(Can) 1(a)149 - 6 days pay (FR&I)(Can)1(c)(ii)149 7 days pay - 1 days concurrant with forfeiture of 3 days pay under 149 1(a). 24 days pay (FR&I)(can)1(b) 149 33 forfeiture 26-2-44									
Seven days C.B. forfeits 1 days pay FR&I (Can) 149(1)(a) 2-4-42. Awarded 14 days C.B. and 14 days for AWL from 1200 hrs 27 Nov 43 to 0130 hrs 1 Dec 43 (3 days 21½ hrs) Forfeit 14 days pay under FR&I 149(b) Forf. 4 days pay under FR&I 149(1)(a)...6 Dec 43									

(PTO)

Plaid	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Awarded 12 days FP & 12 days pay for an offence under AA15(1) AWL from 2200 hrs 5 Nov 43 to 0100 hrs 6 Nov 43. (Absent 3 hrs) Forft 12 days pay under FR&I 149(2)--6 Nov 43. Tried by FGCM (1) AA 40(2) A.A.9(2) (3) Sec 22.(4) AWL from 0600 hrs 26 Dec 43 to 1400 hrs 31 Dec 43. Absent 5 days 8 Hrs) Guilty, sentenced to undergo one years detention Close areest 1330 hrs 25 Dec 43 to 0600 hrs 26 Dec 43(16 Hrs 30 mins) from 1400 hrs 31 Dec 43 to 0900 hrs 21 Jan 44(20 days 19 Hrs) Frft 21 days pay FR&I 149(1)(c)1. Forft 6 days pay FR&I 149(1)(a).Forf. 366 days pay FR&I 149(1)(b)--21 Jan 44. Certified true copy from NFM 4 date - 12 May 44 (G.A. Boyle) Lieut. for officer i/c Cdn Section GHQ 2nd EchelonAAI. Certified to be a true copy from the regimental books in my custody 13 May 44. "W.J.M. Hogan" Capt & Adjt.							

RECORDED AT CMHQ IN AB 160 PPR-51

FIELD GENERAL COURT-MARTIAL

CFAMS (Tp) 86(L) or (AF A3) 40-P & S/1698 (2004)

Convened by Order of Brig E.W. Haldenby Comd 1 CBR Gp dated 22 May 1944

RECEIVED 28 JUN 1944 HQ 1 CBR Gp 2 CBRD

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.
K19035	Tpr	Thomas Hilary (otherwise known as Thomas Henry)	Erwin

PROCEEDINGS REVIEWED 28 Jun 44 Mitchell Capt

29 MAY 1944 HQ 1 CBR Gp 2 CBRD

1 SERVING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Sicily. on (date(s)) 23 May 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5. for oaths and instrs re how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 13, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto (1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn g. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 111(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.W. Haldenby	CIC	HQ 1 CBR Gp
Member	Capt	D.C. Matthews	CAC	5 Bn 2 CBRD
Member	Lieut	A.B. Beaton	CIC	3 CBR Bty
Judge-Advocate				
Prosecutor	Capt	C.J.A. Graham	CAC	5 Bn 2 CBRD
Defending Offr	Lieut	J.P. Moore	CAC	5 Bn 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QH p 3.)

A8. The accused Tpr T.H. Erwin before arraignment make(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 34, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K19035 Tpr Thomas Hilary Erwin 5 Bn 2 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for One year detention beginning on (date) 21 Jan 1944 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.) (122 days) Both

Sentence Awarded by the Court:

To undergo detention for one year

(Sgd) Judge-Advocate, if any. 23 May 1944 Date awarded. (Sgd) E.W. Haldenby President. RP 45, 50

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed. Both

I direct that the ~~accused be not committed to prison or detention barracks until further orders~~.(1)

(1. AA 57A. Delete if not used.)

(Sgd) E.W. Haldenby COMMANDER

Date 23 May 44 Commanding 1 CDN BASE RFT GROUP Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
K19035 Tpr Erwin T.H.	26 May 1944	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your pleas and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]
President to accused: Do you wish to make a statement? Ans Yes
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on ~~first~~ charge. The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex F, initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....[1]
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See M/ML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence saliently on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.
President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (~~copies~~) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) bearing the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex G and Ex H respectively.[3]
(1. *MFB 351 or MFB 296.* 2. *Same.* 3. *RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans Yes in mitigation.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. *Where several accused tried separately see RP* 7(2)). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 114, 119(*A*), *KR Can* 358, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 46, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 43(2), *MML p* 120. *When accused ultimately under sentence of imprisonment or detention see AA* 44(1B), 56(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of report after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

1

CHARGE SHEET

The Accused Number K.19035 Trooper Thomas Hilary ERWIN, a soldier of the Canadian Army, Overseas, on strength of 5 Battalion, 2 Canadian Base Reinforcement Depot, is charged with:

First Charge
A.A. Sec. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, undergoing sentence, absented himself without leave from 25 Field Punishment Camp at 2040 hrs 27 Mar 44 until 0035 hrs 6 Apr 44 when he was apprehended by American M.P.'s at Naples.

In the Field

In Italy

20 May 44

(J.C. [illegible] Col.
Commanding
5 Battalion 2 C.B.R.D.

To be tried by Field General Court Martial.

(E.W. Haldenby) Brigadier
Commander
1 Can Base Rft Group
Cdn Army CMF

IN The Field

In Italy

22 May 44.

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFAS) 40/P&S/1097 (2nd Ed)

(Whether the accused to be tried is under his command or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.19035	Tpr	Thomas Hilary	ERWIN	5 Bn 2CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge-sheet(s) attached and on (date) 22 May 44 endorsed by me, ~~or by an offr of my staff for me~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E.W. DAY (CIC)		HQ 1 CBRD

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	D.C. MATTHEWS (CAC)		5 Bn 2 CBRD
Lieut	S.D. BEATON (CIC)		38 Cdn Base Fft Coy I CBRG p

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC	5 Bn 2 CBRD	

~~ALTERNATIVE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(E.W. Haldenby)

Date 22 May 44. Commanding 1 Cdn Base Fft Group-CA-CMF Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Ewd.

MEDICAL OFFICER'S CERTIFICATE

(K.R. Can) Para 557

I certify that I have this morning examined. K.19036 Tpr ERWIN T.N. on strength of 5 Bn 2 C.S.H.D. and in my opinion he is FIT/~~UNFIT~~ to undergo trial by court-martial

~~Station~~ - Field

Date. 23 May 44

F R MacRae Capt
(Medical Officer's signature)
RCAMC

B2. - Statement of accused - Evid
Extenuating circumstances for breaking out. always believed sentence received last Jan. out of proportion to offence. Sentence one year sent to 257 Pun. Camp. First week there over 25 broke out Camp badly run food bad guards smoked on duty, sanitation bad. my plea is to ask for suspended sentence that I may be allowed to go to the front.

E 3. Statement by defending Officer.
accused volunteered almost on outbreak of war at age of 15. - While at detention barracks 5 Bn. he had opportunity to escape but did not do so. He was detail of 4 men on fatigue and 2 of them made attempted get away. Accused and one other returned and reported getaway. Travelled a quarter of mile without escort This action of man wanting to serve his country - he now realizes his responsibilities Tpr Erwin states provocation at 7th Camp.

I, ASN 32554425 D'Angelo, Joseph D. on the strength of Co.A, 803 M.P. Bn. being duly sworn, state I am Private D'Angelo, Joseph D. on the night of April 5th, I was on duty on the inner gate No. 1, Naples Dock at 0030 hrs 6 Apr 44, I was taking a French Morrocan to a fellow M.P., two Carabinieris ran to me and said in Italian "Two soldiers pushed us aside and rushed into the alley". I left the Morrocan with the M.P. and with the Carabinieri ran into the alley. I flashed my light and saw the two fellows dressed in British uniforms. The taller one had a bed roll which he threw behind some wood. I approached them and questioned them. The taller one refused to say anything. The shorter one kept saying "Give him a break" Since they could give me no satisfaction, I ordered them to march towards the gate. They refused at first but finally came with me to where my other prisoner was. Here again, I asked them for their story. The taller one refused to say anything, so I told them I would take them in. The taller man then started to run, I ordered him to halt but he kept on running. I then fired over his head to stop him, he kept on going. I fired again and he ran towards a truck for protection. Two of our M.Ps, caught him and brought him back to me. I asked him"why did you run?" He replied: " you would too!" One of our M.Ps, who brought the accused back was ASN 32715822, Pvt, Kee, Clark M. Jr. The accused's name is Tpr. Erwin, Thomas Hillary M.19035. He was the taller one of the two I apprehended and he was the one who had the sleeping bag in his possession.

Joseph D'Angelo

I, ASN 32715822, Pvt. Kee, Clark M. Jr. on the strength of Co. A 803 M.P. Bn. being duly sworn state I am Pvt. Kee, Clark M. Jr. On the night of April 5th, 1944, I was on duty at the outer gate No. 1 Naples Dock, at approximately 0035 hrs 6 Apr 44. I saw a soldier running past my post. I apprehended him andreturned with him to the inner gate No. 1 and turned him over to Pvt. D'Angelo, Joseph D. one of our M.Ps. on duty. The name of the accused, the man I apprehended, is Pvt. Erwin, Thomas Hilary, M.19035 of 5 Bn. 2 C.B.R.D. I am of the opinion that I can recognize Pvt. Erwin.

Clark M. Kee Jr.

List of Witnesses: Erwin.

Erw

LIST OF WITNESSES FOR THE PROSECUTION.

First Witness: 2613575 Sgt Lofts L.J.
25 Field Punishment Camp.

Second Witness: 5572070 L/Cpl. Bartlett L.F.
25 Field Punishment Camp.

Third Witness: A.S.N. 32554435 Pvt D'Angelo Joseph D.
Coy "A", 802 M.P. Bn (American Army)

Fourth Witness: A.S.N. 32718622 Pvt Lee.Clark M. Jr.
Coy "A" 802 M.P. Bn (American Army).

LIST OF WITNESSES FOR THE DEFENCE

N I L

Ewin

RECEIPT FOR SUMMARY OF EVIDENCE

I, K.19035 Tpr Thomas Hilary EWIN hereby acknowledge receipt of a true copy of the Charge Sheet and Summary of Evidence in connection with the charges pending against me.

In the Field

In Italy

13 May 44

T H Ewin

K.19035 Tpr EWIN T.H.

Witnessed by: P.C. Bare Lt

Encl D

REQUEST FOR DEFENDING OFFICER

I, R.19035 Tpr ERWIN T.H. request that in the event of a Court-Martial being held, that an Officer be appointed to defend me.

T.H. Erwin
R.19035 Tpr ERWIN T.H.

In the Field
In Italy.
8 May 44.

Witnessed by:

[illegible] Capt.

Exhibit F

Summary of Evidence in the case of No K 19035 Pte Trubin T.H. of 5 Bn 2 C.A.R.D. Cdn Army C.M.F.
On direction of the commanding Officer the evidence is taken on oath.

First Witness for Prosecution 2613573 Sgt Zoyh L.J. of 25 F.P.C. being duly sworn states:-

I am No 2613573 Sgt Zoyh L.J. of 25 F.P.C.
On the 27 of March 1944 No K 19035 Pte Trubin T.H., the accused, was in 25 F.P.C. as a soldier undergoing Sentence. He was quartered in room No 10. I was, on the night of March 27/28 N.C.O. i/c night watch patrol. At appox 2015 hrs I visited the landings and saw all was in order and all S.W.S. were present. The Battle Dress, Trousers, Greatcoats and Boots of all ranks from S.W.S. were in the landings outside their rooms. Pte Trubin's clothing was amongst them. At appox 2040 hrs that night I ordered the two L/Cpls of the night watch patrol to check roll S.W.S. in their rooms. At appox 2045 hrs they reported to me that some S.W.S. were missing from room 10. I immediately reported to the R.S.M. and then proceeded to check the S.W.S. in room No 10 myself. On counting the roll I found that No K 19035 Pte Trubin T.H. was among them missing. I next saw Pte Trubin, the accused on 28th day of April 1944.

The accused declines to cross examine this witness.

L.J. Zoyh, Sgt.

The accused was cautioned as follows:-
"Do you wish to make any statement or give any evidence upon oath? You are not obliged to say anything but to give evidence unless you are willing to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

The accused declines to make a statement or give evidence. The accused declines to call witnesses for the defence

I certify that the foregoing Summary of Evidence consisting of Upwards two pages has been taken down by me in writing in the presence and hearing of the accused and that Rules of Procedure 4 (c)(d)(e)(f) and (g) have been complied with

In the field this
3 day of May 1944

W.M.Z. Rivers Capt.
Officer detailed to take the summary of Evidence.

Second Witness for Prosecution. 5572079 T/Sgt. Bartlett J.F. 25 F.R.C. being duly sworn states:

I am No 5572079 T/Sgt. Bartlett J.F. of 25 F.R.C.

The accused, No K 19035 Pte Irwin T.H. was in 25 F.R.C. on 27 March 44 as a soldier under my orders. On the night of March 27/44 I was on night watch patrol. At approx. 2040 hrs the night of March 27/44 I was detailed by the N.C.O. i/c night watch pat. sct, Sgt Lyle, to patrol the building. On arriving in No 10 room I found the wood of the door had been prised open. I immediately reported to Sgt Lyle who called the roll of room No 10 and reported to the R.S.M. The accused 1 pte Irwin was on the roll of S.U.S. in Room No 10 and on the night calling the roll at approx 2100 hrs the night of March 27/44 the accused failed to answer.

I have not seen the accused from March 27/44 until today April 25/44

The accused declines to cross-examine this witness.

J. Bartlett Sgt.

7th Witness for Prosecution. A.S.N. 32554425 Pvt. D'Angelo Joseph D. on the strength of Co. A 803 M.P. Bn American Army.

I certify in my opinion the attendance of this witness is, owing to this person being employed at a considerable distance from this H.Q., not readily procurable and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as "Exhibit A".

J.M.A. Prescott. Capt. Officer detailed to take Summary of Evidence.

I do not require the attendance of A.S.N. 32554425 Pvt. D'Angelo Joseph D at the Summary of Evidence for the purpose of cross examination.

T.H. Irwin
K19035 Pte Irwin T.H.

4th Witness for Prosecution. A.S.N. 32715822 Pvt. Kee Clark M Jr. on the strength of Co A. 803 M.P. Bn American Army.

I certify that in my opinion the attendance of this witness is, owing to this person being employed at a considerable distance from this H.Q., not readily procurable and a written statement, signed by him has been read to the accused and is attached hereto as "Exhibit B"

J.M.A. Prescott Capt. Officer detailed to take Summary of Evidence

I do not require the attendance of A.S.N. 32715822 Pvt Kee Clark M Jr. at the Summary of Evidence for the purpose of cross-examination

T.H. Irwin
K19035 Pte Irwin T.H.

No. K.19035 Name ERWIN Thomas Henry | Sqn., Battery, or Company | Corps | Date of enlistment 11-9-39 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Corporal

M.F.M. 6 (W.O. Form 1127) No. P 6 (1906) (1965)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with time	By whom awarded	Remarks
				Forfeits 34 days pay while in civil custody undergoing sentence 20			20 Nov 41		
				Sentence 6 weeks imprisonment in Porterfield Prison.					
				Placed under stoppage of pay for period 2200 hrs Oct 1/41 to 0700 hrs Nov 4/41 (33 days 9½ hrs)					
				WOAS: A.W.L. from 0730 hrs 2/12/41 to 1445 hrs 4/12/41 (absent 2 days 7 hrs 15 min) awarded 28 days detention effective 11/12/41. In close arrest from 1400 hrs 11/12/41. Remission of sentence 4 days . Total forfeiture 8 days pay (FR&I) Can. 1(a) 149 6 days pay (FR&I) Can. 1 (c)ii149. 23 days pay FR&I (can) 1(b) 149.				
				32 days forfeiture - 30-1-42.					
				Total forfeiture: 3 days pay (FR&I)(Can) 1(a)149 - 6 days pay (FR&I)(Can)1(c)(ii)149 7 days pay - 1days concurrant with forfeiture of 3 days pay under 1491(a). 24 days pay (FR&I)(can)1 (b) 149 33 days forfeiture 26-2-42.				
				Seven days C.B. Forfeits 1 days pay FR&I (can) 149(1)(a) 27-4-42.					
				Awarded 14 days F.P. and 14 days pay for AWL from 1200 hrs 27 Nov 43 to 0130 hrs 1 Dec 43 (3 days 21½ hrs)					
				Forfeit 14 days pay under FR&I 149(b) Forf. 4 days pay under FR&I 149(1)(a) -- 6 Dec 43					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Awarded 12 days F.P. & 12 days pay for an offence under A.A. 15(1) AWL from 2200 hrs 5 Nov 43 to 0100 hrs 6 Nov 43 (Absent 3 hrs)
Forft 12 days pay under FR&I 149(2) -- 6 Nov 43.
Tried by F.G.C.M. (1) A.A. 40 (2) A.A 9(2) (3) Sec 22. (4) AWL from 0600 hrs 26 Dec 43 to 1400 hrs 31 Dec 43.
Absent 5 days 8 hrs) Guilty, sentenced to undergo one years detention.
Close arrest 1330 hrs 25 Dec 43 to 0600 hrs 26 Dec 43 (16 hrs 30 mins) from 1400 hrs 31 Dec 43 to 0900 hr s 21 Jan 44 (20 days 19 hrs)
Frft. 21 days pay FR&I 149(1)(c)i. Forft 6 days pay FR&I (149(1)(a). Forf. 366 days pay FR&I 149(1)(h) -- 21 Jan 44.
Certified true copy from M.F.M. 4 date- 12 May 44 (G.A. Boyle) Lieut.
for officer i/c Can Section GHQ 2nd Echelon AAI.

Certified to be a true copy from the regimental books in my custody 13 May 44. W J McGee Capt A.A.F.

Exhibit 6

ARMY Form 46.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K.19035	Tpr.	IRWIN T.H.	5 Battalion 20.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—If a trial by field general court martial this statement may be completed from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provided being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Insert words "If a charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL (AA Sec15(1))	2 times	5 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[redacted] or

There are no entries in the conduct sheets of the accused.

2. [redacted] Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. [redacted] The accused is at the present time under sentence for (1) AA Sec 22,(2) A.A. S 24 2, (3) AA Sec 40, (4) A.A Sec 15(1) beginning on the 21st day of January 1944

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service [redacted] is 23 years 8mo

6. The date of his [redacted] attestation specified in his record of service [redacted] is 11 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.A.

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

9. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

10. The accused is [redacted] or entitled to, [redacted] over The Canadian Volunteer Service medal and clas

11. *(If the accused is a warrant officer.)* The accused before he was made a warrant officer last held the regimental rank of N.A.

12. *(In the case of an officer.)* The accused holds in the army the rank of N.A. dated and in his regiment (or corps or department) the rank of N.A. dated

(72041) Wt.20790/1977 10,000 10/42 A.& E.W.,Ltd. Gp.698
(R3617) Wt.30668/1207 50,000 2/43 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 1,19035 Rank Tpr Name LEWIN T.H. of 6 Bn 2 C.S.M.D. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Civil court	20 Nov 41	Theknowds	8 weeks imprisonment Porterfield Prison	
F.G.C.M.	21 Jan 44	(1) A.A. S oc 22, (2) A.A. soc 9(2) (3) A.A. Soc 40. (4) A.A. Soc 15(1).	1 years detention.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of May

W.J.M. Mogan Capt RAPC

officer i/c custody of regimental books.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

To the rank of ..... years. .....

To the rank of ..... years. .....

To the rank of ..... years. .....

(Instructions.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, stating that in the case of a rank the full period completing the non-commissioned service may be calculated from such service as are available and the substantive rank concerned accordingly.)

EEE-8

TPR ERWIN T.H

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	(1 year detention)
2nd	Guilty	Guilty	
3rd	Not Guilty	Guilty	
4th	Guilty	Guilty	
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ Nil ~~awaiting on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

One (1) years detention

(Sgd) ..... 21 Jan 44 (Sgd) T/Maj Mears Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 58.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(7). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) ~~-~~ E.A.W.

(1. AA 57A. Delete if not used.)

(Sgd) ..... Brig.

Date 27 Jan 1944 COMMANDER

Commanding I CDN BASE RFT GROUP

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K-19085 TPR ERWIN T.H. (RAC)	29 JAN 44	T Bl General Staff

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

LEG-8

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFA3) 40. P & R. 1698 (2864)

Convened by Order of Brig E.W. Holdenby Comd *1 CBRG dated 18 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 1a, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/cpnk or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K19085	Trooper	Thomas H'Lary	ERWIN	CAC 5 Pdn

PROCEEDINGS REVIEWED

J Kilgimelon Capt

18 March 1944

REVIEWING OFFICER, JAG BRANCH, G.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Italy on (*date(s)*) 21 Jan 44

RECORD FORM A. OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Members (if any)~~ and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 69S, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 17-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to Pte Morton J as interpreter ? Ans No Sir

~~The interpreter is sworn.~~ (1) ~~Do you object to~~ ~~as shorthand writer or reporter ?~~ Ans ~~.....~~

~~(1. RP 72. Delete, if none employed.)~~

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 98(B). If objection, see procedure AA 31, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~Judge-Advocate~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	M.E. Mears	RCASC	7 Pdn. No 2 CBRD
Member	Capt	B.J. Kelly	RCA	6 Pdn. * 2 CBRD
Member	Capt	J.M. Cameron	RCA	6 Pdn. * 2 CBRD
~~Reserve~~	~~.....~~	~~.....~~	~~.....~~	~~.....~~
Prosecutor	Capt	W.G. McGuire	C.I.C.	SP Sec * 2 CBRD
Defending Offr	Lieut	G.R.W. Graham	CAC	SP Sec * 2 CBRD

Questions by President : Is the Prosecutor a lawyer ? Ans No. Is the Defending Offr a lawyer ? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused K19085 Tpr Erwin T.H. before arraignment make(s) (no) plea (s).

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 1a, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AE case and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 69s to record proceedings. 2. RP 32, RP 33. If otherwise, deletes and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (not) informed, and he (does not) change(s) his plea(s) on ..... charge(s). ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whoin or parts not used.*)

B4. On the charge(s) to which the plea(s) of Guilty was (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (does not make) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is dismissed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Give sworn as to as a witness. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans No
(*1. RP* ~~155~~ 157 *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*b*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the T charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative consequent is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~NB. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 'B' and Ex 'C' respectively.(3)
(*1. MFB* 253 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 7.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (sworn) (3)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. Where several accused tried separately see RP* 120. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, (190A), *KR Can* 508, 526, 543-544, *Overseas MO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), *MML*(*c*), *KR Can* 544. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused K-19035 Tpr ERWIN, Thomas Hilary, Canadian Armoured Corps, a soldier of the Cdn Army on strength of 5 Battalion 2 Canadian Base Reinforcement Depot, is charged with:

FIRST CHARGE
A. A. SEC 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Avellino on 25 Dec 43, did enter St. Mary's Church with a beret on his head and make a disturbance while a divine service was in process.

SECOND CHARGE
A. A. SEC 9 (2)

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

at Avellino, on 25 Dec 43, did not leave the vicinity of St. Mary's Church when ordered to do so by Lieut. Guay, R 22e R.

THIRD CHARGE
A. A. SEC 22

WHEN ON ACTIVE SERVICE, WHEN IN ARREST, ESCAPING,

in that he

at Avellino, on 25 Dec 43, having been placed in arrest at Provost Office, 1 Cdn L. of C. Pro Coy., did escape.

FOURTH CHARGE
A. A. SEC 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

at Avellino, absented himself without leave from 0600 hours 26 Dec 43, until 1400 hours 31 Dec 43. Total time absent (4 days, 8 hours).

F. B. Conrad,
(F. B. Conrad) Lt. Col.
Commanding
5 Bn 2 C. B. R. D.

Avellino, Italy.
10 Jan 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

15 Jan 44

E. W. Sansom Brig.
Comd. 1 Cdn Base Rft Group

FIELD GENERAL COURT-MARTIAL

CFA55 (In lieu of AFA5) 40/FMS/1697 (2005)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
K.19035	Trooper		Thomas Hilary	ERWIN	CAC 5 Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X) named above as the accused, being subject to military law, has (XXXX) committed the offence(s) set forth in the Charge Sheet(X) attached and on (date) 16 Jan 44 endorsed by me, (XX XX XXX XXXX XXX XX), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (XX XXXXX XXXX XXXXXXXX XX XXXXX XXX XX XXXXXX XX A XXXXX XXXXXXX XXXX)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(X), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint an officer to serve on the Court, (b) a officer as President, for the reasons stated here.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I do appoint as Judge Advocate (except the accused) hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	M.E.MYERS	RCASC,	7 Bn, 2 CBRD

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	B.J.KELLY	RCA,	6 Bn, 2 CBRD
Captain	J.M.CAMERON	RCA,	6 Bn, 2 CBRD

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.)

Brig (Rank.)

Date 18 Jan 44

Commanding 1 Cdn Base Sft Group.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that No. [illegible] Regiment

is f.i.t. to undergo trial by Court-Martial.

[illegible]
(Medical Officer)

Vimy Barracks
Avellino, Italy.

24 Jan 44.

First witness for Prosecution

Lieut J. G. Gray, R22eR attached to Canadian section 2nd Echelon C.M.F. sworn states:

"On Christmas day in the year 1943 at about 1320 hours I had occasion to order Sgt Tippett of No 1 Canadian Provost Coy (L of C Coy) to put under close arrest the accused, whom I here recognize, as K 19035 Tpr Erwin. Sgt Tippett complied with my orders and in addition to his action I myself informed Tpr Erwin he was under close arrest."

Question by defence: "Into whose custody was Tpr Erwin put at the time he was placed in close arrest?"

Answer "Sgt Tippett and two L/Cpls of the Provost Company were present at that moment and I considered that sufficient custody."

Question by defence "At what time did you leave the Provost Office?"

Answer "1330 hours exactly by my watch."

R.P 83(B) complied with

Second witness for Prosecution

H 59040 Sgt Tippett J.A. of No 1 Canadian Provost Company (L of C Coy) duly sworn states:

"I recognise the accused as Trooper

Second Witness for Prosecution (Cont'd)

Erwin On Christmas day while on duty and under instructions from Lieut Guay, R 22e R. I placed Tpr Erwin under close arrest This would be about 1330 hours. About fifteen minutes later when I looked for him he was missing. At the time I placed him in close arrest I was alone in the Office"

Question Prosecution: "You say alone. Do you mean that literally or that you were the only one on duty? That no other bodies were present?"

Answer: "I meant on duty. There was a R.S.M of the Provost and several other soldiers present"

Question Defence "Was the accused under escort while in the Provost Office?"

Answer: "No Sir. Lieut Guay turned him over to me and left"

Question Defence: "Did Tpr Erwin enter the Provost Office voluntarily or was he escorted?"

Answer "He was escorted but by whom I cannot say."

Question Defence "Did you institute a search for the accused when you noticed he was absent?"

Answer: "Yes Sir I notified patrols"

Second Witness for Prosecution (cont'd)

Question by Defense: "How soon after the escape were the patrols notified?"
Answer: "About half an hour."
Question Defense "No search was made during that half hour then?"
Answer: "No Sir. I was alone"
Question Defense: "Could you not have ordered out some of the Provost who were not on duty?"
Answer "There were none there with the exception of the 18 M P was the only one in the building"

R.P 83(B) complied with

First Witness for Defense

K19035 Trooper Erwin T.H. C.A.C 5th Battalion. "Z" C B R D (the accused) sworn states:

Question "At the time you entered the Provost building were you arrested?"
Answer "As far as I can remember two Provost escorted me into the building where several other Provost were present."
Question: "Were these Provost present when you left?"

First Witness for Defense (contd)

Answer: "As far as I can remember there were only two or three people left. Whether they were Provost I am not able to say."

Question: "Why did you leave the building?"

Answer: "I figured I had been dismissed."

Question: "What gave you that idea?"

Answer: "At the time I didn't know I had been put under arrest. Nor did I know my pay book had been taken."

Question: "Did anyone try and stop you as you left the building?"

Answer: "No Sir."

Question: "Where did you go when you left the Provost Office?"

Answer: "My memory is vague on that point. However I do remember meeting three fellows from my regiment outside the door."

Question: "Did you get back to camp that day?"

Answer: "Yes"

Question by Prosecution: "Where did you

First Witness for Defense (Contd)

have Christmas dinner?"

Answer: "I did not have Christmas dinner."

Question by Prosecution "At approximately what time did you return to barracks?"

Answer: "I dont know Sir"

R P 83(B) complied with

Second Witness for Defense

M 104782 Trooper Prince K S, CAC 5th Battalion, No 2 CBRD sworn states "On Christmas day at approximately 1415 hours I saw the accused whom I know and now recognize. He was on the corner near the entrance to the Provost Office I was talking to him for about five or ten minutes He was drunk."

R P 83(B) complied with

Third Witness for Defense

A 105209 Trooper McMahon W. E, CAC 5th Battalion, No 2 CBRD sworn states: "On Christmas day at approximately 1415 hours I saw the accused whom I know and now recognize. He was

F Lind Witness for Defence (contd)

on the corner near the entrance to the Provost Office. I was talking to him for about five or ten minutes. He was very drunk."

R.P. 83(B) complied with

Closing Address to Court

by Defence

In the case of K19039 Trooper T.H. Erwin.

"Mr President and Members. I submit that the evidence in this case has been of a conflicting nature. The officer involved gave evidence as to the number of Provost present in the office. Then the Sergeant in his evidence said that he was on duty alone.

I also draw your attention to the evidence of the last two witnesses. They prove conclusively that the accused was only a few hundred steps from the door of the Provost Office at 1415 hours. And in plain view. His actions were definitely not those of an escapee.

It has also been proven or stated by two witnesses on oath that in their opinion the accused was drunk. This is probably the solution to the whole affair. That under the influence of liquor the accused did not and was not capable of realizing the position he was placed in.

I also submit that M.M.L. states that a drunken man should be placed in custody or supervision. In this case this was not done."

Closing Address to Court
By Prosecution

In the case of K19035 Trooper T.H. Erwin

"Mr President and Members. The defence offered is drunkeness. This is no excuse and can only be considered in arriving at the punishment.

It is unfortunately beyond the power of the Court to make a finding under Section 19 of the Army Act.

Please note the unique similarity of evidence as presented by Provost and McMahon. Also that the prosecution did not ask Lieut Gray or Sergeant Tippet as to opinion of sobriety of accused. Provost invariably state when a man is drunk.

I agree there is conflicting evidence as to manner of arrest. This frequently occurs. But the evidence of Lieut McGray and Sgt Tippett clearly shows accused was placed in arrest. It was beyond the power of Sgt Tippett to provide escort at that time.

A person can be guilty of escaping from arrest without having been under escort. The footnote to Army Act 22 states escaping does not have to be accompanied by violence."

Statement in Mitigation
of Punishment

In the case of K19035 Trooper T.H. Erwin

"Mr President and Members"

"This man's records show that he has been in trouble before and the cause was drink. There is no excusing the fact that he was in the Church during service hours but he was definitely under the influence of liquor and was not aware of the realization of the offence he was committing"

Submitted by
the Defending Officer.

In the Case of
Field General Court Martial
K 19035 Trooper Thomas H. Erwin

Officers Under Instruction

Lieut L.E. Harryfield 5 Pltn No 2 GBRD
Lieut A.J Petersen " "
Lieut W.L Newman " "

Summary of evidence in the case of No. K19035 Tp. ERWIN, Thomas Hilary, CAC, on strength of 8Bn 2CBRD, Canadian Army, CMF.

By direction of the Commanding Officer the summary of evidence is taken on oath.

~~[illegible]~~ WAm

1st Witness
Prosecution

Lt Jean GUAY, R 22e R, att Cdn Lec GH Q 2 Echelon, having been duly sworn, states:

At Avellino on 25 Dec 43 I was attending the 1300 hr service at Ste Maria Church on King Lt Col Dunn

About 1310 hrs when Lt Col Dunn pointed out to me 2 soldiers wearing black berets who were interfering with the divine service in that they were moving around the congregation talking loudly. Col Dunn asked me to see what was the matter. I went down and asked the two soldiers to follow me. We stood outside the side door and I explained to them that this building was a Catholic church and that a service was going on. Immediately the two of them started talking saying words to this effect "Je t'en a ... de bull shit, balls and ... a fly" Ste Erwin, whom I knew recognized me told me he wouldn't give them names I produced my identity card, which I did

2 pvs both agreed that I was correctly identified but still failed to produce their particulars. Not wishing to go any further in this matter I ordered them to leave the surroundings immediately which they did after a few repetitions of the order.

I then walked back into the church and continued to assist the service.

Apart 3 minutes later a member of the station force came up to me and shaved me the same as I was back in the church. I went towards them called them out of church and ordered them to go away. Sgt Irwin was now close to me and started asking whom I was, asking me if I was serious, and he (Sgt Irwin) forced me to back off towards the street. I again told him I was an officer and as such I was ordering him to stay away but he put his right hand on my left shoulder grasping the epaulette saying I was a little freak guy but those girls were not worth a shit. He then grabbed the collar of my battle dress with his left hand and slapped me across the left cheek with open hand. I broke away from his hold

IRWIN.

and started back around for any
members of the armed forces. I here were
none. I decided to go to the pro
affice to call for help, which I did. On
my way I saw that the 2 men were
still following me yelling, and asking
me to come and fight them. I was in
no mood for that and as soon as I arrive
at the provost called 2 mp's who were
outside the affice and asked them to
take the 2 soldiers I pointed to under
close arrest.

2 mp's were brought inside the
provost affice where their particulars
were taken down by Lt Tippett. 2 mp's
were both under the influence of alcohol
drinks but definitely not drunk.
Their battle dress blouse was open.

Cross examined by accused

Q-1 Did he wear it that struck the first blow.

A-1 I am sure was only one blow, and you did it.

Q-2 When we first went into the church what did we tell you was our reason for entering

Page 5

P. 2. Nan told me that you wanted to make a present to a girl friend and that you were looking for her. I then explained about a service being held at the time.

[illegible]

Mary Faulkner
Asst

2nd Witness

Prosecution

Lt Col M S Dunn, O I C Cdn Sec G H Q 2nd Echelon, C M F a member of the Cdn Army Overseas.

I certify that in my opinion the attendance of the above witness, is, owing to loss of time involved, not readily procurable. A written statement of his evidence, purporting to be signed by him, (6 pgs) has been read to the accused, and is attached hereto, as Exhibit "A".

I further certify that I was present at the identification parade mentioned in the last para of the above mentioned evidence, and that the soldier identified by Lt Col M S Dunn was K 19025 Tpr E R W I N, Thomas Hilary.

The accused does not demand the attendance of this witness for cross examination.

Wm Lowe Capt.

ERWIN

B138120 Pte Disters, Lawrence, RCE, on strength 5 Bn 2CBRD is sworn as interpreter

3rd Witness

Prosecution

CARULLI, Alfonso, Viale Regina Margherita 67, Avellino, having been duly sworn, states:

On 25 Dec 42 during mass at St Mary's church I was accosted by a lady who was very worried because she was being molested by 2 soldiers. The accused, whom I recognize, insisted on offering a belt to the said girl. At that very moment another civilian asked the assistance of a Cdn Lt. who came over to intervene.

The Lt asked them to leave the church which they did. After a few moments the accused and the other soldier reentered the church, and the accused came forward going towards the girl. I then an Italian Lt called the Cdn Lt and they went outside with the Cdn Lt. Upon reaching the steps the accused grasped the face of

the Cdn Offr with one hand, at the same time pushing the Lt off the steps, while the offr struggled to defend himself. The Lt called the help of certain Cdn soldiers who were around and they refused to give any aid.

The Lt invited the 2 to come over to the provost station. They went along towards there and the Lt called the provosts who took them in custody.

The Cdn Lt asked me for my name and address.

The offrs tried to punch the soldier but did not hit him. The accused did not touch the offrs other than holding his face as he pushed him off the steps.

Cross examined by accused

Q-1 Did you come outside the church.

A-1 Yes.

Q-2 Did you follow us as far as the Provost station

A-2 Yes.

Q-3 Were you in the provost station when they took my name and number

A-3 Yes.

Q-4 - Who all was in the Ob Station at the time.

A-4 There were 5 or 6 personnel of the Ob Corps, plus myself and another Italian witness, and the Col H.

Q-5 Are you positive the affair did not hit me.

A-5 I did not see the punch land.

Q-6 Did you see me fall down.

A-6 I saw you stagger, but not fall.

Q-7 Where were you standing when this happened.

A-7 On the steps of the church.

Interpreter: Lawrence D'Otrea

Carmelo Spina

4th Witness
Prosecution

AMOROSO, Attilio, Via Trinita 5, Avellino, having been duly sworn, states:

[redacted] (Ofm). On the day in question, a feast day, during mass, I saw the accused enter the church following a young lady, who seemed to be frightened by the accused's attention.

He gesticulated to the girl in a manner indicating he wanted her to go outside. A civilian called a Cdn Lt to ask the soldier out.

They went out. The Lt reenters the church. After awhile the accused with another soldier, reenters the church. After this an Italian Lt asked the Cdn Lt to have the accused and another soldier escorted from church. They went out of the church with the Lt. As I came out of church the accused and the other soldier were struggling with the Cdn Lt. The soldier with the accused aimed a punch at the Lt which he ducked. The Lt backed away and went towards the police station where he

Pg 11

called the Provosta and had the accused and the other soldier arrested.

Cross examined by accused.

Q-1 Did you see the Lt hit me?

A-1 I do not know if he hit you, but as I came from the church I saw you stagger and about to fall.

Q-2 Did you see me hit the Lt.

A-2 No.

Q-3 Are you sure it was the other soldier that took a swing?

A-3 Yes.

Q-4 Did you come into the provost office

A-4 No.

Q-4 Was CARULLI, Alfonso with you from the church to the provost station

A-4 No.

Q-5 Have you talked to the Cdo Pt since the affair

A-5 No, I haven't seen him since.

Q-6 Was I making any disturbance in church other than speaking to the girl

A-6 No.

Interpreter: Lawrence Dalton Duncan Hollis

5th witness
Prosecution

H59040 Lgt TIPPETT, John Albert, 1 Cdn Lof C Pro Coy, having been duly sworn, states:

At Orsellino on 25 Dec 43 I was on duty at the Provost Office as desk Lgt. At approximately 1330 hrs two soldiers were brought in by Lt Irwin, 2 Cdn. He ordered me to place the two soldiers under close arrest. I did so and asked one of the soldiers for his name and unit. I took [redacted] Irwin's particulars. I now recognize [redacted] (Accd) as Spr Irwin.

Just at this time 3 other drunken soldiers came into the office. At the time I was alone on duty at the office and while attempting to keep order in the office Spr Irwin and the other soldier brought in by Lt Irwin both left the office.

Cross examined by accused.

Q-1 The accused decides NOT to cross examine.

J. Tippett

6th Witness

Prosecution

M16381 Sgt DAVIS, Ross Graham, 4 PL DG, on strength of 5 Bn 2C BRD, having been duly sworn, states:

At Aveliano, on 26 Dec 43, I was troop sgt of no. 1 Bl of 2 Cav Gp Bn at approx 0600 hrs 26 Dec I went to awaken Sgt Irwin whom I now recognize, for kitchen fatigue. He was absent. He was still absent when I was transferred to 5 Bn on 28 Dec 43.

Accused declines to cross examine

R. G. Davis

7th Witness
Prosecution

B5817 A/C3M MARTIN, Baynard, 8Bn
2CBRD, having been duly sworn, states:

"At Adelaide on 31 Dec 42 at approximately
1400 hrs I was informed that Pte
Erwin and Shirley were in the
hallway. I went there and placed
them under close arrest and
turned them over to the guard, as
I knew they were absentees."
Accused declines to cross examine.

Prosecution

The accused is asked the following question:
" Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused elects to give evidence on oath and states:

1st Wilts Yeomanry. W 19035 Tpr ERWIN, Thomas Hilary, CAC, on strength 4 Bn 2 CBRD, having been duly sworn states:

" On 25 Dec 42 I entered St Mary's Church in Avellino for the purpose of giving a gift to an Italian girl I saw on the street. The belt had been given to me by another soldier, and I had no use for it as it was a woman's belt. I had just given the belt to the girl in the church when I was asked to come outside by [illegible]. We went outside and he pointed out it was an RC church. I then left him and went back in again. After it [illegible] had left, I went in to apologise to the girl."

but I was immediately called outside by Lt Swan. On being ordered to show his books Lee demanded his. He refused to show his identification card and on stepping forward to him I was dealt a blow across the cheek by him. The blow staggered me and knocked me fairly down. On recovering to my feet again I saw Lt Swan leading down the street. He stopped at intervals and gave an attitude of daring us to follow.

On entering the Pro Station we were confronted with several military police and Lt Swan. My pay book was demanded and ~~I~~ and the Pro Sgt and Lt Swan all argued.

Lt Swan left shortly after, whereupon I left the Pro Station also.

F.B. Irwin

2nd deletion
Defence.

W67380 Tpr SHINTY, Charles, CAC, on strength 8 Bn 20825 having been duly sworn, states:

On 25 Dec 42 Tpr Erwin and myself were downtown in Avellino in the bar across from St Mary's church.

At approx 1200 hrs we left the bar and walked towards the church. Tpr Erwin had a belt and he tried to give it to a girl who was walking down the street. The girl took the belt and walked into the church, with both of us following.

Next thing we knew some officer took us outside and told us if we were not RCs to go away. Tpr Erwin wanted his belt back and we went into the church again. The officer again took us outside and told us we were making a disturbance and asked us for our pay books.

We asked him for his identity card and the next thing I knew Erwin was falling down the steps due to a blow struck by the officer who I now know to be Lt Evans.

When Erwin had got to his feet and looked around Lt Evans was at the

corner beckoning me to follow. We did so and he led us to the Bro Station. After that I was separated from Erwin.

Cross Examined by Accused.

Q-1 Did I enter the church to get the hat or to apologize to the girl.

A-1 I don't really know.

Q-2 In entering the Bro Station what was your estimate of the number of provosts present.

A-2 At the time I was tangled up with a sgt major and 2 sgts, but there were more than that.

C. Skeitz

"Rules of Procedure # (C) (D) (E) (F) and (G) have been complied with.

I certify that the foregoing Summary of Evidence consisting of 19 pages was taken down by me in writing in the presence and hearing of the accused on 1st, 2nd and 4th of Jan 44

Wm Lane Capt

Awelino
Capt
4 Jan 44.

Exhibit 'C' Page 1 — Exhibit 'B'

M.F.M. 6 (A.F. B.122), 40/P & /8126 (2966)

No. K19035 Name ERWIN, Thomas Hilary — Sqn., Battery, or Company — Corps C.A.C. — Date of enlistment — G.C. Badges — Service or Proficiency Pay 1.50 — Signature O.C. Company, etc. — Character

TEMPORARY SHEET — Sheet No. 1

Date of last entry in Company Conduct Sheet — No. and date of last drunk 31-5-41 — Period not reckoning towards freedom from extra fine

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.F.C.		Pte.		A.A. 19 - DRUNKENESS & A.A. 22		Awarded 14 dayd Det. & 14 days loss of pay forr 34 days pay while in civil custody undergoing Sentence-(6 weeks imprisonment) in Porterfield Prison Inverness) Remission 8 days	31 May 41	DO 3/41	
C.F.C.		Pte.	(1)	Assault & Bench of Peace (civil offence)			1 Oct 1941	DO 149/41	
C.F.C.		Pte.	(1)	A.A. 15 (1) AWL from 0730 hrs.2 Dec 41 to 1445 hrs. 4 Dec 41 (absence 2 days 7 hrs & 15 min)		Awarded 28 days det. eff 11 Dec 41 Remission 4 days (Good Behaviour) Total forfeiture 33 days pay		DO 10/42	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Scotland	12-2-42	Pte.		Convicted by Civil Court for contravention of Road Traffic Act 1920, taking and driving a car without the owners knowledge or consent.	Sgt. Campbell Ross & Cromarty Constabulary	Fined £2-0-0 Or 20 days imprisonment	12-2-42	"D.Ross" Prosecutor Fiscal.	
~~O.T.C.~~		Pte.		A.A. 15 (1) AWL from 0800 hrs. to 0900 Hrs. 24 Apr 42 (Absent 1 Hour)		7 days C.B.			
~~Field~~	~~25-7-43~~			A.A. Sec 40 Failed to report for church parade.	~~Saldron RC~~	~~5 Days C B~~	~~26-7-43~~	~~Maj.C.A.West.~~	
				Donated blood 24 Aug 43					
2 CBRD		Pte.		A.A. 15 (1) AWL from 2200 hrs. 5 Nov 43 to 0100 hrs 6 Nov 43 (Absent 3 Hrs.)		12 days F.P.forf. 12 days pay F.R.I. 149 (2)	6 Nov 43	DO1 4/5 Jan 44	

M.F.M. 6

ERWIN,

No. K19035 Name Thomas, Hilary Sqn., Battery, or Company Corps C.A.C. Date of enlistment D.C. Badges Service or Proficiency Pay 1.50 (A.F. B.122) 40/F & /8136 (2s65)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Character

~~EXTRACT FROM REGIMENTAL~~ TEMPORARY SHEET (Page 2) Exhibit 'C'

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
2 CBRD		Pte.		A.A. 15 (1) AWL from 1200 hrs. 27 Nov 43 to 0130 hrs 1 Dec 43 (3 Days 21½ Hrs.)	27	14 Days F.P. 14 days pay under FR&I 149(2)	6-12-43	DO18/43	For. 4 days pay under F R & I 149 (1) (a)

Certified to be a true copy from Regimental books in my custody.

10 Jan 44. [illegible] Capt & Adjt.
C. Armstrong 8 Bn. 2 C.B.R.D.

(P.T.O.)

ERWIN,

XXXX

Substitute for AFB 296

Exhibit "B"

STATEMENT OF CHARACTER AND PARTICULARS OF THE ACCUSED.

K 19035 Tpr. ERWIN, Thomas Hilary, Cdn. Armd., Corps.
on strength 8 Bn. 2 C.B.R.D., Cdn. Army, CMF.

(1) The following is a ~~rear~~ and true summary of the entries in the regimental conduct sheet of the accused, exclusive of conviction by court-martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment
For A.W.L.	3	4
For Drunkeness	2	

(1) one, on 31 May. 41.

(2) Convictions of the accused by a civil court are as follows:-

(a) Awarded 6 weeks imprisonment in Portersfield Prison, Inverness by a civil court (8 days remission) commencing 1 Oct. 41 for Assault and Breach of Peace (civil offence).

(b) In Scotland, on 12 Feb 42, convicted by civil court for contravention of Road Traffic Act 1920, taking and driving a car without the owners knowledge or consent; fined £2-0-0

(3) The accused is not under sentence at the present time.

(4) The accused has been in confinement awaiting trial on the present charge, for 0 days in civil custody, and 21 ~~100~~ days in military custody, making a total of 21 days in custody, of which 0 days were spent in hospital.

(5) The present age of the accused according to his record of service is 22 years.

(6) The date of his attestation specified in his record of service is 15 Sept. 39.

(7) The accused is entitled to The Canadian Volunteer Service Medal and Clasp.

Certified to be a true copy of the regimental books in my custody.

20 Jan 44

C. Armstrong, Capt. & Adjt.
(C. Armstrong)
8 Bn. 2 C.B.R.D.

J. Bennett, Capt. Adj.
8 Bn, 2 C.B.R.D.
21 Jan 44

CERTIFIED TRUE COPY. Spare copy EEE 8

A. Mitchingall CAPT.

FIELD GENERAL COURT-MARTIAL CFA 96

Convened by Order of Brig. E.W.Haldenby, Comd #1 CBRG, 18 Jan 44.

ACCUSED.

K-19035 Trooper Thomas Hilary ERWIN, CAC 5 Btn.

PROCEEDINGS OF TRIAL

Held in the Fd in Italy, on 21 Jan 44.

RECORD FORM A-OPENING PROCEEDINGS AND ARRAIGNMENT.

A. 1 The President, Members, and Offrs under instr. assemble, and the Court is closed. "MEM"

A. 2 Word 'are', line 2, deleted. "MEM"

A. 3 The Court is opened. The accused is brought before the Court. "MEM" At 1030 hours trial commences.

A. 4 No alterations.

A. 5 Do you object to B43707 Pte. Salumie J as interpreter? Ans."NO"SIR". Balance of para deleted. "MEM"

A. 6 No alterations, and Answer is "No Sir".

A. 7 Words 'JA, if any' deleted, in line 1. "MEM"

President.	Major M.E.Meers,	RCASC,	7 Btn, No. 2 CBRD
Member	Capt. B.J.Kelly	RCA,	6 Btn, No. 2 CBRD
Member	Capt. J.M.Cameron,	RCA,	6 Btn, No. 2 CBRD
~~Judge-Advocate~~	"MEM"		
Prosecutor	Capt. W.G.McGuire,	CIC,	5 Btn, No. 2 CBRD
Defending Offr	Lieut. G.R.W.Brahm,	CAC,	5 Btn, No. 2 CBRD

Neither the Prosecutor or Defending Offr are lawyers. "MEM"

A. 8 The accused K-19035 Tpr Erwin, T.H. before arraignment makes no plea. "MEM"

A. 9 Words 'are' and 'do' in line 1 deleted. "MEM"

A.10 No alterations. Last senntence: The proceedings are continued on Record Form C

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

(NO ALTERATIONS)

RECORD FORM B-PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B. 1 No alterations.

B. 2 No alterations.

B. 3 The Court considers the accused's statement. Teh Court decides (not) to advise accused to change his pleas of Guilty to Not Guilty on the 1st, 2nd, 4th charges. The accused is so informed and he changes his plea on no charges. (Rest of para deleted). "MEM" "MEM" "MEM" "MEM" "MEM" "MEM"

B. 4 Word 'is' line 1 deleted.

B. 5 The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.

B. 6 No alterations.

RECORD FORM C-PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY

(NO ALTERATIONS)

MEM

CHARGE SHEET

The accused K-19035 Tpr ERWIN, Thomas Hilary, Canadian Armoured Corps, a soldier of the Cdn Army on strength of 5 Battalion 2 Canadian Base Reinforcement Depot, is charged with,

FIRST CHARGE
A.A. SEC 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Avellino on 25 Dec43, did enter St. Mary's Church withs veret on his head and make a disturbance while a divine service was in process.

SECOND CHARGE
A.A. SEC 9(2)

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

at Avellino, on 25 Dec 43, did not leave the vicinity of St. Mary's Church when ordered to do so, by Lieut. Guay, R 22e R.

THIRD CHARGE
A.A. SEC 22

WHEN ON ACTIVE SERVICE, WHEN IN ARREST, ESCAPING,

in that he

at Avellino, on 25 Dec 43, having been placed in arrest at Provost Office, 1 Cdn L. of C. Pro Coy., did escape.

FOURTH CHARGE
A.A. SEC 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he

at Avellino, absented himself without leave, from 0600 hours 26 Dec 43, until 1400 hours 31 Dec 43. Total Total time absent (4 days, 8 hours).

F.B. Conrad) Lt. Col.
Commanding
5 Bn 2 C.B.R.D.

Avellino, Italy.
10 Jan 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

18 Jan 44

E.W. Baldesby Brig.
Comd 1 Cdn Base Rft Gp.

"MEM"

FIELD GENERAL COURT-MARTIAL (in lieu of CFA 95

ACCUSED

K-19035 Trooper Thomas Hilary ERWIN CAC 5 Bn

CONVENING ORDER

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) "EWE attached and on (date) 18 Jan 44 endorsed by me, ~~for an offr of my staff for rel~~, TO BE TRIED BY FIELD GENERAL COURT MARTIAL".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; "EWE (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) Fd Offrs as President, for the reasons I have attached hereto.~~ "EWE

5. ~~I also appoint as Judge-Advocate the Offr mentioned~~ "EWE hereunder.

PRESIDENT

Major M.E.MEERS RCASC, 7 Bn, 2 CBRD

MEMBERS

Captain B.J.KELLY RCA, 6 Bn, 2 CBRD

Captain J.M.CAMERON RCA, 6 Bn, 2 CBRD

WAITING MEMBER

- - - - - -

JUDGE-ADVOCATE

- - - - - -

On Active Service in the Fd "E.W.Haldenby, Brig.

in Italy

Date 18 Jan 44 Commanding 1 Cdn Base Rft Group.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

"MEM"

MEDICAL OFFICER'S CERTIFICATE

I certify that No. K19035 Tpr ERWIN T.H.

Regiment is fit to undergo trialby

Court Martial.

"Chas Cohen", Capt

~~(Unfairperable)~~

Medical Officer

Vimy Barracks
Avellino, Italy

21 Jan 44

First Witness for the Prosecution

Lieut J. Guay, R 22e R attached to Canadian Section 2nd Echelon C.M.F. sworn states:

"On Christmas day in the year 1943at about 1320 hours I had occasion to order Sgt Tippett of No I Canadian Provost Coy (L of C Coy) to put under close arrest the accused, whom I here recognize, as K190355 Tpr Erwin. Sgt Tippett complied with my orders and in addition to his actions I myself informed Tpr Erwin he was under close arrest."

Question by defence:

"Into whose custody was Tpr Erwin put at the time he was placed in close arrest?"
Answer "Sgt Tippett and two L/Cpls of the Provost Company were present at that moment and I considered that sufficient custody."
Question by Defence: "At what time did you leave the Provost Office?"
Answer "1330 hours exactly by my watch."

R.P. 83(B) complied with.

Second Witness for Prosecution Page 2 "MEM"

H59040 Sgt Tippett J.A. of No Canadian Provost Company (L of C Coy) duly sworn states: "I recognize the accused as Trooper Erwin. On Christmas day while on duty and under instructions from Lieut Guay, R 22e R I placed Tpr Erwin under close arrest. This would be about 1330 hours. About fifteen minutes later when I looked for him he was missing. At the time I placed him in close arrest I was alone in the office."
Question Prosecution: "You say alone? Do you mean that literally or that you were the only one on duty? That no other bodies were present?"
Answer: "I meant on duty. There was a C.S.M. of the Provost and several other soldiers present."
Question Defence: "Was the accused under escort while in the Provost Office?"
Answer: "No sir, Lieut Guay turned him over to me and left."
Question Defense: "Did Tpr Erwin enter the Provost Office voluntarily or was he escorted?"
Answer: "He was escorted but by whom I cannot say."
Question Defense: "Did you institute a search for the accused when you noticed he was absent?"
Answer: "Yes Sir I notified patrols."

Page 3 "MEM"

Second Witness for Prosecution (Contd)

Question by Defense: "How soon after the escape were the patrols notified?"
Answer: "About half an hour."
Question Defense: No search was made during that half hour then."
Answer: "No, sir, I was alone."
Question Defense: "Could you not have ordered out some of the Provost who were not on duty?"
Answer: "There were none there. With the exception of the CSM I was the only one in the building."

R.P. 83(B) Complied with

First Witness for Defense

First Witness for the Defense

K19035 Trooper Erwin T.H. C.A.C. 5th Battalion, "2C.B.R.D.
(The accused) sworn states:
Question "At the time you entered the Provost building were you escorted?"
Answer: As far as I can remember two Provost escorted me into the building where several other Provost were present."
Question "Were these Provost present when you left?"

Page 4
First Witness for the Defense (Contd) "MRM"

Answer: "As far as I can remember there were only two or three people left. Whether they were Provost I am not able to say."
Question: "Why did you leave the building."
Answer: "I figured I had been dismissed."
Question: "What gave you that idea."
Answer: "At the time I didn't know I had been put under arrest. Nor did I know my pay book had been taken."
Question: "Did anyone try and stop you as you left the building."
Answer:"No, sir."
Question "Where did you go when you left the Provost Office?"
Answer: "My memory is vague on that point. However I do remember meeting three fellows from my regiment outside the door."
Question: "Did you get back to camp that day?"
Answer: "Yes."

Question by Prosecution "Where didyou have Christmas dinner?"

Page 5
First witness for Defense (Contd) "MRM"

Answer: I did not have Christmas dinner."
Question by Prosecution : "At approximately what time did you return to barracks?"
Answer: "I don't know Sir."

R.P. 83 (B) Complied with.

Second Witness for Defense
M104782 Trooper Briscoe E.S. C.A.C. 5th Battalion No 2 C.B.R.D., sworn states:
"On Christmas day at approximately 1415 hrs I saw the accused whom I know and now recognize. He was on the corner near the entrance to the Provost Office. I was talking to him for about five or ten minutes. He was drunk."

R.P. 83(B) complied with.

Third Witness for Defense Page 6 "MRM"

A105209 Trooper McMahon W.E., C.A.C. 5th Battalion, No 2 CBRD sworn states:
"On Christmas day at approximately 1415 hours I saw the accused whom I know and now recognize. He was on the corner near the entrance to the Provost Office. I was talking to him for about five or ten minutes. He was very drunk."

R P 83(B) complied with

CLOSING ADDRESS TO COURT BY DEFENCE

In the case of K19035 Trooper T.H. Erwin, "MRM"

"Mr President and members. I submit that the evidence in this case has been of a conflicting nature. The Officer involved gave evidence as to the number of Provost present in the Office. Then the Sergeant in his evidence said that he was on duty alone.
I also draw your attention to the evidence of the last two witnesses. They prove conclusively that the accused was only a few hundred steps from the door of the ProvostOffice at 1415 hrs.

And in plain view. His actions were definitely not those of an escapee.

It has also been proven or stated by two witnesses on oath that in their opinion the accused was drunk. This is probably the solution to the whole affair. That under the influence of liquor the accused did not and was not capable of realizing theposition he was placed in.

I also submit that M.M.L. states that a drunken man should be placed in custody or supervision. In this case this was not done."

"MEM"

CLOSING ADDRESS TO COURT BY PROSECUTION

In the case of K19035 Trooper T.H. Erwin

"Mr President and Members. The defense offered is drunkenness. This is no excuse and can only be considered in arriving at the punishment. It is unfortunately beyond the power of the Court to make a finding under Section 19 of the Army Act.

Please note the unique similarity of evidence as presented by Briscoe and McMahon. Also that the Prosecution did not ask Lieut Guay or Sergeant Tippet as to opinion of sobriety of accused. Provost invariably state when a man is drunk.

I agree there is conflicting evidence as to manner of arrest. This frequently occurs. But theevidence of Lieut McGuay and Sgt Tippett clearly shows accused was placed in arrest. It was beyond the power of Sgt Tippett to provide escort at that time.

A person can be guilty of escaping from arrest without having been under escort. The footnote to Army Act 22 states escaping does nothave to be accompanied by violence."

STATEMENT IN MITIGATION OF PUNISHMENT "MEM"

In the case of K19035 Trooper T.H. Erwin

"Mr President and Members"

"This man's records shows that he has been in troublebefore and the cause was drink.

There is no excusing the fact that he was in the church during service hours but he was definitely under the influence of liquor and had not a full realization of theoffence he was committing.

Submitted by The Defending Officer

"MEM"

exhibit - "B"

"MEM"

M.F.B. 385
22M—5-41 (572-3)
H.Q. 1772-39-630
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K19035	Tpr	ERWIN Thomas Hilary,	Cdn Armd Corps.

On strength B^tie Bn, 2 CBRD, Edmonton, Alta

1. The following is a fair and true summary of the entries in the Service and General / ~~Conduct sheets~~ Regimental and Squadron, Battery Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.W.L.	2 times	4 times
For Drunkenness	times	1 (21 MAY 41) times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~ N/A

or,

~~There are no entries in the conduct sheets of the accused.~~

~~NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused was sentenced to [illegible] day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~Air Force~~ civil custody, and 21 days in military custody, making a total of 21 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years

6. The date of his ~~attestation~~ specified in his record of service is 15 Sept 39

7. The service which the accused is allowed to reckon towards discharge is 15 Sept 39

8. The accused is entitled to reckon 4 yrs 5 mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~military~~ C.V.S.M. ~~possession of or entitled to~~. State any air force decoration or reward. ~~military~~

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held ~~Air Force~~ the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force, and in his regiment (or corps), the rank of ..... unit

..... dated .....

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— N/A

In the rank of ..... years. ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number K19035 Rank Pte Name Tpr. ERWIN, Thomas Hilary Cdn Armd., Corps C.A.C. Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Civil Court Inverness	Scotland 1 Oct. 41	Assault and Breach of Peace.	6 weeks imprison ment, Porters-field Pris. £2.0.0	8 days remission.
Civil Court.	Scotland	Taking and driving a car without the owner's consent "Road Traffic Act 1920"		N/A

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20 day of Jan 44 C. Armstrong Capt & Adjt 5 Bn. 2CBRD

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

J. Bennett Capt & Adjt
5 Bn, 2 C.B.H.D.
21 Jan 44.

"MEM"

In The Case Of Field General Court Martial

K19035 Trooper Thomas H. Erwin.

OFFICERS UNDER INSTRUCTION

Liuet.	C.E. Merryfield	5 Bn	No 2 C.B.R.D.
Lieut	A.J. Paterson	do	do
Leiut	W.F. Newman	do	do

"MEM"

TEMPORARY SHEET

No. K 19035 Name ERWIN THOMAS, HILARY Sqn., Battery, or Company | Corps C A C | Date of enlistment | G.C. Badges | Pay 1 | Service or Proficiency Pay | £1-5-0 | M.F.M. 6 "M F M"

(A.F.B. 122) 40/P & B/136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk 3 1 5 41 | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C F C.		Pte		A A 19 - DRUNKENNESS & A A 22		Awarded 14 days Det & 14 days loss of pay. In lieu of 28 days pay, whilst in cadet, entitled to undergo sentence (6 weeks imprisonment) in Petrefield Prison Inverness Remission 8 days	31 May 41	DO 8/41	
C F C.		Pte		(1) Assault & Breach of Peace (Civil Offence)			1 Oct 1941	DO 149/41	
C F C.		Pte		(1) A A. 15 (1) AWL from 0730 hrs 2 Dec 41 to 1485 hrs 4 Dec 41 (Absence 2 days 7 hrs & 15 mins)		Awarded 28 days det. Remission 9 days (Good Behaviour) Total forfeiture 11 days pay	11 Dec 41	DO 10/42	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Scotland	12 2 43	Pte		Convicted by Civil Court for contravention of Road Traffic Act 1930 by driving and driving a car without the owners knowledge or consent.	Sgt Campbell Ross Corporate Civil Constabulary	Fined £2 0 0 or 14 days imprisonment	12 2 43	"D Ross" Procurator Fiscal	
~~C&C~~		~~Pte~~		~~A.A. 15(1) AWL from 0900 hrs to 0900 hrs 24 Apr 43. (Absent 1 hour)~~		7 days C.B.			
~~Field~~	~~25 7~~	~~Pte~~		~~A.A. Sec 40 Failed to report for RSM A/Sgt Waldron RSC (IMPROPER ENTRY~~ 5 days CB 26 7 43 ~~to my CA wrote "W H Mackenzie Capt")~~					
				Donated Blood 24 Aug 43					
2 CBRD		Pte		A.A. 15 (1) AWL from 2000 hrs 5 Nov 43 to 0700 hrs 6 Nov 43 (absent 3 hrs)		13 days F.P. for 13 days part F.A. Act 1949 (2)	6 Nov 43	D.O.	15 Jan 44

ERWIN, TEMPORARY SHEET (Page 2) Exhibit 'C'

No. K 19035 Name Thomas Hilary Sqn., Battery, or Company Corps C A C Date of enlistment G.C. Badges Service or Proficiency Pay 1/150 M.F.M. 6 (A.F.B. 122) 40/P & S/136 (2637) "B"

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
2 CBRD		Pte		AA 15 (1) AWL from 1200 hrs 27 Nov 43 to 0130 hrs 1 Dec 43 (3 days 13½ hrs)		14 days F.P. 14 days Pay under FR 31/141 (2)	6 D 43	DOR 1/43	forf 4 days Pay under FR 31 149 (1) (a)
				Certified to be a true Copy from Regimental Books in my custody.					
				10 Jan 43 C. ARMSTRONG ... Capt - Adjt. (C. Armstrong) 4 Bn 3 C A R D					

(P.T.O.)

Page 1a Exhibit 'A'

SUMMARY OF EVIDENCE in the case of K190325 Tpr. ERWIN, Thomas Hilary, C.A.C. on strength of 9 Bn. 2 C.A.A.D. Canadian Army C.M.F.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

Page 2.

1st. Witness. for the Prosecution. Lieut. Jean Guay, R 22nd Regt. Att. Cdn Sec. GHQ 2 Echelon, having been duly sworn states:-

At Avellino on the 25 Dec 43 I was attending the 1300 hour Service at St. Mary's Church, King St., with Lieut. Col. Dunn. About 1310 hours when Lt. Col. Dunn pointed out to me two soldiers wearing black berets who were interfering with the Service in that they were moving around the congregation talking loudly. Col. Dunn ordered me to see what was the matter. I went down and asked the soldiers to follow me. We stood outside the side door and I explained to them that this building was a Catholic Church and that a service was going on. Immediately the two of them started to talk saying, It's a lot of bull-shit, balls, and sissy's play or words to that effect. I then asked them for their particulars. Tpr. Erwin, who I now recognize told me he would not give them unless I produced my identity card, which I did.

Page 3.

They both agreed that I was correctly identified but still failed to produce their particulars. Not wishing to go any further in the matter I ordered them to leave the surroundings which they did after a few repititions of the order. I then walked back into the church and continued to assist in the Service. About three minutes later a member of the Italian Forces came up to me and showed me the same two soldiers back in the church. I went toward them, called them out of the church and ordered them to go away. Tpr. Erwin was very close to me and started asking me if I was serious, and he forced me to back up towards the street. I again told him that I was an Officer and as such I was ordering him to stay away, but he put his right hand on my left shoulder grasping the epaulette, saying I was a little fresh guy, [illegible] that those pips were not worth a snit. He then grabbed me by the collar of my battle dress with his left hand and slapped me across the left cheek with his open hand. I broke away from his hold

Page 4.

and started looking around for any member of the Armed Forces. There were none. I decided to go to the Provost Office to call for help which I did. On my way I saw that the two men were still following me, yelling, and asking me to come back and fight them. I was in no mood for that and as soon as I arrived at the Provosts called two MPs. who were outside the office and asked them to put the two soldiers I pointed to under close arrest. They were brought inside the Provost Office,

1st. Witness (cont)
for the Prosecution

where their particulars were taken down by Sgt. Tippet. They were both under the influence of alcoholic drink but definitely not drunk. Their battle dress blouse was open.

Cross-examined by the accused.

Q.1. Who was in that struck the first blow?

A.1. There was only one blow, and you did it.

Page 5.

Q.2. When we first went into the church what did we tell you was our reason for entering ?

A.2. You told me that you wanted to make a present to a girl friend and that you were looking for her. It was then that I explained that a Service being held at the time.

Signed: Jean Guay Lieut.

Page 6

2nd Witness for the Prosecution

Lt. Col. M.S. Dunn, CIC, Odn. Sec HQ, 2nd Echelon, C.W., a member of the Canadian Army Overseas.

I certify that in my opinion the attendance of the above witness, is, owing to loss of time involved, not readily procurable. A written statement of his evidence, purporting to be signed by him has been read to the accused and is attached hereto and marked Exhibit "A".

I further certify that I was present at the identification parade mentioned in the last para of the above mentioned evidence and that the soldier identified by Lt. Col. M.S. Dunn was K19035 Pte. Erwin, Thomas Hilary.

The accused does not demand the presence of this witness for cross-examination.

Signed: W.G. McGuire Capt.

Page 7

D1g/120 Pte. GUIHAL, Laurence, HQX on strength 8 Sp. I C.R.C.D. is sworn as Interpreter.

2nd Witness. for the Prosecution.

CASSILI, Alfonso, Viale Regina Margherita, 67, Avellino, having been duly sworn states:-

On 25 Dec 43 during mass at St. Mary's Church I was accosted by a lady who was very worried, because she was being molested by two soldiers. The accused was I now recognize [illegible] offering a belt to the said girl. At that very moment another civilian asked the assistance of a Cdn. Lieut. who came to intervene.

3rd Witness(cont) for the Prosecution

The Lieut. asked them to leave the church which they did. After a few moments the accused and the other soldier re-entered the church, and the accused came forward going towards the girl. Then an Italian Lieut. called the Cdn. Lieut. and then they went outside with the Cdn. Lieut. Upon reaching the steps the accused grasped the face of the Cdn. Officer with one hand at the same time pushing the Lieut. off the steps. While the Officer struggled to defend himself. The Lieut. called the help of certain Cdn. soldiers who were around and they refused to give any aid. The Lieut. invited the two soldiers to come to the Provost Station. They went along towards there and the Lieut. called the Provost who took them in custody. The Cdn. Lieut. asked for the my name and address.
The Officer tried to punch the soldier but did not hit him. The accused did not punch the Officer other than holding him by the face as he pushed him off the steps.

Page 8

Cross-examined by the accused.

Q.1. Did you come outside the church?

A.1. Yes

Q.2. Did you follow us as far as the Provost Station?

A.2. Yes.

Q.3. Were you in the Provost Station when they took my name and number?

A.3. Yes.

Page 9.

Q.4. Who all was in the Provost Office at the time?

A.4. There were five or six personnel of the Provost Corps., plus myself and another Italian witness, and the Cdn. Lieut.

Q.5. Are you positive the Officer did not hit me?

A.5. I did not see the punch land.

Q.6. Did you see me fall down?

A.6. I saw you stagger but not fall.

Q.7. Where were you standing when this happened?

A.7. On the steps of the church.

Interpreter: Laurence Ostera.

Signed: Alfonso Carulli.

4th Witness for the Prosecution

AMORUSO, Attilio, Via Trinta 5, Avellino having been duly sworn states:-

On the day in question, a feast day, during mass I saw the accused entering the church following a young lady who seemed to be frightened by the accused's attention.
He gesticulated to the girl indicating he wanted her to go outside. A civilian called a Cdn. Lieut. to ask the soldier out. They went out. The Lieut. re-entered the church. After a while the accused with another soldier entered the church. After this an Italian Lieut. asked the Cdn. Lieut. to have the accused and another soldier exited from the church. They went out of the church with the Lieut. As I came out of the church the accused and the other soldier were struggling with the Cdn. Lieut. The soldier with the accused aimed a blow at the Lieut. which he dusked . The Lieut. backed away and went towards the police station where he

called the Provost and had the accused and the other soldier arrested.

Cross-examined by the accused.

Q.1. Did you see the Lieut. hit me?

A.1. No.

Q.2. Did you see me hit the Lieut?

A.2. No.

Q.3. Are you sure that it was not other soldier who took a swing?

A.3. Yes.

Q.4. Did you come into the Provost Office?

A.4. No.

Q.4. Was CARULLI, Alfonso, with you from the church to the Provost Station?

A.4. No.

Q.5. Have you talked to the Cdn. Lieut since the affair?

A.5. No, I havent seen him since.

Q.6. Was I making any disturbance in church other than speaking to the girl?

A.6. No.

Interpretar: Laurence Catsaras.

Signed: " Amoroso Attilio"

5th Witness for the Prosecution.

M59040 Sgt. TIPPET, John Albert, 1 Coy. 1 of 3 Provost Coy., having been duly sworn states:-

At Avellino on 25 Dec 43 I was on duty at the Provost Office as desk Sgt. At approximately 1330 hours two soldiers were brought in by Lieut. Quay 2 Echelon. He ordered me to place the two soldiers under close arrest. I did and asked one of the soldiers for his A.B.64. I. I took Erwin's particulars. I now recognize Pvr. Erwin.
Just at the time three other drunken soldiers came into the office. At the time I was alone on duty at the office and while attempting to keep order in the office Pvr. Erwin and the other soldier brought in by the Lieut. left the office.

Cross-examined by the accused.

The accused decides not to cross-examine.

Signed: J. Tippet.

Page 13

6th Witness. for the Prosecution.

[illegible] Sgt. DAVIS, Rose Graham, 4 FTSC on strength of 5 Bn. 2 C.R.R.D. having been duly sworn states:-

At Avellino on the 26 Dec 43, I was troop Sgt. of No. 1 Pl. of 2 Coy. 5 Bn. At approximately 0830 hours [illegible] Pvr. Erwin, whom I now recognize, for kitchen fatigue. He was absent. He was still absent when I was transferred to 5 Bn. 28 Dec 43.

Accused declines to cross-examine this witness.

Signed: R.G.Davis.

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7th Witness for the Prosecution.

[illegible] 5617 A/C.S.M. MARTIN, Reynard, 5 Bn. 2 C.R.R.D. being duly sworn states.-

At Avellino 31 Dec. 43 at approximately 1400 hours I was informed that Pvrs. Erwin & Kinsey were in the hallway. I went there and placed them under close arrest, and turned them over to the guard, as I knew they were absentees.

Accused declines to cross-examine the witness.

Signed "B. Martin"

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The accused is asked the following questions:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you say or any evidence which you give will be taken down in writing and may be used as evidence.

The accused elects to give evidence.

1st Witness. for the Defence

K19034 Tpr. ERWIN, Thomas Hilary, C...C. on strength of 3 Bn. 3 C.D.A.D. having been duly sworn states:-

On 25 Dec 43 I entered St. Mary's Church in Avellino for the purpose of giving a gift to an Italian girl, I saw on the street. The belt had been given to me by another soldier and I had no use for it, as it was a woman's belt. I had just given the belt to the girl in church when I was asked to come outside by Lieut. Quay, We went outside and he pointed out it was an R.C. church. Then he left us and went back in again. After Lieut. Quay left I went back inside to apologize to the girl

Page 16

but I was immediately ordered outside by Lieut. Quay. On being ordered to show my pay book we demanded his. He refused to show his identification card and on attempting forward to his I was dealt a blow across the cheek by him. The blow staggered me and knocked me partly down. On returning to my feet I saw Lieut. Quay leading down the street. He stopped at intervals and gave an attitude of daring us to follow. On entering the Provost Station we were confronted with several military police and Lieut. Quay. My pay book was demanded and I and the Provost Sgt. and Lieut. Quay all argued. Lieut. Quay shortly left the Provost Office whereupon I left the Provost Station also.

Signed: T.H. Erwin.

Page 17.

2nd Witness. for the Defence.

K47260 Tpr. KELLY, Charles, C...C. on strength of 3 Bn. 3 C.D.A.D. having been duly sworn states:-

On 25 Dec 43 Tpr. Erwin and myself were downtown in Avellino in the bar across from St. Mary's Church. At approximately 1300 hours we left the bar and walked towards the church. Tpr Erwin had a belt and tried to give it to a girl who was walking down the street. The girl took the belt and walked into the church, with both of us following her. Next thing we knew some Officer took us outside and told us if we were not N.C's. to go away. Tpr. Erwin wanted his belt back and we went into the church again. The Officer again took us outside and told us we were making a disturbance and axed us for our pay books. We asked him for his identity card and the next thing I knew Erwin was coming down the steps due to a blow struck by the officer, who I now know is Lieut. Quay. When we looked around Lieut. Quay was at the

Page 18.

corner beckoning us to follow. We did so and he lead us to the Provost Station. After that I was separated from Erwin.

Cross-examined by the accused.

Q.1. Did I enter the church to get the belt or to apologize to the girl?

A.1. I don't really know.

7869

2nd. Witness (cont) for the Defence

4.2. On entering the provost station what would be your estimate of the number of Provost present?

A.2. At the time I was sangled up with a Sgt. Major and two Sgts. but there were more than that.

Signed: C. Shinty

Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

I certify that the foregoing Summary of Evidence consisting of 19 pages was taken down by me in the hearing and presence of the accused on the 1st, 3rd, and 4th days of January 1944.

Auchinn
H Jan HH

Signed: W.G. Esquire Capt.

RECORD FORM D-PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D. 1 No alterations, and answer reads: "NO"

D. 2 The Prosecutor makes no opening address. "MEM"

D. 3 No alterations.

D. 4 The Prosecution is closed. (Rest of para deleted) "MEM" "MEM" "MEM" "MEM" "MEM" "MEM"

D. 5 No alterations. the 3 answers read: "Give evidence as a witness" "YES" "NO"

D. 6 No alterations.

D. 7 No alterations.

D. 8 The President announces the findings, if any, of Not Guilty, and states to the accused that the findings of the Court on the Third Charge, being subject to confirmation, will be promulgated later. (2nd sentence deleted) Part I of the Schedule is dated and signed.

D. 9 Deleted. "MEM"

RECORD FORM E-PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E. 1 No alterations, and answer reads: "NO"

E. 2 No alterations, and line 6 reads: "marked Ex "B" and Ex "C" respectively

E. 3 No alterations, answer reads: "YES (ATTACHED)

E. 4 No alterations.

E. 5 No alterations.
Footnote, line 1 for 'RP 7(D)' read 'RP 71(D)'.

SCHEDULE

PART I. PLEAS, FINDINGS AND SENTENCE.

ACCUSED: - - - - - - - - - - -

1st Charge, Guilty, Guilty.)
2nd Charge, Guilty, Guilty.)(1 year detention)
3rd Charge, NOT Guilty Guilty.)
4th Charge, Guilty, Guilty.)

~~At present under sentence for beginning on the~~ "MEM"

21 days in confinement awaiting trial, NIL days in hospital.

Sentence awarded by the Court:

"One (1) years detention"

(Sgd)- - - - - - - - - - - - 21 Jan 44 (Sgd) "M.E.Meers, Major"
Judge Advocate. Date Awarded President

PART II. MINUTE WHERE CONFIRMATION RESERVED.

(NO ALTERATIONS)

PART III. DECISION OF CONFIRMING OFFR ON FINDINGS AND SENTENCE.

My decision on the findings and sentence set forth in Part I is:

"CONFIRMED"

~~I direct that the accused is not committed to prison or detention barracks until further orders.~~ "EWH"

(Sgd) "E.W.Haldenby" Brig,

Date 27 Jan 1944.

Commanding 1 Cdn Base Rft Group,
confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN

K-19035 Tpr. ERWIN, T.H. (CAC) 29 Jan 44. "F.B.Conrad" Lt-col.

NNN-32
GNR ESCOE S

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-6559 Gnr ESCOE, S. - 1 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in case of kill see RP 44 fn 6.)

R ~~As proved under evidence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 4 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of nine (9) months.

29 May/44 (Sgd) D.L.Redman Lt Col

(Sgd) Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(5), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(2). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed but do remit two months of the sentence.

I direct that the accused be not committed to prison or detention barracks until further orders.(*)

(1. AA 57A. Delete if not used.)

(Sgd) B.Kerr Col

Date 30 May 44 Commanding "C" Group

Commanding Cdn Reinforcement Units.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B-6559 Gnr Escoe S.	31 May 44	L.E.Lick Major Adm Offr 1 CARU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Stamp Received 8 Jun 1944 JAG Branch, CMHQ.

COPY RECORDED AF CMHQ IN AB 160 ~~Spare Ref~~ NNN.32

CF A96 (In lieu of AF A2) 40-1 A 8/1618 (2964)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Colonel B.R.Ker, ED A/Comd "C" Gp. CRU dated 28 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Permt R (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-6559	Gnr	Samuel	ESCOE	1 CARU

Proceedings Reviewed (SGD) JR Miquelon Capt 10 June 1944 Reviewing Officer, JAG Branch CMHQ

H.G.Brody Capt 3 Aug 44 H.G.Brody, Capt, CMHQ

PROCEEDINGS OF TRIAL.

R Held in the Fd in (country) England on (date(s)) 29 May/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

R A1. The President, Members, ~~waiting Member, if any~~ and ~~Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnss RFs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1)

R The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

R A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1130 hours trial commences.

R A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

R ~~The Prosecutor informs the Court that accused should be tried by court-martial instead of being dealt with summarily by the O(i/c)~~

R (1. KR Con 557. 2. AA 46(B), RP 56 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

R A5. ~~President to accused — Do you object to be tried by me as President or by any of the Members of the Court?~~ ~~Ans~~ ~~Interpreter to swear(/affirm) — Do you object to be tried by me as President or by any of the Members of the Court?~~ ~~Ans~~

R ~~The shorthand-writer is sworn(/affirmed).~~

R (1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 53, RP 25, 71, 98, MML p 742.)

R A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L.REDMAN	HQ CRU
Member	Capt	H.F.JOHNSTON	2 CARU
Member	Lt	W.E. LLOYD	2 CARU
~~Judge-Advocate~~			
Prosecutor	Lt	J.A. DEACON (DLR)	1 CARU
Defending Offr	Lt	P.S.H.BRADY	1 CARU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 98 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused (DLR) before arraignment make(s) (no) (a) plea. (3)

R Def Officer ~~acts~~ waives.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13, RP 37), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB none and name of the accused making the plea.)

R A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 24, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and one separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

R A10. The Court (~~for closed trial~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*
for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser,

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~as JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - SIR (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

~~(1. Court may be closed to consider the statement. Delete whole or part not used.)~~

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 80(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused on his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 101(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (3), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans To call character witness NOTE- Att
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 253 or AFB 2795. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Any Def Officer - NOTE - Att (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and him JA, if any~~.(2) 2/1
(1. When several accused tried separately see RP 2(d). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its gotrelse, is to be awarded to cover all charges in all charge sheets on which accused found guilty. 2. RP 32. As to sentences see AA 44, 138, 182, RP 46-50, 69, 114, 119(A), KR Con 308, 330, 363-366, Overseas KO 109, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 40(C), MML p 130. When accused MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 40(C), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(B), 68(C), KR Con 564. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COPY

CHARGE SHEET

The accused, No. B.6559 Gunner Samuel ESCOE, R.C.A., on strength of No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
AA Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, did absent himself without leave from 2359 hrs 2 Apr 44 until 1040 hrs, 26 May 44.

BK
(Absent: 52 days 10 hrs 41 mins)
WAT

(SGD) W.A.Townsley
(W.A.TOWNSLEY) Colonel,
Commanding Officer,
No. 1 Canadian Artillery Reinforcement Unit.
R.C.A. Canadian Army Overseas.

Dated at Bordon, Hants,
this 26th day of
May, 1944.

To be tried by Field General Court Martial,

(SGD) B Kerr Colonel
A/Commander "C" Group, Cdn Reinforcement Units,
(Convening Officer)

Bordon, Hants,
26 May 44.

DLR

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFA 3)
60/FAN/1697 (Dr68)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap Y pores 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-6859	Gnr	Samuel	ESCOE	1 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 May 44 endorsed by me, (or by an offr of my station ~~xxx~~. "To be tried by Field General Court-Martial". BK

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that xxx xxx practicable by reason of the trial for ~~xxxxx~~ xxx separate charges xxx~~ BK

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. BK

4. ~~I may enable to appoint in the above offrs to form the Court, (b) a fit Offr as President for the purpose I have~~ ~~directed hereby~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder~~ BK (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lieut.-Colonel	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be appointed by CO	2 CARU
Lieutenant	to be appointed by CO	2 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)	B.T.Kerr (Signed personally. RP 105 fn 2.)	Colonel (Rank.)
Date	Commanding "C" Group, Cdn Rft Units.	Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

DLR

COPY

I CERTIFY THAT I HAVE THIS MORNING EXAMINED

B 6559 Gnr, Escoe S and in my opinion
number rank name

he is fit to undergo trial by Court Martial.

Field
(STATION)

DLR

29 May /44
(DATE)

SIGNED C.W.Stephens Capt
R.C.A.M.C. Asst. No. 1 C.A.H.U.

COPY

CASE OF

ESCOE S 1 CARU

B. 6559 Gnr

CHARACTER WITNESS

Lt H. Roberts, 1 CARU, having been duly sworn, states:

I am the SPO of 1 CARU. I interviewed the accused on 28 Mar 44. It was a casual intake interview, and my finding at that time was that the man seemed more fitted for duties of a batman than going on the guns. He seemed to be gun shy and his past record indicated that he had been employed on routine duties because of that reason.

STATEMENT BY THE ACCUSED

The accused, B.6559, Gnr ESCOE S, 1 CARU, having been duly sworn, states:

I joined up in Toronto, MD 2 in Aug 40. In Canada I was hut orderly and in the officer's mess. I have had very little training and on guns I have been gun shy. This was reported to the officer on the shoot. An interview was arranged with the psychiatrist and his finding was that I was best suited for other work. I arrived in this country Sep 43. By Sep 4 the troop that had come here that I was in, I was put on as a hut orderly, until the latter part of October. I then went on draft for advanced training. Then about 3 days after being there I was put on a gun crew. I injured my leg while on training and was excused duty until about the middle of December. On Dec 25, '43 there was a shoot put on and I was a member of the gun crew. I just can't describe how one feels at the time but I practically passed out after 4 rounds. Then about 2 Jan I was taken to Admin Wing and there I was placed in the officers mess. I worked there until about 18-19 Mar and was sent back to 1 CARU. I found out that was to take 2 weeks of gun drill. I never paid any attention and at no time did I refuse guns and before our training started I was being interviewed by infantry officers and they asked me what part of the infantry I wanted to join and I told them none at all, Sir. That is the day I went absent. I figured I wasn't getting a fair deal. I am married with no children. My wife and I come from Toronto and in civilian life I was a clother.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

E-1

DLR

COPY

Address for the Defense.

Mr. President and Gentlemen of the Court.

As defending officer for the accused I would like to transagress somewhat and go back to August 13th., 1940 at a time when the English speaking peoples were shocked almost beyond recovery by the tremendous successes of the German Army. A feeling of overwhelming excitement almost akin to fear engulfed the British race. Throughout the Dominions young men and women answered the call to the help the island which was being besieged by savage forces of colossal proportions. All patriotic Canadians rallied to the call for help by the mother country in her supreme test on the eve of the Battle of Britain. In the city of Toronto a young respectable married man, who was engaged in the clothing business walked into the recruiting office and joined the active forces the Canadian Army. He was keen and very anxious to fulfill his duty as a citizen of our great dominion. His name Samuel Escoe. Escoe proceed to Petawawa camp where he took his advanced training. Army life was different to anything he had previously known and at times as it is to many of us difficult to take. His training was never completed as he was detailed for such duties as hut orderly, waiter in an officers' mess and routing clerical work. He took part in shoots and to his dismay found that he was gun-shy. This is not a human failing gentlemen, it is a mental condition. This condition was brought to the attention of the Camp Psychiatrist. This medical officer recommended that Escoe be employed in duties of an administrative nature as it did not appear to this competent professional practisioner that Gnr. Escoe would be at his best performance as a gun number. In Sept. 43 Gnr. Escoe arrived in Westley, England to take his basic training. He was at this camp for seven weeks when he was transferred to #2 C.A.R.U. for advanced training. Again he was sent as a gun number on the S.P's in spite of the warnings of a competent psychiatrist. And again this mental condition reasserted itself. This is definitely not a question of courage gentlemen, it is purely and simply a question of mental make-up. This particular field of study has shown great developments in this war and has taken tremendous strides in the American Army. It should be treated with great deference by all officers in the Canadian army. In March 44 Escoe was transferred to #1 C.A.R.U. for further training. In March 44 Escoe was transferred to #1 C.A.R.U. for further training. He was interviewed by the S.P10 of #1 C.A.R.U. who saw fit to subscribe to the findings of the psychiatrist and recommended that the accused be employed as a batman or some similar duty as he was categorized as "Gun-Shy". On the second day of April 44 the accused was interviewed by an Infantry Board to ascertain what his reactions would be to transferring to this branch of the service. Escoe was not keen to leave Artillery at this stage of the game and gentlemen it is not illogical to assume that practically four years in a particular branch of the army does lend itself to an attachment and pride in one's unit. It is also my firm opinion that if a man is not considered suitable for artillery then it is safe to advance the theory that he will not be suitable for infantry. Soldiering in both branches have to be equally efficient and equally convinced of the superiority of their respective arms. If a soldier is gun-syy in artillery than it is not improbable that he will be weapon-shy in the Infantry.

It would appear in this particular case and it becomes increasingly clear as one studies the pertinent facts of the case that Escoe during his 48 months in the army has been thrown from pillar to post with no apparent attempt on the part of supervising authorities to find the right place for him. To Escoe the only escape and that we know now was only a temporary escape was to get away for awhile. Should we condemn a man unmercifully and say he is no good because he suffers a temporary mental collapse, because he feels that no one in the army is particularly concerned

with his hopes, his aspirations. I feel quite confident that Escoe given an opportunity in a job suitable to his mental and physical qualifications will acquit himself efficaciously and not only want to soldier but love to soldier. I appeal to the justice of this court. THE DEFENSE RESTS.

E-3

DLR

COPY

COPY/HAR

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ASSEMBLED AT BORDON, HANTS ON THE 26TH DAY OF APRIL 1944 FOR THE PURPOSE OF INVESTIGATING AND RECORDING THE ABSENCE, WITHOUT LEAVE, FROM HIS DUTY, AND DEFICIENCY, IF ANY, IN THE ARMS, AMMUNITION, EQUIPMENTS, INSTRUMENTS, REGIMENTAL NECESSARIES, OR CLOTHING OF NO. B.65589 GNR ESCOE, S., NO. 1 C.A.R.U.

DECLARATION

(1) The Court declare that B.65589 Gnr Escoe, S., of No. 1 Cdn Arty Rft Unit, absented himself without leave from his Unit, No. 1 C.A.R.U., at Bordon, Hants at 2359 hrs 2 Apr 44 and has been absent for a period of more than 21 clear days, and is still so absent on this date.

(2) The Court declare that his remaining kit has been checked against the normal issue as laid down in CARO(O) 1958 and CARO(O) 2111 and found it to be deficient in the amount of £4-1-0 Vocabulary Price and £3-0-9½ Unexpired Wear Value as per attached list marked Appendix "B".

Signed at Bordon, Hants, this 26th day of April 1944.

PRESIDENT:	Capt H.A. Olmstead	RCA	1 CARU
MEMBERS:	Lieut G.S. Woods	RCA	1 CARU
	Lieut S.M. Bahl	RCA	1 CARU

(Sgnd)

(William H. Fleury) Lt. Col.
A/Commanding Officer,
No. 1 C.A.R.U.

Certified True Copy

(SGD) L.E.Lick
(L.E.LICK) Major, R.C.A.
26 May 44 Administrative Officer,
No. 1 Cdn Arty Rft Unit.

Officer having custody of original documents.

APPENDIX "B"

DEFICIENCIES - REGIMENTAL KIT - B.65589 GNR ESCOE, S.

ARTICLE	NO.	VOCAB PRICE	UNEXP PRICE
Badges, Cap	1	- - 4½	- - 5½
Battle Dress Blouses, serge	1	1 3 6	1 17 7½
Battle Dress Trousers, serge	1	1 4 1½	- 18 3
Braces, prs	1	- 1 4	- 1 0
Brushes, boot, polishing	1	- 1 3	- - 11½
Brushes, cloth	1	- 2 2	- 1 7½
Brushes, shaving	1	- 1 8	- 1 2
Comb, hair	1	- - 2	- - 1½
Discs, identity & seal with cord	3	- - 1½	- - 1
Drawers, woollen, prs	1	- 5 4	- 4 0
Holdalls	1	- - 10	- - 7½
Housewives	1	- - 9	- - 7
Jacket, sweater	1	- 8 0	- 6 0
Knife, clasp & Lanyard	1	- 3 10	- 2 10½
Razors	1	- - 3	- - 2½
Shirts, woollen	1	- 5 4½	- 4 3
Shorts, cello	1	- 1 11	- 1 6½
TOTAL VOCAB PRICE		£4 1 0	
TOTAL UNEXP PRICE			£3 0 9½

DLR

(Sgnd)
B.7027 RQMS CONNER, H.M.

COPY

"C o p y"

B6559 Gnr ESCOE, S.

Interviewed 28 Mar 44 - H. Roberts, Lieut.

Gun shy. Been taken off guns and placed on Admin Wing duties as waiter in Officers Mess. Has done some clerical work of routine nature but cannot type. Always waiter or similar duties. Seems to be good, willing worker. Tries to please.

Recommend : Batman.

COPY

26 May 44

This is to certify that I have today received a copy of Charge Sheet and Summary of Evidence for my trial by Court Martial.

.....(Sgd)..Escow..S.
B.6559 Gnr. Escoe, S.

COPY

SUMMARY OF EVIDENCE in the case of No. B.6559 Gunner Samuel ESCOE, R.C.A., on strength of No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the prosecution

Lt. S. Whitaker, Administrative Office, "Q" Training Wing, No.1 Canadian Artillery Reinforcement Unit, having been duly sworn states:-

I hereby produce a certified true and exact copy of the Findings of a Court of Inquiry held at Bordon, Hants, on 26 Apr 44, and which states that B.6559 Gnr. Escoe, S. was absent without leave from 2359 hrs 2 Apr 44 and was deficient in his kit to the amount of £4-1-0 Vocabulary Price and £3-0-9½ Unexpired Wear Value, which is attached hereto and marked Appendix "A".

The accused declines to cross-examine this witness.

(SGD) S. Whitaker Lt
(S. Whitaker) Lt. R.C.A.

SECOND WITNESS for the prosecution

A.31012 Sjt. Jones, C.C., NCO IC Regimental Police, No.1 Canadian Artillery Reinforcement Unit, having been duly sworn states:-

As NCO IC Regimental Police, No.1 C.A.R.U., I was on duty in St Lucia Guard Room on 25 May 44. when the accused B.6559 Gnr. Escoe, S., whom I now recognize, surrendered himself to me at about 1040 hrs. He was sober and properly dressed. As he was an absentee I immediately placed him under close arrest.

The accused declines to cross-examine this witness.

(SGD) C.C.Jones
A.31012 Sjt. Jones, C.C.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

(SGD) J.A.Deacon Lt
(J.A. Deacon) Lt. R.C.A.
Officer detailed to take the Summary of Evidence.

Ex A
DLR

Bordon, Hants.
26 May 1944.

COPY

No B6559 Name ESCOE, S. Sqn, Battery, or Company | Corps RCA | Date of enlistment 13 Aug 40 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 40/PAM/130 (5488)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Mar 41	Gnr		AA Sec 15(1) AWL from 0730 hrs 20 Mar 41 to 0900 hrs 5 Apr 41 (Absent 16 Days 1 hr 30 mins)	L/Bdr Brown Documentary	168 hrs Detn Forf 7 d - p FRAI 149(1) b	8 Apr 41	Col A.V. TREMAINE	Forf 17 d - p FRAI 149(1)a
Field	25 Apr 41	Gnr		AA Sec 12(1) Desertion from 2230 hrs 16 Apr 41 to 1830 hrs 3 Sep 42	N/A	14 months Detention. Stoppage of pay to make good costs apprsh $14.04 Loss Kit-$46.89	29 Sep 42	D.C.M.	N/A

Sheet destroyed on completion of two yrs service 13 Aug 42. Last ENTRY 8 Mar 41. Cases of drunkenness - Nil

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30Oct 43	Gnr		AA Sec 15(1) AWL from 2200 hrs 30 Oct 43 to 1930 hrs 31 Oct 43. (Absent: 21 hrs 30 mins)	Bdr Nelanson Documentary	10 days C.B.	1 Nov 43	Lt-col Thompson	Forf 1 d - P FR&L 149(1)a
Field	12Dec 43	Gnr		AA Sec 15(1) AWL from 2359 hrs 12 Dec 43 to 0825 hrs 13 Dec 43. (Absent: 8 hrs 26 mins)	Bdr Reamsbottom Documentary	7 days FP Forf 7 D - F FR&I 149 (2)	13 Dec 43	Lt-col Thompson	Forf 1 D - P FR&I 149(1)a

Certified True Copy
27 MAY 44
OFFICER HAVING CUSTODY OF REGIMENTAL BOOKS

(SGD) L.E.Lick
(L.E.LICK)Major RCA
Administrative Officer,
No. 1 Cdn Arty Rft Unit

Ex C
DLR

ARMY FORM B.296 (War).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
3.6559	Gunner	ESCOE, Samuel	No. 1 C.A.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) 3 times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 8 Apr 41

Date of last entry in Field Conduct Sheet 13 Dec 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused attained [illegible] RGM

beginning on the RGM [illegible] RGM

4. The accused has been awaiting trial on the present charges for .....

days in civil custody and RGM 4 days in military custody, i.e. RGM

days in open arrest, RGM 4 days in close arrest; RGM

since RGM [illegible] RGM 26 MAY 44

5. The present age of the accused is 30 yrs 9 mons 5 days

6. The date of his attestation 13 Aug 40

enlistment into regular service RGM

7. The service which the accused is allowed to reckon is 3 yrs 9 mons 13 dys

8. The [illegible] RGM

†State the military decorations (if any) held by accused.

9. (If accused is a naval officer or RAF etc.) The accused has served [illegible] RGM

without [illegible], to the present date RGM

In the substantive rank of RGM .....

In the war substantive rank of RGM .....

In the acting rank of RGM .....

Ex 8

DLR

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(81116) W.4870/866 100,000 6/42 A. & E.W.116. Gp.498
(81116) W1.29058/1875 60,000 6/42 " " Forms/B.296(War)/2

5 S 84
Cpl. Escott. 1 B

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.25712 Gnl ESCOTT TG - 1 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs. p. 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 403 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)~~ beginning on (date) (2)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital. (3)
(3. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay & allowances of Three (3) days.

(Sgd) ..... Judge-Advocate, if any. 24 Aug/45 Date awarded. [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

I direct that the sentence ~~be carried into execution forthwith unless further orders~~ (1) Sept

~~(1. AA 57A. Delete if not used.)~~

(Sgd) [illegible] Lieut-Col

Date 1 Sept 45 Commanding E Syd B.C.V. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C.25712 Gnl ESCOTT TG	25 Aug 45	B Sperstead Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 14 SEP 1945 JAG BRANCH G.H.Q.

RECORDED AT CMHQ IN AG 100 ... 5-5-84

CPA66 (To form one of AFA31 40/P & B/1668 40/70)
4/38B

FIELD GENERAL COURT-MARTIAL

Convening Offr: Brig TV RUTHERFORD Comd "E" Gp CRU dated 21 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C.25712		Gnl	Terrance Granville	ESCOTT	1 Cdn Repat D

PROCEEDINGS REVIEWED
12 Sept 45
[illegible] Capt.
REVIEWING OFFICER, JAG BRANCH, G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 24 Jul 45 and 24 Aug/45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initiates and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2); accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that counsel elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. Prosecutor to accused: Do you elect to be tried by court-martial instead of being dealt with summarily by the CO?~~

~~Ans .....~~

A5. Prosecutor to accused: Do you object to ~~Lieut~~ [illegible] 4288126 ~~Capt~~ AH SINCLAIR as interpreter? Ans No

~~Interpreter sworn.~~ (1). Do you object to ~~Capt~~ AH SINCLAIR as shorthand writer? Ans No

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, SIR.(2)

(1. RP 118, 119. If accused "objects" a member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 72, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. HERMAN	HQ CRU
Member	Capt	J.B. TALBERT	4 Cdn Repat D
Member	Lt	E.E. JOHNSON	4 Cdn Repat D
~~Judge-Advocate~~			
Prosecutor	Capt	E. SPAFFORD	1 Cdn Repat D
Defending Offr	Lt	B.N. VEILLEUX	1 Cdn Repat D

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~no~~) plea. (3)

(3. If a special plea in grade for separate trial on one of more charges (RP 62(E), (GB), or as to the jurisdiction of the Court (RP 34, 35(A), (FB), or the bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All caps and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A65 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed) and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5(2)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3; *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*B*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Losing Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO, SIR .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*b*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1) NOT-ATT
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114*, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans NO - SIR
(1. *RP* 115. 2. *RP* 80(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOT-ATT
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*d*), *RP* 45, 120(*b*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans NO - SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and them to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*f*) (*g*) (*h*), and (*ii*) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex ..... respectively.(3)
(1. *AFB 255 or AFB 294.* 2. *MFM 6.* 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans NOT-ATT (2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-564, *Overseas RD* 309, 1323, *MML p* 80, 737-739. *As to sentence assigned for civil offences by the law of England see AA* 40(3), *MML p* 130. *When accused already under sentence of imprisonment or detention: see AA* 44(3), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused C-85712 Cpl. T.G. ESCOTT, No. 1 Canadian Repatriation Depot (Lorne Scots) a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
A.A. Sec 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

IN THAT HE

in the field, absented himself without leave from 0030 hrs 26 Feb 45 until approx 1945 hrs 26 Mar 45. (Total time absent 28 days 11 hours 15 minutes.)

In the Field
31 Jul 45.

(J.M.W. Gordon) Colonel,
Commanding Officer,
No. 1 Canadian Repatriation Depot,
(Lorne Scots)

"To be tried by Field General Court Martial"

In the Fd
31 Jul 45

(T J RUTHERFORD) Brig
Comd
"Z" Gp CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C 25712	Cpl		Terence Grenville	ESCOTT	1 Cdn Repat Dep

1

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Jul 45 endorsed by me, ~~or by an officer my staff or me~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior competent offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached thereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redmond, VD	H, CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO 4 Cdn Repat Dep	4 Cdn Repat Dep
Lieut	To be detailed by CO 4 Cdn Repat Dep	4 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 21 Jul 45

(Signature personally. RP 105 fn 2.) Brig (Rank.)

(T J RUTHERFORD)

Commanding "Z" Gp CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/28A (See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
KR (Can) para 507

I certify that I have this morning examined No. C 23713

Rank Cpl. Name Smith T.G. of #1 Cdn Repat Depot

and in my opinion he is fit to undergo trial by Court Martial

Station #1 Cdn Repat Depot

Date 24 Jul 45

Medical Officer
No. 1 Cdn. R.C.T.D.
(Lorne Scots)

Medical Officer's Certificate
Kr (Can) Para 557

I certify that I have this morning examined No. [illegible] Rank. Cpl.

Name. [illegible] of [illegible] (Unit) and in my opinion

his if ~~fit~~ / unfit to undergo trial by Court Martial.

Station. Aldershot Camp

Date. 24 Aug 1945

[illegible] Capt.
Medical Officer
No 1 Cdn Repat Depot
(Lorne Scots)

TRANSCRIPT RW: P.28126 SGT AN SINCLAIR

TRIAL OF 24 Jul 45

C.25712 Cpl ESCOTT T.G. 1 Cdn Repat Depot

PROSECUTION

THE PROSECUTOR PRESENTED:

(1) The Record of a Declaration of a Court of Inquiry, relating to the accused.

DOCUMENT MARKED EXHIBIT 1

(2) A Unit Pt II Order No. 35, 3/4 Apr 45, relating to the accused.

ORDER MARKED EXHIBIT 2

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(5)

THE PROSECUTION IS CLOSED

- DEFENCE -

FIRST WITNESS

The ACCUSED, having been duly sworn, states:

Sir, on the 28th day I was AWL I met this friend of mine, a Lcpl Pasque DeMascois. I had met him before when I first came from France in Feb 45. He asked me that day if I would come with him the following day; he said that due to the fact he had an argument with his uncle that he and his wife left his uncle's place, but that there were still some things that belonged to him there, including furniture, that he wanted to get. He said his aunit was quite willing to let him have it but his uncle wasn't, and would I go with him and give him a hand in getting it out before his uncle came back the following night. I said I was returning to Camp in 2 days and if I was going to help him it would have to be right away so he said we would do it at 8 o'clock that night. We drove up to this house, I had no reason to believe it wasn't his house------it was double daylight saving time, and the man that was driving the van remained with the van and he asked me to go to the bend in the road to make sure his uncle was not coming while he was around the place, which I did, and I stayed there 3/4 of an hour. Then, as I heard later, a civilian approached the man in charge of the van and asked him what he was doing there. In the meantime, around the area there were about four police radio cars which suddenly appeared. Something had been taken out of the house and put in the van and we were arrested. I was in remand 7 weeks awaiting trial and was then given a sentence of three months. I served eight weeks and six days and was then released. Demascois was sentenced to 6 mths.

A week ago I saw a Mrs O Brennan of 117A Randolph Ave, a sister of DeMascois's wife, and she said to me that DeMascois had written a letter to his wife in which he stated that he was sorry he had got me into any trouble in connection with this affair, but he was afraid to say anything in Court as he might have got a heavier sentence. I asked Mrs Brennan if she would ask her sister to get DeMascois to fill out a statement for me saying that I had nothing to do with it and she said she would get him to do it. I've been trying since to get this but the Wandsworth Prison authorities say he is not entitled to see any visitor only once a month

and that nothing can be done until August. I'm very anxious to get this letter from him to be attached to these proceedings before this trial is completed and I would ask the Court if they will have the proper Army authority get in touch with the Warden of Wandsworth Prison to arrange an interview for me under escort to see DeMascois, at the earliest possible date.
I have never had an offence in civil life or in the Army before this one, except a severe reprimand back in '43.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

DEFENDING OFFR
TO PRESIDENT:

I would now ask that this case be adjourned until this interview can be arranged, Sir.

PRESIDENT:

Adjournment granted.

24 AUG 45

THE SAME COURT REASSEMBLED

THE PROSECUTOR PRODUCED A MEDICAL CERTIFICATE

FIRST WITNESS FOR THE DEFENCE, (THE ACCUSED), CONTINUES:-

Sir, since I last gave evidence I went to Wandsworth Prison on 2 Aug 45 and there I saw DeMascois and my Def Offr and the Prosecutor here were present when my Def Offr asked him if he wished to make a statement. DeMascois wrote a statement out and signed it, it was witnessed, and here is the statement which I offer now in evidence.

STATEMENT MARKED EXHIBIT 3

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SECOND WITNESS

The DEF OFFR, having been duly sworn, states:

Sir, the accused and I and the Prosecutor went to the Wandsworth Prison and there contacted the authorities to see DeMascois, and I explained to DeMascois that we wanted a statement to clear the accused here and that he wouldn't incriminate himself in any way by making a statement. He then made the statement, Exhibit 3, and from what he said I believe he was telling the truth, and I saw no reason to believe the contrary.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THE DEFENCE IS CLOSED

STATEMENT BY THE PROSECUTOR ON THE FINDING

-NIL -

STATEMENT BY THE DEF OFFR ON THE FINDING

- NIL -

THE COURT IS CLOSED TO CONSIDER ITS FINDING

THE COURT IS REOPENED

PLEA IN MITIGATION

(BY DEF OFFR)

(NOTE ATT)

H/CdN Repat Depot,
C.A.O.,
24-7-45

E-3 (W)

PLEA IN MITIGATION

Gentlemen—

C-25712 Cpl Cscott T.J. who is standing trial here today joined the Canadian Army as a volunteer on the 6th Sept 1939. He arrived in the United Kingdom on the 20th Dec 1939. Since his departure from Canada he has served in England and has spent seven months with the Canadian Army on the Continent.

Today he stands trial for "Absenting himself without leave" for a period of twenty eight days, a crime to which he has pleaded guilty, being a soldier who knows the army code he realizes he must pay the penalty.

Gentlemen, I grant you this was a willful act, however I ask you are not all willful acts guided by the circumstances under which they were performed. What I wish to point out to you is the fact that the circumstances under which he "Absented himself without leave" are extenuating.

Cpl Cscott was married in the UK in 1941. The woman he married beguiled him into marriage. She professed that she was going to have a baby and that he was the father

Cpl Escott seeking for advice on the matter consulted his "Salvation Army Superman", who advised him to marry the woman. The child Gentleman was not born till eleven months after the marriage. Realizing that the child was not his own and that he had been tricked into the marriage, he asked his wife for a divorce which she refused as she claimed she wished to go to Canada. He then consulted the "Legal Aid Department" who advised him to get his wife back to Canada as she was now a Canadian citizen and being such could only be dealt with in Canada.

Cpl Escott then arranged for her to go to Canada and she with her mother. After she had been with him, made for a period of four months she suddenly left with the baby and "told no one where she was going. Since that date he has not heard of her. With this additional trouble on his mind he again consulted the "Legal Aid Department" and asked how he could obtain a divorce? They informed him that in order to do so he must not have any connection with her for a period of one year.

In Jan 45 while Cpl Escott was serving in Holland his name was called out for his 30 day leave in Canada. Not wishing to go home, for reasons above circumstances, he had it cancelled. This occurred twice till at last he was told he must return to Canada. He arrived in England in Feb 45 and tried every means to have the order cancelled but to no

await. This absenting himself without leave deemed
while he was on a 48 hr pass during which time
he was doing the afore mentioned. Cpl Escott considered
at the time that this was the only way to avoid
going home to Canada. Surely Gentlemen after
five and a half years away he would want to return
but not ~~with~~ certainly with the conditions quoting
him.

Gentlemen Cpl Escott's conduct about
is without trait of any crime and I ask you
to bear in mind what I have told you and
to consider his gratuities after a period of
five and a half years faithful services.
He has already availed 60 days for his
part in detention.

B. Vullins Capt

SUMMARY OF EVIDENCE

In the case of C-26712 Cpl. ESCOTT, T.G., No. 1 Wing, No. 1 Canadian Repatriation Depot (Lorne Scots), a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

I am Capt. J.G. MIMMS, Adjutant, "A" Wing, No. 1 Canadian Repatriation Depot (Lorne Scots). I present a certified true copy of Court of Inquiry dated 19 March, 1945, pertaining to C-26712 Cpl. ESCOTT, T.G. Appended hereto is exhibit "A". I also present copy of Part II Order No. 35 "A" dated 4 Apr 45 showing date the accused returned from A.W.L. Appended hereto is exhibit "B".

J.G. Mimms Capt

(J.G. MIMMS) Captain.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS

QUESTION TO THE ACCUSED

"Do you wish to make a statement or give any evidence on oath? You are not obliged to make a statement or give any evidence on oath, but if you do make a statement or give evidence on oath it will be taken down in writing and may be brought up in evidence."

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence consisting of (1) one page was taken by me in the presence and hearing of the accused and that Rules of Procedure 4(a), (d), (e), and (f) have been complied with.

(H.F. Pegler) Lieut (CAC)
Officer detailed to take
Summary of Evidence

EXA

In the Field
12 Jul 45

RECORD of the Declaration of a Court of Inquiry assembled at 1 Cdn Repat Depot, Morval Wing.

on the 19th day of March 19 46, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. C-25791 Cpl. ESCOTT, J.A.

DECLARATION

The Court declare that No. C-28712 Cpl. ESCOTT, J.A. attached to #1 Cdn Repat Depot (Lorne Scots) Morval Wing, Cove Hants,

illegally absented himself without leave from 1 Cdn Repat Depot Morval Wing

at 0830 hrs on the 26th day of Feb 1946.,

that he is still so absent, and that on the 19 Mar 1946 he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
AS PER ATTACHED LIST			

Lieut. J.G. Turnbull CIC — President
1 C Repat D (Lorne Scots)

Lieut. A.W. Wyse RCASC — Member
1 C Repat D (Lorne Scots)

Signed at Morval Wing Cove Hants. Lieut. J.A. Brown CIC — Member
1 C Repat D (Lorne Scots)

this 19th day of Mar 19 46

Signature of Commanding Officer Colonel Louis Keene) Comdg Officer, 1 Cdn Repat Depot (Lorne Scots)

This is exhibit "A" referred to by me in the case of C-28712 Cpl. Escott J.A. aged.....

H.F. Pegler Lieut.

detailed to take evidence.

Certified true copy Geo W Akehurst Maj or
Signature of Officer having custody of records

(G.W. Akehurst)
Admin Officer, 1 C Repat D.
(Lorne Scots)

3/608 MFB 375-AFB 835 40/PAS/392 (6610)

Ex 1
MY

KIT DEFICIENCIES
C85712 Cpl. Escott, J.A.

Item	Deficient	Full Voc. Rate	Less 25%
Anklets Web prs	1	.99	.74
Battle Dress Blouse	2	13.00	9.75
Boots Ankle Prs.	2	11.64	8.73
Beret Khaki	1	.61	.46
Drawers Cellular prs	1	.43	.32
Drawers Woollen prs	2	2.80	2.10
Gloves knitted drab	1	.47	.35
Jersey Pullover	1	1.79	1.34
Battle Dress Trousers	2	13.10	9.83
Vest Woollen	2	2.40	1.80
Braces prs	1	.32	.24
Brushes Clothes	1	.48	.36
Brushes shaving	1	.32	.24
Brushes shoe polishing	1	.28	.21
Comb hair	1	.04	.03
Holdall	1	.19	.14
Razor safety	1	.08	.05
Vest Cotton Gym	1	.41	.31
Towels hand	2	.68	.52
Total		$49.86	$37.36

J.P. Kairstead Capt QM
1 Can Repat Depot Morval Bldg.

Certified true copy. Geo W Akehurst Major
Officer having custody of
original record.
(G.W. Akehurst)
Admin Officer,
1 Can Repat Depot,
(Lorne Scots)

CERTIFIED TO BE A TRUE COPY FROM THE ORIGINAL DOCUMENT HELD IN MY CUSTODY.

F.T. Lloyd Capt

(F.T. Lloyd) Captain
Officer i/c Records,
No. 1 Cdn Repat Depot (Lorne Scots)

Last Order
No. 34 "A"
d/3 Apr 45

PART II ORDER
No. 1 Canadian Repatriation Depot
(Lorne Scots)
Issued by
Col. Louis Keene, ED
Officer Commanding

This Order
No. 35 "A"
d/4 Apr 45

PERMANENT ESTABLISHMENT

SECTION "A"

1. OFFICERS

N I L

EX 2 MY

2. OTHER RANKS

1. STRENGTH INCREASE

(a) TOS from 1 CITR wef 26 Mar 45(Auth: 4SE/Glover HL/1 d/22 Mar 45)
B.119949 PTE GLOVER, HL

2. ATTACHED

(a) ATT from PTE COPD wef 3 Apr 45(Auth: 53/Postings/1/6 d/30 Mar 45)
B.181360 PTE CRUICKSHANK, SG M.36999 PTE DUPILKA, J

(b) ATT from on command from RCNR wef 3 Apr 45(Auth: 44/Despatch/2/15(ADSs) d/27 Mar 45)

D.8107	SGT	HOLLAND	DJ	D.109306	SGT	JAMIESON	HC
L.64963	SGT	LANNIGAN	K	A.22614	SGT	KEITH	H
G.11017	SGT	MC KENZIE	W	B.85900	SGT	MORRISON	J
C.58078	CPL(A/SGT)	RICHIE	DF	K.79076	SGT	SHINDEL	CE

(c) CTBA from 1 COPD wef 4 Apr 45(Auth: as shown)
L.41836 PTE MC CLOCKLIN AA CM&T 465 d/17 Feb 45.
A.60192 PTE POWELL JR AT 490 d/17 Feb 45.

(d) CTBA from 1 CGHU wef 3 Apr 45(Auth: 406/Pay Clerks/1 (PTA) d/1 Mar 45)
H.38978 A/CPL WHITEHEAD, NE

(e) CTBA from 1 CGHU wef 4 Apr 45(Auth: 406/Aux/1(PTA) d/19 Feb 45)
B.142908 PTE BROAD, W

2S ATTACHED (CANCL)

(a) DO #24 "A" para 2(e) d/30 Mar 45 insofar as it refers to B.42177 PTE MORSON, G is hereby "CANCELLED"

3. LEAVE OF ABSENCE

(a) Granted 9 days PL with All'ce in lieu of rations from 4 Apr 45 to 13 Apr 45.

H.18835	PTE	CARSON	AE	D.86249	PTE	DAFTER	WF
B.110857	PTE	CARMICHAEL	DF	L.101984	CPL	DALLYN	HL
B.76083	L/CPL	GRENFELL	J	C.4754	PTE	LARSON	RN
H.196258	PTE	MITCHELL	IH	B.81907	PTE	MAC PHERSON	DS
L.10746	PTE	MAC DOUGALL	E	M.108581	PTE	PROCHE	SF
K.53809	PTE	PRING	JT	B.88006	CPL	REID	LR

4. STRENGTH DECREASE

(a) The under-mentioned posted from P.R. to Transit Strength wef 3 Apr 45(Auth: CFA 2553 d/3 Apr 45)
K.37441 SGT MARSHALL, CF

This is exhibit "B" referred to by me in the case of C-28712 Cpl. Escott T.G.
sgd.... [illegible]
E.F. Taylor - Lieut.
CO/Officer detailed to take evidence.

Last Order
No. 34 "A"
d/3 Apr 45

PART II ORDER
No. 1 Canadian Repatriation Depot
(Aorne Scots)

This Order
No. 35 "A"
d/4 Apr 45

TRANSIT TRANSIT TRANSIT

SECTION "F"

1. OFFICERS

1. ATTACHED

(a) CTBA to CMH wef 3 Apr 45(Auth: MS 1815 d/3 Apr 45)
Brig. James Crossley STEWART (CBE. DSO)

(b) CTBA to 19 CGH wef 3 Apr 45.
Lt. Col. Harold John SPOONER.

2. COURSES

(a) ATT to National Hospital London on Course wef 3 Apr 45(Auth: 2/36A #0/20/45)
Capt Irvin SCHIFFER.

3. COMMAND

(a) On Command to Cdn. Sec. 1 Kch. AFH wef from 4 Apr to 6 Apr 45(Auth: MS 1815 d/3 Apr 45)
Brig James Crossley STEWART (CBE. DSO)

4. LEAVE OF ABSENCE

(a) Granted 4 days PL with All'ce in lieu of rations from 29 Mar 45 to 2 Apr 45.
Lieut R.V. SAWYER.

5. STRENGTH DECREASE

(a) SOS Cdn. Army Overseas and No. 1 Cdn. Repat. Dep. wef 4 Apr 45(Auth: MS 1966 d/29Mar 45
The under-named having completed six(6) months continuous service and being otherwise eligible is entitled to receive$100.00 clothing all'ce on disch from the Cdn. Army wef 4 Apr 45(Auth: OHQ 5194)
Capt Dennis William GUEST.

2. OTHER RANKS

5. STRENGTH INCREASE

(a) TOS from Units shown wef 4 Apr 45(Auth: as shown)
R.106673 PTE PORTIER PA 9 CITH Med List.
R.69547 CPL PAGAN RL 1 CACHU For Placement.

(b) TOS from CMH (Signals) wef 4 Apr 45(Auth: Med List)
C.84162 SGN CASSIDY, JF WRLESS OP" [illegible] SGN CAMBRIDGE, WA Sech94 Op "C"

(c) TOS from 1 Cdn. School of Arty. wef 4 Apr 45 (Auth: Med List)
F.32080 GNR HUDY JR Equipt Repr "C"
R.144047 GNR LYMAN FC

(d) TOS from Desertion on being apprehended by Civil Authorities wef 26 Mar 45.
C.93718 CPL ESCOTT, HS

5A. STRENGTH INCREASE(AMD)

(a) DO #19"A" para 11 (g) d/13 Mar 45 insofar as it refers to C.80098 CPL PURTEL, MG is amd by Unit of TOS to READ: "1 CHU"

5B. STRENGTH INCREASE (CANCL)
(a) DO #29 "A" para 11 (e) d/27 Mar 45 insofar as it refers to R.81544 PTE FRECHETTE, RJ and F.80498 CPL HARVIE, F is hereby "CANCELLED"

P T O

Last Order
No. 34 "A"
d/3 Apr 45

PART II ORDER
No. 1 Canadian Repatriation Depot
(Lorne Scots)

This Order
No. 35 "A"
d/4 Apr 45

6. LEAVE OF ABSENCE

(a) Granted 7 days PL with All'ce in lieu of rations from 3 Apr 45 to 10 Apr 45.

K.1349	PTE	BARZ	HE	A.118198	PTE	CONWAY	JJ
F.56347	PTE	CLARKE	HC	B.50648	PTE	COOPER	WC
L.41360	PTE	CHAMPAGNE	AO	F.78168	PTE	FORRESTALL	GO
C.11800	PTE	GAUDETTE	E	D.118724	PTE	KIRTON	JA
D.114706	CPL	LACHANCE	R	D.128831	PTE	MOORE	V
G.4815	PTE	MC LAUGHLIN	PHS	H.36406	PTE	MORRISON	CA
D.131179	PTE	MILLETT	JD	G.28041	CPL	MARAFFEY	HG
F.29936	PTE	MELANSON	F	G.17793	PTE	MAZEROLLE	HJ
K.59041	PTE	PRESCOTT	EG	L.164178	PTE	SPENCER	TH
D.91098	PTE	SAMUELS	W	E.14864	PTE	SAMSEVILLE	H
G.45170	PTE	THIBAUDEAU	GR	A.47617	CPL	ROADHOUSE	JR
M.3492	GNR	ROSS	RH	K.42458	PTE	WILLIAMS	WG
D.6856	BDR	WHITE	L	D.71209	GNR	WILLIAMS	R
F.38381	SGT	YOUNGHUSBAND	GD	B.290156	SPR	MONTGOMERY	CA
B.51618	CPL	TAYLOR	WG				

7. ABSENT WITHOUT LEAVE

(a) H.77708 TPR ADAMSON JD Returned from AWL 1430 hrs 2 Apr 45.
C.28712 CPL ESCOTT TG Returned from AWL 1945 hrs 26 Mar 45.

7A ABSENT WITHOUT LEAVE (AWL)

(a) DO# 34 "A" para 16 (a)(b) and (c) d/30 Mar 45 insofar as it refers to C.28712 CPL ESCOTT, JG is and by None to READ: "C.28712 CPL ESCOTT, TG"

8. PUNISHMENTS

(a) A.22810 PTE BAUCHNER, RD

On 4 Apr 45 Awarded a forf of 4 days pay for an offence under AA Sec. 15 (I) (AWL) was AWL from 1200 hrs 2 Apr 45 to 1550 hrs 3 Apr 45(Time Absent 1 day 3 hrs 45 min)
FORF 2 days pay FRAI 149 (I) (a)
FORF 4 days pay FRAI 149 (2)
TOTAL FORF 6 days pay.

(b) H.104609 CPL CISSELL, JG

On 4 Apr 45 Awarded a Severe Reprimand for and offence under AA Sec 15 (I) (AWL) was AWL, from 1200 hrs 2 Apr 45 to 1740 hrs 3 Apr 45.(Time Absent 1 day 5 hrs 40min)
FORF 2 days pay.FRAI 149 (I) (a)
TOTAL FORF 2 days pay.

(c) B.118035 PTE LAUZON, J

On 4 Apr 45 Awarded a forf of 2 days pay for an offence under AA Sec. 15 (I) (AWL) was AWL from 1200 hrs 2 Apr 45 to 1150 hrs 3 Apr 45 (Time Absent 23 hrs 50 min)
FORF 1 days pay FRAI 149 (I) (a)
FORF 2 days pay FRAI 149 (2)
TOTAL FORF 3 days pay.

(d) F.38878 PTE BYRNE, E

On 4 Apr 45 Awarded a forf of 6 days pay for an offence under AA Sec 15 (I) (AWL) was AWL from 1200 hrs 2 Apr 45 to 1420 hrs 3 Apr 45. (Time Absent 1 day 2 hrs 20 min)
FORF 2 days pay FRAI 149 (I) (a)
FORF 6 days pay FRAI 149 (2)
TOTAL FORF 8 days pay.

p t o

Last Order

No. 34 "A"

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PART II ORDER
No. 1 Canadian Repatriation Depot
(Lorne Scots)

This Order

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d/4 Apr 45

8. PUNISHMENTS (CONT'D)

(c) F.32618 PTE WILLIAMS, CD

On 4 Apr 45 awarded a forf of 4 days pay for an offence under AA Sec. 15 (1) (WO/S was AWL from 1200 hrs 2 Apr 45 to 1420 hrs 3 Apr 45. (Time Absent 1 day 2 hrs 20 min)
FORF 2 days pay FR&I 149 (1) (a)
FORF 4 days pay FR&I 149 (2)
TOTAL FORF 6 days pay.

9. REMISSIONS OF SENTENCE

(a) The under-named was sentenced to 1 year detention by FGCM on 4 Mar 44. This sentence was suspended on 4 Jun 44 and placed in execution to run consecutively with a sentence of 150 days detention awarded 24 Oct 44. On 10 Mar 45 these sentences were reviewed and it was directed that the remainder (i.e. the sentences) be remitted, wef 5 Apr 45.

No. of days Remission 119 days
M.60478 PTE BELL, D

(b) The under-named was sentenced to 9 months detention by FGCM on 17 Nov 44. This sentence was reviewed by the D.G, CMHQ 23 Mar 45 and it was directed that the remainder (i.e. the sentence) be remitted, wef 5 Apr 45.

No. of days remission 135 days
B.74170 PTE LAING, G

10. DEATH OF KIN

(a) Change of Address of N of K to Mrs. Sheila Frances DONALD (Wife) C/O A.P. HUDSON R.R. No. 1, Nelson, B.C. Canada.
K.8041 SWE (WO1) DONALD, ANH

11. STRENGTH DECREASE

(a) SOS Can. Army O/S and No. 1 Cdn. Repat. Dep. wef 4 Apr 45(with: 19/Hogarth AW/1 CMHQ d/13 Dec 44) (on Appointment as Asst. Serv. Supvr.)
H.11110 SM(WO1) HOGARTH, JW

12. STRENGTH DECREASE (ADD)

TO "#26 "A" para 20 (b) d/22 Mar 45 insofar as it refers to [illegible] CPL SCOTT, JC and by Name to READ: "C.25712 CPL SCOTT, TT"

for (Lorne HENDEL) Colonel.
Officer Commanding,
No. 1 Cdn. Repat. Depot (Lorne Scots)

Last Order
No. 34 "A"
d/3 Apr 45

PART II ORDER
No. 1 Canadian Repatriation Depot
(Lorne Scots)

This Order
No. 35 "A"
d/4 Apr 45

8. PUNISHMENTS (CONT'D)

(a) F.32618 PTE WILLIAMS, CD — On 4 Apr 45 Awarded a forf of 4 days pay for an offence under AA Sec. 15 (I) (WOAS was AWL from 1200 hrs 2 Apr 45 to 1420 hrs 3 Apr 45. (Time Absent 1 day 2 hrs 20 min)
FORF 2 days pay FRAI 149 (I) (a)
FORF 4 days pay FRAI 149 (2)
TOTAL FORF 6 days pay.

9. REMISSIONS OF SENTENCE

(a) The under-named was sentenced to 1 year detention by FGCM on 4 Mar 44. This sentence was suspended on 4 Jun 44 and placed in execution to run consecutively with a sentence of 180 days detention awarded 24 Oct 44. On 10 Mar 45 these sentences were reviewed and it was directed that the remainder (i.e. the sentences) be remitted, wef 5 Apr 45.

No. of days Remission 119 days
H.60472 PTE HILL, D

(b) The under-named was sentenced to 9 months detention by FGCM on 17 Nov 44. This sentence was reviewed by the D/D, CMHQ 23 Mar 45 and it was directed that the remainder (i.e. the sentence) be remitted, wef 5 Apr 45.

No. of days remission 136 days
H.74170 PTE LAING, G

10. NEXT OF KIN

(a) Change of Address of N of K to Mrs. Sheila Frances DONALD (Wife) C/O ...F. HUDSON R.R. No. 1, Nelson, B.C. Canada.
H.9041 QMS (WO11) DONALD, ANH

11. STRENGTH DECREASE

(a) SCS Cdn. Army C/S and No. 1 Cdn. Repat. Dep. wef 4 Apr 45 with: 19/Hogarth JW/1 CMHQ d/13 Dec 44) (On Appointment as Adl. Serv. Sprvr.)
H.11110 SM(WOI) HOGARTH, JW

11A STRENGTH DECREASE (AMD)

(a) DO "#26 "A" para 20 (b) d/22 Mar 45 insofar as it refers to C.25718 CPL MACOTT, JC is and by Name to READ: "C.25718 CPL MACOVIL, JC"

Capt.
for (Louis KEEFE) Colonel.
Officer Commanding.
No. 1 Cdn. Repat. Dep. (Lorne Scots)

H. M. PRISON
-3 AUG 1945
WANDSWORTH

WANDSWORTH PRISON
2-AUG-45 (1130 hrs)

TO WHOM IT MAY CONCERN —

I - PASQUALE ~~BDE~~ MASCIO wish to state here that I am responsible for getting C-25712 - CPL ESCOTT - T.G. into any trouble with the Civilian authorities here.

I asked ESCOTT (knowing him through my family) if he would give me a hand getting some of my things from my uncle's house in Edgware. I told him that we (my uncle & I) had had a row and he (my uncle) was holding some of my things.

I told him all he had to do was to wait for my uncle. This is all ESCOTT did do until the police arrived on the scene. Then he knew something was wrong. I can only say I am sorry I did it and I hope he can get some help from this statement.

This I swear to be true.

Pasquale M Mascio

WITNESSED —

Whitehead Capt. 1 CDN. REPAT DEPOT.
B.M. Leckman Capt. 1 CDN Repat. Depot.

EX 3

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.25712	Cpl	T. G. Escott	C Prov C

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and attached to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or entry in the conduct sheets, preference being given to the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

Instruction.—If the charge is in respect of the current sentence the particulars must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A.A. Sec 15(1)	times	one	time
For		times		times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused.

2. [redacted]

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for Nil beginning on the -- day of --

4. The accused has been in confinement, awaiting trial on the present charges, for Nil. days in civil custody, and 49 days in military custody, making a total of 49 days, of which Nil. days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 27

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 6 Sep 39

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of or entitled to (*state any military decoration or reward*)). C.V.S.M. & Clasp

11. [redacted]

12. [redacted]

(75000) W1.54495/1750 25,000 12/43 A.& E.W.Ltd. Gp.686
(20000) W1.32004/1489 12,000 2/44 " "

E T S

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C.25712 Rank Cpl Name Escott, T. G. of 1 C Repat Dep Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
Civil Court	26 Mar 45	Burglary	Sentenced to serve three months hard labour in HM Prison Brixton for Burglary and a total forf of pay of 127 days	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of ~~June~~ August, 1945.

J. G. Mimms Capt.,
(J. G. Mimms)

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of Spr	3 years,	
In the rank of A/Sgt	1 years	18 - 1 - 40.
In the rank of reverts to cpl Confirmed Cpl 14 - 2 - 41	years,	6 - 1 - 41.

(Insert here, except in the case of a trial by field general court martial the information under the paragraph numbered and lettered accordingly.) any matter in any of the above paragraphs to be struck through, except that

SUPPLEMENTARY

No. C.25712 Name ESCOTT, T. G. Sqn, Battery, or Company Cdn Prov Corps Date of enlistment 6-9-39 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/P&S/136 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-3-45	Cpl		Sentenced to serve three months hard labour in HM Prison Brixton for Burglary and a total forf of pay of 127 days.					

Certified to be a true copy of the original documents in my custody

J. G. Mimms Capt

(J. G. Mimms) Capt., Adj., 1 Cdn Repat Dep
Officer having custody of the original documents.

HQ CRU

24 Jul 45

Brig TJ RUTHERFORD,
Comd "E" Gp CRU

F.G.C.M. - 24 Jul 45
C.E5/18 Cpl ESCOTT TG - 1 Cdn Repat Depot

Herewith two copies of the evidence given by the accused at his trial held today on the charge of 28 days AWL.

2. The accused has been in the Army since Sep 39. There is no previous offence on his MFM 6 although he said he once received a severe reprimand. He has been a Cpl in the Cdn Pro Corps since 6 Jan 41, is of good appearance and made a good impression upon the Court.

3. He is very anxious before these proceedings are completed to get a letter from DeMascois to the effect that the accused did not know that the furniture being moved was not the property of DeMascois.

4. The writer thought it fair that his request be granted and that the proper Army ~~Authority~~ should approach the Warden of Wandsworth Prison to arrange an interview at that Prison between the accused and DeMascois.

5. If you agree I would be grateful if you would initiate the necessary action.

(D.L. REDMAN) Lt-col
President of the Court

DLR/AHS

E
N
C

LIST OF WITNESSES

IN THE PROSECUTION — Capt J. G. Mimms, CIC, No. 1 Cdn Repat Dep(A Wing)

IN THE DEFENCE — Nil

LIST OF EXHIBITS

FOR THE PROSECUTION — "A" Certified true copy of a Court of Inquiry dated 19 March, 1945.

"B" Part II Order No. 35 "A" dated 4 April, 1945.

FOR THE DEFENCE — Nil

Z-125 (case #2)

PTE ESSELMONT J.J.

See B-376 for 1st case

Z-125

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this ninth day of March, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * and that it is not practicable to delay the trial for reference to a superior qualified officer;

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* I am unable to appoint

*(Three Officers to form the Court.)

*(A Field Officer as President.)

for the following reasons, namely:—

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

55

President.

Rank.	Name.	Regiment.
Major	W.T. Grant	Stor Regt

Members.

Rank.	Name.	Regiment.
Capt.	F.S. Robertson	P.P.C.L.I.
Lieut.	J.L. Madore	Stor Regt.
Capt.	J.P. Brophy	Can List (Prov'L)
(w) Lieut.	R.D. Graham	P.P.C.L.I.

Instructions.

Sure ... the President must be named. The members and waiting members of court may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be inserted on the margin.

*Signed

Commanding 2 Can Inf Bde.

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K-52158 Private James John ESSELMONT The Seaforth Highlanders of Canada.	1st Charge A.A. Sec (15) (1) ABSENTING HIMSELF WITHOUT LEAVE.	Guilty	Guilty	Confirmed. W.
	2nd Charge A.A. Sec 24 (2) LOSING BY NEGLECT HIS CLOTHING AND SERVICE MATERIAL NECESSARIES.	Guilty	Guilty	
		W.	To undergo 6 months detention.	
			To undergo stoppages in the sum of $11-8-5½ to make good cost of return and loss of equipment.	(G. Yokes) Brig Comd, 2 Can Inf Bde
			W.T. Gromb Jr. Major 12/3/43.	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) —

(Signed) (G. Yokes) Brig (Signed) W.T. Gromb Jr. Major

Commanding 2 Can Inf Bde

Confirming Officer (d) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and on serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twelfth day of March, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The Interpreter~~
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 12 day of March 1942.

W.T. Gromb Jr. Major
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (f) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

W.T.C.
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer other has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be not committed to prison or detention barracks until further orders. W.

Signed this 12th day of March 19 43.

(G. Yokes) Brig
Comd, 2 Can Inf Bde
Confirming Officer.

Promulgated and extracts taken in the case of 15-22 Pte James John Esselmont of the Seaforth Highlanders of Canada.

(a) (Dated) 13 Mar 43 (Signed) Brut Information Officer

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(20154) W.o.A.(Q.M.G.) 25,000 12/42 A.& E. P. Ltd. Gp.648
(21756) W.o.(Q.M.G.) 10,000 7/42

W.B. Jr. W.B. Grant Jr. Major

B2

CHARGE SHEET

The accused, K52156 Pte. James John Macdonald, The Seaforth Highlanders of Canada, a soldier in the Canadian Army, Overseas, is charged with, while On Active Service,

ABSENTING HIMSELF WITHOUT LEAVE,

1st. Charge Sec. 15(2) Army Act.

in that he, in the field, at 2359 hrs 31 Dec 42, absented himself without leave and was absent until surrendering himself to the Civil Police, in London, at 2230 hrs 28 Feb 43, thereby incurring cost of apprehension and return in the sum of £0-7-10.

Absent 58 days 22 hrs 31 mins.

2nd. Charge Sec. 24(2) Army Act.

LOSING BY NEGLECT HIS CLOTHING AND REGIMENTAL NECESSARIES,

In that he, in the field, on 9 Mar 43 was deficient the following articles of clothing and Regimental necessaries,

	100%	75%
Badges, cap	£0- 1- 3	£0- -10½
Balmoral	4- 2	3- 1½
Brushes, tooth	4½	3½
Drawers, woolen	10- 6	7-10½
Dressing, field	1- 1	9
Holdall,	2	2
Sweater,	5- 7	4- 2
Shirts, flannel	4- 8	3- 6
Towels, hand	1½	1
Vests, P.T.	3- 0	2- 3
Bags, ration	3½	2½
Helmets, steel	10- 6½	7-11½
Slings, rifle	1- 4	1
Straps, web supporting	2- 2	1- 7
Bottles, oil	1	9
Pullthrough	6	4½
Rifle	7- 8- 0	5-11- 0
Tools, entrenching	9- 3	7- 1
Blankets, (4)	5- 5- 6	3- 5- 2½
Sheets, ground	10- 2	7-10½
Coveralls,	12- 6	9- 4½
	£14-14-2½	£11- 0- 7½

B.M. Hoffmeister Lt.-Col.
O.C. The Seaforth Highlanders of Canada.

In the Field 9 Mar 43

To be tried by F.G.C.M.

In the Field
9 Mar, 43

for Vorsal Brig
Comd, 2 Can Inf Bde.

12-3-43 W.S. Crombie Capt

MEDICAL OFFICER'S CERTIFICATE W.T.B. fs.

I certify that No K52135, Pte. Beaumont N.J. Seaforth of Regiment, is fit to undergo trial by Court-Martial.

*Insert "fit" or "unfit."

W.T. MacDonald. W.T. Macdonald Signature of the Medical Officer
MO The Seaforth Highlanders of Canada.

12-3-43 W.S. Macdonald Capt W.I.C. fit

MEDICAL OFFICER'S CERTIFICATE

I certify that No K52105, Pte. Baslemont J.J. Seaforth of C Regiment, is fit to undergo trial by Court-Martial.

W.S. MacDonald, Wx Macdonald Capt.
MO The Seaforth [illegible] Canada.
Signature of the Medical Officer.

*Insert "fit" or "unfit."

W.T. Gromb Major

W.T.G.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at The Field

on the 12 day of March 19 43 by order of

Brigadier C. Vokes Commanding 2 Can Inf Bde

dated the 9th day of March 19 43

President.

Major W.T. Gromb, Edmonton Regiment

Members.

Capt. R.F.S. Robertson, P.P.C.L.I.

Lieut. J.K. Madore, Edmonton Regiment

~~Lieut. Capt. J.P. Brophy, General List, attd P.P.C.L.I.~~

W.T.G.

W.T.G.

~~Lieut. Adjutant~~

Trial of* K52158 Pte James John Cuthbert, Seaforth of C.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

~~The Court satisfy themselves that~~ is not available to serve owing to

~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut. A.W. Mercer, Seaforth of C.

~~Counsel~~ defending officer† Capt. J.K. Malkin, Seaforth of C.

~~The prosecutor has legal qualifications.~~

At 1020 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

MD. Form R. 271
1200—8-41 O.E.(S)
H.Q. 1772-23-124

W.T. Brown Jr. Major.

W.T.B.

B

W.T.B.

The President, members and ~~judge advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Capt. J. P. Brophy, General List, att. P.P.C.L.I.

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Guilty

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

W.T.B.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to both charges the provisions of Rule of Procedure 35 (B) are here complied with. W.T.B.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

W. T. Cromb Jr. Major

W. T. C

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge ~~to which he has pleaded "Guilty"~~ read to ~~him again.~~]

W. T. C

The accused K52158 Pte. James John Beaumont, Seaforth of C
is found guilty of
both charges

*The summary ~~(or abstract)~~ of evidence is read, marked E, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[See Attached]
W. T. C

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

No

Evidence as to character.

W.T. Grant Jr Major. ~~Exhibit~~ E

Summary of Evidence in the case of K52158, Pte James John Esselmont, The Seaforth Highlanders of Canada.

By Direction of the Commanding Officer the evidence is taken on oath.

1st Witness. – A/Capt D.H. Strain, The Seaforth Highlanders of Canada, having been duly sworn states: I am adjutant of the Seaforth Highlanders of Canada, and have been so since 4th December 1942, as such I am in charge of the Regimental Books. I produce AFB 115 certified true copy of the Declaration of a Court of Enquiry stating that K52158, Pte Esselmont, J.J., illegally absented himself without leave at 2359 hrs 31 December 1942 and that he was still so absent 21 January 1943. I produce AFO 1617 stating that K52158 Pte Esselmont, J.J., surrendered himself to the Civil Police in London at 2230 hrs 28 Feb 1943.

I also produce expense vouchers in the amount of 7 shillings and 10 pence relating to the accused.

Pte Esselmont J.J., was a member of "B" Company until 21 Jan 1943 when he was S.O.S as a deserter. From that date until he was returned in escort he did not report back to this unit.

D.H. Strain Capt.

The accused declined to cross examine the witness.

2nd Witness K52881 CQMS Bell, L.D., - having been duly sworn states:

I was C.Q.M.S. of "B" Coy. from 28 Aug 42 until the Coy. was re-organized 17 Feb '43. When K52158 Pte Esselmont J.J., was reported absent all his kit which he had left behind was brought to the Q.M. stores of "B" Coy. where I checked it on January 4th 1943, and found it to be deficient a number of articles. I have re-checked to-day the kit of Pte Esselmont, J.J., against my records and after crediting him with all articles returned to date I find that he is still deficient in the following articles:

	180%	75%
Badges, cap	1:3	:10½
Balmoral	4:2	:3:1½
Brushes, tooth	:4½	:3½
Drawers, woolen	10:6	7:10½
Dressings, field	1:1	:9
Holdall	:9	:6½
Sweater	5:7	4:2
Shirts flannel	4:8	:3:6
Towels hand	:11½	:9
Vests P.T.	3:0	:2:3
Bags ration	:3½	:2½
Helmets steel	10:6½	:7:11½
Slings rifle	1:4	1:—
Straps web supporting	2:2	1:7
Bottles oil	1:0	:9
Pullthrough	:6	:4½
Rifle	7:8:0	5:11:0
Tools entrenching	9:3	7:1
Blankets (4)	3:5:6	2:9:2½
Sheet ground	10:9	7:11½

	100%	75%
Coveralls	12:6	9:4½
Total:	14:14:2	11:0:7½

The accused declines to cross examine the witness.

P. Zull Capt.

3rd Witness: K52203 Sgt McKee, G.K., having been duly sworn states:

I was Platoon Sergeant of No. 13 Platoon "B" Coy, Seaforth Highlanders of Canada from 13 Oct 1942 until 17 Feb 43. On 1 Jan 43 Pte Ereleuont, J.J., was reported to me to be absent from 2359 hours 31 Dec 42. I reported him as A.W.L. on my morning parade state of 1 Jan 43. He failed to appear on any parade of my platoon up until time of the re-organization of the Battalion on the 17 Feb 43.

The accused declines to cross examine the witness.

G.K. McKee Sgt.

The accused was cautioned as follows:

Do you wish to make any statement or give any evidence on oath? You are not obliged to ~~have~~ say anything or give any evidence unless you wish to do so, but whatever you say or whatever evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement and does not wish to call any witnesses for the defence.

I certify that the appended exhibits A, B, and C were produced, and were read by the accused.

I certify that the foregoing summary of evidence consisting of four pages, was taken down by me in the presence of the accused and that the Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

J C Peter Scott
Lieut
The Seaforth Highlanders of Canada

In the Field
9 Mar 1943

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the field on the 22nd day of January 19 43, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada,

DECLARATION.

The Court declare that K52158 Pte. Esselmont, J.J. The Seaforth Highlanders of Canada, illegally absented himself without leave at 2359 hrs 31 Dec 42, in the field, that he is still so absent and that on the 21 Jan 43 was deficient and still is deficient the following articles. (attached app A)

W.C. Crawford
Major

W.C.C.

Names of President and Members

President: Capt. S.W. Thomson
Member: Capt. B.G. Parker
Member: Lieut. C.E. Wood

Signature of Commanding Officer B.M. Hoffmeister

CERTIFIED TRUE COPY

S.W. Thomson Capt.

Signature of Officer having custody of the Original Record.

(1568A5) Wt.59462/1365 120,000 1/41 A.& E.W.Ltd. Op.692 Forms/B115/37.

re: K52158 Pte. Esselmont, J.J. --- Deficiencies of Kit.

Appendix A to declaration of Court of Inquiry

	100%			75%		
	£					
Badges, cap.		1.	3			
shoulder		1.	0			
Battle dress blouse	1.	7.	8			
trousers	1.	7.	11			
Balmoral		4.	2			
Boots, ankle	1.	1.	6			
Braces		1.	3½			
Brushes, boot			9			
Blacking			8			
Cloth		1.	1			
Shaving		1.	4			
Tooth			4½			
Greatcoat	3.	17.	0½			
Comb, hair			2			
Drawers, woolen		10.	6			
Field dressing		1.	1			
Gloves, woolen		2.	7½			
Holdall,			9			
Sweater		5.	7			
Shirts flannel		4.	8			
Socks		3.	4			
Towels		1.	11			
Vests, P.T.		3.	0			
Div Patches			2			
Bags ration			11½			
Helmets, steel		10.	6½			
Slings rifle		1.	4			
Straps web supporting		2.	2			
Bottles, oil		1.	0			
Pullthrough			6			
Rifle	7.	8.	0			
Tools entrenching		9.	3			
Blankets (4)	3.	5.	6			
Sheets ground		10.	9			
Overalls,		12.	6			
	£24.	8.	11	£	18.	6. 9

I CERTIFY that the man whose personal description is given below surrendered himself to Pc 31[illegible] Coleman at 10.30 pm at (hour) Lindley Rd on the 28th day of Feb. 1943, as being No. 5521158 (Rank and Name) Pte James John ESSELMONT a deserter (or absentee without leave) from Seaforth Highlanders Canadian Army and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22 Height 5' 10½" ~~over~~ ~~inches~~

Complexion fresh Hair Fair

Eyes Grey.

Marks

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	6-9-39. Aberdeen
Probable Date of Desertion or beginning of absence, and from what place	28th December 1942. Eastbourne.

[illegible] 165[illegible]

Signature of Officer of Police in charge of [illegible] Station.

METROPOLITAN POLICE WANDSWORTH COMMON WOMEN DIVISION

1-3-43 Signature.

Army Form O 1617
R.A.F. Form 1617.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† NOTE.—Special instructions apply in war for the disposal of absentees and deserters from the Army, who surrender to the civil police; *e.g.*, such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 499/1940).

(20979) 201,484/45 15,000 5/45 A.A.E.W.Ltd. Gp.682 Forms/O.1617/45.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. K-52158 Rank Pte. Name Esselmont, J.J. Unit Seaforth Hgt

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount
March	Escorts return fare from LONDON To Lewes	7 10
	Prisoners single fare to LONDON From	
	Prisoners fare from London To Lewes	Free ticket
	Escorts & Prisoners expenses for Bed, Meals, Bus fares	
	Total £	7 10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S./462

W. T. Grisack Jr.
Major

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the ~~consideration~~ of the finding.

The Court find that the accused W.T.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~ W.T.

Evidence of character, &c.

Lieut. A.W. Mercer, Seaforth Hgh C. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes I produce certified copy of NFB 16 and NFB 355 relating to the accused

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked F, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

[Instruction.—If by reason of the nature of the service of the accused in a department, corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the proceedings must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

The accused declines to cross-examine the witness

Question to the accused.

Do you wish to address the Court? *Answer.* ~~The Defending Officer addresses the Court~~ (See attached)

The Court is closed for the consideration of the sentence.

W.C.

W. C. Brownlow Jr.
Major

F

Sentence

The Court sentence the accused *To undergo* Sentence.

detention for a period of six months
and to undergo stoppages of pay in the
sum of eleven pounds, eight shillings and
five pence halfpenny (£11-8-5½) to make
good cost of return and loss of equipment.

12 Mar 43

Defending Officers Statement
Pte. Esslemont JJ.

I do not wish to condone the absence without leave of the accused, but there are a few extenuating circumstances which should be considered by the Court in arriving at a sentence.

It will be noted that the accused period of leave expired on 28 Dec 42. I produce herewith a Birth Certificate showing that his child was born on 1 Jan 43 also a telegram showing that he had applied for an extension of leave. Under the circumstances, when the child was expected at any moment and in view of the fact that he had applied for leave, I consider that he was justified in staying away for that short. The subsequent illness of his wife and child caused him to stay away longer still and I would point out that it was an unselfish act which has some merit in it.

Pte. Esslemont has now the added responsibility of a child and I am convinced that he seriously intends to become a good soldier given a fair opportunity. While he has a conduct sheet that he is by no means proud of, it is pointed out that since those crimes were committed, he has the added responsibility of a wife and child which will have a considerable steadying influence on him.

A sentence of detention will inflict a hardship

not only on his Army career in the future, but also on his wife and child and I would plead with the Court to exercise due leniency in arriving at a just sentence. I am convinced in my own mind that Pte Esslemont has the makings of a very good soldier and that he intends making use of these qualities to become a credit to his country.

J.B. Walkin Capt
Defending Officer.

Statement by accused in mitigation of punishment

On Dec. 28th I wired back to the unit for an extension of leave, which was not granted. When I went on leave on the 15th of December, my wife was expecting a baby before Jan. 1st and the baby was not born until Jan. 1st. The baby's eyes became affected through neglect and had to be given treatment at Westminster Eye Hospital. My wife, due to sickness, was unable to make these trips, so I stayed away until she was well enough to carry on.

N.D.G. Jr.

W. Brandt Major

List of Witnesses in the case of K52189 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

A/Capt. D.N. Strain	Seaforth of C.
K52681 C/Sjt Bell, L.D.	Seaforth of C.
K52209 Sgt. McKee, G.E.	Seaforth of C.

List of Exhibits in the case of K52189 Pte. Esselmont, J.J. The Seaforth Highlanders of Canada.

"A" - Declaration of a Court of Inquiry on the Illegal Absence of of a Soldier.
"B" - A.F.B. 1817 - Certificate of surrender.
"C" - Travelling expense voucher.

Officer Commanding,
The Seaforth Highlanders of Canada.

Sir,

I respectfully request that Capt J. L. Mackin be appointed to represent me in my forthcoming D.S.O.C.

J J Esselmont

F.

W. Lord Major

No. K52150 Name Esselmont, J. Sqn., Battery, or Company B Corps The Seaforth Highlanders of Canada. Date of enlistment 26:9:39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) (1939—1-41 (11-39)) 35 Q. 1772-37-1653

Date of last entry in Company Conduct Sheet 20:8:40 No. and date of last drunk NIL Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Tweedsmuir, Major.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Oxted	17:9:40	Pte	nil	AWL 2 days A.A. Sec 15(1)	Sgt Fortin	7 dys C.B. 9 days forf pay.	19.9.40	Major Adams	
Tatsfield	15:10:40	"	"	AWL 15 hrs. A.A. Sec 15(1)	Cpl Bain Cpl Kay	14 days C.B. 14 days forf pay	14:10:40	Major Adams.	
Limpsfield	25 Oct 40	"	"	AWL 9 days 6 hrs. A.A. Sec 15(1)	L/Sgt Reid Pte Truax	27 days F.P. 27 days pay	28:10:40	Lt.-col. Stevenson	
Limpsfield	23 Dec40	"	"	AWL 11 days 4 hrs. AA Sec 15(1)	Cpl McMullen L/C. McCafferty	15 days F.P. 27 days pay	6 Jan 41	Major C.C. Ferrie	
"	4 Feb 41	"	"	Failing to appear on parade Sec 15(2) A.A.	CSM Nicholson L/S Whittaker	10 days C.B.	15:2:41	Major Tait	
"	12Feb 41	"	"	AWL 1 day 2 hrs. AA Sec 15(1). AWL while on C.B. AA Sec 15(1) Failure to appear on parade AA Sec 15(3)	CSM Nicholson Sgt Hyndman	28 days FP 28 days FP 2 days extra	19:2:41		

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the field	9:6 41	Pte		F.G.C.C. A.A. Sec 40	Documentary	60 days det.	14:7:41	FGCM	RELEASED FROM DETENTION BARRACKS MEADLEY DOWNS 19:Nov:42 sentence having expired:
In the field	15 Oct 42	Pte		AWL 17 hrs. A.A. Sec 15(1)	Cpl. Weise	7 days C.B. 1 days lay	18:10:41	Maj Adams	
Algonquin	29:9 42	"		WOAS, AWL from 1030 hrs 25:9:42 to 1030 hrs 8 Oct 42. Absent 12 days A.A. Sec 15(1)	Sgt Thomson	J. 28 days detention	9:10:42	CC Ferris Lt.Col.	REMISSION EARNED UNDER SEC" RULES FOR DETENTION
Westham	10:11 42	"		AWL 1 day Sec 15(1) A.A.	Cpl Stephenson	4 days lay	24:11:42	Major Griffin	BARRACKS AND MILITARY PRISONS" 327 DAYS. COMPANYANTS INITIALS

CERTIFIED A TRUE COPY [illegible] 43.

D.H. Strathy Capt.
Adjt The Queen's Own Highlanders of Canada.

W.L.J.

W. L. Brandt, Major

F

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-527
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number R.92196 Rank Pte. Name [illegible] Regiment (or unit) The Lethbridge Highlanders (M.G.)

1. The following is a fair and true summary of the entries in the Service and ~~General~~ Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For [illegible]	[illegible] times	Eleven times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

~~There are no entries in the conduct sheets of the accused~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 72 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 9 days in military custody, making a total of 9 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~Record of Service~~ attestation paper is 26.

6. The date of his ~~enlistment~~ attestation specified in his ~~Record of Service~~ attestation paper is 26 5 39.

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~Air Force~~ military decoration, or ~~Air Force~~ military reward [illegible] possession of or entitled to: ~~State any air force decoration or reward~~ military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force 04.

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R54150 Rank Pte Unit Name Sergeant, J.J. of Service Hospital Regiment or Corps

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.O.S.M.	9 June 41 In the field.	Sec 40 AA	90 days detention	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of March

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

J.H. Sloan Capt
Adjt Regiment of C.

376 R. Pte J. F. Coulmont,

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 8th day of July, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely :—]

President.

Rank.	Name.	Regiment.
Major	W.G. Bury	Edmn. Regt.

Members.

Rank.	Name.	Regiment.
Capt.	A.E.T. Paquet	P.P.C.L.I.
Lieut.	H. Buss	P.P.C.L.I.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Arthur E. Potts
(Arthur E. Potts) Brig
Commanding 2 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K.52158 Pte. Esselmont J.J. Seaforth of C	~~1st Charge~~ ~~Sec 19, A.A.~~ ~~W.O.A.S. Drunkenness~~			
	1st ~~2nd~~ Charge Sec 40, A.A. W.O.A.S. conduct to the prejudice of good order and military discipline.	Not Guilty	Guilty thirty days detention	Remitted to 45 days. A.F.F.
	2nd ~~3rd~~ Charge Sec 6, A.A. W.O.A.S. offering violence to his superior officer.	Not Guilty	Not Guilty	recommended for leniency Lt-Col. Barry M.C. President
	3rd ~~4th~~ Charge Sec 40, A.A. W.O.A.S. conduct to the prejudice of good order and military discipline.	Not Guilty	Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Arthur E Potts (Signed) W.J. Barry Lt-Col President.
(Arthur E. Potts) Brig
Commanding Cond 2 Cdn Inf Bde
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column. Initials are sufficient.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the day of , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court,
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 14th day of July 1941

W.J. Barry Lt-Col
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (i) on page 762 M.M.L. 1939.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 24 day of July 1941

Arthur E Potts
Confirming Officer.

Promulgated and extracts taken in the case of #52158 Pte Esselmont JJ

(a) (Dated) 25 July 41 (Signed) [illegible] Lt-Col
[illegible] The Seaforth Highlanders of Canada

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

By Lt. G. Burg (Deputy President)

CHARGE SHEET

The Accused, No. K52158 Pte. Haselmont, J.J. The Seaforth Highlanders of Canada, a soldier of the Canadian Army (Overseas) is charged with, while on active service,

DRUNKENNESS

~~In that he, at London, on 19 Jun 41 was drunk.~~

~~1st~~ Charge. Section 17, Army Act.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

1st Charge. Section 40. Army Act.

In that he, at London, on 19 Jun 41, used ~~insubordinate~~ language to his superior officer, in that he, when questioned by Sgt. O'Neill, of the Canadian Provost Corps, did use abusive language.

OFFERING VIOLENCE TO HIS SUPERIOR OFFICER

2nd Charge. Section 8(2), Army Act.

In that he, at London, on 19 Jun 41, when being placed under arrest by Sgt. O'Neill of the Canadian Provost Corps, attempted to strike the said sergeant.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

3rd Charge. Section 40, Army Act.

In that he, at London, on 19 Jun 41, did use ~~insubordinate~~ language to the Deputy Assistant Provost Marshal, Captain Cheeseman, his superior officer, in that he did call the said Captain Cheeseman "A limey two-pipped bastard", or words to that effect.

Remanded for a Court Martial

[illegible]

W.G. Bury Major President

Proceedings of Field General Court Martial, held at Hookwood House, Limpsfield, 14th day of July 1941 by order of Brigadier A.E. Potts, E.D. Commanding 2 Cdn Inf Bde, 1 Cdn Div.

PRESIDENT

Major W.G. Bury
Edmn R

MEMBERS

Capt. A.E.T. Paquet
P.P.C.L.I.

Lieut. N. Buss
P.P.C.L.I.

Trial of K 52158 Pte. Esslemont J.J., Seaforth of C.

The order convening the Court, the Charge Sheet and the Summary of Evidence are laid before the Court.

The accused is brought before the court.

Prosecutor - Lieut. T.C.B. Vance, Seaforth of C - who produces medical certificate which is marked "B"1 and is annexed to proceedings.

Defending Officer - Lieut. J.J. Conway, Seaforth of C.

At 1057 hours the trial commences. The order convening the court is read over in the hearing of the accused. The names of the president and members are read to the accused.

Q.1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over.
A.1 No.

Presidents and members are duly sworn.

Q.2 Do you object to M 15741 L/Cpl. Drummond, William H., Edmn R as stenographer?

Stenographer is duly sworn.

Q.3 Do you plead guilty or not guilty to the first charge?
A.3 Not guilty, sir.

Q.4 Do you plead guilty or not guilty to the second charge?
A.4 Not guilty, sir.

Q.5 Do you plead guilty or not guilty to the third charge?
A.5 Not guilty, sir.

Question to counsel

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, or that you have not had sufficient opportunity to prepare the defence.

Defending Officer - Yes, sir. I object to first charge which has been withdrawn as the entire defence revolves round the fact that the accused was drunk at the time. I can only refer the court to K.R.

Chap 5 - para 71 - page 58
Chap 5 - para 47 & 48 - Page 25
Chap 7 - para 9 - page 106

The court adjourns to allow this and for the reframing of the charges and is adjourned till 1400 hours this date and decision is made known to the accused.

The Court reopens at 1407.

The accused is again brought before it and the charge sheet with alternations is read to him.

Q.7 Do you plead guilty or not guilty to the first charge?
A.7 Not Guilty, sir.

Q.8 Do you plead guilty or not guilty to the second charge?
A.8 Not Guilty, sir.

Q.9 Do you plead guilty or not guilty to the third charge?
A.9 Not Guilty, sir.

Prosecutor's opening address

First I intend to prove in the case against K 88158 Pte. Esslemont J.J. that on the evening of the 19th of June of this year in London that he was drunk, and that while being put under arrest he used obsene language and attempted to strike Sgt. O'Neill and that he used improper language to Capt. Cheeseman. I intend to prove this when Esslemont was arrested.

Prosecutor proceeds to call witnesses.

First Witness

P 17132 Sgt. Joseph A. O'NEILL, No.6 Coy, Cdn Pro Corps, having been duly sworn states:

Q. (By prosecutor) Do you know Pte. Esslemont of the Seaforth of C?
A. Yes, sir.

Q. Do you see him here?
A. Yes, sir (turning around and pointing to accused)

Q. Will you tell the court what you know about Pte. Esslemont on the 19 Jun 41.

A. On the 19 Jun 41 at about 2320 hours I was coming down Rupert St. When I come to the corner of Coventry St I saw Pte. Esslemont in company with another Seaforth of C. Both these men were acting drunk and disorderly. I stopped them and asked for thier passes. After examining their passes I was about to let them proceed when Pte. Esslemont became very abusive and used very obsene language towards me. He called me a fucking redcap. When I warned this man, he did not stop, and I was forced to place him under close arrest. I sent L/Cpl. Patterson of the Cdn Pro Corps to go to the police box On Piccadilly and phone for a policeman. L/Cpl. Jeffries came by at this time and I had him stay with me. Pte. Esslemont then started to offer violence. He took a poke at L/Cpl. Jeffries. At this time 2 N.C.O.s from the Corps of Military Police and the D.A.P.M., Capt. Cheeseman came to our assistence. Pte Esslemont turned on these 2 N.C.O.s and the D.A.P.M. and used very obsene and foul language to-wards them. Capt. Cheeseman ordered the policeman from C.R.L.D. and we took Pte. Esslemont, put him in the truck and took him down to Cdn Pro Corps HQ.

Q. What obsene language did he use.
A. He called Capt. Cheeseman a two pip limey cocksucker and that the whole fucking bunch of us were the same. When we took this man to Cdn Pro Corps HQ, the N.C.O. on duty there ordered us to take him down to C.L.R.D. (Central London Recruiting Depot) where we placed Pte. Esslemont in the drunken cell.

Q. When you were arresting Pte. Esslemont, will you tell the court just what you mean by saying violent.
A. He offered resistance and made one or two attempts to break away. We had to push him down on the cement so that he wouldn't get away.

Q. Will you tell the court just how drunk Pte. Esslemont was at the time?
A. When I stopped him and told him he was under arrest he said: "I know I've done wrong. My chum is on leave, let him go and I will take all the blame."

The first witness is cross examined by the Defending Officer.

Q. With regard to the drunkeness, would you say he was drunk?
A. He passed out when we took him down to HQ.

Q. I under stood you to say in answer to a question put by the prosecutor, that when you arrested Esslemont his violence consisted of attempting to break away from your custody.
A. Yes, sir.

Q. And that you were obliged to place him on the pavement.
A. Yes, sir.

Q. Have you anything to add to that?
A. No.

Second Witness

A 6088 L/Cpl. William A. JEFFRIES, No.6 Coy, Cdn Pro Corps, having been duly sworn states.

Q. (By prosecutor) Do you know Pte. Esslemont of the Seaforth of C.
A. Yes.

Q. Do you see him in this court.
A. Yes sir. (turning around and pointing to accused)

Q. Will you tell the court what you know?

A. On the 19 Jun 41 at about 2320 hours I was walking along Coventry St when I was approached by L/C

another member of the Seaforth of C. We approached these men and asked them for their passes. Pte. Esslemont became very argumentative. Their passes being in order I went further up the street to get Sgt. O'Neill of the Cdn Pro Corps for advice as to what we should do with the men. When Sgt. O'Neill and I returned to the men who were waiting with L/Cpl. Patterson, Pte. Esslemont continued his arguments and became violent.

Q. What did the violence consist of?
A. He was inclined to fight.

Q. What do you mean by inclined to fight?
A. He hit me once or twice and a man from the Military Police Force. This member was dressed in civilian clothes.

Q. Who else did he attempt to hit?
A. He was more or less inclined to hit the whole lot of us if he could. We had phoned for a van, but as it had not arrived the Cdn Pro Corps car was called for and two men were taken to Cdn Pro Corps HQ on Henrietta St. While we were waiting for the van to arrive, the D.A.P.M. of the Corps of Military Police had come upon the scene with 2 Cpls from the Corps, and Pte. Esslemont used abusive language towards the D.A.P.M., amongst other things calling him a two pip limey bastard. When we arrived at the Cdn Pro Corps HQ we were instructed to take Pte. Esslemont down to the cell at C.R.L.D. We took him down there, turned him over to the chief R.C.O. there and returned to our HQ.

Q. How drunk would you say Pte. Esslemont was at the time you arrested him?
A. He was drunk but I am certain that he knew what he was doing because he asked us if we would let the other man go as he was fully responsible for the disturbance.

The witness is cross examined by the Defending Officer.

Q. Would you say that you think that the accused was too drunk to know what he was doing.
A. No.

Q. Was the man with the accused drunk?
A. Yes, sir.

Q. Would you say that the other man was drunker than the accused?
A. Yes

Q. What do you mean by saying that he tried to hit you once or twice?
A. When we were trying to put him in the van he was swinging his arms and continually trying to break away from us.

Third Witness

U 1507 L/Cpl. George W. PATTERSON, No. 6 Coy, Cdn Pro Corps, having been duly sworn states:

Q. (By Prosecutor) Do you know Pte. Esslemont of the Seaforth of C.
A. Not personally sir.

Q. Could you recognize Pte. Esslemont.
A. Yes sir.

Q. Tell the court what you know about Pte. Esslemont on the 19th of June of this year.

A. About 2315 hours I was on duty with Sgt. O'Neill. Sgt. O'Neill checked Pte. Esslemont for his respirator. He was drunk but he know what he was saying and doing. He then became very violent and struck at Sgt. O'Neill. Sgt. O'Neill sent me up to phone for the van at Cdn Pro Corps HQ. While I was going up there I met Capt. Cheeseman, English Military D.A.P.M. He stopped me and asked me if I had seen two air force officers whom he was looking for. I then came back to Sgt. O'Neill and Capt. Cheeseman came round the corner of the street. Then Capt Cheeseman went over to Sgt. O'Neill to see what the trouble was about. Pte. Esslemont then used very obscene language towards Capt. Cheeseman. I think also that he struck a C.I.D. officer in company of Sgt. O'Neill. There were four redcaps in company of Capt. Cheeseman.

Q. What was the nature of the obscene language he used towards Capt. Cheeseman.
A. He called Capt. Cheeseman a two pip limey bastard and we then escorted him to Cdn Pro Corps HQ.

The Witness is cross examined by the Defending Officer

Q. Would you describe again the nature of the violence the accused offered Sgt. O'Neill.
A. He told Sgt. O'Neill to take off his coat and called him so many names I couldn't remember them all and he struck Sgt. O'Neill .

Q. Did you see him strike Sgt. O'Neill.
A. Yes, sir.

Q. Sgt. O'Neill has just given evidence and doesn't recall being struck by him.
A. I saw him strike him

The prosecution is closed.

W.G. Barry Major
President

DEFENCE

Q.10 (By President to Defend. Officer) Do you wish to call the accused?
A.10 Yes, sir.

Q.11 Have you any other witnesses?
A.11 Yes sir. One.

Q.12 Is he a witness as to character?
A.12 No. He is a witness as to the actual occurrence.

The accused K 58158 Pte. James J. ESSLEMONT, Seaforth of C having been duly sworn states.

Q. (By Defending officer) Will you tell the court according to your recollection what happened in London the 19th of Jun 41.

A. I went to Godstone where I got picked up by a car driven by Miss Cumberham of Hampstead and went to London. She took me to an officers' club just off Buckingham Palace where we had 6 or 7 large whiskeys, and then left there about 7:30 p.m. We drove around to the Ace of Clubs on Piccadilly, where she left me and I went up to the club myself. I stayed up there until about 9 p.m. and when I came out I was going to come home and I bumped into the other Seaforth of C. We went back up to the club and I can't remember leaving.

The accused is cross examined by the prosecutor.

Q. Have you no idea what time you left the club?
A. No sir.

Q. What is the last thing you remember?
A. The last thing I remember was putting down a pound note and buying drinks for the house.

Q. About what time was that?
A. Some time after 9:30 p.m. as near as I can make out.

Q. You can't remember a thing after that?
A. No, sir.

Second Witness for the Defence

K 55360 Pte. Raymond E. JENKINS, Seaforth of C, having been duly sworn states.

Q. (By Defending Officer) What time of the evening did you meet Pte. Esslemont?
A. About 8: p.m.

Q. Where?
A. It was on Piccadilly Circus. I do not exactly know the street.

Q. And what did the two of you do?
A. We went up to a Nite Club and started drinking.

Q. About how long?
A. About two and one-half hours.

Q. What was your condition when you left the club?
A. I was fairly well intoxicated.

Q. Was the accused drinking with you all that time?
A. Yes, sir.

Q. Do you remember what happened after you left the club?
A. I remember a Provost stopping us in the street. I could not remember what it was they stopped us for and I think there was five of them. Then they took us in the wagon to the station and I do not remember getting out of the wagon when we got to the station.

L.G. Barry Maj/a President

The witness is cross examined by the prosecutor

Q. Did you have anything to drink before you met Esslemont?
A. Yes, sir I had something to drink at Victoria Station.

Q. Did you have quite a bit to drink?
A. I had two scotches and eight beers.

Q. Did you drink approximately the same amount as Esslemont after you met him?
A. Yes sir, I think I drank the same.

Q. Did Esslemont seem to have lots of money?
A. I think I bought most of the drinks.

Q. Did you see Esslemont display one or two pound notes?
A. No.

Q. Were you with him all the evening?
A. Yes, we were together in the club.

Q. When you were checked up by the Provosts did Esslemont talk to them.
A. Sir, I do not remember.

Q. Did he at any time tell them to let you go and that he was responsible?
A. I did not hear that.

Q. Do you remember what went on when you were arrested?
A. No sir I cannot remember what they stopped us for.

Q. You then remember them arresting you?
A. Yes.

Written statement to be handed in by Defence.

Objection re reference to Capt. Cheeseman by Prosecution, overuled by Court. Page 106, para 9 Chapter VII of K.R.L. is referred to.

Defence is closed.

The Court is closed for the consideration of the finding.

The Court find the accused is not guilty of the second charge but is guilty of the first and third charges.

The accused is again brought before the court and the findings made known to him

"K 52158 Pte. Esslemont J.J., Seaforth of C the Court find you not guilty of the second charge but the court find you guilty of the first and of the third charge."

Q.13 (By President to Prosecutor) Have you any evidence as to the character and particulars of service of the accused.
A.13 Yes. I produce this M.F.M. 6 or conduct sheet. (Which is annexed to proceedings marked 6A)

Q.14 Have you compared the contents of this statement with the regtl books?

A.14 No sir but it has been certified by the Adjt.

Q.15 (To Accused) Do you wish to address the court?
A.15 No, sir.

The court is closed for consideration of the sentence.

W.G. Bury. Major President

SENTENCE

The Court sentence K 82158 Pte. Esslemont J.J. to the following punishment. Sixty days detention

W.G. Bury.
.....PRESIDENT
(W.G. Bury) Major
Edmn R

.....MEMBER
(A.K.T. Paquet) Capt.
P.P.C.L.I.

.....MEMBER
(R. Buss) Lieut.
P.P.C.L.I.

The Seaforth Highlanders of Canada.

No. R52138 Name Esselmont J.J. Sqn., Battery, or Company A" Corps Date of enlistment 26 Sept 39 Sheet No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Army Form B.122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Oxted	17:9: 40	Pte	Nil	AWL from 0600 hrs 17:9:40 to 0600 hrs 19:9:40	Sgt Fortin	7 days C.B. 7 days pay	19:9:40	Maj Adams	2 days
Tatefield	5:10:40	Pte	Nil	AWL from 0600 hrs to 2100 hrs 8:10:40	Cpl Kay Cpl Bain	14 days C.B. 14 days pay	14:10:40	Maj Adams	14 days pay
Limpsfield	15:10: 40	Pte	Nil	AWL from 1900 hrs to 1100 hrs 20:10:40 9 days 6hrs AAL	Sgt Tait Pte Trunk	27 days F.P.	28:10:40	Lt.Col.V.B. Stevenson	37 days pay
Limpsfield	23:12: 40	Pte	Nil	AWL from 2300 hrs 23:12:40 to 1995 hrs 4:1:41 timeAll days 5 hrs 55mins Sec 15 AA	Cpl McMullen	15 days F.P.	6:1:41	Maj C.C. Ferrie	37 days pay total stoppage
Limpsfield	4:2:41	Pte	Nil	AOAS failing to appear on parade CSM with his platoon after having been warned by his Sgt Sec 15 AA(2)	Pte Gibson	10 Days C.B.	15:2:41	Maj Tait	of pay

Pte

W.G. Barry Major President

Place	Date of Offence	Rank	Corps or Unit to which Member belongs	Offence	Name of Witnesses	Punishment Awarded	Date of award or if award made with trial	By whom awarded
Limpsfield	2:4:41	Pte	Nil	AOAS absent from 1200 hrs12:4:41 to 2030 hrs 14'4:41 time 8 hrs	Sgt Hyndman CSM Nicholson	28 days F.P. 28 days forf 1 day Sx hrs	19:4:41	Maj. Tait
Limpsfield	7&12 41	Pte	Nil	AS breaking out of barracks (after he was C.B. absented himself from co. area 2200 10 4) AA AOAS and in arrest AWL from quarters and d.t.y. from 1200hrs14:4:41 to 2030hrs14:4:41 time absent 1 day 8hrs(2) days Sec 15AA(1) AA AOAS having been detailed for co. parade to visit church parade failed to appear at time & place designated. Sec 15 AA(2)	Sgt Hyndman CSM Nicholson	28 days F.P. 28 days Pay 2 days auto forf pay	19:4:41	Maj Tait

Certified to be a true copy

for [illegible]

C.O. Ferrie

C.O. The [illegible] of the Regiments of [illegible]

SUMMARY OF EVIDENCE

In the case of

E32158 Pte Esselmont J.J., THE SEAFORTH HIGHLANDERS OF CANADA

FIRST WITNESS FOR THE PROSECUTION: Sgt. O'Neill, J.A., P.17152 Canadian Provost Corps, No. 6 Company, London. Having been duly sworn states: I am a sergeant in the Canadian Provost Corps. At London on the 19th of June 1941 at about 2315 hours I was in company with Lance Corporal Jefferies when I saw Pte. Esselmont, he was drunk and acting in a disorderly manner. He was on the corner of Rupert Street and Coventry Street in company with another Seaforth Highlander. Private Esselmont had no respirator so I stopped the two of them. When I told the other Seaforth Highlander to do up his tunic Pte. Esselmont demanded to be shown my authority for doing so and on being so shown he became abusive. Then I asked Pte. Esselmont for his pass and on checking it was about to let him proceed when he again started using abusive and obscene language to me. I warned him that if he didn't stop and I placed him under arrest if he then became violent and attempted to strike me. During the ensuing struggle two more corporals of the Corps of Military Police and the Assistant Provost Marshal, Captain Cheeseman came to my assistance. He used very obscene language towards the Provost Marshal and the two N.C.O.s of the Corps of Military Police. I escorted Pte. Esselmont to the Canadian Provost Corps H.Q. where I turned him over to the R.S.M. in charge to be detained.

Cross examination by the accused:

Question: Did I leave you at all after you put me under arrest?

Answer: You attempted to leave me.

(sgd). P.17152 J.A. O'Neill Sgt.
P17152 Sgt. J.A. O'Neill

The accused declines further to cross-examine this witness.

Second witness for the prosecution: A.6065 Jefferies, W.A. L/Cpl. Canadian Provost Corps, No. 6 Company, London. Having been duly sworn states: I am a Lance Corporal in the Canadian Provost Corps. I was in Coventry St. at about 2315 hours 19 June 1941, when I was approached by Lance Corporal Patterson of the Canadian Provost Corps and asked if I had seen any Air Force officers or the R.A.F. in the vicinity. I told him I hadn't seen any and proceeded with him back up to Rupert Street.

Second Witness for the Prosecution, (cont'd:

As we were going up the street we saw Pte. Esselmont and another private of The Seaforth Highlanders of Canada and I could see that they had been drinking. I stopped them and asked them for their passes and they were in order. Then Pte. Esselmont was inclined to be argumentative so I went and got Sgt. O'Neill who was up the street with a member of the Metropolitan C.I.D. When we returned to the men Sgt. O'Neill checked their passes as well and as Pte. Esselmont was argumentative and abusive still, Sgt. O'Neill placed him under arrest. In the meantime Captain Cheeseman, Deputy Assistant Provost Marshal of the Corps of Military Police had come upon the scene and Pte. Esselmont began to use very abuse language towards him and amongst other things called him a "limey two pipped bastard". We had phoned for our van but it had not arrived and so the C.M.P. van was called and we took the two men to our H.Q. on Henrietta Street. There we were instructed by the R.S.M. in charge to take the two men to Central London Recruiting Depot to be detained for the night. When we were putting Pte. Esselmont in the van he attempted to strike any of us he could reach. He did hit me once or twice.

(sgd). A. 4085 "M.C." Jeffery, L/Cpl

The accused declines to cross-examine this witness.

The accused having been duly warned in accordance with R.P. 4 (K) reserves his defence.

Certified that R.P. 4 (C), (D), (E), (F), and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 29th day of June, 1041.

(sgd). .....

Officer taking summary.

The signatures of the above witnesses are on the original Summary of evidence taken down by me in writing in the presence of the accused and attached hereto and marked Appendix "A"

FURTHER SUMMARY OF EVIDENCE

In the case of

K52158 Pte. Esselmont, J.J., THE SEAFORTH HIGHLANDERS OF CAN.

First Witness for the prosecution: L/Cpl. Patterson, G.W., U.1507 Canadian Provost Corps, No. 6 Company, London.
Having been duly sworn states:
I am a lance corporal in No. Company, Canadian Provost Corps. At London on the 19th June, 1941, at about 2315 hours, I was in company with Sgt. O'Neill when I saw Pte. Esselmont, J.J., he was drunk and staggering as he walked and acting in a disorderly manner. Sgt. O'Neill checked him for his pass, he produced one and after checking him Sgt. O'Neill was about to let Pte. Esselmont, J.J. proceed when he started to use abusive language towards him. Sgt. O'Neill warned him but he continued. At about 2330 hours L/Cpl. Jeffries came along and as Pte. Esselmont continued to use abusive language Sgt. O'Neill placed him under arrest. When placed under arrest he became very violent and attempted to strike Sgt. O'Neill. During the ensuing struggle three C.M.P. N.C.O.s and the D.A.P.M., Capt. Cheeseman, came to our assistance. Pte. Esselmont used very obscene language towards the Provost Marshal, Capt. Cheeseman, and the three C.M.P. N.C.O.s. Among other things he called Capt. Cheeseman a bastard, and a dirty son of a bitch. Then Sgt. O'Neill, L/Cpl. Jeffries and myself escorted Pte. Esselmont, J.J. to Canadian Provost Corps H.Q. to be detained. He also attempted to strike a C.I.D. officer who was in our company. Pte. Esselmont, J.J. had no respirator or steel helmet when he was arrested.

(sgd) "U.1507 L/Cpl. G.W. Patterson"
Witness

The accused declines to cross-examine this witness.

The accused having been duly warned in accordance with R.P. 4 (E) reserves his defence.

Certified that R.P. 4 (C), (D), (E), (F) and (9) have been duly complied with.

Taken down by me in the presence and hearing of the accused this 20th. day of June, 1941.

(Sgd) J.S. Clarke Lt
Officer taking summary.

The signature of the above witness is on the original Summary of Evidence taken down by me in the presence of the accused and attached hereto and marked "Appendix A"
J.S. Clarke Lt

W.G. Berry Maj.
President

MEDICAL CERTIFICATE

I HEREBY certify that I have examined _____

K52158 Pte. Esselmont, J.J.

of The Seaforth Highlanders of Canada

and find him physically fit and mentally capable of undergoing trial by Court Martial.

H.O. [illegible] Capt.
Medical Officer,
The Seaforth Highlanders of Canada.

Place In The Field.

Date 14 July 41.

C.F. Bury Maj Paiclas

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

(a) The accused has been in confinement awaiting trial on the present charges for — days in Civil Custody and 26 days in military custody making a total of 26 days of which — days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 25 years.

(c) The date of his attestation specified in his attestation paper is 26 Sept 39

(d) The accused is in possession, or entitled to no military decoration or military reward, or is in possession of or entitled to

NA

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

Lieut
Actg Quarter M. C.

July 14th, 1941.

Proceedings of Field General Court Martial held at Hookwood House, Limpsfield, 14th day of July 1941 - by order of Brigadier OE Leathes commdg 2nd E.S.B. 1st Edn Div.

President.
Major Berry
Edn. Rgt

members

Capt A.E.D. Paquet
PPCLI
Lieut H. Bass
PPCLI

Trial of K.52158 Pte. Esclamont J.J. Seaforth H. of Canada -

The order convening the Court, the charge Sheet, & the summary of Evidence are laid before the court.

The accused is brought before the Court

Prosecutor. Lieut T.C.B. Vance D.H. of C marked 'B';
who produces medical certificate which is annexed to proceedings -

Defending Officer Lieut - J.J. Conway D.H. of C.

at 1027 hrs. the trial commences. The order convening the Court is read over in the hearing of the accused. The names of President members are read to the accused.

Question 1 - Do you object to be tried by any of the officers whose names you have heard read over?

Answer 1 - No - President & members were duly sworn

Question 2 - Do you object to Lt-Col Drummond Edn. Regt as Interpreter?

Answer 2 No.

Stenographer was duly sworn -

accused is arraigned upon each charge in the above charge sheet

The charge sheet is read to the accused -
Attached B.D. & annexed to proceedings.

Question 3 - Do you plead Guilty or not Guilty to the 1st Charge

Answer 3. Not Guilty Sir -

Question 4. Do you plead Guilty or not Guilty to the 2nd Charge

Answer 4. Not Guilty Sir -

Question 5. Do you Plead Guilty or not Guilty to the 3rd Charge

Ans 5. Not Guilty Sir.

Question to Counsel - Do you wish to apply for an adjournment on the ground that any of the rules relating to proceedure before trial have not been complied with, or that you have not had sufficient opportunity to prepare the defence -

Ans 6 Defending officer. Yes. Sir. I object to 1st charge which has been withdrawn as the entire defence revolves round the fact that the accused was drunk at the time, I can only refer the court to K.R.I.E.

Chap 5 - para 71 - Page 52
3 - 47 & 48 - 25
7 - 9 - 106

The court adjourns to allow that leave a span for the reframing of the charges - & is adjourned till 1400 hrs this date & decision is made known to the accused -

The Court resumes at 1407 -
Accused is again brought before the Court & the charge sheet with alteration is read to him -

Ques.7. Do you plead guilty or not guilty to the 1st Charge

Ans 7 not guilty Sir.

Ques.8 Do you ele _____ to 2nd charge

Ans 8. not guilty Sir.

Ques 9 Do you ele. _____ to 3rd Charge

Ans 9. not guilty Sir.

(Prosecutor opens & addresses (as per shorthand notes)

Prosecutor proceeds to call witnesses

1st witness Sgt Jr. O'neill #6 Coy Con Pro Corps.
(as per notes)

Cross examined by Defence Officer.

2nd witness L/Cpl Jeffries. #6 Coy C.P.C
(as per notes)

Cross examined by Def. Off.

3rd witness. L/Cpl Pallesen. #6 Coy C.P.C.

Cross examined by Def. Off.

Question by Court re Police-ele:
(notes)

The Prosecution is closed.

Defence.

Question 10. Do you wish to ~~call~~ give evidence yourself as a witness

Answer 10. Yes, Sir. I, the accused being duly sworn states:-
(As per notes)

Ques. " Do you wish to call any other witness in your defence?

Ans " Yes. K53360 Pte Jenkins R.E. S.H. & C. who being duly sworn states:-
(As per notes)

—Cross examined by Prosecutor
(As per notes)

Objection re reference to legal Documents by Prosecution, overruled by Court.
Page 10b. Para 9. Chap. VII
Omit words referred to.

Defence is closed. Speech
The Court is closed for the consideration of its finding.
The Court find the accused is not guilty of the 2nd charge but is guilty of 1st & 3rd charges.
The accused is again brought before the Court & the finding made known to him.
K53360 Pte Jenkins S.H. of the R.E. Court find you not guilty of the 2nd charge but the Court find you guilty of the 1st charge & of the 3rd charge.

Ques 12 - by Prosecution.

Have you any evidence to produce as to the charge particulars of service of the accused -

Ans 12. Yes I produce this M.D.No. 6 of Conduct Sheet. which is annexed to proceedings marked 6A.

Ques 13. Have you compared the contents of this Statement with the Reg. books.

Ans 13. Yes. but it is certified by the Adjt.

Ques to Accused -

Do you wish to address the Court.?

Ans Nil.

The Court is closed for the consideration of the Sentence -

Sentence -

The court sentence Pte

to the following punishment -

Pres

Members

Members

Case for defence

I Charge 2 (Offering violence)

This charge should be dismissed because the only evidence brought in support of it is that of a by-stander. The man supposed to have been struck cannot recollect the incident and describes what can only be called "resisting arrest" which is another charge entirely.

II Charges 1 & 3

In deciding on the sentence to be imposed, the surrounding circumstances cannot be ignored even tho' the wording of the charge has been changed. As to Capt. Cheeseman's previous record Cf III para. 25 (47) p. 25 And as to these two charges generally see Cf II para 11 p. 56 & Cf III para. 9 - p. 102.

J. Rowland Jr.

C.S. Barry Major
President

Case for defence

1. Charge 2. (offering violence)

This charge should be dismissed because the only evidence brought in support of it, is that of a eyewander. The man supposed to have been struck cannot recollect the incident, and describes, what can only be called "resisting arrest"; which is another charge entirely.

2. Charges 1 & 3.

In deciding on the sentence to be enforced, the surrounding circumstances must be examined even though the wording of the charge has been changed. As to Capt. Cheeseman's presence, see Ch.III, para. 47, page 25, and as to these two charges generally, Mir. Ch. 6, para.71, page 86, and Ch. 7, para. 9, page 106.

C.J. Bary, Maj'n
President

Case for defence

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This charge should be dismissed because the only evidence brought in support of it, is that of a bystander. The man supposed to have been struck cannot recollect the incident, and describes, what can only be called "resisting arrest"; which is another charge entirely.

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In deciding on the sentence to be enforced, the surrounding circumstances must be examined even though the wording of the charge has been changed. As to Capt. Cheeseman's presence, see Ch.III, para. 47, page 25, and as to these two charges generally Sir, Ch. 5, para.71, page 58, and Ch. 7, para. 9, page 106.

W. G. Barry Major
President

Case for defence.

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This charge should be dismissed because the only evidence brought in support of it, is that of a bystander. The man supposed to have been struck cannot recollect the incident, and describes, what can only be called "resisting arrest"; which is another charge entirely.

2. Charges 1 & 3.

In deciding on the sentence to be enforced, the surrounding circumstances must be examined even though the wording of the charge has been changed. As to Capt. Cheeseman's presence, see Ch.III, para. 47, page 28, and as to these two charges generally Sir, Ch. 5, para.71, page 56, and Ch. 7, para. 9, page 106.

Notes on address of the prosecution re F.G.C.M.
of K 52158 Pte. Eastmond J.J.:

I Drunkenness, the defence of the ~~prosecution~~ accused is no defence. See M.M.L. Chapt. VII section 4 (page 106) and chapt. III section 48 (page 25)

II Sergeant O'Neill, L/Cpl Jeffries, L/Cpl Patterson all state that Pte. Eastmond was drunk but not so drunk that he didn't know what he was doing viz. he said "let my friend go free I am the one responsible for causing the disturbance."

III Pte. Eastmond was not so drunk that he didn't recognize an Officer when he saw one viz. Capt Cheeseman.

IV All the Provost N.C.O's swear that Pte. Eastmond used ~~improper~~ improper language to Capt Cheeseman and Sergeant O'Neill.

V Pte Eastmond attempted to strike Sgt. O'Neill L/Cpl Patterson says he struck Sgt. O'Neill, L/Cpl. Jeffries says he attempted to strike Sgt. O'Neill and Sgt. O'Neill says that he became wicked and waved his arms about. All show an attempt.

VI "Nothing can justify a soldier striking or offering

violence to a superior —." MML chapt. III sect. 47 (page 28)

VII MML. chapt V sect. 71 (page 58) pointed out to the court for the courts guidance and in fairness to the accused.

VIII Pte Jenkins had equally as much to drink as Pte. Eastmont but Pte Jenkins can remember being arrested while Pte Eastmont can't remember anything after 9:30 (21:30) hrs.. If he was that drunk for two hours or more it is unlikely that he would be able to walk.

IX Pte Eastmont says that he bought drinks for the room at about 9:30 (21:30) with a pound note but Pte Jenkins who was with him all the time in this bar saw no pound notes and says he paid for most of the drinks.

X VIII and IX make me believe that Pte. Eastmonts story is made up.

Respectfully submitted

J. Williams D

Prosecuting Officer

Lt. J. Barry Major
President

Notes on address of the prosecution re. F.G.C.M. of K82156 Pte. Asselmont, J.J.

I. Drunkenness, the defence of the accused is no defence. See M.M.L. Chapt. 7, section 9, page 106, and Chapt. 3, section 48, page 25.

II. Sergeant O'Neill, L/Cpl. Jeffries, L/Cpl. Patterson all state that Pte Asselmont was drunk, but not so drunk that he didn't know what he was doing, viz: He said "Let my friend go free, I am the one responsible for causing the disturbance."

III. Pte. Asselmont was not so drunk that he did not recognize an officer when he saw one, viz: Capt. Cheeseman.

IV. All three Provost N.C.O.s swear that Pte. Asselmont used improper language to Capt. Cheeseman and Sergeant O'Neill.

V. Pte Asselmont attempted to strike Sgt. O'Neill. L/Cpl. Patterson says he struck Sgt. O'Neill, L/Cpl. Jeffries says he attempted to strike Sgt. O'Neill, and Sgt. O'Neill says that he became violent and waved his arms about. All show an attempt.

VI. "Nothing can justify a soldier striking or offering violence to a superior:- M.M.L. Capt.III, section 47, page 25.

VII. M.M.L. Chapt V, sec. VI, page 58, pointed out to the court for the court's guidance, and in fairness to the accused.

VIII. Pte. Jenkins had equally as much to drink as Pte. Asselmont, but Pte. Jenkins can remember being arrested while Pte. Asselmont can not remember anything after 9:30(2130)hrs. If he was that drunk for two hours or more it is unlikely that he would be able to walk.

IX. Pte. Asselmont says that he bought drinks for the room at about 9:30(2130) hrs., with a pound note, but Pte. Jenkins who was with him all the time in this bar saw no pound notes, and says he paid for most of the drinks.

X. Para.'s VIII, and IX, make me believe that Pte. Asselmont's story is made up.

Respectfully submitted

Prosecuting Officer

C.J. Barry Maj
President.

Notes on address of the prosecution re. F.G.C.M. of K82158 Pte. Asselmont, J.J.

I. Drunkenness, the defence of the accused is no defence. See M.M.L. Chapt. 7, section 9, page 106, and Chapt. 3, section 48, page 25.

II. Sergeant O'Neill, L/Cpl. Jeffries, L/Cpl. Patterson all state that Pte Asselmont was drunk, but not so drunk that he didn't know what he was doing, viz: He said "Let my friend go free, I am the one responsible for causing the disturbance."

III. Pte. Asselmont was not so drunk that he did not recognise an officer when he saw one, viz: Capt. Cheeseman.

IV. All three Provost N.C.O.s swear that Pte. Asselmont used improper language to Capt. Cheeseman and Sergeant O'Neill.

V. Pte Asselmont attempted to strike Sgt. O'Neill. L/Cpl. Patterson says he struck Sgt. O'Neill, L/Cpl. Jeffries says he attempted to strike Sgt. O'Neill, and Sgt. O'Neill says that he became violent and waved his arms about. All show an attempt.

VI. "Nothing can justify a soldier striking or offering violence to a superior:- M.M.L. Chpt.III, section 47, page 25.

VII. M.M.L. Chapt V, sec . 71, page 88, pointed out to the court for the court's guidance, and in fairness to the accused.

VIII. Pte. Jenkins had equally as much to drink as Pte. Asselmont, but Pte. Jenkins can remember being arrested while Pte. Asselmont can not remember anything after 9:30(2130)hrs. If he was that drunk for two hours or more it is unlikely that he would be able to walk.

IX. Pte. Asselmont says that he bought drinks for the room at about 9:30(2130) hrs., with a pound note, but Pte. Jenkins who was with him all the time in this bar saw no pound notes, and says he paid for most of the drinks.

X. Para's VIII, and IX. make me believe that Pte. Asselmont's story is made up.

Respectfully submitted

Prosecuting Officer

C.S. Barry Maj
President

Notes on address of the prosecution re. F.C.C.M. of K52158 Pte. Asselmont, J.J.

I. Drunkenness, the defence of the accused is no defence. See A.M.L. Chapt. 7, section 9, page 106, and Chapt. 3, section 48, page 26.

II. Sergeant O'Neill, L/Cpl. Jeffries, L/Cpl. Patterson all state that Pte Asselmont was drunk, but not so drunk that he didn't know what he was doing, viz: He said "Let my friend go free, I am the one responsible for causing the disturbance."

III. Pte. Asselmont was not so drunk that he did not recognise an officer when he saw one, viz: Capt. Cheeseman.

IV. All three Provost N.C.O.s swear that Pte. Asselmont used improper language to Capt. Cheeseman and Sergeant O'Neill.

V. Pte Asselmont attempted to strike Sgt. O'Neill. L/Cpl. Patterson says he struck Sgt. O'Neill, L/Cpl. Jeffries says he attempted to strike Sgt. O'Neill, and Sgt. O'Neill says that he became violent and waved his arms about. All show an attempt.

VI. "Nothing can justify a soldier striking or offering violence to a superior:- M.A.L. Chapt.III, section 47, page 26.

VII. M.A.L. Chapt V, sect. 71, page 98, pointed out to the court for the court's guidance, and in fairness to the accused.

VIII. Pte. Jenkins had equally as much to drink as Pte. Asselment, but Pte. Jenkins can remember being arrested while Pte. Asselment can not remember anything after 9:30(21.30)hrs. If he was that drunk for two hours or more it is unlikely that he would be able to walk.

IX. Pte. Asselment says that he bought drinks for the room at about 9.30(21.30) hrs., with a pound note, but Pte. Jenkins who was with him all the time in this bar saw no pound notes, and says he paid for most of the drinks.

X. Para.'s VIII, and IX, make me believe that Pte. Asselmont's story is made up.

Respectfully submitted

Prosecuting Officer

D Coy Admn. Reg.
24 July 44

Staff Capt.
2 C.I.B.

COURT MARSHALL X 8815B Pte. Masolmont J.J., MALCOTH Cpl J

1. Ref. m/n subject these proceedings have been delayed for the following reasons:-

(a) The stenographer detailed to record the proceedings was a Company Orderly Room clerk, who had also to take the proceedings in a another Court Marshall, and Court of Inquiry, immediately after the Court Marshall in this case, this stenographer's Company, and my own Coy. moved from the Oxted area to the areas south of Godstone now occupied

(b) My own Orderly Room clerk in on leave.

(c) The two Officer members of the court also moved to another area.

2. The Court feels that in view of the fact that the prosecution and defense bothe admit that the accused was very drunk and not in full possession of his senses. Consideration may well be given to the fact of drunkenness. The Court feels that while the sentence is not excessive in view of the seriousness of the charge, that at least a portion of the time that this man has already been in custody, may in fairness be allowed to count as part of his sentence.

J.G. Barry Maj
President

U.S. Army Air Forces

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

(a) The accused has been in confinement awaiting trial on the present charges for — days in Civil Custody and 17 days in military custody making a total of 17 days of which 17 days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 25 years.

(c) The date of his attestation specified in his attestation paper is 26 Sept. 39

(d) The accused is in possession, or entitled to no military decoration or military reward, or is in possession of or entitled to

N.A.

I hereby certify that the foregoing particulars are true extracts from the Regimental books in my custody.

Adjt. Lufbra Sq.

5th Jan 41

Lt. Bayerlein Prosecutor

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED.

(a) The accused has been in confinement awaiting trial on the present charges for — days in Civil Custody and 17 days in military custody making a total of 17 days of which days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 25 years.

(c) The date of his attestation specified in his attestation paper is 26 Sept 39

(d) The accused is in possession, or entitled to no military decoration or military reward, or is in possession of or entitled to

N.A.

I hereby certify that the foregoing particulars are true extracts from the Regimental books in my custody.

Adjt Leopold 1 C.

5th July 41

S.H. 5-4-A.

8 July 41.

To: 2 Cdn Inf Bde.

From: Seaforth of C.

Discipline.

K52138 Pte. Esselmont, J.J.

1. The m/n has been remanded for Court Martial.

2. The lapse of time between his arrest and the application that a F.G.C.M. might be convened was caused for the following reasons.

(a) The Battalion was on a scheme.
(b) Witnesses were in London and unavailable when first asked for.

C.C. Ferrie
Lieut.-Col.
O.C. THE SEAFORTH HIGHLANDERS OF CANADA.

EEE-29

PTE ESSELMONT J J.

Correspondence to be PINNED here.

ENTERED IN RECORDS OF C.M. 66629

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

D21

A.

Order convening the Court.

On Active Service, this Twentieth day of January, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * and that it is not practicable to delay the trial for the reason for a superior qualified officer;

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* I am unable to appoint

*( ) other Officers to form the Court

*( ) as President as President

in the following manner, namely:—

PROCEEDINGS REVIEWED
21 Jan 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and name and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.E. Leach	P.P.C.L.I.

Members.

Rank.	Name.	Regiment.
Captain	R.W. Blake	Sask. L.I.
Captain	L.V. McQurran	D. Manitoba Regt

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed C.B. Ware Lt.-Col.
Commanding 2 Cdn Inf Bde
Convening Officer.

D21

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K52158 Private Easelmont, J.J. The Seaforth Highlanders of Canada.	First Charge When on active service, Committing a Civil Offence. A.A. Sec. 41. (a)	Guilty	Guilty To be imprisoned until Said Release by Civil Authorities 29th Jan 44 Lieut. Major President	Sentence The finding and sentence of the Court. G.B. Ware Lt Col T/Commanding 2 Can Inf Bde
	RP 35(B) has been complied with.			
	See charge Sheet annexed marked "B"			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G.B. Ware (Signed) Lieut. Major
G.B. Ware Lt.-col.
T/ Commanding 2 Can Inf Bde.
Commanding Officer (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twenty forth day of January, 1944, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
~~*(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this twenty forth day of January 1944.

Lieut. Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (i) on page 702 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 ,~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 28th day of January 1944.

G.B. Ware Lt Col
Confirming Officer.

Promulgated and extracts taken in the case of K52158 Pte Easelmont J.J. Seaforth

(a) (Dated) 29 Jan 44 (Signed) Lt Walker Capt
for OC. H Coy. Seaforth of C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Lieut. Major. Presided A.F.C.M.

CHARGE SHEET

K52158 Pte. ~~John James~~ James John ESSELMONT, The Seaforth Highlanders of Canada, a soldier in the Canadian Army, Overseas, is charged with, G
While On Active Service,

First Charge:
Sec. 41
Army Act

COMMITTING A CIVIL OFFENCE,

that is to say, burglary, with intent to commit a felony contrary to section 25 (1) of the Larceny Act, 1916, in that he, in the field, on the 10th January 1944 during the night, did break and enter the dwelling house of Signora Anina Politi, with intent to commit a felony therein.

(A.J. Creighton) Lt.-col.
O.C. The Seaforth Highlanders of Canada.

In the Field 20 ~~10~~ Jan 44

To be tried by F.G.C.M.

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) PARA 557

I certify that I have this morning examined

No K32158 Rank Pte Name Esselmont, J.J.

of The Seaforth Highlanders of Canada

and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station In the Field

Date 24 Jan 44

Lt/Col. W. Woody
Medical Officer

Trial of K52158 Pte Freeland, D.F. James John S. N. of 6, B
Army Troops, C.M.F.

Capt F. Bonnell, S. N. of 6. appears as prosecutor

Lt L. M. McBride, S. N. of 6. defending officer appears as
Counsel.

R. P. (110) A is complied with

K42341 Sgt DeGroote, J. appears as interpreter.

The accused pleads guilty to the charge which is read and

The Summary of Evidence as taken by Capt F. Bonnell
S. N. of 6. was read to the accused and is herein attached
marked "H"

The accused having been duly sworn states as follows:

On Jan. 10 we were having a party We ran out
of wine. myself and a few of the boys went and got a
few bottles. We went to two or three places and had a few
more drinks. After that I don't remember very much
about what happened until I found myself in the
cooks and out for the night. I was told in the morning
what had happened that is about all I can say
for it.

Evidence as to character and particulars of service of accused.

Capt. H. F. Williams, S. N. of 6 being duly sworn deposes
I am Capt H. F. Williams medical officer of S. N. of 6.
Freeland J.J. K52158 came to this station as a

Imprisonment with his MFH's 6814 (Original) has not been received from Adm. Section, HQ 8 Theatre. I submit this supplementary sheet and the statement as to character and particulars of service of accused.

If accused elected to address the court in connection with conduct sheet or statement as to character and particulars of service.

Address of Defending Officer.

In mitigation of punishment I would like to point out three things. First the long service of the accused during the 6 Sept 1939. Secondly the fact that the accused was almost the point that in his own words he didn't know what about until court on.

The court is closed to consider the sentence

Finding: The court finds the accused Guilty of the charge

Signed & dated this 14th day of [illegible]

14.4

[illegible], Major
President, F.G.C.

N.F.W. 6

14 Jan 44

R62150 Pte Easelmont, J.J.

time.

M/n document not available at present

W.D. Reid Capt.
Adjt. The Seaforth Highlanders of Canada.

Summary of Evidence in the case of No K 2558
Pte Eastment J. of the Seaforth Highlanders
of Canada.

No. K 426461 Pte/Sgt. Eastment J. of the Seaforth Highlanders of Canada was admonished his
usual oath to act as interpreter
first witness

Signorina Palita Bice Boccia of 50 Via Sofia Turin
Witness having been duly sworn deposes as
follows:

I am Signorina Palita Bice Boccia of 50 Turin
Via Sofia Torino. At about 10 o'clock
in the morning of 10 January 1918 I was
at home at 50 Via Sofia. I saw the
accused whom I now identify and
two other soldiers climb up the balcony
of my house. The accused had a
revolver in his hand. He entered
the house and demanded cognac.
We had no cognac and the accused
opened all the drawers in the house
looking for it. I was in bed and
the accused ordered me to get up.
I then told the accused we had
no cognac so one of the others told
me to go back to bed which I did.
The accused then made me get
up again and go outside. I told him I
was cold so then the soldiers and my
sister and myself went into my
cousins house. The accused told us
to stay where we were until he told us to come.

my cousin opened the door and he invited us again demanded cognac. my cousins did not have any cognac so then the soldiers went away and started to my house that approximately 1130. I did not return until they had left. I returned about 1130 and locked the doors and I heard I cannot say which one forced a shot through the door. The next morning I reported to A.M.C. of Ypres.

On the 10th January I attended an identification parade of soldiers and picked out the accused as being one of the soldiers who had visited my house on the evening of 10 January 1940.

Robert Rice

The accused declines to cross examine this witness.

Second witness

Sigisard Amina Politi of 50 Via Sofia Arlona having been duly sworn deposes as follows

On the night of the 10 January 1908 at about 10 o'clock I was sitting in my house and I heard a lot of noise around the balcony. I saw two soldiers come into the house from the balcony. Two or three minutes after a third soldier came in. I recognize the accused as being one of the soldiers who came in. The accused asked for cognac he had a pistol in his hand and kept it there. The accused went to look through the drawers. He never found any cognac. The soldiers locked me in a room so I could not see what they did after that. I had a key to the room and got out and went to my sister's room. The accused then took me to another door, it was locked open so he pushed it open. That was the room of Nicola Romanco. My sister myself and the three soldiers went into the room and the soldiers demanded cognac again. Nicola Romanco did not have any cognac. The accused grabbed Mr Romanco by the coat, he then hit him two or three times and his companion was asking the accused not to hit him. He would not listen. After this my sister and I went both into our room. All I heard after that was one shot fired.

Cross-examined by accused - Where did I hit Mr. Romanco?

Answer - You grabbed hold of him by the coat and stopped his face.

Devotion "Intense warm regard or devotion"
Amour "In this balance"

Amina Polite

Hand written. D Cwy.

K 52036 ~~Cpl~~ C.S.M. Ethan J. Falle Seaforth Highlanders of Canada being duly sworn, depose as follows:

On the 11 Jan. 1944 at about 1400 hrs. ~~the R.C.M.P.~~ a private from the R.C.M.P. came to see me and asked to have an identification parade of this Cpl. I did so on the 12 Jan. 1944, Five Italian women and a man ~~were~~ attended the parade separately and each & them picked out the accused. J Falle.

The accused declines to cross-examine his witness

Fourth Witness

I Nicola Romano having been duly sworn depose as follows:

I live at 50 Via Sofia Orlando, in the same house with my cousins Virginia Bice and Zeppara Politi. On the night of the 10th Jan. 44 at about 11 o'clock I heard a lot of screaming. I opened my door and went outside, and in the hall saw two soldiers, one was pointing a revolver at me, he was the accused. He demanded Cognac. The accused went into my room and again demanded cognac. I did not have any cognac. The accused grabbed me by the jacket and stopped my face two or three times. One of the soldiers went outside and I heard one shot. I saw the soldiers upstairs and one down below.

On the 11th January 1944 I received a parcel of cordite and picked out the accused as being one of the soldiers who broke into the house on the evening of the 10th January 44

His Lordship

No accused Witness to cross examine Witness
The accused having been duly cautioned in accordance with Rule of Procedure 44 declines to make any statement

Taken down by me in the field, this 13 day of January in the presence of the accused. Rule of Procedure 44 complied with.

J A Bennett Capt.
The Seaforth Highlanders of Canada.

Capt. Maj. President R.C.M.P. H

Summary of Evidence in the case of No. K52158 Pte. James John ~~Connor~~ Esselmont, The Seaforth Highlanders of Canada.

No. K42546 A/L/Cpl. Degrazio, J., The Seaforth Highlanders of Canada was administered the required oath to act as interpreter.

First Witness — Signorina Polita Bice of 50 Via Sofia, Ortona, having been duly sworn deposed as follows:
"I am Signorina Polita Bice of 50 Via Sofia, Ortona. At about 10 o'clock in the evening of 10 January 1944 I was at home at 50 Via Sofia. I saw the accused whom I now identify and two other soldiers climb up the balcony of my house. The accused had a revolver in his hand. He entered the house and demanded cognac. We had no cognac and the accused opened all the drawers in the house looking for it. I was in bed and the accused ordered me to get up. I then told the accused we had no cognac so one of the others told me to go back to bed which I did. The accused then made me get up again and go outside. I told him I was cold so then the soldiers and my sister and myself went into my cousins house. The accused told us to stay where we were until he told us to move. My cousin opened the door and the accused again demanded cognac. My cousins did not have any cognac so then the soldiers went away and stayed in my house until approximately 1130. I did not return until they had left. I returned about 1130 and locked the doors. One of the accused I cannot say which one fired a shot through the door. The next morning I complained to ANDOT officer.
On the 12th January I attended an identification parade of soldiers and picked out the accused as being one of the soldiers who had entered my house on the evening of 10 January 1944."

sgd. Polita Bice

The accused declines to cross-examine this witness.

Second Witness — Signora Anina Politi of 50 via Sofia, Ortona, having been duly sworn deposed as follows:
"On the night of the 10 January 1944 at about 10 o'clock I was sitting in my house and I heard a lot of noise around the balcony I saw two soldiers come into the house from the balcony. Two or three minutes after a third soldier came in. I recognize the accused as being one of the soldiers who came in. The accused asked for cognac he had a pistol in his hand and kept it there. The accused went to look through all the drawers. He never found any cognac. The soldiers locked me in a room so I could not see what they did after that. I had a key to the room and got out and went to my sisters room. The accused then took me to another door, it wouldn't open so he kicked it open. This was the room of Nicola Domarco. My sister myself and the three soldiers went into this room and the soldiers demanded cognac again. Nicola Domarco did not have any cognac. The accused grabbed Nicola Domarco by the coat, he then hit him two or three times and his companion was asking the accused not to hit him. He would not listen. After this my sister and I went back into our room. All I heard after that was one shot fired."

Cross-examined by the accused:
Q. Where did I hit Nicola Domarco?
A. Slapped his face.
Q. Where was my gun at this time?
A. In his blouse.

sgd. Anina Politi

Third Witness K52026 CSM Gibson, J., of "D" Coy The Seaforth Highlanders of Canada, having been duly sworn, deposes as follows: "On the 11 Jan 1944 at about 1000 hrs a private from the R.C.M.P. came to see me and asked to have an identification parade of this Coy. I did so on the 12 Jan 1944. Two Italian women and a man attended the parade separately and each of them picked out the accused."

sgd. J. Gibson

The accused declines to cross-examine this witness.

Fourth Witness I, Nicola Domarco having been duly sworn depose as follows "I live at 50 via Sofia, Ortona, in the same house with my cousins Signorina Nice and Signora Polita. On the night of the 10th Jan 44 at about 11 o'clock I heard a lot of screaming. I opened my door and went outside in the hall and saw two soldiers, one was pointing a revolver at me, he was the accused. He demanded cognac. The soldiers went into my room and again demanded cognac. I did not have any cognac. The accused grabbed me by the jacket and slapped my face two or three times. The soldiers went outside and I heard one shot. I saw two soldiers upstairs and one down below. On the 14th January 1944 I attended a parade of soldiers and picked out the accused as being one of the soldiers who broke into the house on the evening of the 10th January 1944.

sgd. Nicola Domarco

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 declines to make any statement.
Rule of Procedure 4 complied with.
Taken down by me in the field this 13th day of January in the presence of the accused.

sgd. R.M. Bonnell, Capt.
The Seaforth Highlanders of Canada

List of Witnesses in the case of K58158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Signorina Polita Bice	50 Via Sofia, Ortona
Signora Amina Politi	50 Via Sofia, Ortona
K52086 ~~C&M~~ Gibson, J.	Seaforth of C
Nicola Domarco	50 Via Sofia, Ortona

List of Exhibits in the case of K58158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Nil

Officer Commanding
Seaforth of C

Sir:

I respectfully request that Capt E.D. Sutton

be appointed to represent me at my forthcoming F.G.C.M.

J.J. Esselmont

No. K5215 Name ESSELMONT, F.T. Sqn., Battery, or Company D Corps SEAFORTH O&C Date of enlistment 6.9.39. G.C. Badges Service or Proficiency Pay 1/30. M.F.M. 6 (A.F.B. 122) (15M—7-45 (1253-94) H.Q. 1772-39-1952

Character Bad

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SUPPLEMENTARY SHEET — ORIGINAL SHEET NOT AVAILABLE					NIL

H. Coll

Signature of Witness

(P.T.O.)

M.F.B. 355
22M—5-41 (572-S)
H.Q. 1772-30-620
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E52156	Pte	Esselmont J.J.	Perforth of 9

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Army Act~~ Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For W.F.M. 6 sent down to Can Sec GHQ 2 Echelon=	times	Same as other side times
For not not returned to	times	times
For unit	times	times

~~Number of entries of infantry or distinguished conduct:~~

or,

~~There are no entries in the conduct sheets of the accused.~~ N/A

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Army Act~~ A.F.A. 72 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. N/A

3. ~~The accused is recommended for special~~

or,

~~The accused is the recipient of the following~~ N/A ~~decorations:~~

4. The accused has been in confinement awaiting trial on the present charges, for 1 days in ~~Army~~ Air Force civil custody, and 4 days in military custody, making a total of 4 days in custody, of which 1 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 28 years

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 6 Sep 1939 N/A

7. The service which the accused is allowed to reckon towards discharge is ~~nil~~ 6 Sep 1939 N/A

8. ~~The accused was on~~ N/A

9. ~~The accused is in possession of a certificate to~~ ~~Army~~ ~~Army~~ N/A possession of or entitled to ~~Army~~

10. ~~The accused was awarded~~ ~~Army~~ N/A ~~Army~~ N/A

11. ~~(In the case of an officer.)~~ The accused holds the Royal Canadian Air Force the rank of Pilot Officer

~~[illegible] dated [illegible] and in his regiment (or corps) the rank of~~

~~[illegible] dated~~ N/K

12. ~~The accused has served as a non-commissioned officer continuously without reduction since the~~ N/A ~~[illegible]~~

~~[illegible]~~ N/K ~~[illegible]~~

~~[illegible]~~ N/K ~~[illegible]~~

~~[illegible]~~ N/K ~~[illegible]~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~No. [illegible]~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with [redacted] Rank Pte

Name Eggelmont, T.J. of Bedford St. G Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of January 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

CERTIFIED TRUE COPY.

A. McDougall CAPT.

Spare copy

Correspondence to be PINNED here

Army Form C.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twentieth day of January, 19 44.

Whereas it appears to me, the undersigned, an officer in T/Command of Second Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [xxxx

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K52158 Private Esselmont J.J. The Seaforth Highlanders of Canada.	First Charge When on active service, Committing a Civil Offence A.A. Sec. 41 "J.C.J. R.P. 35(B)Has been complied with See Charge Sheet annexed marked "C"	Guilty	Guilty to be imprisoned with hard labour for twelve months 24 Jan 44 "J. Leach" Major President FGCM	I confirm the finding and sentence of the Court. "C.B. Ware" Lt.Col. T/Commanding 2 Cdn Inf Bde.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) "C.B. Ware" (Signed) "J. Leach" Major
T/Commanding 2 Cdn Inf Bde
Confirming Officer (e) President

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

No K52158 Name ESSELMONT JJ | Sqn, Battery or Company | Corps CIC | Date of enlistment 26/9/39 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field		Pte		AA Sec 15(1) AWL 24½hrs					2 dys' pay aut.
Field		Pte		AA Sec 15(1) AWL 12 hrs					1 dys' pay aut
Field		Pte		AA Sec 15(1) AWL 48 hrs		7 dys' pay			2 dys' pay aut.
Field		Pte		AA Sec 15(1) AWL 87 hrs		14 dys' pay			4 dys' pay aut
Field		Pte		AA Sec 15(1) AWL 10 dys 6 hrs 10 mins.		27 dys' Detn.			11 dys' pay aut
Field		Pte		AA Sec 15(1) AWL 11 dys 3 hrs 55 mins.		15 dys' pay			12 dys' pay aut
Field		Pte							Tot. forf 27 dys' pay.
Field		Pte	(1) (2)	AA Sec 15(1) AWL 2 dys 8½ hrs. Breaking out of Bks.		28 dys' pay 149(1)(b)			3 dys pay aut. Total forf. 31 dys pay.

(P.T.O.)

(PTO)

		Rank	Place of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22Aug41	Pte		(Sgt) Tried by FGCM. AWARDED 60 dys Detn. Remitted to 45 dys. Close arrest 23 dys 23 hrs. Forfeits 45 dys pay 149(1)(b). Forfeits 24 dys pay 149(1)(c)(i). Total forfeiture 69 days pay.					
Field	18Oct41	Pte		AA Sec 15(1) AWL 17 hrs 1 min.		1 dys' CB			1 dys' pay aut.
Field	13May42	Pte		AA Sec 15(1) AWL [illegible]					forf's 39dys' pay.
Field		Pte		AA Sec 15(1) AWL 12 dys		28 dys' detn			14 " " pay aut.
Field	16Mar43	Pte		AA Sec 15(1) AWL 10 hrs Tried by FGCM for AWL 58 dys 22 hrs. 31 minutes. & AA 24(2) Deficient am't pr [illegible] 31/8/5. AWARDED [illegible] 6 months detention. Forfeits 184 dys' pay FR&I 149(1)(b). Forfeits 59 days pay FR&I 149(1)(a). Forfeits 12 dys pay 149(1)(c)(i). Forfeits 7s10d for FR&I 172(8). Forfeits £11/8/5 under FR&I 158(2). Total forf. 255 dys' pay & £11/16/3½.			Total forf. 4[illegible] dys' pay.		" 4 dys' pay.
Field		Pte		AA Sec 15(1)		Admonished			forf. 1 dys' pay.
Field		Pte		AA Sec 15(1) AWL 1 dy 11 hrs 1 min.		15 dys' pay			2 dys' pay aut.
									Total forf. 17 dys' pay.

(Cont. on page two)

MFM 6
(AFB 122)
40/PAM/136 (3438)

No E52158 Name ESSELMONT JJ | Sqn, Battery or Company | Corps CIC | Date of enlistment | OC Badges | Service or Proficiency Par | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award if under disposing with trial	By whom awarded	Remarks
Field		Pte		AA Sec 15(1)		10 dys' pay FR&I 149(2)			5 dys' pay FR&I 149(1)(a) Total forf. 15 dys' pay
Field		Pte		AA Sec 11(g) ~~XXXXXXXX~~ AA Sec 10(3)		8 dys' F.P. & 8 dys' Pay.			

CERTIFIED COPY OF TRUE EXTRACT FROM MF M4

(D.W. Owen) Lieut.
for Officer i/c Cdn Section GHQ 2 Echelon AAI.
26 Jul 44

(PTO)

"J.E. Leach, Major" President F.G.C.M.

CHARGE SHEET "G"

"CBW"

K52158 Pte. James John ESSELMONT, The Seaforth Highlanders of Canada, a soldier in the Canadian Army, Overseas, is charged with, while on Active Service,

First Charge:
Sec. 41
Army Act

COMMITTING A CIVIL OFFENCE,

that is to say, burglary, with intent to commit a felony contrary to Section 25 (1) of the Larceny Act, 1916, in that he, in the field, on the 10th January 1944 during the night, did break and enter the dwelling house of Signora Amina Politi, with intent to commit a felony therein.

A.C. Creighton

(A.C. Creighton) Lt.-Col.
O.C. The Seaforth Highlanders of Canada.

In the Field "CBW"
"C.H. Ware Lt-col 20 Jan 44
T/Commanding 2 Cdn Inf Bde.

To be tried by F.G.C.M.

MEDICAL OFFICER'S CERTIFICATE

KR (CAN) PARA 557

I certify that I have this morning examined

No K52158 Rank Pte Name Easselmont, J.J.

of the Seaforth Highlanders of Canada

and in my opinion he is ~~unfit~~ fit to undergo trial

by Court Martial.

Station In the Field

Date 24 Jan 44

G.E. Wood Major
(Medical Officer

Trial of K-58158 Pte ESSELMONT James John S.H. of C., [illegible]

Canadian Army, C.M.F.

Capt F.H. Bonnell, S.H. of C. appears as prosecution.

Lieut I.M. McBride, S.H. of C. defending officer appears as counsel.

R.P. (110)A is complied with.

K42546 L/Cpl DeGrosie J. appears as interpreter.

The accused pleads guilty to the charge which he he rd read.

The Summary of Evidence as taken by Capt F.H. Bonnell, S.H. of C., was read to the accused and is herewith attached marked "A".

The accused elected to make no statement.

Evidence as to Character and Particulars of Service of accused

Capt R.F. Williamson, S.H. of C., having been duly sworn states:

I am Capt R.F. Williamson, the orderly officer of S.H. of C., Pte Esselmont, James John, was brought before me on the morning of 6 Sept 39. He was drunk. He was brought to the battalion as a reinforcement from the depot. He has been with the battalion ever since. He is a good soldier and has been [illegible] and this at present is my opinion of his character and particulars of service.

Accused.

The accused declined to address the Court in connection with his conduct sheet or statement as to character or particulars of service.

Address of Defending Officer

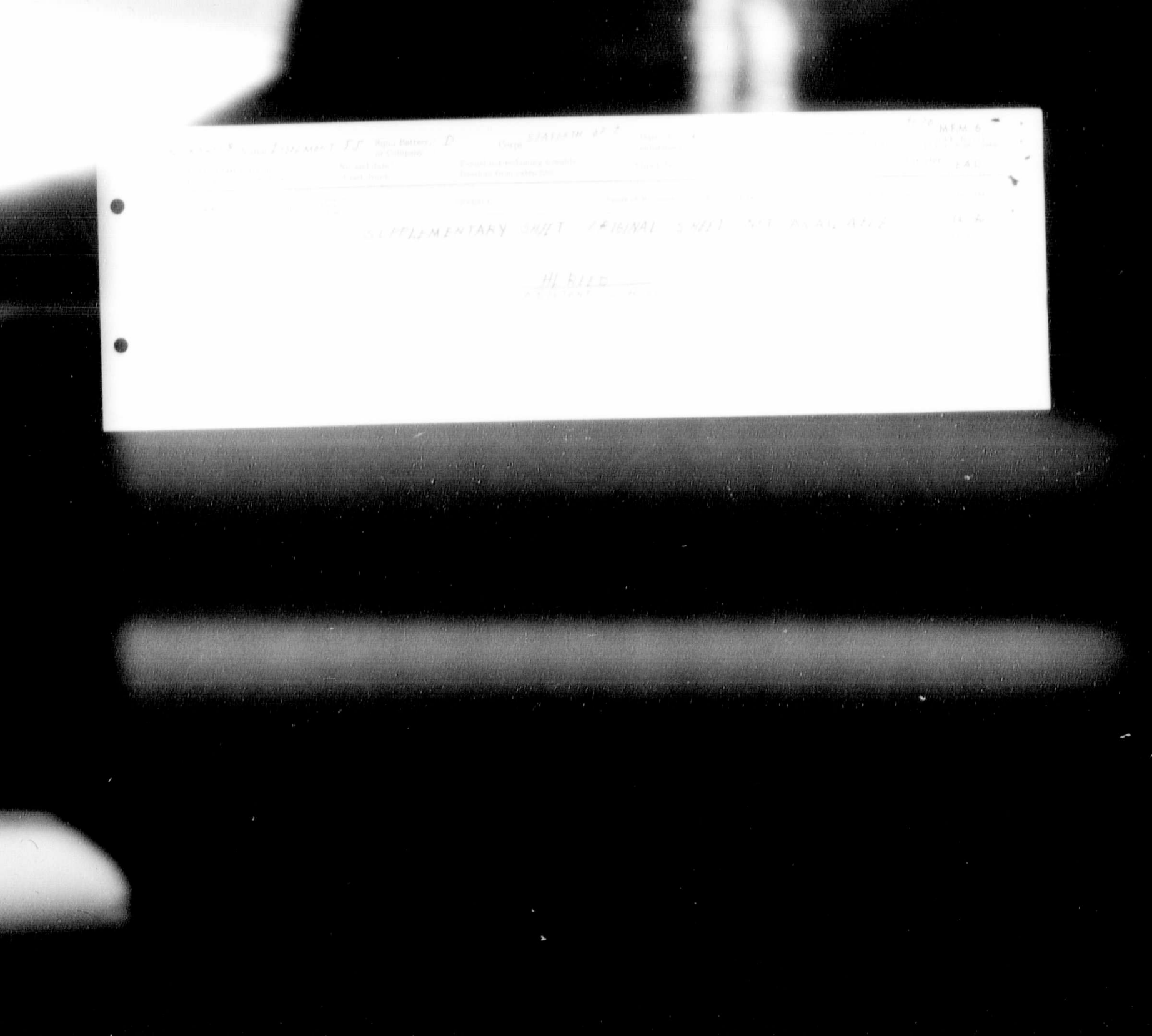
In mitigation of punishment I would like to point out two things. First the long service of the accused from 6 Sept 39. Secondly the fact that the accused was drunk, to point that in his own words he didn't know much about what went on.

The Court is closed to consider the sentence.

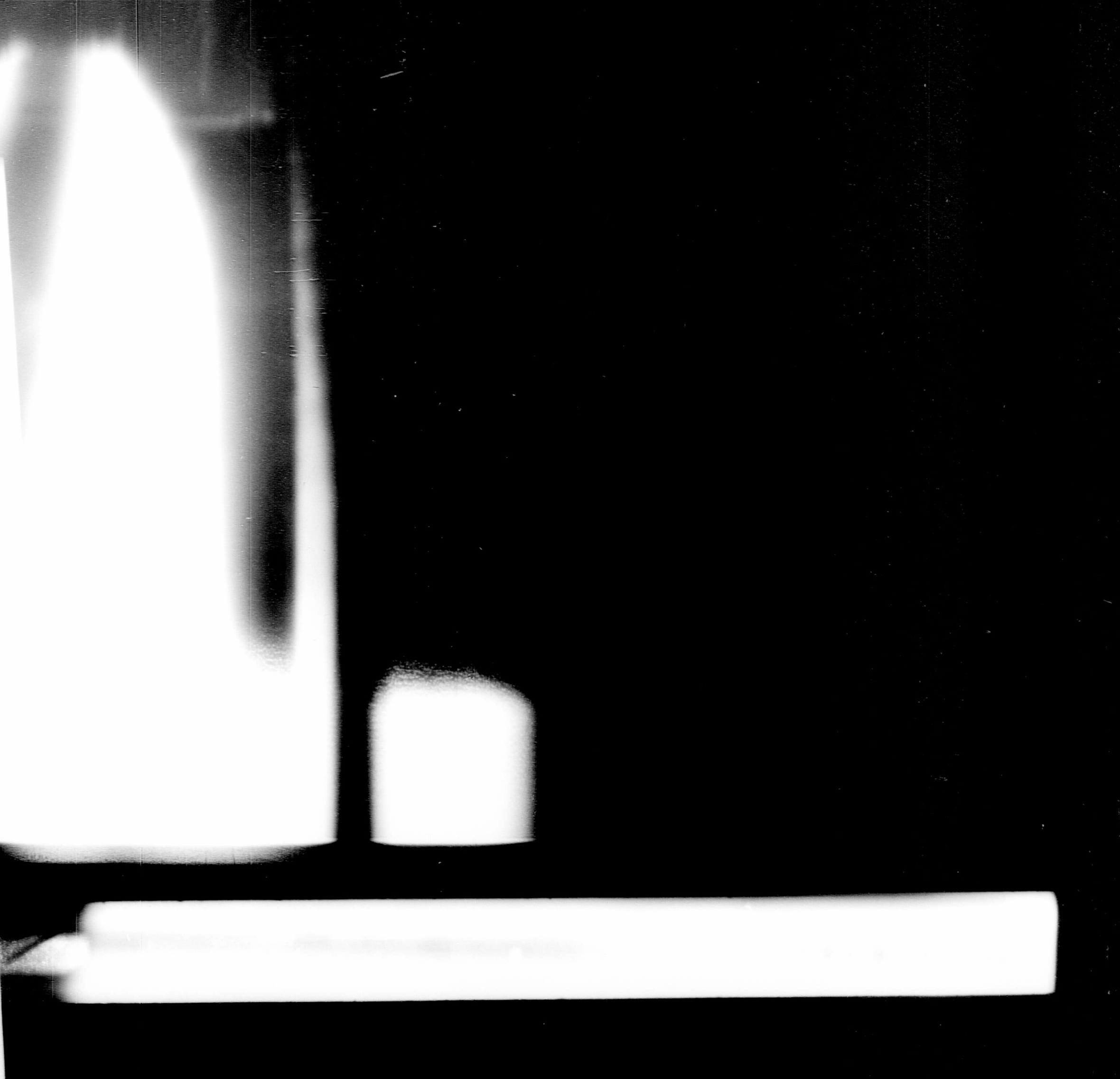
Finding The Court finds the accused guilty of the Charge.

Signed at Ortona this 24th day of January, 1944.

J.E. Leach, Major.
President, F.G.C.M.



[redacted]





COUNTER NUMBER 544920

HOUR 2250

OPERATOR'S INITIALS ER

RELIEVING OPERATOR ML

M.F.B. 355
22M—5-41 (573-5)
H.Q. 1772-39-629
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A52158	Pte	Esselmont J.J.	Seaforth of C.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	K.F.M. 6 Sent down to Cdn Sec HHq 2 Echelon	times
For	not returned to unit,	same as other side. times
For	times	times
For	times	times

or,

"nil"

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [illegible]

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement. "nil"

3. [illegible]

or,

[illegible] "nil"

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 4 days in military custody, making a total of 4 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 28 years- mos dys

6. The date of his attestation specified in his attestation paper 6 Sep 1939 "nil"

7. The service which the accused is allowed to reckon towards discharge is from 6 Sep 1939 "nil"

8. [illegible] "nil"

9. [illegible] "nil"

"nil"

10. [illegible]

"nil"

11. ~~(In the case of an officer.)~~ ~~The accused holds~~ in the Royal Canadian Air Force the rank of ~~Permanent Force~~ unit ~~dated~~, and in his regiment (or corps), the rank of ~~dated~~ "WR"

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~

~~Date of promotion~~

~~In the rank of~~ ~~years~~

~~In the rank of~~ ~~years~~ "WR"

~~In the rank of~~ ~~years~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~In force~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank [illegible] Unit

Name Esselmont J.J. of Seaforth of C Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of January 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

S.D. Reid
Adjutant, Seaforth Highlanders.

J.E. Leach, Major, President F.G.C.M.

"H"

Summary of Evidence in the case of No. K52156 Pte James John Esselmont, The Seaforth Highlanders of Canada.

No. K.42546 A/L/Cpl. Degrazio, J., the Seaforth Highlanders of Canada was administered the required oath to act as interpreter.

First Witness

Signorina Polita Bice of 50 Via Sofia, Ortona, having been duly sworn depose as follows:
"I am Signorina Polita Bice of 50 Via Sofia, Ortona. At about 10 o'clock in the evening of 10 January 1944 I was at home at 50 Via Sofia. I saw the accused whom I now identify and two other soldiers climb up the balcony of my house. The accused had a revolver in his hand. He entered the house and demanded cognac. We had no cognac and the accused opened all the drawers in the house looking for it. I was in bed and the accused ordered me to get up. I then told the accused we had no cognac so one of the [illegible] told me to go back to bed which I did. Theaccused then made me get up again and go outside. I told him I was cold so then thesoldiers and my sister and myself went into my cousins house. Theaccused told us to stay where we were until he told us to move. My cousin opened the door and the accused again demanded cognac. My cousins did not have any cognac so then thesoldiers went away and stayed in my house until approximately 1130. I did not return until they had left. I returned about 1130 and locked the doors. One of the accused I cannot say which one fired a shot through the door. The next morning I complained to AMGOT officer.
On the 12th January I attended an identification parade of soldiers and picked out the accused as being one of the soldiers who had entered my house on the evening of 10 January 1944.

sgd. Polita Bice

The accused declines to cross examine this witness.

Second Witness

Signora Amina Politi of 50 Via Sofia, Ortona, having been duly sworn depose as follows:
"On the night of the10 January 1944 at about 10 o'clock I was sitting in my house and I heard a lot of noise around the balcony I saw two soldiers come into the house from the balcony. Two or three minutes after a third soldier came in. I recognize the accused as being one of the soldiers who came in. The accused asked for cognac he had a pistol in his hand and kept it there. The accused went to took through all the drawers. He never foundany cognac. The soldiers locked me in a room so I could not see what they did after that. I had a key to the room and got out and went to my sisters room. The accused then took me to another room, it wouldn't open so he kicked it open. This was the room of Nicola Domarco. My sister myself and the three soldiers went into this room and the soldiers demanded cognac again. Nicola Domarco did not have any cognac. The accused grabbed Nicola Domarco by the coat, he then hit him two or three times and his companion was asking the accused not to hit him. He would not listen. After this my sister and I went back into our room. All I heard after this was one shot fired.

Cross examined by the accused:
Q. Where did I hit Nicola Domarco?
A. Slapped his face.
Q. Where was my gun at this time?
A. In his House?

Sgd. Amina Politi.

Summary of Evidence in the case of No. K52158 Pte. James John Esselmont, The Seaforth Highlanders of Canada.

Third Witness

K52086 CSM Gibson, J., of "D" Coy the Seaforth Highlanders of Canada, having been duly sworn, depose as follows:
"On the 11 Jan 1944 at about 1000 hrs a private from the R.C.M.P. came to see me and asked to have an identification parade of this Coy. I did so on the 12 Jan 1944. Two Italian women and a man attended the parade separately and each of them picked out the accused."

sgd. J. Gibson.

The accused declines to cross-examine this witness.

Fourth Witness

I, Nicola Domarco having been duly sworn depose as follows:
"I live at 50 Via Sofia, Ortona, in thesame house with my cousins Signorina Bice and Signora Polita. On the night of the10th Jan 44 at about 11 o'clock I heard a lot of screaming. I opened my door and went outside in the hall and saw two soldiers, one was pointing a revolver at me, he was the accused. He demanded cognac. The soldiers went into my room and again demanded cognac. I did not have any cognac. The accused grabbed me by the jacket and and slapped my face two or three times. The soldiers went outside and I heard one shot. I saw two soldiers upstairs and one down below. On the 12th January 1944 I attended a parade of soldiers and picked out the accused as being one of the soldiers who broke into the house on the evening of 10th January 1944.

sgd. Nicola Domarco

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 declines to make any statement.
Rule of Procedure 5 complied with.
Taken down by me in the Field this 13th day of January in the presence of theaccused.

sgd. F.H. Bonnell, Capt.
The Seaforth Highlanders of Canada.

List of Witnesses in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Signorina Polita Bize	50 Via Sofia, Ortona
Signora Amina Politi	50 Via Sofia, Ortona
K52026 CSM Gibson, J.	Seaforth of C
Nicola Domarco	50 Via Sofia, Ortona

List of Exhibits in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Nil

Officer Commanding
Seaforth of C

Sir:

I respectfully request that "Capt. E. Sutton

be appointed to represent me at my forthcoming F.G.C.M.

J.J. Esselmont

14 Jan 44

M.F.M. 6
K52156 Pte Esselmont, J.J.

M/n document not available at present time.

"W.D. Reid"

W.D. Reid Capt.
Adjt. The Seaforth Highlanders of Canada.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Twenty-fourth day of January, 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)

[redacted] "J.L."

were duly sworn.

*Omit if not applicable.

Signed this Twenty-fourth day of January 1944.

"J. Leach" Major
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (b) on page 762 M.M.L. 1929.

[redacted] the terms of [redacted]

Signed [redacted] "JL"

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

[redacted]

Signed this 28th day of January 1944.

"C.B. Ware" Lt-Col
Confirming Officer.

Promulgated and extracts taken in the case of 4-52158 Pte Esselmont, J.J. Seaforth of C.

(a) (Dated) 29 Jan 44 (Signed) "E.D. Fulton" Capt. for O.C. "D" Coy Seaforths of C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.G.R.W. Ltd. Gp.466

COUNTER NUMBER 544920

HOUR 22 50 1350

OPERATOR'S INITIALS ER

RELIEVING OPERATOR KL

M.F.B. 355
20M—5-41 (372-8)
H.Q. 1774-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A52158	Pte	Esselmont J.J.	Seaf rth of C.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	M.F.M. 6 Sent down to Cdn Sec GHQ 2 Echelon	times same as other side. times
For	not returned to unit.	times times
For		times times
For		times times

or,

"NR"

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement. "NR"

3.

or,

"NR"

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 4 days in military custody, making a total of 4 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 28 years- [illegible] dys

6. The date of his attestation specified in his attestation paper 6 Sep 1939 "NR"

7. The service which the accused is allowed to reckon towards discharge is from 6 Sep 1939 "NR"

8. "NR"

9. "NR"

"NR"

"NR"

11. ~~(In the case of an officer.) The accused holds in the Royal Canadian Air Force~~ the rank of W/AC
~~Permanent Force~~
~~unit~~
~~dated~~, and in his ~~regiment (or corps)~~, the rank of
~~dated~~. "WR"

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—~~

Date of promotion.

~~In the rank of~~ ~~years.~~

~~In the rank of~~ ~~years~~ "WR"

~~In the rank of~~ ~~years.~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number K52.15X Rank Pte Unit

Name Asselmont J.J. of Seaforth of C Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 15th day of January 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked W.D. Reid signed by the president, and annexed to the proceedings.

Adjutant, Seaforth Highlanders.

J.E. Leach, Major, President F.G.C.M.

"H"

Summary of Evidence in the case of No. K52158 Pte James John Esselmont, The Seaforth Highlanders of Canada.

No. K.42546 A/L/Cpl. Degrazio, J., the Seaforth Highlanders of Canada was administered the required oath to act as interpreter.

First Witness

Signorina Polita Bice of 50 Via Sofia, Ortona, having been duly sworn depose as follows:
"I am Signorina Polita Bice of 50 Via Sofia, Ortona. At about 10 o'clock in the evening of 10 January 1944 I was at home at 50 Via Sofia. I saw the accused whom I now identify and two other soldiers climb up the balcony of my house. The accused had a revolver in his hand. He entered the house and demanded cognac. We had no cognac and the accused opened all the drawers in the house looking for it. I was in bed and the accused ordered me to get up. I then told the accused we had no cognac so one of the ~~fellows~~ told me to go back to bed which I did. Theaccused then made me get up again and go outside. I told him I was cold so then thesoldiers and my sister and myself went into my cousins house. Theaccused told us to stay where we were until he told us to move. My cousin opened the door and the accused again demanded cognac. My cousins did not have any cognac so then thesoldiers went away and stayed in my house until approximately 1130. I did not return until they had left. I returned about 1130 and locked the doors. One of the accused I cannot say which one fired a shot through the door. The next morning I complained to AMGOT officer.
On the 12th January I attended an identification parade of soldiers and picked out the accused as being one of the soldiers who had entered my house on the evening of 10 January 1944.

sgd. Polita Bice

The accused declines to cross examine this witness.

Second Witness

Signora Amina Politi of 50 Via Sofia, Ortona, having been duly sworn depose as follows:
"On the night of the10 January 1944 at about 10 o'clock I was sitting in my house and I heard a lot of noise around the balcony I saw two soldiers come into the house from the balcony. Two or three minutes after a third soldier came in. I recognize the accused as being one of the soldiers who came in. The accused asked for cognac he had a pistol in his hand and kept it there. The accused went to took through all the drawers. He never foundany cognac. The soldiers looked me in a room so I could not see what they did after that. I had a key to the room and got out and went to my sisters room. The accused then took me to another room, it wouldn't open so he kicked it open. This was the room of Nicola Domarco. My sister myself and the three soldiers went into this room and the soldiers demanded cognac again. Nicola Domarco did not have any cognac. The accused grabbed Nicola Domarco by the coat, he then hit him two or three times and his companion was asking the accused not to hit him. He would not listen. After this my sister and I went back into our room. All I heard after this was one shot fired.

Cross examined by the accused:
Q. Where did I hit Nicola Domarco?
A. Slapped his face.
Q. Where was my gun at this time?
A. In his House? Sgd. Amina Politi.

Summary of Evidence in the case of No. K52156 Pte. James John Esselmont, The Seaforth Highlanders of Canada.

Third Witness

K52026 CSM Gibson, J., of "D" Coy the Seaforth Highlanders of Canada, having been duly sworn, depose as follows:
"On the 11 Jan 1944 at about 1000 hrs a private from the R.C.M.P. came to see me and asked to have an identification parade of this Coy. I did so on the 12 Jan 1944. Two Italian women and a man attended the parade separately and each of them picked out the accused."

sgd. J. Gibson.

The accused declines to cross-examine this witness.

Fourth Witness

I, Nicola Domarco having been duly sworn depose as follows:
"I live at 50 Via Sofia, Ortona, in thesame house with my cousins Signorina Bice and Signora Polita. On the night of the10th Jan 44 at about 11 o'clock I heard a lot of screaming. I opened my door and went outside in the hall and saw two soldiers, one was pointing a revolver at me, he was the accused. He demanded cognac. The soldiers went into my room and again demanded cognac. I did not have any cognac. The accused grabbed me by the jacket and and slapped my face two or three times. The soldiers went outside and I heard one shot. I saw two soldiers upstairs and one down below. On the 12th January 1944 I attended a parade of soldiers and picked out the accused as being one of the soldiers who broke into the house on the evening of 10th January 1944.

sgd. Nicola Domarco

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 declines to make any statement.
Rule of Procedure complied with.
Taken down by me in the Field this 13th day of January in the presence of theaccused.

sgd. F.H. Bonnell, Capt.
The Seaforth Highlanders of Canada.

List of Witnesses in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Signorina Polita Bice	50 Via Sofia, Ortona
Signora Amina Politi	50 Via Sofia, Ortona
K52026 CSM Gibson, J.	Seaforth of C
Nicola Domarco	50 Via Sofia, Ortona

List of Exhibits in the case of K52158 Pte. Esselmont, J.J., The Seaforth Highlanders of Canada.

Nil

Officer Commanding
Seaforth of C

Sir:

I respectfully request that "Capt. E. Sutton

be appointed to represent me at my forthcoming F.G.C.M.

J.J. Esselmont

14 Jan 44

M.F.M. 6
K52158 Pte Esselmont, J.J.

M/n document not available at present time.

"W.D. Reid"

W.D. Reid Capt,
Adjt. The Seaforth Highlanders of Canada.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Twenty-fourth day of January, 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)

[redacted] "J.L."

were duly sworn.

Signed this Twenty-fourth day of January 1944

"J. Leach" Major
President of the Court Martial.

*Omit if not applicable.

C. Certificate in case of death sentence.

*See footnote (b) on page 767 M.M.L. 1929.

[redacted] the terms [redacted] "JL"

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

[redacted]

Signed this 28th day of January 1944.

"C.B. Ware" Lt-Col
Confirming Officer.

Promulgated and extracts taken in the case of A-92158 Pte Esselmont, J.J. Seaforth of C.

(a) (Dated) 29 Jan 44 (Signed) "E.D. Fulton" Capt. for O.C. "D" Coy Seaforths of C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

C. N. O. T. — 1 — 54

Pt. Essery, Ont.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H45898 Pte Essery W. A.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 7.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

~~At present under evidence for~~ beginning ~~Monday~~ HSP (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

The court sentence the accused, H45898 Pte Essery W.A. 3 Cdn Inf Div Ses Catering Pool CAOF to undergo detention for Six months.

13 Nov 45 (Sgd) H B Patrick President. (RP 45. HSP

(Sgd) ..... Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 53-56, 120, MML pp 759-761; KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be put into confinement in prison at Aldershot for twelve months.~~ (1)

(1. AA 57A. Delete if not used.)

Date 14 NOV 45 (Sgd) W H Calling Lt-C
H.Q. R.C.A.S.C. 3 Cdn Inf Div (Comd)
Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
H-45898 Pte Essery. W.A	4-Nov-45	J.D.K Blane Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECEIVED AT CMHQ IN AB 160 C A O F - 1 - 54

HEADQUARTERS JAG BRANCH C.M.H.Q. 5 APR 46

CPA96 (In lieu of AF A3)
C.F.R.B. 1608 (2504)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col W H Calling Comd Rcasc 3 Cdn Inf Div CAOF dated 10 Nov 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H45898	Pte	William Alfred	Essery	3 Cdn Inf Div Ses Catering Pool CAOF

5 Privates

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 13 Nov 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RO1. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10 00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused is to be tried by court-martial instead of being dealt with summarily by (Unit).~~ HSP

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A HSP as interpreter? Ans N/A HSP
The Interpreter is sworn.(1) Do you object to N/A HSP as shorthand writer? Ans N/A HSP
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H B Patrick	2/9 C I B Coy Rcasc CAOF
Member	Capt	J K Armitage	2/7 C I B Coy Rcasc CAOF
Member	Lt	R L Maingay	2 M.G. Rcasc CAOF
Judge-Advocate	N/A		
Prosecutor	Capt	D R Saltens	2/3 Div Tpt Coy Rcasc CAOF
Defending Offr	Capt	B P McGovern	2/9 C I B Coy Rcasc CAOF

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir 33.)

A8. The accused H45898 Pte Essery W.A. before arraignment makes(s) (no) objn. HSP

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB name and rank of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(severally)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

HSP HSP

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans No Sir.[5]

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement~~ [illegible] the Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on ~~the~~ charge(s). The accused is (are) so informed, and he (they) ~~changes (change)~~ his (their) plea(s) on ~~the~~ charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.[1]

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(1. *RP 37(A), (E).*)

C2. The charge(s) on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and recording in appropriate record thereof as a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here 12 p Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....[1]

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is re-opened, and the President announces that the submission is closed, and considers the submission.[3] The Court is re-opened, and allowed on the ..... charge(s), and disallowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, but you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

Do you intend to call witnesses on your behalf? Ans .....

Are they witnesses as to character only? Ans .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(b).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]

(1. *AA 54(3) (4), RP 45, 120(A).* 2. *AA 54(3), RP 42, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans No Sir.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.[3]

(1. *MFR 255 or MFR 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans I wish the Defending Officer to make a statement for me.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should prohibit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]

(1. *Where several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 43. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas 80, 304, 2323, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. Where accused already under sentence of imprisonment or detention see AA 44(1B), 56(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

/

HQP

CHARGE SHEET

The accused H.45898 Pte. Essery, W.A. of 3 Cdn Inf Div Sec Catering Pool (CAOF) a soldier of the Canadian Army Overseas is charged with:

First Charge
A.A. Sec 15(1)

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field, in Germany, did absent himself without leave from 2230 hrs 6 Oct 45 until apprehended by 2/4 Cdn Provost Coy, in Oldenburg Germany, at 1415 hrs 29 Oct 45.(Total Time Absent: 22 days, 15 hrs, 45 mins.)

In the Field
2 Nov 45.

H.C. Patterson Major
(C.D. Hazard) Capt
Officer Commanding
3 Cdn Inf Div Sec Catering
Pool (CAOF)

To be tried by Field-General Court Martial.

DATE 10 Nov 45

W.H. Colling
(W. H. Colling) Lt-Col
C, RASC
3 Cdn Inf Div CAOF

FIELD GENERAL COURT-MARTIAL

CFA46 (In lieu of AFA8)
40/P&R/1697 (H&S)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 45898	Pte		William Alfred	Essery	3 Cdn Inf Div Sec Catering Pool (CAOF)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 NOV 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified authy.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~Duty having to appear (a) as a Offr to form the Court, (b) a Pl Offr as President, to the undersigned I have detailed hereby.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~Judge-Advocate to be detailed by the Offr nominated hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.E.Patrick	2/9 Cdn Inf Bde Coy RCASC (CAOF)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.R.Armitage	2/7 Cdn Inf Bde Coy RCASC (CAOF)
Lieut	R.L.Mainguy	2 Cdn M.A.C. RCASC (CAOF)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	R.C.L.Hunter	2 Cdn M.A.C. RCASC (CAOF)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country)

W.H.Colling (W.H.Colling personally. RP 105 fn 2.) Lt.-Col (Rank.)

Date 10 Nov 45

Commanding R.C.A.S.C. 3 Cdn Inf Div (CAOF)
Convening Offcer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

13 Nov 45

I certify that No. H.45898 Pte. Eddy. W.A. .....of

3 Cdn Inf Div Sec Catering Pool CAOF is ..fit...to undergo

trial by Court-Martial.

.....
Signature of Medical Officer.

Summary of Evidence in the case of H 45898 Pte Essery R.A. of 3 Cdn Inf Div Sec Catering Pool (CAOF)

The Officer Commanding directs that the evidence be taken on oath

First Witness - K 53582 S/Sgt Crowe-Swords W.E. of 3 Cdn Inf Div Sec Catering Pool (CAOF) sworn states

I am K 53582 S/Sgt Crowe-Swords of 3 Cdn Inf Div Sec Catering Pool (CAOF) employed as instructor. On 6 Oct 45 at 2230 hours I made a check of personnel in billets and found one empty bed. On inquiring I was informed it belonged to Pte Essery I then called his name and receiving no answer made a thorough check of the billets but could not

First witness (cont'd) find Pte Essery. I immediately reported him as absent without leave as from 2230 hours 6 Oct 45. Pte Essery has been continuously absent from that time until 1415 hrs 29 Oct 45 when he was turned over to me by F81079 L/Cpl Johnson A.A. of 3/4 Cdn Provost Coy (C.A.O.T.). I then placed him under close arrest and turned him over to the Cpl of the guard and informed Pte Essery that he was charged with being absent without leave.

The accused declines to Cross examine this witness.

H.B. Evans-Lewis

Third Page

Second Witness F87079 L/Cpl Johnson H. A.
of 2/4 Bde Provost Coy (C. A. O.T.)
duly sworn states.

I am F87079 L/Cpl Johnson H.A.
of 2/4 Bde Provost Coy (C. A. O.T.).
At approximately 1100 hrs 29
Oct 45 I was called to 28
Wilhemstrasse to apprehend
a civilian women, there
I found Pte Essery D. Hodg-
kins 2/4 Provost Coy later
appeared upon the scene
and instructed me to
escort Pte Essery back
to his unit and to find
out if he was A.W.O.L.
I did place Essery under
arrest, he accompanied
me willingly. On arriv-
al at 3 C.S.S. Section Catering
Pool I found Essery had
been absent since the
morn of 8 Oct, I turned Pte
Essery over to S/Sgt Crow-
swords who stated he
would charge Pte Essery.

H. A. Johnson

The accused declines to Cross-examine the

The accused was cautioned as follows

Ques! Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Ans. I do not wish to make a statement sir

H McGrath

The accused does not call any witnesses

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that R.P.A. (c)(d)(e) and (f) have been complied with

D. R. Hartley Lt
2/3 Edmonton Sherwood Foresters
R.C.A.S.C. (Coast)

2 Nov 45

Ex "A"

SUMMARY OF EVIDENCE IN THE CASE OF H45898
PTE ESSERY, W.A. of 3 CDN INF DIV SEC CATERING
POOL (CAOF)

THE OFFICER COMMANDING DIRECTS THAT THE EVIDENCE
BE TAKEN ON OATH

FIRST WITNESS

K53582 S/Sgt Crowe-Swords, W.E. of 3 Cdn Inf Div Sec Catering Pool (CAOF) sworn states:-

I am K53582 S/Sgt Crowe-Swords of 3 Cdn Inf Div Sec Catering Pool (CAOF), employed as instructor. On 6 Oct 45 at 2230 hours I made a check of personnel in billets and found one empty bed. On inquiring I was informed it belonged to Pte. Essery. I then called his name and receiving no answer made a thorough check of the billets but could not find Pte. Essery. I immediately reported him as absent without leave as from 2230 hours 6 Oct 45. Pte. Essery has been continuously absent from that time until 1415 hours, 29 Oct 45 when he was turned over to me by F87079 L/Cpl Johnson, H.A., of 2/4 Cdn Provost Coy (CAOF). I then placed him under close arrest and turned him over to the Cpl of the guard and informed Pte Essery that he was charged with being absent without leave.

The accused declines to cross-examine this witness.

W.E. Crowe-Swords.

SECOND WITNESS

F87079 L/Cpl Johnson, H.A. of 2/4 Cdn Provost Coy (CAOF) duly sworn states.

I am F87079 L/Cpl Johnson, H.A. of 2/4 Cdn Provost Coy (CAOF). At approximately 1100 hours 29 Oct 45 I was called to 26 Wilhem-strasse to aprehend a civilian woman, there I found Pte Essery. Lt. Hodgkiss 2/4 Provost Coy later appeared upon the scene and instructed and instructed me to escort Pte Essery back to his unit and to find out if he was A.W.O.L. I did not place Essery under arrest, he accompanied me willingly. On arrival at 3 C.I.D. Section Catering Pool I found Essery had been absent since the sixth of Oct, I turned Pte. Essery over to S/Sgt Crowe-Swords who stated he would charge Pte Essery.

The accused declines to cross-examine this witness.

H.A. Johnson

The accused was cautioned as follows:

Ques 1 - Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Ans - I do not wish to make a statement, sir.

W.A. Essery.

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that RP 4 (c), (d), (e) and (f) have been complied with.

In the Field
2 Nov 45.

D.R. Gaitens Lt
2/3 Cdn Inf Div Tps Coy RCASC
(CAOF)

CERTIFIED TRUE COPY

In the Field
2 Nov 45

D.R. Gaitens Lt

Ex "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H.45398	Pte.	Essery, W.A.	3 Cdn Inf Div Sec Catering Pool (CaOF)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	AWL	9 times.
For	Breaking out of barracks	1 times.
For	Fraternizing	1 times.
For	Falsefying a leave pass	1 times.

Date of first entry in Field Conduct Sheet 4 May 42

Date of last entry in Field Conduct Sheet 7 Sep 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The accused is not known to have been convicted by a court martial or a civil court.~~ Nil.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 1½ days in military custody, *i.e.*, Nil days in open arrest, 1½ days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 24 yrs 11 months.

6. The date of his attestation is 27 Jun 40

7. The service which the accused is allowed to reckon is 5 yrs 4 months 5 days

[State the military decorations (if any) held by accused.

8. The accused is in possession of CVSM & Clasp Defence Medal France Germany Str.39-45 Star.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) Wt.24930/3494 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 21 Feb 44	A.A. Sec 15(1)	90 days Fd. Punishment	30 days remitted.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of Nov 45

H.C. Pattison Major

(H.C. Pattison) Major
Officer having custody of

Mr President, Members of the Court.

The accused H. 45898 Pte Emery H.
of 3 Can Inf Div Re Catering Pool (WD) C F
has pleaded guilty to the charge of
being A.W.O.L. It devolves to me to accept
the punishment which will be set by
you the President, and members of
this Court.

In setting the punishment in
this particular case I feel that the
following points should be carefully
considered.

1° The accused has served in
the Can Army for a period of 5 years
and 11 mos. Most of this time has
been spent overseas.

2° He has always been a model
soldier, whilst on duty and has
established the reputation of being a
hard and cheerful worker.

3° This Soldier has previously
suffered from loss of memory. Major
Neil of the R Can A M C has examined
this man and has stated that Pte Emery
should be returned to Canada because
of his mental stability.

4° The accused has been stationed in Germany whilst awaiting repatriation. And as he is a cook he has been proper.

5° As he was awaiting a posting in the catering pro and with no particular job to do, he had a great deal of spare time on his hands, in such a position it is only natural for a man to become rather morose.

6° The accused did go AWL but had no intention of staying away. Enjoying the company of friends by putting off his return until he was picked up by the Provost.

7° He has previously been found guilty of a number of small charges but never of one of disobedience. He made no effort to resist arrest and at all times has been a model soldier whilst awaiting trial.

8° Every day spent in detention will lengthen the time before his discharge to civilian life. As the accused is now 25 years of age the readjustment will be very difficult to readjust himself to civilian life.

9° Having the previously mentioned reasons I feel that as light a sentence as possible should be given the accused.

E Pte Lorenz Capt.

EEE72
PTE ESSERY W.A.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 45898 Pte William Alfred Essery R.C.A.S.C. attached Lake Superior Regt (Motor)

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. 15 (1)	Not Guilty	Guilty	
2nd A.A. 15 (1)	Not Guilty	Guilty	With the exception that for 2330 hrs 20 Jan 44 read 1100 hrs 21 Jan 44.
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 86, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as to use of kit see RP 44 (6).)

~~At present under sentence for~~ ~~Nil~~. beginning on (date) ~~Nil~~. (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil. days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo ~~detion~~ detention For 90 days

(Sgd) ~~Nil~~ Judge-Advocate, if any. ~~Nil~~. Date awarded 21 Feb 44. (Sgd) R H Haidlaw Major President (RP 45, 90)

(See back of Convening Order as to assembly and disposal of record after trial.) 21 Cdn Armd Regt

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP (20)(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

My decision on the finding(s) and sentence set forth in Part 1 is:

I confirm the finding and sentence but commute the sentence to read, "To suffer field punishment for 90 days and to forfeit 90 days pay, but remit 30 days field punishment and forfeiture of 30 days pay"

Date 21 Feb 44.

(Sgd) W A Calgeny Lt/Col.
A/Commanding 4 Cdn Armd Bde.
Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 378, 377.)

Accused.	Date.	Signature of Offr.
H45898 PTE. ESSERY W A	22 Feb 44	W. T. Elliott Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. EEE 22

CPA86 (1b Revd of APA3) 40; P A S/1698 (2604)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J.D.B. Smith Comd 4 Cdn Armd Bde dated 8 Feb 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Pmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
H 45898	Pte	William Alfred	Essery	R.C.A.S.C. attached to Lake Superior Regt (Motor)

PROCEEDINGS REVIEWED
J. Bridgeland Capt
20 Feb 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England. on (date(s)) 9 Feb 44 and 10 Feb 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RoS. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0935 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2).~~

(1. KR Can 357. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 363(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~Nil~~ ~~an interpreter ? Ans~~ ~~Nil~~

~~The interpreter is sworn.(1) Do you object to~~ ~~Nil~~ ~~as shorthand writer ? Ans~~ ~~Nil~~

~~The shorthand writer is sworn.(1)~~ ~~Nil~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.D.(1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 28, 71, 76, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R H Haidlaw	21 Cdn Armd Regt.
Member	Capt	C. Cassils	22 Cdn Armd Regt.
Member	A/Capt.	K B West	21 Cdn Armd Regt.
~~Judge Advocate~~	~~Nil~~	~~C N Ackland~~ ~~Nil~~	~~Lake~~ ~~Nil~~
Prosecutor	Lieut	C N Ackland	Lake Superior Regt (Motor)
Defending Offr	Capt	T H Murray	Lake Superior Regt (Motor)

Questions by President: Is the Prosecutor a lawyer? Ans. No. Is the Defending Offr a lawyer? Ans. No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv. Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

~~A8. The accused~~ ~~Nil~~ ~~before arraignment makes(s) (not) the plea~~

~~The accused Pte W.A. Essery before arraignment makes(s) no plea.~~ ~~Nil~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP s25(f), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 17), or in case of several accused charged jointly to be tried separately (RP 14, 77), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of insert p 2. When more than one Charge Sheet see RP 82; when several accused to be tried separately see RP 77(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 37(*B*) *fn* 5 *and* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him [illegible] again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (not) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the Second charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is dismissed on the Second charge(s), and allowed on the Second charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (not) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 49. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 80(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Make a statement — Cautioned re evidence Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans No .....
(*1. RP* 39. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s)(1). The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex E respectively.(3)
(*1. AF B* 103 *or AFB* 2196 *Sec* 1 *para* 6. *2. RP* 46, *KR Con* 539. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans [illegible] (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried sequentially see RP* 39(*b*). *One sentence only, comprised of the punishment or punishments held down in AA* 41, 44 *and* 81*a proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas AO* 809, 2323, 3046, *p* 60, 737-739. *As to sentences consigned for civil offences by the law of England see AA* 41(5), 3046, *p* 130. *Where accused already under sentence of imprisonment or detention see AA* 44(8), 98(1), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see orders on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"A" "B"

CHARGE SHEET

The Accused H-45898 Pte. William Alfred ESSERY, Royal Canadian Army Service Corps attached to The Lake Superior Regiment (Motor) a soldier of the Canadian Army Overseas is charged with while on active service:

FIRST CHARGE
SEC 15 (1)
THE ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, on 15 Jan 44 did absent himself without leave from his unit from 2230 hrs 15 Jan 44 until 1100 hrs 18 Jan 44.
(Total absence 2 days 12 hrs 30 mins)

SECOND CHARGE
SEC 15 (1)
THE ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, on 20 Jan 44 did absent himself without leave from his unit from 2230 hrs 20 Jan 44 until 1045 hrs 22 Jan 44 when he was apprehended by Sgt Foulds R., at 61 Rugby Place, Brighton.
(Total absence 1 day 12 hrs 15 mins)

W. T. Ibbott
(W.T. Ibbott) Lt-Col
Lake Sup R (M)

In the Field
27 Jan 44

To be tried by Field General Court-Martial.

J.D.B. Smith
(J.D.B. SMITH) Brig.
Comd. 4 Cdn Armd Bde

In the Field.
7 Feb 44

B.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1497 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H 45898	Private	William Alfred	ESSERY,	Lake Sup R (M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 7 Feb 44 endorsed by me, ~~or [illegible]~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~For conducting the proceedings the Offr to form the Court, (c) a Fd Offr as President, the remainder thereof, [illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	R.H. Laidlaw, (Must be named. RP 106.)		21 Cdn Armd Regt (Unit.)

MEMBERS.

Capt.	K.B. West,	21 Cdn Armd Regt
Capt. (Rank.)	C. Cassils, (Named or detailed. RP 106.)	22 Cdn Armd Regt (Unit.)

WAITING MEMBER.

Lieut. (Rank.)	C.D. Robertson, (Named or detailed, if any. RP 106.)	22 Cdn Armd Regt (Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England. (Country.)

Date 7 Feb 44

J.B. Smith Brig (Rank.)
(Signed personally. RP 105 fn 2.)
(J.D.B. SMITH) Brig.
Commanding 4 Cdn Armd Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

C

MEDICAL OFFICER'S REPORT

I certify that No. H45898 Pte. ESSERY, W.A.
of Lake Sup Regt (M) is in a GOOD state of health,
and FIT to undergo Trial by Court martial.

P. Bergeron Capt
Medical Officer

Station In the Field

Date 9 February 1944

M. F. B. 246
MM—4-41 (702)
H.Q. 172-39 680

"A1" C 1.

MEDICAL OFFICER'S REPORT

I certify that No. H38698 Pte. Essery, W.A.,
of Lake Sup Regt (W) is in a Good state of health,
and Fit to undergo Trial by Court martial.

F.E. Ferguson Capt
Medical Officer

Station In the Field

Date 10-2-44

M. F. B. 246

FIRST WITNESS FOR THE PROSECUTION

A-34.091 Pte. Grant, S.R. having been duly sworn is examined by the Prosecutor:-

I am A-34.091 Pte.Grant, S.R. and was employed as Sgt. Caterer in the Officers' Mess L.S.R.(M). Pte. Essery was under my command as second cook. At 1030 P.M. on the 15 Jan 44 on making my nightly check of personnel Pte.Essery was absent. I did not see him until 11 A.M. 18 Jan 44 when he reported to the Officers' Mess.

CROSS EXAMINED BY THE DEFENCE

Q. Do you remember that particular night Sat 15 Jan. 44?

A. As well as can be expected it was some time ago.

Q. Who was in charge of the bar that night?

A. L/Cpl. Kabel.

Q. Do you have a formal roll call?

A. No. I just make a visual check sometime between 1030 and 11 P.M.

R.P. 83(b) complied with.
The witness withdraws:

SECOND WITNESS FOR THE PROSECUTION

H-45.521, Sgt. Morice having been duly sworn is examined by the Prosecutor:-

I am H-45.521, Sgt.Morice of C Coy. L.S.R.(M).
I was Coy Orderly Sgt. on 20 Jan 44 the accused was on Orderly Room Parade. As Coy Orderly Sgt. I made a check at tattoo roll call. The accused was not in the lines. He had been on parade with No. 12 Pl. that day. The next morning I checked the Coy Lines, Nos. 1 & 2 kitchens, the Officers' lines and the R.A.P. In this check I did not find the accused or anyone who had seen him in quarters the night previous, I therefore reported the accused absent from 1030 P.M. 20 Jan 44.

CROSS EXAMINED BY THE DEFENCE

Q. On the night of the 20 Jan 44 when you checked the lines, where was Pte. Essery's bed?

A. I did not know whether it was in the Officers lines or not.

Q. Had his bed been in the Officers lines would you have known if he was in his quarters?

A. No, not that night but I checked next morning.

R.P. 83(b) complied with.
The witness withdraws:

THIRD WITNESS FOR THE PROSECUTION

H-46.429 Sgt. Foulds having been duly sworn is examined by the Prosecutor:-

I am H-46.429 Sgt.Foulds, Regt'l Police L.S.R.(M).
On the morning of 22 Jan 44 I was called to the Bn.Orderly Room by Capt.Bate, Adjt. L.S.R. and asked if I could locate Pte. Essery. I said that I could try and left immediately for Brighton. On information received there I proceeded to 61 Rugby Place and on asking at the house if Pte.Essery was there, I was told that he was. He was called to the door and I placed him under arrest at 1045 A.M. 22 Jan 44 and returned him to the Unit Lines in close arrest.

The Defending Officer objected to the second charge stating that the Prosecution had not established a prime facie case.

The court closed at 2.45 P.M. to consider their decision and reopened

at 3.10 P.M.

FIRST WITNESS FOR THE PROSECUTION RECALLED
Is cross examined by the President:-

Q. With whom did you check at the Officers Mess?

A. In the morning I checked with L/Cpl. Kabel at the Officers Mess by telephone.

Q. Was the accused reported absent?

A. No.

R.P. 83(b) complied with
The witness withdraws:
The President read Sec. 32 R.P.

At 3.20 P.M. 9 Feb 1944 the court adjourned until 10 Feb 1944

At 9.40 A.M. 10 Feb 1944 the court re-assembled pursuant to adjournment President and same Members as when adjourned.

SECOND WITNESS FOR THE PROSECUTION RECALLED
Is cross examined by the President:-

Q. At what time on the morning of 21 Jan 44 did you establish that the accused was not in any part of the Unit Lines?

A. At 11 A.M. Sir.

R.P. 83(b) complied with
The witness withdraws:

The accused wishes to make a statement without being sworn.

"H" I established friendly relationships with a Mrs.Hailstone while the Unit was in Brighton. On the 7 Sept' Mrs. Hailstone visited me and told me that she was pregnant. I realized that I was the father of the child if this were true. On Friday the 21 Jan 44 I was at Mrs. Hailstone's house, she was sick after having a miscarriage Thursday night. I remained there all day to look after her. She did not want me to call a doctor because she had been trying to bring on an abortion by taking pills. I remained Friday night because she was still sick and when the air raid started she got worse. I hope to marry Mrs. Hailstone as soon as her divorce comes through. If Sgt.Foulds had not come for me I would have been back on Sunday morning 23 Jan 44. This would have been possible because Mrs.Hailstone's sister would have been back from London to look after her. After I left there was a doctor called in.

R.P. 83(b) complied with.

FIRST WITNESS FOR THE DEFENCE
H-45.559 Pte. Leonzio,G.F. having been duly sworn is examined by the Defence:-

I am H-45.559 Pte.Leonzio,G.F. of the L.S.R.(M)
I was employed in the Officers' Mess as a waiter on 15 Jan 44
I was on duty the night of the 15 Jan 44 working in the bar.
Sgt.Grant was not in the mess that night. I was taking his place so that I could get a pass on Monday night.

CROSS EXAMINED BY THE PROSECUTOR

Q. You state that you were taking Sgt.Grant's place on Sat. night so that you could get a pass on Monday?

A. Yes.

Q. This exchange was at your request?

A. Sgt.Grant asked me on Thursday night if I would take his place on Saturday night. I said I might want to go out myself that night.

Q. Did you that evening have occassion to look for Sgt.Grant?

A. No Sir, but he was not in the Mess when I closed the bar at 1115 P.M.

Q. When the accused was in the Mess as second cook did you live in the same room as him?

A. No.

Q. Did you however live in the same building?

A. Yes.

Q. On that night 15 Jan 44 did you see the accused?

A. I did not live in the same room and I do not remember whether I saw him or not.

R.P. 83(b) complied with XIII
The witness withdraws:

SECOND WITNESS FOR THE DEFENCE
H/Capt. Lang,J.R. having been duly sworn is examined by the Defence:-

I am H/Capt.Lang,J.R. Padre attached to L.S.R.(M). The accused came to me for advice in clearing up some serious complications in connection with his marrying Mrs. Hailstone. I saw Mrs. Hailstone when she visited the accused early in September. At that time she was pregnant. I visited Mrs. Hailstone on or about the 26 Jan 1944, she was quite ill having suffered a miscarriage The accused is to the best of my knowledge even more determined to marry Mrs. Hailstone.

R.P. 83(b) complied with XIII
The Witness withdraws:

FIRST WITNESS FOR THE PROSECUTION RECALLED
Is cross examined by the President:-

Q. Were you in the Officers Mess building on the night of 15 Jan 1944 before 1030 P.M?

A. I don't remember.

Q. Were you on duty in the bar?

A. No, L/Cpl. Kabel was in the bar.

Q. Are there one or two men in the bar at night?

A. One man.

Q. Are you sure that L/Cpl. Kabel was in the bar and not Pte. Leonzio?

A. It was my intention that when I went out L/Cpl. Kabel would be in charge of the bar, but I understand that sometimes he puts on one of the waiters so that he could go out himself, therefore it might have been Pte.Leonzio.

CROSS EXAMINED BY THE DEFENCE

Q. On the week end of 15 Jan 44 to your knowledge did L/Cpl. Kabel have a week-end pass?

A. I believe that was the week end before.

Q. Do you know if he did not have a week-end pass that week end 15 Jan 1944?

A. I could not say definitely.

Q. Are you sure that you made a visual check the night of Saturday 15 Jan 1944?

A. Yes.

R.P. 83(b) complied with RML
The witness withdraws:

The prosecution asked permission of the court and the defending Officer to call a fourth witness for the prosecution.

Granted.

FOURTH WITNESS FOR THE PROSECUTION

Capt.M.W.Babe having been duly sworn is examined by the Prosecutor:-

I am Capt.M.W.Babe Adjt. L.S.R.(M)

Q. Was the accused refused a pass when it was urgently required?

A. No I told the accused that if he was ever refused a pass by his Coy Commander to come and see me about it.

Q. Did the accused ever contact you in this matter?

A. As near as I remember, No.

Q. Was the Commanding Officer aware of the circumstances and sympathetic towards the accused?

A. Quite aware.

Q. Did you advise the Coy Commander of the circumstances about the pass?

A, I am not sure.

Q. Were you in camp the week end of the 15 Jan 1944?

A. I was there until approximately 5 P.M. Sat, Sunday Morning and part of Sunday afternoon.

R.P. 83(b) complied with RML
The Witness withdraws:

CLOSING ADDRESS BY DEFENDING OFFICER

With reference to the first charge I submit that the prosecution has not proved the fact that the accused was absent from 15 Jan 44. The evidence produced by the prosecution was that Pte.Grant who if in the mess before 11.15 P.M. on 15 Jan 44 was not seen by the person in charge of the bar on 15 Jan 44. This contradicts the statement of Leonzio who was in charge of the bar. I submit therefore that the evidence in so far as the first charge is insufficient.
With reference to the second charge no attempt has been made to prove that the accused was not absent. I submit that the accused could not leave Mrs. Hailstone during the time covered by the second charge and still call himself a man. Had he left the girl he hopes to marry he would have displayed great disregard, and brutality far from Normal. Normally A.W.L. involves a stay under happier circumstances. With the accused this is not the case. The time spent must have been anything but happy. In fact a most horrible and trying experience. I submit the accused is not guilty of the second charge and quote notes under Sec. 15 A.A. involving absence owing to sickness or arrest by civil authority. "Involuntary absence, due for example to illness or arrest by civil power , is not ordinarily an offence under this section". I am quite sure that we need no medical advice to confirm how ill Mrs. Hailstone was at that time. Faced again with the same situation the accused in fairness to his manhood must make the same choice.

R.P. 83(b) complied with ~~C&H~~.

CLOSING ADDRESS BY PROSECUTING OFFICER

With reference to the first charge the prosecution has presented evidence to the effect that the accused was not present when the customary Tattoo check was made on 15 Jan 44. The defence has attempted with evidence to show that there is no proff of absence at approximately 10.30 P.M. There may be some argument regarding the exact time in this case. In this connection I wish to refer to Sec.15 A.A. "The particulars should state the date when the absence began and the date when it ended. If the hour of his absence is material for the purpose of proving a days absence. The hours of departure and return must also be stated in the particulars.
I submit that the absence of the accused may have taken place anytime up to 10.59 A.M. the following morning and it would not alter the charge of the crime in the least. The prosecution has proved that the accused absented himself some time during the night 15/16 Jan. 44 and is therefore guilty of the first charge.

With reference to the second charge. The defence has attempted to show involuntary absence, I wish to briefly refer again to notes A.A. Sec. 15. Reference there to involuntary absence in connections with illness to the accused, we have no evidence that the accused went to any great efforts to secure some individual to take his place by the side of his sick friend while he returned to duty with his Unit, nor is there any evidence that the accused made any attempt to contact his Unit and inform them of the circumstances at that particular time. As the prosecution has brought out the Commanding Officer and Adjutant and others were sympathetic towards the circumstances of the accused, and were doing all in their power to assist him. I submit that the accused was quite aware of this sympathy and regardless of this fact he continued to disregard Military Authority. I therefore submit that his absence was voluntary. As the defence has admitted physical absence. I submit the accused is guilty of the second charge.

CERTIFIED R.P. 83(b) HAS BEEN COMPLIED WITH ~~C&H~~.

G

In the Field 27 Jan 44.

SUMMARY OF EVIDENCE

in the case of

H-45898 Pte. William Alfred ESSERY, Royal Canadian Army Service Corps, attached to The Lake Superior Regiment (Motor), a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

A-34091 Pte. Grant, S.R., "C" Company, Lake Sup R (M) having been duly sworn, states:

"Sir, I am A-34091 Pte. Grant S.R., of "C" Company, The Lake Superior Regiment (Motor). In my capacity as Officer's mess steward on 15 Jan 44 I found Pte. Essery, whom I recognize as the accused, absent from his quarters in the Mess at tattoo roll call at approximately 2230 hrs. I did not see the accused again until approximately 1100 hrs 18 Jan 44 when he appeared at the Officer's mess. On seeing him there I warned him that he was under open arrest. This concludes my evidence, sir".

The accused declined to cross examine the witness.

S.R. Grant.
(A-34091 Grant S.R.) Pte.
The Lake Superior Regiment (Motor)

SECOND WITNESS FOR THE PROSECUTION

H-45521 Sgt. Merice F.C., "C" Company, Lake Sup R (M) having been duly sworn, states:

"Sir, I am H-45521 Sgt Merice, F.C., of "C" Company, Lake Sup R (M). On 20 Jan 44 I was company orderly sergeant "C" Company. The accused after being remanded for the Commanding Officer was warned by myself that he would be warned for Bn.Orderly room and would be under open arrest until that time. On checking the lines that night 20 Jan 44 at approximately 2230 hrs, the accused was not in the lines. The accused, being assistant cook in the officer's mess, had been sleeping there, and also had been recently detained and was sleeping in the R.A.P. and did not know therefore exactly where he was sleeping that night, so a thorough check was made the following morning. A check was made at the officer's mess, the R.A.P. and both the men's kitchens and also " C" Company lines. On completion of this check, as I was unsuccessful in locating the accused, I reported the accused as absent. This concludes my evidence, sir".

Question by the accused

Sgt. Merice did you look in huts 25 and 28 when you were making the check on the 21st.

P.T.O.

SECOND WITNESS FOR THE PROSECUTION (CONT'D)

Answer

I did not check these huts, as the cooks had said they had not seen the accused.

Question by the accused

How did you advise me that I was under open arrest.

Answer

When we came out of the company orderly room I told you that you were under open arrest and would be warned for Bn.orderly room later. I said this while I was coming through the door of the orderly room and my voice may have been too low to be clear to the accused.

The accused declined to further cross examine the witness.

A C Morice
(H-45521 Morice F.C.) Sgt
The Lake Superior Regiment (Motor)

THIRD WITNESS FOR THE PROSECUTION

H-46429 Sgt. Foulds, R., Regimental Police, The Lake Superior Regiment (Motor), having been duly sworn, states:

"Sir, I am H-46429 Sgt Foulds R., regimental police of The lake Sup R (M). On morning of 22 Jan 44 I was called to the Bn.Orderly room by Capt. Babe, the Adjutant and asked to try and locate Pte.Essery W.A., I immediately took a truck and went to Brighton. There, on information received I went to 61 Rugby Place and arrested the accused, Pte. Essery W.A., and returned him to his lines under close arrest. That concludes my evidence sir".

The accused declined to cross examine the witness.

R Foulds
(H-46429 Foulds R.) Sgt
The Lake Superior Regiment (Motor)

"Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be used as evidence."

ACCUSED "Nothing, Sir."

RULES OF PROCEDURE 4 (c) (d) (e) (f) HAVE BEEN COMPLIED WITH.

TAKEN BEFORE ME IN THE PRESENCE OF THE ACCUSED IN THE FIELD, THIS TWENTY SEVENTH DAY OF JANUARY 1944.

C.N. Ackland

(C.N. Ackland) Lt.
The Lake Superior Regiment (Motor)

In the Field 1 Feb 44.

ADDITIONAL EVIDENCE

in the case of

H-45898 Pte. William Alfred ESSERY, Royal Canadian Army Service Corps, attached to The Lake Superior Regiment (Motor), a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

H-46429 Sgt. Foulds R., Regimental Police, The Lake Superior Regiment (Motor), having been duly sworn, states:

"Sir, I am H-46429 Sgt Foulds R., regimental police of The Lake Sup R (M). I wish to state that I placed the accused, Pte Essery W.A., under arrest at 1045 hrs on the morning of the 22 Jan 44, sir".

The accused declined to cross examine the witness.

R. Foulds
(H-46429 Foulds R.) Sgt
The Lake Superior Regiment (Motor)

"Do you wish to make any statement or give evidence on oath. You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be used as evidence."

ACCUSED "Nothing, Sir."

RULES OF PROCEDURE 4 (c) (d) (e) (f) HAVE BEEN COMPLIED WITH.

TAKEN BEFORE ME IN THE PRESENCE OF THE ACCUSED IN THE FIELD, THIS FIRST DAY OF FEBRUARY 1944.

C.N. Ackland
(C.N. Ackland) Lt.
The Lake Superior Regiment (Motor)

No H45898 Name ESSERY William Alfred | Sqn. Battery or Company | Corps R.C.A.S.C. | Date of enlistment 27 Jun 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 48/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original Sheet Destroyed 27 June 42					
Camp Borden	4 May 42	Pte		AWL from 0815 hrs 4 May 42 to 0815 hrs 9 May 42 (5 days)AA 15(1)		14 days C.B.	9 May 42		Forf 5 days pay
Field	9 Aug 43	Pte		AWL from 2230 hrs 9 Aug to 0900 hrs 10 Aug 43 (10½ hrs) AA 15(1)	CSM Bynski	Forf 2 days pay	13 Aug 43	Lt.-Col. A.T. Ibbett	Auto forf 1 days pay.
Field	25 Sep 43	Pte		AWL from 1000 hrs 25 Sep 43 to 0700 hrs 26 Sep 43 (21 hrs)AA 15(1)	C.S.M. McKane	Forf 10 days pay	4 Oct 43	Lt.-Col. A.T. Ibbett	Auto forf 1 days pay.
Field	16 Dec 43	Pte		AWL from 2230 hrs 16 Dec 43 to 1030 hrs 17 Dec 43 (12 hrs)AA 15(1)	Cpl Sheppard L/Sjt Grant	Forf 21 days pay	20 Dec 43	Lt.-Col. A.T. Ibbett	Auto forf 1 days pay.
Field	1 Jan 44	Pte		AWL from 2230 hrs 1 Jan 44 to 2200 hrs 2 Jan 44 (23 hrs 30 mins)AA 15(1)	L/Cpl Grant	Forf 2 days pay	8 Jan 44	Lt.-Col. A.T. Ibbett	Auto forf 1 days pay.

CERTIFIED TRUE COPY OF REGIMENTAL RECORDS

W.M. Babcock (Major) Capt & Adjt.

Offr i/c Regtl Recds - Ottawa

(Lieut) Capt & Adjt. i/c Regtl Recds - Ottawa

(PTO)

M.F.B. 355
1M—8-40 (6400-1)
H.Q. 1772-39-620
A.F.R. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H-45898	Pte.	J.A. EMERY	Royal Canadian Army Servi Corps, attd. Lake Sup R(M)

1. The following is a fair and true summary of the entries in the Service and Conduct Records / Regimental Squadron, Battery Conduct sheets / Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, and of summary awards under Section 47 of the Army Act / and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. 15 (1)	4 times	A.A. 15 (1) 5 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct / or

There is no entry in the conduct sheets of the accused / Records show no instances for which rewards were awarded separately

2. The accused has not been previously convicted / or

Previous convictions of the accused / Records show convictions by civil court or summary court under Army Act / and particulars of such convictions are detailed on the attached sheet, marked

3. The accused is not under sentence at the present time / or

The accused at the present time is under sentence / beginning on the / days

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 19 days in military custody, making a total of 19 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his / Pay book is 23 yrs 1 month 21 days

6. The date of his / attestation specified in his / Pay book is 27 June 40

7. The service which the accused is entitled to reckon towards discharge is

8. The accused is entitled to / for the purpose of determining his pension / gratuity

9. The accused is in possession of / and has forwarded / or has not forwarded / to the / military authorities

10. The accused is / is not / in the opinion of his commanding officer / likely to become an efficient soldier

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial of civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Regiment

Name of

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

N/A

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~tenth~~ Tenth day of February, 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(L. A. Bobe) Capt & Adj.
Lake Sup R (R)

Pte Allain 4/c Regt Canada

HH-37

Pte. Espaniel. A. J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B149288 Pte Archie James ESPANIEL - 2 CITR - CIC

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd	AA Sec 40	GUILTY	GUILTY	
3rd	AA Sec 40	GUILTY	GUILTY	
4th	AA Sec 15(1)	GUILTY	GUILTY	
5th	AA Sec 40	GUILTY	GUILTY	
6th				Nil

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO BE IMPRISONED WITH HARD LABOUR FOR A PERIOD OF (24) TWENTY-FOUR MONTHS, AND TO BE DISCHARGED WITH IGNOMINY FROM HIS MAJESTY'S SERVICE.

(Sgd) Judge-Advocate, if any. 27 Nov 44 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation by superior authority

Date 23 Nov 44 (Sgd) [K G Blackader] Brigadier Commanding 13 Cdn Inf Trg Bde

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

I vary the sentence so that it shall be as follows: To be imprisoned with hard labour for a period of two years and to be discharged with ignominy from His Majesty's Service and I confirm the findings and sentence as so varied.

Date 24 NOV 44 (Sgd) J. H. ROBERTS, Maj-Gen.,
Commanding Comd. Cdn. Rft. Units.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. B149288 Pte Espaniel A J Date. 27 NOV 1944 Signature of Offr.

22d/28 Hqo 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4H-37

FIELD GENERAL COURT-MARTIAL CFA90 (In lieu of AFA3) 40/P A/B/1699 (6144) 4/38B

Convened by Order of Brig KG Blackader, DSO, MC, ED Comd 13 CITB dated 19 NOV 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B149288	Pte		Archie James	ESPANIEL	2 CITR CIC

PROCEEDINGS REVIEWED 19 Dec 44
Rmte W.C. Smith Capt
REVIEWING OFFICER, [illegible]

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 27 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1430 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to N/A as interpreter? Ans N/A

~~The Interpreter is sworn.(1)~~ Do you object to N/A as shorthand writer? Ans N/A
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	G TRIPP	4 CITR
Member	Capt	A S GRAYDON	2 CITR
Member	Lt	S FIDLER	2 CITR
Judge-Advocate			
Prosecutor	Lt	P SAPERIA	2 CITR
Defending Offr	Lt	GR HOLDER	2 CITR

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (3) and fn 2 were not followed. See Dir p 2.)

A8. The accused B149288 Pte ESPANIEL, A J before arraignment make(s) (no) ~~[illegible]~~ plea(s). (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AE mark and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 26, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 95.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on All the charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 353 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir. (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to adduce on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then J.A., if any~~.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments said down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(5), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. B.149288, Pte. Archie James ESPANIEL, C.I.C. on strength of 2 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Sec. 15(1) Army Act.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 2359 hrs. 24 Sep 44 absented himself without leave until he surrendered himself at Unit Guard Room, 2 C.I.R.U. at 0010 hrs. 30 Oct 44.

(Total Absence: 35 days, 10 min.)

SECOND CHARGE
Sec. 40 Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

[redacted]

at Laurentide Camp at approximately 0610 hrs. 1 Nov 44 while in confinement in Unit Detention Barracks, did take part in an assault upon A.56620 Cpl. Earl, D. thereby causing grievous bodily harm to the said Cpl. Earl, D.

THIRD CHARGE
Sec. 40 Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at Laurentide Camp at approximately 0610 hrs. 1 Nov 44 while in confinement in Unit Detention Barracks did unbolt the cell doors of three soldiers in confinement awaiting trial thereby permitting them to escape from custody.

FOURTH CHARGE
Sec. 15(1) Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Laurentide Camp while in confinement in Unit Detention Barracks, at 0610 hrs. 1 Nov 44, did absent himself without leave until he was arrested at Kingston by the C.P.C. at 1045 hrs. 9 Nov 44

(Total Time absent: 8 days, 4 hrs. 35 min.)

FIFTH CHARGE
Sec. 40 Army Act

WHEN ON ACTIVE SERVICE AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he

at Kingston at 1045 hrs. 9 Nov 44 was in unlawful possession of M.B.M.1 Pts. 1 and 3, made out in the name of B.105149, Pte. PHILION, Joseph Rene.

.....
(J.A.Wilson) Colonel
Commanding 2 C.I.T.R.

In the Field
15 Nov. 44.

To be tried by Field General Court Martial.

K G Blackader

(K G Blackader) Brigadier
Commander
13 Cdn Inf Trg Bde

Field
19 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B149288	Pte		Archie James	ESPANIEL	2 CITR CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 19 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~)," To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~XX I APPOINT AS PRESIDENT XXXXX OFR OF THE COUNTRY XX OF ANY FORCE IN THE SERVICE I XXX XXXXXXXXX~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~XX I APPOINT A JUDGE ADVOCATE XXXXXXXX

F.G.C.M. file

Medical Officer's Certificate
K.R. (Can) Para. 557.

I certify that I have this morning examined B149255 Pte ESPANIEL, A.J.
(No.) (Rank) (Name)

of 2 C.I.T.R. and in my opinion he is ~~unfit~~ fit to under go trial by Court Martial.

Station Lamentide

Date 22 Nov/44

D.A. Stone Capt.
(Medical Officer)

MED. OFFICER'S CERTIFICATE

K.R.Can.Para 557.

I certify that I have this morning examined No B.149288

Pte. Espaniel. A.J. and in my opinion he is

~~FIT~~ UNFIT to undergo trial by Court-Martial.

Station: Laurentide Camp.

Date: 21 Nov 44.

.....Capt.
RCAMC, Attached to 2 C.I.T.R.

Pedro Vizcaíno to Cajetano Ato Capanillas

[illegible]
[illegible]
[illegible]

[illegible] in his brain. His view is upheld by the fact that he has already been before the army psychiatrist on one occasion.

These facts I have mentioned I believe help to explain that [illegible] when the accused committed these acts he was unconsciously reverting to his pre-army experience, a part of his subconscious mind was gaining dominance over the [illegible]

[illegible]

Therefore, I do not consider that the accused will be driven [illegible] by his experience, but by his pre-army experience and environment.

FGCM Ex "A"

SUMMARY OF EVIDENCE

In the case of B.149288, Pte. Archie James ESPANIEL, C.I.C., on strength of 2 Canadian Infantry Reinforcement Unit, a soldier in the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

First Witness Prosecution. Lieut. W.H. Pope, "D" Coy., 2 C.I.R.U., having been duly sworn, states as follows:-

"I am Lieut. W.H. Pope of "D" Coy., 2 CIRU, and I produce as exhibit "A" for the prosecution Certified True Copy of the Record of Declaration of a Court of Inquiry assembled in the Field on the 17 Oct 44, declaring that B.149288, Pte. Espaniel, A.J. illegall y absented himself without leave from 2 CIRU at 2359 hrs. on the 24 Sep 44 and that at the date of the Court he was still so absent, which Exhibit pertains to the accused."

The accused declines to cross-examine the witness.

.....W.H.Pope.....Lieut.
(W.H.Pope)

Second Witness Prosecution. No.A-56620, Cpl. Earl, D. of the Regimental Police, 2 CIRU, having been duly sworn, states as follows:-

"I am A-56620, Cpl. Earl, D. of the Regimental Police, 2 CIRU.

On 30 Oct 44, I was on duty in the Unit Guard Room. At approximately 0010 hrs that date, the accused, whom I now recognize, reported in to me stating that he was an absentee. I placed him under close arrest."

The accused declines to cross-examine this witness.

....D. Earl.....Cpl.
(D. Earl) A-56620.

The accused was cautioned as follows:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(C) (D) (E) and (F) have been complied with.

In the Field.
1 Nov 44.

.....Lieut.
(W.L.Liscombe) Officer detailed to take Summary of Evidence.

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of B.149288, Pte. Archie James ESPANIEL, C.I.C. on strength of 2 Cdn. Infantry Training Regt. a soldier in the Canadian Army Overseas.

By direction of the Commanding Officer, the Supplementary Summary of Evidence is taken on oath.

Second Witness Prosecution. (Recalled)

No. A.56620, Cpl. Earl, D. of the Regimental Police, 2 C.I.T.R., having been recalled and duly sworn states as follows:- "I am A.56620, Cpl. Earl, D. of Regimental Police, 2 C.I.T. R.

"On the 1st day of Nov 44, I was on duty at Unit Detention Bks. and was in charge of the night shift of Regimental Police.

At approximately 0605 hrs. that day, I opened the door of the Bull Pen of the Unit Guard Detention Room where the S.A.S. are confined and allowed the accused , whom I now recognize, along with Pte.Tomlinson, also an S.A.S., to enter the main detention room in order to arrange table and forms for breakfast. The accused and Pte. Tomlinson went in to the blanket room , which adjoins the main guard room, to get tables and benches. They had taken the tables in to the Bull Pen and came out to get the forms from the blanket room to take them into the Bull Pen. Pte.Tomlinson asked me if he could go to the toilet. I told him he could go and then he went around behind me in order to get to the toilet. He then attacked me from behind. The accused went to the cells and opened up the bolts allowing three other S.A.S. to escape into the large detention room. Then the accused, along with several other S.A.S.'s, attacked me--knocking me over--and took the key to the outer door from me. The accused, along with some of the others, then unlocked the outside door and escaped. The time of escape would be approximately 0610 hrs. After the escape I was removed to No. 2 C.M.C. with a head injury and remained there under treatment for 12 days."

Witness cross-examined by the accused:-

Q.1 "Did you say that you were hit on the head by a club and not by a fist?"
A.1 "Yes, I was hit on the head by a club and not by a fist."

Q.2. "Did you also see me run down to open up the cell doors?"
A.2. "Yes."

The accused declines to cross-examine the witness further.

D. Earl .....Cpl.
(D. Earl)

(Cont'd Next page)

In the case of B.149288, Pte. Archie James ESPANIEL, C.I.C. on strength of 2 Cdn. Infantry Training Regt. a soldier in the Canadian Army Overseas.

(Continued)

Third Witness Prosecution. Lieut. F.R. Caron, Depot Bn., 2 C.I.T.R. having been duly sworn, states as follows:-

"I am Lieut. F.R. Caron, Depot Bn., 2 C.I.T.R. and I produce as Exhibit "B" for the prosecution, certificate in accordance with P.C. 2797, dated 10 Nov 44, showing that B.149288, Pte. Espaniel, A.J. of 2 CIRU was arrested at Kingston at 1045 hrs. 9 Nov 44."

The accused declines to cross-examine this witness.

F.R. Caron .....Lieut.
(F.R.Caron)

Fourth Witness Prosecution. A.3788, Cpl. O'Brien, F.H., C.P.C.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Supplementary Summary of Evidence and marked Appendix "A"

Having regard to the expense and loss of time involved, a ttendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

W.L. Liscombe .....Lieut.
(W.L. Liscombe)

Fifth W itness Prosecution. H.102749, L/Cpl. Proctor, V.E. of C.P.C.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Supplementary Summary of Evidence and marked Appendix "A"

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

W.L. Liscombe .....Lieut.
(W.L.Liscombe)

SUPPLEMENTARY SUMMARY OF EVIDENCE

In the case of B.149288, Pte. Archie James ESPANIEL, C.I.C., on strength of 2 Cdn. Infantry Training Regt. a soldier in the Canadian Army Overseas.

(Continued)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Supplementary Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

In the Field.

13 Nov 44.

.....Lieut.
(W.L. Liscombe)
Officer detailed to take the Summary of Evidence.

EXHIBIT "D"

RECORD of the Declaration of a Court of Inquiry assembled at in the field on the 17 day of Oct 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-149288 Pte. Espaniel, A.J. (CIC)

DECLARATION

The Court declare that No. B-149288 Pte. Espaniel, A.J. (CIC)

illegally absented himself without leave from 2 C.I.R.U.

at 2359 hrs. on the 24 day of Sep 44,

that he is still so absent, and that on the 17 Oct 44 he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	No.	Vocab. Price £	s	d	Approx. Value £	s	d	ARTICLES	VALUE
Blouse Battle Dress	1	1	3	6		17	7½		
Boots Ankle	1	1	4	5		18	3½		
Drawers Cellular	2		3	10		2	10½		
Socks, prs	3		5	0		3	9		
Trousers Battle Dress	1	1	4	1½		18	1½		
Braces	1		1	4		1	0		
Combs Hair	1			2			1½		
Dressing Field	1		1	1			9½		
Mugs Drinking	1			7			5½		
TOTAL		£4-3-½			£3-3-½				

PRICES CERTIFIED CORRECT:

Capt/Q.M.
2 C.I.R.U.

F.A. Tilston Capt President
(F.A. Tilston) Capt. (ESR) 2 CIRU CA(O)

C.T. Smith Lieut Member
(C.T. Smith) Lieut. (ESR) 2 CIRU CA(O)

Member

Signed at in the field

this 17 day of Oct 19 44

Signature of Commanding Officer

Certified true copy

Signature of Officer [illegible] custody of original record

3/608 MFB 375-AFB 115 (P&S) 282 (5610)

Et. "B"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 APR. 42

I certify that No. B.149288 Rank Pte. . Name Espaniel.A.J. . . .

Unit no.2.C.I.R.U.(CRU) . . . was arrested at Kingston . . (place)

at 1045hrs (hour) on 9 Nov 44. (date) and that at the time of his arrest he was wearing (military uniform) or(xxxxxxxxxxxxxxxx).

Signature of Provost-Marshal, Assistand Provost-Marshal, or other officer or the Commanding Officer of the portion of Him Majesty's Forces or the officer, warrent-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

(R.R.Holmes),Major.
A.P.M. C.M.H.Q.

London
10 Nov 44.

Appx "A"

statement of **EVIDENCE** in the case of
B 149286 Pte. Espaniel.A.J.
No.2.C.I.R.U.(CRU)

Sir:

At Kingston, Surrey at about 1045hrs on 9 Nov 44 I was on duty in company with L/C. Proctor.V.E. when I saw the a/m soldier.

I approached him and requested to see pass and M.B.M.L.Pts.1,3,

He was unable to produce a pass, but produced the attached M.B.M.1 Pts.1,3, He was absent without leave.

I then placed him under close arrest and had him escorted to the Detention Room No.6. (Area)Provost Coy. where he was handed over to the N.C.O.i/c of Cells to be detained.

When I requested his particulars he admitted that the attached M.B.M.1 Pts.1,3 made out in the particulars of B 105149 Tpr. Filion.J.R. were not his.

London
9 Nov 44.

F.H.O'Brien Cpl.
A 3788 O'Brien.F.H.
Cdn.Provost Corps.

Sir:

I have read over and corroborate the above statement.

London
9 Nov 44.

V.E.Proctor L/C.

REMARKS

H 102749 Proctor.V.E.
Cdn.Provost Corps

CHARGE

Army Form B 252
(See King's Regulations)

No.2.C.I.R.U.(CRU) ..... Regiment

..... { Battery / Squadron / Troop or Company }

CHARGE against No. B 149288 Rank Pte.

Name Espaniel.A.J.

Place Kingston,Surrey. Date of Offence 9 Nov 44.

OFFENCE W.O.A.S. was A.W.L.(2)Improper Possession and Producing M.B.M.L. Pts.1,3, made out to the particulars of B 103149 Tpr.

Philion.J.R.

R. R. HOL MAJOR
ASSISTANT PROVO
CANADIAN MILIT MARSHAL
ARMY H.Q.

Names of Witnesses:

Cpl.O'Brien.F.H. No.6.(Area)Provost Coy.

L/C.Proctor.V.E. No.6.(Area)Provost Coy.

Signature of O.C. Battery, Squadron, Troop or Company .....

Punishment Awarded .....

By whom Awarded .....

Adjutant

F.T.O.

3 2m G.H.Q.F. 2818

Ex "B"

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.149288	Pte.	Archie James SEPANIEL,	2 CIRU,

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron / Battery Conduct sheets / Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec. 9 (2)	1 times	1 times
For Sec. 40	0 times	1 times
For Sec. 8 (2)	0 times	1 times
For Sec. 15 (1)	3 times	5 times
For Sec. 10 (4)	0 times	1 times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / A.F.A. 78 and dispensations with trial under A.A. 73 are set out in the Schedule Section 47 of the Army Act annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for ..... beginning on the~~

~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 15 days in military / Air Force custody, making a total of 15 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service / attestation paper is 19 yrs 4 mos.

6. The date of his ~~enlistment~~ specified in his record of service / attestation paper is 14 Jul 43.

7. The service which the accused is allowed to reckon towards discharge

8. The accused is entitled to reckon ..... service for the purpose of determining the pensionary

9. The accused is in possession of or entitled to ~~the~~ Air Force / military decoration, or ~~the~~ Air Force / military reward (~~the~~ Air Force / military possession of or entitled to). State any Air Force / military decoration or reward.

C.V.S.M. & Clasp.

10. ~~If the accused is a warrant officer.~~ The accused before he was made a warrant officer had held ~~the~~ Air Force / regimental rank of

B.149288

No. Name KOPANISL A. J. Sqn, Battery, or Company Corps CIC Date of enlistment 14-7-43 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No One Signature OC Company, etc Character

W3/17 MFM 6 (AFB 122) 40/P&S/136 (5418)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Original sheed destroyed 12-2-44					
Orillia	8-9-43	Tpr		(1) Conduct to prejudice of good order and military discipline (continued making noise in mess hall after told to be quiet) A.A. Sec. 40)	Cpl Schade, E.	Forf. dys P&A 9-943) A.A. Sec 46(2) 7 days C.B.		Lt.Col. T.W. Greenfield	
				(2) Using insubordinate language to a superior officer. (A.A Sec 9(2)	Cpl Power E.J.	7 dys P&A under A.A. Sec. 46 7 days C.B.		Lt.Col T.W. Greenfield	
Camp Borden	25-10-43	Tpr		Sec. 15 (1) A.A. AWL from 2200 hrs 25-10-43 until 1455 hrs 27-10-43. (Absent 1 day, 16 hrs 55 mins)	Documentary	14 days C.B.	26-10-43	C.J. Barlow Lieut	2 dys forf of pa R. R. & I 149 (1)(a

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	29-10-43	Tpr		Sec 10 (4) A.A. breaking out of barracks whilst a defaulter (2) Sec 15 (1) A.A. absenting himself for 4 hrs 15 mins without leave	Documentary	16F Hrs det.	1-11-43	E.T.B. Hankney Major	Forf 1 days P&A FR&I 149(1)a
Camp Borden	10-12-43	Tpr		Sec 9 (2) A.A. disobeying a lawful command given by his commanding officer on the D.E. parade square did break ranks after being warned with the rest of the troops on #2 C.A.C. PARADE SQUARE	L/Cpl Smart	7 days C.B.	10.12.43	G.C.H. Barlow Lieut.	
Previous sheet destroyed 14 Jan 44. Last Entry 10-12-43. Drunkeness Nil. Destroyed after 2 months R&R									
Camp Borden Ont	1-4-44	Tpr		Sec 15 (1) AA absent without leave from 0600 hrs. 3 Apr 44 till 0210 hrs 4 Apr 44. Total time Abs 20 hrs 10 mins.	Documentary	4 days C.B.	4-4-44	Lt A.Yates	1 days Forf. P&A FR&I 149(1) a

B.149288

No. Name ESPANIEL A.J. Sqn, Battery, or Company Corps GIC Date of enlistment 14-7-43 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAS/136 (5418)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No Two Signature OC Company, etc N.S. WADHAMS Capt A/OC Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	15-5-44	TPte		Sec. 15 (1) A.A. AWL from 0600 hrs 15-5-44 until 0130 hrs 29-5-44 (Absent 13 days 19 hrs 30 mins)	Documentary	10 days Pay A.A. Sec 46(2)(d)	29-5-44	Major T.W. Rutherford	Forf. 14 days pay FRAI 149
Field				Blood Donor to Red Cross 15 Aug 44	A.G.LAING Capt			Lt-Col R.C. Coleman	1 days pay FRAI 149 (1)(a)
Field	10Sep44	Pte		A.A. Sec 15 (1) WOAS, AWL from 0630 hrs 10 Sep 44 until 2300 hrs 10 Sep 44. Total 15 hrs 30 mins)	H.41147 Sgt Lunan W.J.E. A.104277 Cpl Thornton, W.E.	7 days F.P.2	12 Sep 44	C. Coleman	7 days pay JEAG FRAI 149 (1)(b)

Certified True Copy Consisting of Two Pages

21 NOV 44 .....

(W.S. WADHAMS) Capt.

Officer having Custody of Regimental Books.

(PTO)

REQUEST FOR DEFENDING OFFICER

I, B.149288, Pte. Archie James ESPANIEL, C.I.C. hereby request that the Convening Officer appoint any available officer to represent me at my forthcoming Court-Martial.

A.J. Espaniel .....Pte.
(A.J. Espaniel)

In the Field
1 Nov 44

RECEIPT FOR DOCUMENTS.

I, B.149288, Pte. Archie James ESPANIEL, C.I.C. hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

A.J. Espaniel .....Pte.
(A.J. Espaniel)

In the Field,
1 Nov 44.

LIST OF WITNESSES

In the case against B. 149288, Pte. Archie James ESPANIEL, C.I.C.

(For the Prosecution)

1. Lieut. W.H. Pope,	2 C.I.T.R.
2. A.56620 Cpl. Earl, D.	2 C. I.T.R.
3. Lt. F.R. Caron,	2 C.I.T.R.
4. A.3788 Cpl. O'Brien, F.H.	C.P.C. No.6 Area.
5. H.102749 L/Cpl. Proctor, V.E.	C.P.C. No.6 Area.

(For Defence)

Nil.

LIST OF EXHIBITS

In the case against B.149288, Pte. Archie James ESPANIEL, C.I.C.

(For the Prosecution)

Exhibit "A"	-	Certif.True Copy of Record of Decl. of C. of I. held 17 Oct 44, showing the accused to be A.W.L. from 2359 hrs. 24 Sept 44.
Exhibit "B"	-	P.C. 2797, d/10 Nov 44, showing accused to have been apprehended at Kingston at 1045 hrs. 9 Nov 44.

(For Defence)

NIL.

HF. 101
Pt to Estabrooke W 6

RECORDED AT CMHQ IN AB 160, 47-101

FIELD GENERAL COURT-MARTIAL

CPA96 (1)n lieu of 40-P & R (1)60

Convened by Order of Lieut-Gen H C Curry Comd 3 Cdn Div dated 26 Sep 44

RECEIVED 1 DEC 1944 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
[illegible]	[illegible]	William Irvine	MOSABROOKS	14 Cdn Fd Amb, RCAMC

PROCEEDINGS REVIEWED
W G Lundin Lt. Col
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) France on (*date(s)*) 27 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13|17

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs~~ under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1640 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Proceedings informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn j. For offence see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt [illegible] as interpreter? Ans No

The Interpreter is sworn.(1) ~~Prisr does not object to~~ ~~The shorthand writer is sworn.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J C Pattison	2 Cdn Inf Bde Coy, RCASC
Member	Capt	J P Rutherford	3 Cdn Inf Div Sigs
Member	Capt	J G Hunter	7 Cdn FDS RCAMC
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Capt	D J Welch	14 Cdn Fd Amb
Defending Offr	Maj	H A Preston	HQ 3 Cdn Div

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 36, 37, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI 3 21.)

A8. The accused ~~Private~~ [illegible] before arraignment make(s) (no) ~~a~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 896 to record proceedings. 2. RP 32, RP 33. If otherwise, discuss and make appropriate record per Notes.)

A10. The Court ~~adjourned~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

France I
page 84

RECORDED AT CMHQ IN AB 160, 47-101

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C/47238 Pte William Irving ESTABROOKS, 14 Cdn Fd Amb, RCAMC

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15.1	Not Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present ~~under sentence for~~ [illegible], beginning on (date) [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 5 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer Field Punishment for 90 Days. and to Forfeit all Ordinary Pay for a Period 90 Days.

(Sgd) [illegible] Judge-Advocate, if any. Sept 27-44 Date awarded. (Sgd) H C Pattison Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

Extracts entered as No. 33 in the Record of Court-Martial kept in the office of the Judge Advocate-General this 15th day of Dec 1944

I direct that the accused be not committed to prison or detention barracks until further orders.(*) (1. AA 57A. Delete if not used.)

(Sgd) D. C. Spry Lieut-for

Date 2 Oct 44 Commanding 3 Cdn Inf Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C-47238 Pte William Irving Estabrooks	10 Oct	H C Pattison Lt Col.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lieut-Gen B C Nary Comd 3 Cdn Div dated 26 Sep 44

RECEIVED 1 DEC 1944 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED [illegible] Lt Col REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
C/47238	Pte	William Irving	ESTABROOKS	14 Cdn Fd Amb, RCAMC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 27 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 13147

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs~~ under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Can ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF AP5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(*) The Court is satisfied that it is properly convened and constituted(*), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(*)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1640 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(*) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily (at Unit).(*)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Sgt Pte Richards as interpreter? Ans no

The Interpreter is sworn.(1) ~~Prsnr to object to the shorthand writer is conducted.~~ ~~as shorthand writer? Ans.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans no (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H C Pattison	9 Cdn Inf Bde Coy, RCASC
Member	Capt	J P Rutherford	3 Cdn Inf Div Sigs
Member	Capt	J A Hunter	7 Cdn FDS RCAMC
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Capt	D C Spry	1 Can Fd Amb
Defending Offr	Maj	W A Preston	HQ 3 Cdn Div

Questions by President: Is the Prosecutor a lawyer? Ans no Is the Defending Offr a lawyer? Ans no (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di 3 3.)

A8. The accused C/47238 Pte Estabrooks, W I before arraignment make(s) (no) plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB4 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(members withdrew)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

Record I page 84

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 2. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty, or in which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans. .....(4)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here-Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and upholds the submission.(3) The Court is re-opened, and allowed on the ..... charge(s) is dismissed from the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither?

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....

Do you intend to call witnesses on your behalf? Ans. .....

Are they witnesses as to character only? Ans. .....

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, *117*(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later,(1) and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.

(1. AA 54(3) (*d*), *RP* 45, 120(*A*). 2. AA 54(3), *RP* 45, *117*. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (*g*) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(1. *MFR* 355 *or MFR* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. .....(2)

(1. *RP* 37(*C*), 44(*D*). 2. *Address of any, recorded per Notes. Court should permit accused or his witnesses to prove or note anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 71(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 86-95, 69, 118, 119(*A*), *KR Can* 306, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned Cse xiiid offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(7), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

I, the undersigned, being the competent Military Authority, do hereby, pursuant to the powers vested in me by P.C. 9229/44 and Section 70(1)(ee) Army Act, R.S. 53A and G.O. 93 of 1925, substitute for the Finding of the within Field General Court-Martial the following Finding:

"The accused G.47238 Pte. William Irvine Estabrooks, 14th Canadian Field Ambulance, R.C.A.M.C. is found Guilty of the charge with the exception that the property stolen belonged to Mme. Martin, Cafe Bolognais, Marquise, France, and not to Mlle. Lucienne Martin, Cafe Bolognais, Marquise, France, as stated in the charge."

SIGNED at OTTAWA, ONTARIO, this 21st day of December, 1944.

A.G.L. Mayhew Maj. Gen.

ADJUTANT-GENERAL

FGCM - 27 Sep 44
G.47238 Pte William Irvine Estabrooks
14 Cdn Fd Amb RCAMC

WHEREAS the above mentioned soldier was tried in the field in France on 27 Sep 44, by field general court martial, on the following charge under AA 41, namely

"Committing a civil offence, that is to say, stealing

in that he

at about 1945 hrs 13 Sep 44 at Marquise, France, stole two bottles of cognac, the property of Mlle Lucienne Martin, Cafe Bolognais, Marquise, France,"

and was found guilty thereof, and sentenced to suffer Field Punishment for 90 days and to forfeit all ordinary pay for a period of 90 days,

AND WHEREAS on 21 Dec 44 Major-General A.E. Walford, the Adjutant-General, under the authority vested in him by PC 9229/44 and Section 70(1)(ee) Army Act, RP 53A and GO 93 of 1925 substituted the following special finding for the finding of the court, namely

"The accused, G.47238 Pte William Irvine Estabrooks, 14 Canadian Field Ambulance, RCAMC, is found guilty of the charge with the exception that the property stolen belonged to Mme Martin, Cafe Bolognais, Marquise, France, and not to Mlle Lucienne Martin, Cafe Bolognais, Marquise, France, as stated in the charge."

AND WHEREAS it is necessary to impose a sentence for the offence involved in the new finding

NOW THEREFORE, I, under the authority vested in me by PC 1405 of 1945 and Section 70(1)(ee) Army Act and RP 53A impose the following sentence in place of the sentence imposed by the court-martial, the same to have effect as if imposed by the court-martial on 27 Sep 44, namely:

"The accused G.47238 Pte William Irvine Estabrooks is sentenced to suffer Field Punishment for 90 days and to forfeit all ordinary pay for 90 days"

Signed in the Field in Holland

this 31st day of March 1945.

H.D.G. Crerar

(H.D.G. Crerar)General
The General Officer of the
Canadian Militia commanding
the First Canadian Army.

Promulgated and Extracts taken in the field,

2 May 45
(date)

"John R Barr" .....signature

Major .....rank

Adj .....appointment

2 Cdn Fd Amb RCAMC .....unit

N.G.P.

CHARGE SHEET

The accused -- G/47838 Pte William Irvine ESTABROOKS, 14 Canadian Field Ambulance, RCAMC, a soldier of the Canadian Army Overseas -- is charged with:

First Charge
Army Act
Sec 41

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

in that he

at about 1945 hrs 13 Sep 44 at Marquise, France, stole two bottles of cognac, the property of Mlle Lucienne Martin, Cafe Bolognais, Marquise, France.

In the field
22 Sep 44

(J Tennamn) Lt-Col
Commanding officer
14 Cdn Fd Amb, RCAMC

Approved on behalf of the JAG Cdn Army Overseas in accordance with K R (Can) 540 and Overseas H Q 4756.

In the field
25 Sep 44

(A C Wall) Capt
AJAA 3 Cdn Div

To be tried by Field General Court Martial.

In the field
26 Sep 44

(D C SPRY) Major-Gen
GOC 3 Cdn Inf Div

MEDICAL CERTIFICATE

27 Sep 44

I hereby certify that the undermentioned soldier was examined by me this date and is medically fit to undergo trial by F.G.C.M.

G47236 Pte ESTABROOKS W I

R. V. Potter Maj.

Medical Officer

FIELD GENERAL COURT-MARTIAL

C.A.M.6 (In lieu of A.F.A.S.)
40/P&S/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G/47230	Pte		William Irvine	EBTABROOKS	14 Cdn Fd Amb, RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 26 Sep 44 endorsed by me, ~~*(or by an offr of my staff for me)*~~, he (they) be tried by Field General Court-Martial";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~*(and that it is not practicable to delay the trial for reference to a superior qualified offr.)*~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H D Fabilson	9 Cdn Inf Bde Coy, RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J F Rutherford	8 Cdn Inf Div Sigs
Capt	J G Hunter	7 Cdn FDC, RCAMC

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A C Hall	ADJA 2 Cdn Inf Div

On Active Service in the Fd

in France
(Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 26 Sep 44

(D C STAY) Major-General
Commanding 7 Cdn Inf Div
Convening Offr.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

Accused. Cdn. 14 Fd Amb.

GH72386 William Ervin Estabrooke
Charged with stealing 2 bottles of Cognac

Plea.
Not guilty

1st Witness 1=8967 Pte DeRoche C.W.P

~~Yes I~~ I accompanied Pte Estabrooke, Cpl Raymond Cpls Cantin to the Cafe Bolognaise in Marquise France. It was my first visit Could not find toilet but ended up in the cellar looking for it. We did nothing there or took nothing there. I could not say whether Pte Estabrooke had a bottle with him when he arrived. I did not see him drop a bottle in the Cafe Bolognaise. We proceeded to another Cafe with Pte Estabrooke. He there produced a bottle of Cognac which Pte Estabrooke claimed to have purchased for about 400 frc from a man on the street. We there drank the bottle of cognac.

XXX

left Cafe Bolognaise to go to latrine but could not find it. It was possible to leave the courtyard ~~in a~~ by climbing a small fence without passing through the Cafe.

I met Pte Estabrooke & Cpl Raymond on their way from barracks to the Cafe Bolognaise. Pte Estabrooke could have had a bottle in his tunic but I did not notice it. ~~I did not~~ I did not notice a bottle at the foot of my chair before it was kicked over. Pte Estabrooke and I went to another Cafe where we bought a round of beer. I did not see Estabrooke purchase the bottle he had with him in the second Cafe. I could not recognise the man the bottle was purchased from. I gave Estabrooke the money to purchase the bottle of Cognac.

2nd Witness.

Mlle Lucienne Martin.

~~I am~~ My mother owns the Cafe Bolognaise in Marquise France.

On the evening of 13 Dec 44 while working at the Cafe Bolognaise in Marquise France at about 7.30 I saw two soldiers come out from the yard. as the cellar door was open they entered the cellar. When they came up from the cellar I went out. ~~They~~ Pte Estabrooke was on the cellar stairs and he called his comerad friend and they entered the Cafe. I went down to the cellar to see how many bottles of cognac there were there. I saw there were four missing. I asked Pte Estabrooke and his companion if they had taken them. He answered no, meanwhile a bottle slipped out of his tunic and fell on the floor. My mother entered the Cafe at this time and she asked him to return the cognac and he refused. Madame Martin picked up the bottle that had fallen on the floor and Pte Estabrooke took it from my mothers hand. He placed the bottle on the table and my mother took it after that they left the Cafe. ~~On~~ When Pte Estabrooke left the Cafe ~~I~~ he saw the form of a bottle still showing in his tunic.

X X M

My mother owns the stock in Cafe Bolognaise

The stock was last counted before the incident ~~was~~ at noon that day

There ~~was~~ were about 1/4 bottle of Cognac sold before the incident

I did not SEE a bottle on his person when he left the Cafe.

Pte Estabrooke offered to purchase the bottle that fell on the floor but Mde Martin would not sell.

3rd Witness for the Prosecution

Cpl Jones. R G47170 14 Cdn Fd Amb. RCAMC.

On the evening of 15 Sep 44 I was in the Cafe Bolagnaise in Marquise France accompanied by Cpl Raymond Pte Estabrooke and Pte DeRoche. After having a few drinks Pte Estabrooke & Pte DeRoche left the Cafe by the back entrance saying they were going to the toilet. About five minutes later I went out the same door. At the entrance to the door were the steps leading to the cellar. At the foot of the cellar steps I saw Ptes Estabrookes & DeRoche. About halfway down the steps was one of the ladies of the Cafe. She was talking to them in French which I could not understand. They all came up the cellar steps and entered the Cafe at the same time as I did. The lady upon entering locked the door. I asked Pte Richard to find out what was wrong as he could talk French. He said that the lady claimed that there was cognac missing from the Cafe. He said that the lady claimed that Pte Estabrookes & Pte LaRoche had it. On asking them if this was true they denied it. A bottle of Cognac slipped out of Estabrookes trouser on to the floor. The lady told Pte Richard that it was hers. Pte Estabrookes offered to buy the bottle. Mlle Martin stated that she was not allowed to sell it. Pte Estabrookes allowed her to have it back. She then having found the second bottle of Cognac by Pte DesRoches feet. One of the girls returned the two bottles to the cellar. When she returned she told Pte Richard that there were still two bottles missing. Pte Estabrookes denied having any of it with him. He then left the Cafe accompanied by Pte DesRoches. The lady in the Cafe stated that she wanted to repo

that two bottles of Cognac had been stolen. Myself & Cpl Raymond told her that we would see these two fellows and see if they had it. We called at another pub where Pte Estabrooke & Desleeles were. Cpl Raymond called Pte Estabrooke outside and asked him if he had her Cognac. He did not say that it was here but pulled a bottle ~~of~~ out stating that this is one bottle she will not get. We told him that we would have to report the matter as the lady in the Cafe insisted on it being reported unless it was returned.

XXM.

Pros: I did not notice any ~~one~~ bulged on his person before entering the cafe, or Boulogne on leaving. I saw Pte Estabrooke pull ~~it~~ a bottle out ~~of~~ his tunic at the second Cafe.

Defence

Pte Estabrooke re-entered the Cafe without force. There was no struggle when the bottle was given up. No attempt was made to get Estabrooke to return the bottle he showed at the second Cafe to Cafe Boulogne.

4th Witness for Prosecution.

G. 47149 Cpl Raymond D.A. 1st Cdn Fd Amb

Pte Estabrooke left billets in Marquise with me on the evening of the 13 Sep. There was no sign of any bottles on his person. We proceeded to the Cafe ~~Boulogne~~ Bolognaise. He expressed the wish to go to the toilet. He did so I did not hear him receive instructions as to the location of the toilet. When he I did ~~not~~ notice ~~any~~ a bulge in his tunic on his return from the yard and on questioning he stated he had nothing there. Pte Estabrooke then sat down and a bent over and a bottle fell out of his tunic on to the floor. After a little argument he gave up the bottle. He claimed that he had bought the bottle but he had not [illegible]

certain knowledge at the Cafe Bolognaise or on the way there. I did not notice anything in his tunic when he left the Cafe. A.G.P.

I followed him to the other Cafe because Madame Martin stated that if the other two bottles were returned to her she would forget the incident.

They were in the other Cafe. We called Pte Estabrooke out. He spoke. On questioning he pulled a bottle out of his tunic stating in effect that here was one bottle that Madame Martin would not get.

X×M.

Pte Estabrookes reentered the Cafe Bolognaise of his own free will.

The bottle that fell to the floor could not be recognised by label or other sign.

I could not identify the bottle.

Pte Estabrooke resisted Madame Martins attempt to retrieve the bottle that had fallen from his tunic to the floor

Pte Estabrooke offered to buy a bottle of Cognac from Madame Martin

No real complaint was made by Pte Estabrooke when Madame Martin took back the bottle.

~~Defence~~ Defence.

No witnesses for the defence were called.

No evidence or statement of character given by the accused.

Pte Estabrooke has a clean character and clean conduct sheet. The case is complicated by misunderstanding & language difficulties. His record has been good.

Judge Advocate addresses the Court

The accused is charged with stealing. A person steals who, without the consent of the owner, fraudulently and without a claim of right ~~made~~ in good faith, takes and carries away anything capable of being stolen, with intent at the time of such taking, permanently to deprive the owner thereof.

The prosecution alleges, and must prove, that the accused did those things alleged in the charge and moreover that those things constitute the offence charged. Witnesses have appeared before the court to give their testimony and you have had the opportunity of hearing and observing these witnesses and it is part of your judicial discretion to decide whether you believe them. The accused is by law, presumed to be innocent until he has been proved otherwise. The burden of establishing guilt lies upon the prosecution and unless the prosecution satisfies you beyond all reasonable doubt that the accused is guilty, then you must find him innocent.

Reasonable doubt does not mean the vague, ephemeral doubt that a cowardly man could conjure up in his mind in order to evade an unpleasant responsibility. It is, on the other hand, that indecision, which when encountered in ordinary life, prevents you from taking positive action.

No. Gh7238 Name ESTABROOKS, W. I. Sqn., Battery, or Company | Corps R.C.A.M.C. | Date of enlistment 6-11-40 | G.C. Badges 6 Nov 42 | Service or Proficiency Pay | Character Good

Date of last entry in Company Conduct Sheet nil | No. and date of last drunk nil | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

F.M. 6

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed and no regimental entries brought forward 6 Nov 42					
				Awarded one G.C. Badge 6 Nov 42 Auth Part II Orders					
				CERTIFIED TRUE COPY.....					

(P.T.O.)

A.F.M. 6

No. G47238 Name ESTABROOKS, W. I. | Sqn., Battery, or Company | Corps R.C.A.M.C. | Date of enlistment 6-11-40 | G.C. Badges 6 Nov 42 | Service or Proficiency Pay | Character Good

Date of last entry in Company Conduct Sheet: nil | No. and date of last drunk: nil | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed and no regimental entries brought forward 6 Nov 42					
				Awarded one G.C. Badge 6 Nov 42 Auth Part II Orders					
				CERTIFIED TRUE COPY.....					

(P.T.O.)

B H.Q.P.

M.F.B. 355
22M—5-41 (372-2)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G-47238	Pte	Estabrooks W.I.	14 Canadian Field Ambulance RCAMC

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil	
For		
For		
For		

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 26 Years

6. The date of his attestation specified in his record of service is 6 November 1940

7. The service which the accused is allowed to reckon towards discharge is 3Yrs10 Mos 11Days

8.

9. The accused is in possession of or entitled to). State any military decoration or reward. CVSM and Clasp

10.

11. ([redacted] Permanent Force unit [redacted], [redacted]

[redacted]

[redacted].

12. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

[redacted]

[redacted]

[redacted]

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Part Thereof Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 Seventeeth day of September 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [redacted] signed by the president, and annexed to the proceedings.

Hqf.

SUMMARY OF EVIDENCE IN THE CASE OF No. G47238 Pte. Estabrooks, W.I., No. 2 section "A" company, 14 Canadian Field Ambulance, charged with theft (AA section 41). and Conduct to the prejudice etc. (AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness - Mlle Lucienne Martin, Marquise, France, sworn states:

J'ai vue sortir deux soldats dans la cour, ils sont descendu dans la cave. A ce moment la J'ai sortie, ils remontaient de la cave, ils sont entrer dans le cafe, je suis allor voir a la cave ils manguaient auatre (4) bouteilles de cognac. Je leur ai demander si c'etait eux. Ils ont repondu, non. A ce moment la une bouteille est sortie de sa reste, et l'autre avait mis L'autre bouteille sous la banc. A ce moment la ma mere est arrive, je lui ai dis, alor maman luer a demander le cognac. Ils ont disent au ils voulais acheter une bouteille. Ils ne voulais pas a le rendre. Leurs comrades leur ont dient que ce N'etait pas bien de faire cela, ils sont partient en sportant deux bouteille les qu l'ils avait encore de cacher. Les autres soldats sont ranuent luer demander de rendre le cognac. Ils n'ont pas vouluent. C'est pour cela que nous sommes revenu ici.

J'assume qu'ils avaient encore deux bouteilles quant ils sont sortie du cafe parce que ilyavait dix (10) bouteilles de cognac dans la cave, et quand j'ai descender il n'en restais que six (6). Mais je n'ai pas vu le bouteille grand. Je suis sortie, c'est liu.

Marie Lucienne

The accused declines to cross-examine the witness.

Second witness - Mlle. Janette Martin, Marquise, France, sworn states:

J'ai rien vue. J'ai seulement vue sa bouteille tomber de sa reste. C'est lui.

Martin Janette

The accused declines to cross-examine the witness.

Third witness - Mme. Gustave Martin, 25 Avenue Ferber, Marquise, France, sworn states:

Je suis Mme. G. Martin, 25 Avenue Ferber, Marquise. J'etais dans la cour le soldat etait assie il avait la bouteille de cognac dans sa main. J'ai demander pourquoi avez vous descender dans la cave, il ma demander pour acheter la bouteille. Je lui ai dis, non, et j'ai repris la bouteille et il s'en alla tout de suite. C'est lui.

Martin G

The accused declines to crose examine the witness.

Fourth Witness - G63158 Pte. Richard, J. No. 2 section "A" company, 14 Canadian Field Ambuoance, sworn states:

I am Pte. Richard, J. of the 14 Canadian Field Ambulance. On the 13th September, 1944, at about 1930 hours, I was in the Cafe Bolognias where I saw Pte. Esterbrooks and Pte. Deroche. A girl came in, I can't remember her name. She said some cognac was missing and accused them of stealing her liquor. Then an older lady came in, which I think was her mother, and saw Esterbrooks with a bottle in his hand and pleaded to get it back. One of the ladies went to Deroche and accused him, and I saw a bottle under his seat. I saw the bottles but cannot say what the contents were or whether they were full or empty.

J Richard

The accused declines to cross-examine the witness.

Fifth Witness - G47149 Cpl. Raymond, D.A. No.2 section "A" company 14 Canadian Field Ambulance, sworn states:

I am Cpl. D.A. Raymond, G47149 of No. 2 Section, "A" company 14 Canadian Field Ambulance. At about 1915 hours 13 September 1944, L/Cpl. Jones, G47170, Pte. Estabrooks G47238, Pte Deroche F88967 and myself entered Cafe Bolognias. After buying a drink, Pte. Estabrooks and Pte. Deroche went to the toilet. In the meantime four other soldiers came into the above cafe, one of them Pte. J. Richard, G63158, whom we had interpret for us. When Pte. Estabrooks and Pte. Deroche came back into the cafe, the lady came in and locked the door and I knew there was something wrong and Pte. Richard told us she said 4 bottles of cognac was missing. I then asked Pte. Deroche and Pte. Estabrooks about it and they said they didn't have it. Then Pte. Estabrooks bent over in his chair and a bottle of cognac fell out of his tunic. He then picked it up and did not want to give it up at first, after arguing, Mme. Martin got the bottle of cognac. Pte. Deroche sat on the bench behind the table, and when he went to get up, he kicked a bottle of cognac on the floor which Mlle. Martin picked up. She then went to the cellar and came back and said there was still 2 bottles of cognac missing. We asked Pte. Estabrooks and Pte. Deroche about it but they said they didn't have it. They then left the cafe. After talking to Mme. Martin, she said, if the two other bottles were returned there would be no trouble. L/Cpl. Jones and myself then went to another cafe and called Pte. Estabrooks outside. We asked Estabrooks about the bottle and he pulled it out of his tunic saying, "there it is and she's not getting it back", or words to that effect. I told him then there would be trouble and that I was going to report him. We then went back to the Cafe Bolognais and talked to Mme. Martin and brought her to report the incident to Major Norton, O.C. of "A" Company, 14 Canadian Field Ambulance.

Cpl D A Raymond

The accused declines to cross-examine the witness.

Sixth Witness - G47170 L/Cpl. Jones, R.G., No. 2 Section, "A" Company, 14 Canadian Field Ambulance, sworn states:

I, G47170 L/Cpl. Jones, R.G., on the evening of 13th September, 1944, left my billets accompanied by Cpl. Raymond and Pte. Estabrooks and proceeded to Cafe Bolognais. On our way we picked up Pte. Deroche. The four of us entered the cafe and had a few drinks of cognac and beer. Shortly after entering Pte. Esterbrooks enquired where the toilet was. He and Deroche went out the back door towards the toilet. Not later than five minutes, I went out to the toilet and they were not there. I heard a lady talking in the cellar and having to pass the cellar door on my way back into the cafe, I looked down the cellar and at the bottom of the steps was Pte. Esterbrooks and Pte. Deroche. The lady was part way down the steps, and was talking in French, which I could not understand. I entered the cafe followed by the lady, Pte. Esterbrooks and Pte. Deroche. The lady went to the front door and locked it. In my absence Pte. Richard and a couple of other boys had entered the cafe. I knew something was wrong when she locked the door as she was all excited. I told Pte. Richard to ask the trouble and she said these two men, which were Pte. Estabrooks and Pte. Deroche, had taken some of her cognac from the cellar. The proprietress of the cafe wanted to search the boys and while they were talking a bottle of cognac fell out of Pte. Estabrooks' tunic onto the floor.

He picked it up and wanted to buy it. The lady said that it was against her orders to sell it. Pte. Estabrooks did not want to give it back to her. After we had talked to him for a few minutes, he gave her back the bottle. Pte. Estabrooks and Pte. Deroche got up to leave the cafe, when the lady found the second bottle that was by Pte. Deroche's feet. One of the ladies took the two bottles of cognac back to the cellar. She returned and stated that there were still two bottles of cognac missing. There was a lot of talking in French which I did not understand. After Deroche and Estabrooks had left the cafe, Pte. Richard said that unless the two bottles were returned, she would report it. Cpl. Raymond and myself told her that we would see the fellows of whom she was convinced had taken her cognac. We went to another cafe and Pte. Estabrooks and Pte. Deroche were there. Cpl. Raymond called Pte. Estabrooks out and asked him to returnthe two bottles, if he had them. Cpl. Raymond stated the lady would report it to our officer if the bottles werg not returned and it would cause a lot of trouble. Pte. stabrooks pulled a bottle out of his tunic and [redacted] is one bottle she will not get", or words to that effect. He also said that he was out to get drunk and he did not want us to bother him. Cpl. Raymond and I tried to reason with him but he would not listen to us, so we went back to the cafe and the proprietress wanted to have the incident reported. So Cpl. Raymond and I, also Pte. Richard, went up with her to see Major Norton. She reported to him about the whole affair.

W/C R.G. Jones

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witness or witnesses.

*Rules of Procedure 4(C), (D), (E) and (F) have been complied with. I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in writing in the presence and hearing of the accused this 14th day of September, 1944.

J. G. Lieut. Capt.
Signature of Officer taking Summary

SUMMARY OF EVIDENCE IN THE CASE OF No. G47238 Pte. Esterbrooke, W.I., No. 2 section "A" company, 1h Canadian Field Ambulance, charged with theft (AA section 41). and Conduct to the prejudice etc. (AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness - Mlle Lucienne Martin, Marquise, France, sworn states:

J'ai vue sortir deux soldats dans la cour, ils sont descendu dans la cave. A ce moment la j'ai sortie, ils remontaient de la cave, ils sont entrer dans le cafe, je suis aller voir a la cave ils manquaient quatre (4) bouteilles de cognac. Je leur ai demander si c'etait eux. Ils ont repondu, non. A ce moment la une bouteille est sortie de sa reste, et l'autre avait mis l'autre bouteille sous la banc. A ce moment la ma mere est arrive, je lui ai dis, alor maman luer a demander le cognac. Ils ont disent au ils voulais acheter une bouteille. Ils ne voulais pas a le rendre. Leurs comrades leur ont dient que ce N'etait pas bien de faire cela, ils sont partient en apportant deux bouteille les qu'ils avait encore de cacher. Les autres soldats sont ranuent luer demander de rendre le cognac. Ils n'ont pas vouluent. C'est pour cela que nous sommes revenu ici.

J'assume qu'ils avaient encore deux bouteilles quant ils sont sortie du cafe parce que il y avait dix (10) bouteilles de cognac dans la cave, et quand j'ai descender il n'en restais que six (6). Mais je n'ai pas vu le bouteille grand. Je suis sortie, c'est liu.

Marie Lucienne

The accused declines to cross-examine the witness.

Second witness - Mlle. Janette Martin, Marquise, France, sworn states:

J'ai rien vue. J'ai seulement vue sa bouteille tomber de sa reste. C'est lui.

Martin Ginette

The accused declines to cross-examine the witness.

Third witness - Mme. Gustave Martin, 25 Avenue Ferber, Marquise, France, sworn states:

Je suis Mme. G. Martin, 25 Avenue Ferber, Marquise.
J'etais dans la cour le soldat etait assie il avait la bouteille de cognac dans sa main.
J'ai demander pourquoi avez vous descender dans la cave, il ah demander pour acheter la bouteille. Je lui ai dis, non, et j'ai repris la bouteille et il s'en alla tout de suite. C'est lui.

Martha G

The accused declines to cross examine the witness.

Fourth Witness - G47158 Pte. Richard, J. No. 2 section "A" company, 1h Canadian Field Ambucance, sworn states:

I am Pte. Richard, J. of the 1h Canadian Field Ambulance. On the 13th September, 1944, at about 1930 hours, I was in the Cafe Bolegnias where I saw Pte. Esterbrooks and Pte. Deroche. A girl came in, I can't remember her name. She said some cognac was missing and accused them of stealing her liquor. Then an older lady came in, which I think was her mother, and saw Esterbrooks with a bottle in his hand and pleaded to get it back. One of the ladies went to Deroche and accused him, and I saw a bottle under his seat. I saw the bottles but cannot say what the contents wer or whether they were full or empty.

J Richard

The accused declines to cross-examine the witness.

Fifth Witness - G47149 Cpl. Raymond, D.A. No.2 section "A" company 1h Canadian Field Ambulance, sworn states:

I am Cpl. D.A. Raymond, G47149 of No. 2 Section, "A" company 1h Canadian Field Ambulance. At about 1915 hours 17 September 19hh, L/Cpl. Jones, G47170, Pte. Estabrooks G47238, Pte Deroche R68967 and myself entered Cafe Bolognias. After buying a drink, Pte. Estabrooks and Pte. Deroche went to the toilet. In the meantime four other soldiers came into the above cafe, one of them Pte. J. Richard, G67158, who we had interpret for us. When Pte. Estabrooks and Pte. Deroche came back into the cafe, the lady came in and locked the door and I knew there was something wrong and Pte. Richard told us she said h bottles of cognac was missing. I then asked Pte. Deroche and Pte. Estabrooks about it and they said they didn't have it. Then Pte. Estabrooks bent over in his chair and a bottle of cognac fell out of his tunic. He then picked it up and did not want to give it up at first, after arguing, Mme. Martin got the bottle of cognac. Pte. Deroche sat on the bench behind the table, and when he went to get up, he kicked a bottle of cognac on the floor which Mlle. Martin picked up. She then went to the cellar and came back and said there was still 2 bottles of cognac missing. We asked Pte. Estabrooks and Pte. Deroche about it but they said they didn't have it. They then left the cafe. After talking to Mme. Martin, she said, if the two other bottles were returned there would be no trouble. L/Cpl. Jones and myself then went to another cafe and called Pte. Estabrooks outside. We asked Estabrooks about the bottle and he pulled it out of his tunic saying, "there it is and she's not getting it back", or words to that effect. I told him then there would be trouble and that I was going to report him. We then went back to the Cafe Bolognais and talked to Mme. Martin and brought her to report the incident to Major Norton, O.C. of "A" Company, 1h Canadian Field Ambulance.

Cpl D A Raymond

The accused declines to cross-examine the witness.

Sixth Witness - G47170 L/Cpl. Jones, H.G., No. 2 Section, "A" Company, 1h Canadian Field Ambulance, sworn states:

I, G47170 L/Cpl. Jones, H.G., on the evening of 17th September, 19hh, left my billets accompanied by Cpl. Raymond and Pte. Estabrooks and proceeded to Cafe Bolognais. On our way we picked up Pte. Deroche. The four of us entered the cafe and had a few drinks of cognac and beer. Shortly after entering Pte. Estabrooks enquired where the toilet was. He and Deroche went out the back door towards the toilet. Not later than five minutes, I went out to the toilet and they were not there. I heard a lady talking in the cellar and having to pass the cellar door on my way back into the cafe, I looked down the cellar and at the bottom of the steps was Pte. Estabrooks and Pte. Deroche. The lady was part way down the steps, and was talking in French, which I could not understand. I entered the cafe followed by the lady, Pte. Estabrooks and Pte. Deroche. The lady went to the front door and locked it. In my absence Pte. Richard and a couple of other boys had entered the cafe. I knew something was wrong when she locked the door as she was all excited. I told Pte. Richard to ask the trouble and she said these two men, which were Pte. Estabrooks and Pte. Deroche, had taken some of her cognac from the cellar. The proprietress of the cafe wanted to search the boys and while they were talking a bottle of cognac fell out of Pte. Estabrooks' tunic onto the floor.

He picked it up and wanted to buy it. The lady said that it was against her orders to sell it. Pte. Estabrooks did not want to give it back to her. After we had talked to him for a few minutes, he gave her back the bottle. Pte. Estabrooks and Pte. Deroche got up to leave the cafe, when the lady found the second bottle that was by Pte. Deroche's feet. One of the ladies took the two bottles of cognac back to the cellar. She returned and stated that there were still two bottles of cognac missing. There was a lot of talking in French which I did not understand. After Deroche and Estabrooks had left the cafe, Pte. Richard said that unless the two bottles were returned, she would report it. Cpl. Raymond and myself told her that we would see the fellows of whom she was convinced had taken her cognac. We went to another cafe and Pte. Estabrooks and Pte, Deroche were there. Cpl. Raymond called Pte. Estabrooks out and asked him to returnthe two bottles, if he had them. Cpl. Raymond stated the lady would report it to our officer if the bottles were not returned and it would cause a lot of trouble. Pte. Estabrooks pulled a bottle out of his tunic and said, "Here is one bottle she will not get", or words to that effect. He also said that he was out to get drunk and he did not want us to bother him. Cpl. Raymond and I tried to reason with him but he would not listen to us, so we went back to the cafe and the proprietress wanted to have the incident reported. So Cpl. Raymond and I, also Pte. Richard, went up with her to see Major Norton. She reported to him about the whole affair.

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witness or witnesses.

"Rules of Procedure 4(C), (D), (E) and (F) have been complied with. I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in writing in the presence and hearing of the accused this 18th day of September, 1944.

.....
Signature of Officer taking Summary

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G/47238 Pte William Irvine ESTABROOKS, 14 Cdn Fd Amb, RCAMC

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Al~~ [illegible] ~~sentence~~ HCP ~~awarding sentence~~ HCP (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To Suffer Field Punishment for 90 Days and to Forfeit all Ordinary Pay for a Period 90 Days

(Sgd) "Alec C. Hall" Judge-Advocate Capt — Sept 27 - 44 Date awarded. — (Sgd) "H.C. Pattison" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(2D) fn 6, 46(A), 51-56, 120, MML pp 759-761; KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further notice~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) "D.C. Spry" Maj-Gen

Date 2 Oct 44

Commanding 3 Cdn Inf Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G-47238 Pte William Irving Estabrooks	10 Oct	"Jos Tanman Lt-Col"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 [illegible] HCP

FIELD GENERAL COURT-MARTIAL

CFADS (To Dep. of AFAs) 60/P & S/1000 (40/01) 4/38B

Convened by Order of Major-Gen D C SPRY Comd 3 Cdn Div dated 26 Sep 44

RECEIVED - 4 DEC 1944 JAG/MS/CMHQ

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 94, 109. As to reasons for showing (a) permanent or confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, 184, KR Can 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G/47238	Pte	William Irvine	ESTABROOKS	14 Cdn Fd Amb, RCAMC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 27 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~ assemble, and the Court is closed. ACH

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ☒ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ☒☒ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ☒☒ brought before the Court. At 1640 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO.~~ ACH

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans G63158 Pte Richard 14 Fd Amb. No.

The Interpreter is sworn.(1) ~~He has objected. The objection was overruled~~ (1) ACH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H C Pattison	9 Cdn Inf Bde Coy, RCASC
Member	Capt	J F Rutherford	3 Cdn Inf Div Sigs
Member	Capt	J G Hunter	7 Cdn FDS RCAMC
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Capt	S J Glick	14 Cdn Fd Amb
Defending Offr	Maj	H A Procter	HQ 3 Cdn Div

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See QI p 4.) ACH

A8. The accused G/47238 Pte Estabrooks, W I before arraignment make(s) (no) ☒ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ☒☒ arraigned ~~xxxxxxx~~ on all charges in the charge sheet.(1) The accused does ☒☒ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 12, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~xxxxxxx~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

He picked it up and wanted to buy it. The lady said that it was against her orders to sell it. Pte. Estabrooks did not want to give it back to her. After we had talked to him for a few minutes, he gave her back the bottle. Pte. Estabrooks and Pte. Deroche got up to leave the cafe, when the lady found the second bottle that was by Pte. Deroche's feet. One of the ladies took the two bottles of cognac back to the cellar. She returned and stated that there were still two bottles of cognac missing. There was a lot of talking in French which I did not understand. After Deroche and Estabrooks had left the cafe, Pte. Richard said that unless the two bottles were returned, she would report it. Cpl. Raymond and myself told her that we would see the fellows of whom she was convinced had taken her cognac. We went to another cafe and Pte. Estabrooks and Pte, Deroche were there. Cpl. Raymond called Pte. Estabrooks out and asked him to returnthe two bottles, if he had them. Cpl. Raymond stated the lady would report it to our officer if the bottles werg not returned and it would cause a lot of trouble. Pte. Estabrooks pulled a bottle out of his tunic and said, "Here is one bottle she will not get", or words to that effect. He also said that he was out to get drunk and he did not want us to bother him. Cpl. Raymond and I tried to reason with him but he would not listen to us, so we went back to the cafe and the proprietress wanted to have the incident reported. So Cpl. Raymond and I, also Pte. Richard, went up with her to see Major Norton. She reported to him about the whole affair.

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witness or witnesses.

"Rules of Procedure 8(C), (D), (E) and (F) have been complied with. I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in writing in the presence and hearing of the accused this 18th day of September, 1944.

.....
Signature of Officer taking Summary

Corb Jones-
Corp - Raymond
Miss Lucien Marlin

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G/47238 Pte William Irvine ESTABROOKS, 14 Cdn Fd Amb, RCAMC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 41	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Already under sentence for~~ HCP ~~beginning on (date)~~ HCP (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To Suffer Field Punishment for 90 Days and to Forfeit all Ordinary Pay for a Period 90 Days

(Sgd) "Alec C. Hall" Judge-Advocate Capt — Date awarded: Sept 27 - 44 — (Sgd) "H.C. Pattison" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be released on account of detention therefor until further notice.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) "D.C. Spry" Maj-Gen

Date 2 Oct 44 — Commanding 3 Cdn Inf Div — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
G-47238 Pte William Irving Estabrooks	10 Oct	"Jos Tanzman Lt-Col"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

CPA88 (To form of AFA3) 45-P & H-1688 (40-01) 4/38B

Convened by Order of Major-Gen D C SPRY Comd 3 Cdn Div dated 26 Sep 44

RECEIVED - 4 DEC 1944 JUDGE ADVOCATE GENERAL'S BRANCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 94, 109. As to reasons for showing (a) permanent or confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, Regns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G/47238	Pte	William Irvine	ESTABROOKS	14 Cdn Fd Amb, RCAMC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 27 Sep 44 2 1/2 hrs.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any and Offrs under instr, if any~~ ACH assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fms RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [X] attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [XX] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [XX] brought before the Court. At 1640 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Declaration informing the Board that accused elected to be tried by court-martial instead of being dealt with summarily (as the case may be).~~ ACH

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to be tried by ~~me~~ G63158 Pte Richard 14 Fd Amb? Ans No.

The Interpreter is sworn.(1) ~~Do you object to be tried by the Interpreter? Ans No.~~ (1) ACH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 118, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H C Pattison	9 Cdn Inf Bde Coy, RCASC
Member	Capt	J F Rutherford	3 Cdn Inf Div Sigs
Member	Capt	J G Hunter	7 Cdn FDS RCAMC
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Capt	S J Glick	14 Cdn Fd Amb
Defending Offr	Maj	H A Procter	HQ 3 Cdn Div

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI 9 ACH

A8. The accused G/47238 Pte Estabrooks, W I before arraignment make(s) (no) [X] plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is [XX] arraigned [XXXXXX] on all charges in the charge sheet.(1) The accused does [XX] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court [XXXXXXX] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 105; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 89(D); [illegible] of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2) .....
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form 'A' or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 17(E). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here: Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans Nc .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ACH (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s). (2) – The Court is cleared and considers the submission.(3) – The Court is reopened and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~ ACH
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans Neither Do you intend to call witnesses on your behalf ?
Ans No Are they witnesses as to character only ? Ans ---
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(a).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court is/are ..... charge(s). Some evidence having been recorded on the ..... charge(s), and it being proved that he has been convicted by a Court of ..... on the ..... charge(s), the President announces that the accused is liable to be punished for the offence(s) of which he has been found guilty.(1) Or, The President announces that the accused is liable to be punished for all the offences of which he has been found guilty.~~
(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 215 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes by my Def Offr .....(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(4), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"H.C.P."

CHARGE SHEET

The accused--- G/47238 Pte William Irvine ESTABROOKS, 14 Canadian Field Ambulance, RCAMC, a soldier of the Canadian Army Overseas -- is charged with:

First Charge
Army Act
Sec 41

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

in that he
at about 1945 hrs 13 Sep 44 at Marquise, France, stole two bottles of cognac, the property of Mlle Lucienne Martin, Cafe Bolognais, Marquise, France.

"J.Tanzman"
(J Tanzman) Lt-col
Commanding Officer
14 Cdn Fd Amb, RCAMC

In the Field
20 Sep 44

Approved on behalf of the JAG Cdn Army Overseas in accordance with K R (Can) 540 and Overseas RO 4756.

"A.C.Hall"
(A C Hall) Capt
ADJA 3 Cdn Div

In the Field
25 Sep 44

To be tried by Field General Court Martial

"D.C. Spry"
(D C Spry) Major-Gen
GOC 3 Cdn Inf Div

In the field
26 Sep 44

"H.C.P"

MEDICAL CERTIFICATE

27 Sep 44

I hereby certify that the undermentioned soldier was examined by me this date and is medically fit to undergo trial by F.G.C.M.

G-47238 Pte ESTABROOKS W I

"R.T. ?????"Major
Medical Officer

#HCP#

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G/47235	Pte	William Irvine	ESTABROOKS	14 Cdn Fd Amb, RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Sep 44 endorsed by me, ~~or by an offr of my staff for that purp~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint: (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.C. Pattison	9 Cdn Inf Bde Coy, RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.F. Rutherford	3 Cdn Inf Div Sigs
Capt	J.G. Hunter	7 Cdn FDS, RCAMC

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A.C. Hall	ADJA, 3 Cdn Inf Div

On Active Service in the Fd

In France (Country.)

"D.C. Spry" (Signed personally. RP 105 fn 2.) Major-General (Rank.)

Dat 26 Sep 44

(D.C.Spry)
Commanding 3 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 66 (In lieu of AFA 8) 40-P & S/1697 (8142)

(See overleaf for oaths and notes for use on trial.)

Accused "HCP"

C-472386 William Ervin ESTABROOKS, 14 Cdn Fd Amb - charged with stealing 2 bottles of Cognac.

PLEA

Not Guilty

1st Witness F-88967 Pte De Roche, C.W.P.

I accompanied Pte Estabrooks, Cpl Raymond, Cpl Cook to the Cafe Bolognaise in Marquise, France. It was my first visit. Could not find toilet but ended up in the cellar looking for it. We did nothing there or took nothing there. I couldn't say whether Pte Estabrooke had a bottle with him when he arrived. I did not see him drop a bottle in the Cafe Bolognaise. We proceeded to another Cafe with Pte Estabrooke. He then produced a bottle of Cognac which Pte Estabrooke claimed to have purchased for about 400 francs from a man on the street. We there drank the bottle of cognac,

XXX

Left Cafe Bolognaise to go to Latrine but could not find it. It was possible to leave the courtyard by climbing a small fence without passing through the cafe.

I met Pte Estabrooke and Cpl Raymond on my way from barracks to the Cafe Bolognaise. Pte Estabrooke could have had a bottle in his tunic but I did not notice it. I did not notice a bottle at the foot of my chair before it was kicked over. Pte Estabrookes and I went to another Cafe where we bought a round of beer. I did not see Estabrooke purchase the bottle he had with him in the second Cafe. I could not recognise the man the bottle was purchased from. I gave Estabrooke the money to purchase the bottle of Cognac.

2nd Witness Mlle Lucienne Martin.

My mother owns the Cafe Bolognaise in Marquise, France.

On the evening of 13 Dec 44 while working at the Cafe Bolognaise in Marquise, France at about 1430 I saw two soldiers come out from the yard, as the cellar door was open they entered the cellar. When they came up from the cellar I went out. Pte Estabrooke was on the cellar stairs and he called his friend and they entered the Cafe. I went down to the cellar to see how many bottles of cognac there were there. I saw there were four missing. I asked Pte Estabrooke and his companion if they had taken them. He answered no, meanwhile a bottle slipped out of his tunic and fell on the floor. My mother entered the Cafe at this time and she asked him to return the cognac and he refused. Madame Martin picked up the bottle that had fallen on the floor and Pte Estabrooke took it from my mothers hand. He placed the bottle on the table and my mother took it. After that they left the Cafe. When Pte Estabrooke left the Cafe I saw the form of a bottle still showing in his tunic.

XXX

My mother owns the stock in Cafe Bolognaise. The stock was last counted before the incident at noon that day. There was about 4 bottle of Cognac sold before the incident.
I did not see a bottle in his person when he left the Cafe.
Pte Estabrooke offered to purchase the bottle that fell on the floor but Mle Martin would not sell.

"HCP"

3rd Witness for the Prosecution Cpl Jones, R. G-47170, 14 Cdn Fd Amb, RCAMC.

On the evening of 15 Sep 44, I was in Cafe Bolognaise in Marquise, France, accompanied by Cpl Raymond, Pte Estabrooke and Pte DeRoche. After having a few drinks Pte Estabrooke and Pte DeRoche left the Cafe by the back entrance saying they were going to the toilet. About five minutes later I went out the same door. At the entrance to the door were the steps leading to the cellar. At the foot of the cellar steps I saw Ptes Estabrookes and De Roche. About halfway down the steps was one of the ladies of the Cafe. She was talking to them in French which I could not understand. They all came up the cellar steps and entered the Cafe at the same time as I did . The lady upon entering locked the door. I asked Pte Richard to find out what was wrong as he could talk French. He said that the lady claimed that there was cognac missing from the cafe. He said that the lady claimed that Pte Estabrookes and Pte La Roche had it. On asking them if this was true they denied it. A bottle of Cognac slipped out of Estabrookes tunic on to the floor. The lady told Pte Richard that it was hers. Pte Estabrookes offered to buy the bottle. Mde Martin stated that she was not allowed to sell it. Pte Estabrookes allowed her to have it back. She then having found the second bottle of Cognac by Pte Des Roches feet. One of the girls returned the two bottles to the cellar. When she returned she told Pte Richard that there were still two bottles missing. Pte Estabrookes denied having any of it with him. He then left the Cafe accompanied by Pte Des Roches. The lady in the Cafe stated that she wanted to report that two bottles of Cognac had been stolen. Myself and Cpl Raymond told her that we would see these two fellows and see if they had it. We called at another pub where Pte Estabrooke and Des Roches were. Cpl Raymond called Pte Estabrookes outside and asked him if he had her Cognac. He did not say that it was hers but pulled a bottle out stating that this is one bottle she will not get. We told him that we would have to report the matter as the lady in the Cafe insiste on it being reported unless it was returned.

XXM

Pros I did not notice any bulges on his person before entering the cafe Boulognaise or on leaving. I saw Pte Estabrooke pull a bottle out of his tunic at the second cafe.

Defence Pte Estabrooke re-entered the Cafe without force. There was not struggle when the bottle was given up. No attempt was made to get Estabrooke to return the bottle he showed at the second Cafe to Cafe Boulognaise.

4th Witness for Prosecution G-47149 Cpl Raymond, D.A. 14 Cdn Fd Amb

Pte Estabrooke left billets in Marquise with me on the evening of the 13 Sep. There was no sign of any bottles on his person. We proceeded to the Cafe Bolognaise. He expressed the wish to go to the toilet. I did not hear him receive instructions as to the location of the toilet. I did notice a bulge in his tunic on he return from the yard and on questioning he stated he had nothing there. Pte Estabrooke then sat down and bent over and a bottle fell out of his tunic on to the floor. After a little argument he gave up the bottle. He claimed that he had bought the bottle but he had not done so to my certain knowledge at the Cafe Bolognaise or on the way there. I did not notice anything in his tunic when he left the Cafe.

I followed him to the Cafe because Madame Martin stated that if the other two bottles were returned to her she would forget the incident.

11HCP

They were in the other Cafe. We called Pte Estabrooke out. On questioning he pulled a bottle out of his tunic stating in effect that here was one bottle that they would not get.

XXM

Pte Estabrookes re-entered the Cafe Bolognaise of his own free will.
The bottle that fell ~~am~~ to the floor could not be recognised by label or other sign.
I could not identify the bottle.
Pte Estabrooke resisted Madame Martins attempt to retrieve the bottle that had fallen from his tunic to the floor.
Pte Estabrooke offered to buy a bottle of Cognac from Madame Martin.
No real complaint was made by Pte Estabrooke when Madame Martin took back the bottle.

Defence

No witnesses for the defence were called.

No evidence or statement of character given by the accused.

Pte Estabrooke has a clean character and clean conduct sheet. The case is complicated by misunderstanding and language difficulties. His record has been good.

"ACH"

Judge Advocate addresses the Court

The accused is charged with stealing. A person steal who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent at the time of such taking, permanently to deprive the owner thereof.

The prosecution alleges, and must prove, that the accused did t ose things alleged in the charge and moreover that those things constitute the offence charged. Witnesses have appeared before the court to give their testimony and you have had the opportunity of hearing and observing these witnesses and it is part of your judicial discretion to decide whether you believe them. The accused, is by law, presumed to be innocent until he has been proved otherwise. The burden of establishing guilt lies upon the prosecution and unless the prosecution satisfies you beyond all reasonable doubt that the accused is guilty, then you must find him innocent.

Reasonable doubt does not mean the vague, ephemeral doubt that a cowardly man could conjure up in his mind in order to evade an unpleasant responsibility. It is, on the other hand, that indecision, which when encountered in ordinary life, prevents you from taking positive action.

No. G47238 Name ESTABROOKS, WI | Sqn, Battery, or Company | Corps R.C.A.M.C. | Date of enlistment 6-11-40 | GC Badges 6 Nov 42 | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (5438)

Date of last entry in Company Conduct Sheet: Nil | No and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc "J Tanzman" Lt-Col | Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed and no regimental entries brought forward 6 Nov 42					
				Awarded one G.C. Badge 6 Nov 42 Auth Part II Orders					
				CERTIFIED TRUE COPY..."J. Tanzman" Lt-Col.					

(PTO)

B "HCP" MFB 355

STATEMENT AS TO CHARACTER AND PARTICULARS
OF SERVICE OF ACCUSED

G-47238 Pte Estabrooks W.I. 14 Canadian Field Ambulance RCAMC

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months	Since enlistment or appointment
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There are no entries in the conduct sheets of the accused

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for No days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 26 Years

6. The date of his attestation specified in his record of service is 6 November 1940

7. The service which the accused is allowed to reckon towards discharge is 3 Yrs 10 Mos 11 Days

8. ----------

9. The accused is in possession of or entitled to). State any military decoration or reward. CVSM and Clasp.

10. ----------

11. ----------

12. ----------

SCHEDULE

Note - A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 Seventeeth day of September 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....

signed by the president, and annexed to the proceedings.

HCP

SUMMARY OF EVIDENCE IN THE CASE OF No.G-47236 Pte Estabrooks, W.I., No.2 Section "A" Company, 14 Canadian Field Ambulance, charged with theft (AA Section 41) and Conduct to the prejudice etc. (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

First Witness — Mlle Lucienne Martin, Marquise, France, sworn states:

J'ai vue sorti deux soldats dans la cour, ils sont descendu dans la cave. A ce moment la j'ai sortie, ils remontaient de la cave, ils sont entrer dans le cafe, je suis allor voir a la cave ils manquaient quatre (4) bouteilles de cognac. Je leur ai demander si c'etait eux. Ils ont repondu, non. A ce moment le une bouteille est sortie de sa reste, et l'autre avait mis l'autre bouteille sous la banc. A ce moment la ma mere est arrive, je lui ai dis, alor maman leur a demander le cognac. Ils ont disent au ils voulais acheter une bouteille. Ils ne voulais pas a le rendre. Leurs comrades leur ont dient que ce n'etait pas bien de faire cela, ils sont partient en apportant deux bouteilles les que l'ils avait encore de cacher. Les autres soldats sont remuent leur demander de rendre le cognac. Ils n'ont pas voulunt. C'est pour cela que nouse sommes revenu ici.
J'assume qu'ils avaient encore deux bouteilles quand ils sont sortie du cafe parceque il y avait dix (10) bouteilles de cognac dans le cave, et quand j'ai descendor il n'en restais que six (6). Mais je n'ai pas vu le bouteille grand. Je suis sortie, c'est

The accused declines to cross-examine the witness.

"Martin, Lucienne"

Second Witness — Mlle Janette Martin, Marquise, France, sworn states:

J'ai rien vue. J'ai seulement vue sa bouteille tomber de se reste. C'est lui.

"Martin, Janette"

The accused declines to cross-examine the witness.

Third Witness — Mme. Gustave Martin, 25 Avenue Ferber, Marquise, France, sworn states:

Je suis Mme. G. Martin, 25 Avenue Ferber, Marquise.
J'etais dans la cour le soldat etait assis il avait la bouteille de cognac dans sa main.
J'ai demander pourquoi avez vous descender dans la cave, il ma demander pour acheter la bouteille. Je lui ai dis, non, et j'ai repris la bouteille et il s'en alla tout de suite. C'est lui.

"Martin, G"

The accused declines to cross examine the witness.

Fourth Witness — G-65158 Pte Richard, J. No.2 Section "A" Company, 14 Canadian Field Ambulance, sworn states:

I am Pte Richard, J. of the 14 Canadian Field Ambulance. On the 13th September, 1944, at about 1930 hours, I was in the Cafe Bolognias where I saw Pte Estarbrooks and Pte Deroche. A girl came in, I can't remember her name. She said some cognac was missing and accused them of stealing her liquor. Then an older lady came in, which I think was her mother, and saw Estarbrooks with a bottle in his hand and pleaded to get it back. One of the Ladies went to Deroche and accused him, and I saw a bottle under his seat. I saw the bottles but cannot say what the

contents were or whether they were full or empty.

"J. Richard".

The accused declines to cross-examine the witness.

Fifth Witness G-47149 Cpl Raymond, D.A., No.2 Section "A" Company 14 Canadian Field Ambulance, sworn states:

I am Cpl D.A. Raymond, G-47149 of No.2 Section, "A" Company 14 Canadian Field Ambulance. At about 1915 hours 13 September 1944, L/Cpl Jones, G-47170, Pte Estabrooks G-47238, Pte Deroche F-86967 and myself entered Cafe Bolognias. After buying a drink, Pte Estabrooks and Pte Deroche went to the toilet. In the meantime four other soldiers came into the above cafe, one of them Pte J. Richard, G-63188, who we had interpret for us. When Pte Estabrooks and Pte Deroche came back into the cafe, the lady came in and locked the door and I knew there was something wrong and Pte Richard told us she said 4 bottles of cognac was missing. I then asked Pte Deroche and Pte Estabrooks about it and they said they didn't have it. Then Pte Estabrooks bent over in his chair and a bottle of cognac fell out of his tunic. He then picked it up and did not want to give it up at first, after arguing Mme Martin got the bottle of cognac. Pte Deroche sat on the bench behind the table and when he went to get up, he kicked a bottle of cognac on the floor which Mlle. Martin picked up. She then went to the cellar and came back and said there was still 2 bottles of cognac missing. We asked Pte Estabrooks and Pte Deroche about it but they said they didn't have it. They then left the cafe. After talking to Mme Martin, she said if the other two bottles were returned there would be no trouble. L/Cpl Jones and myself then went to another cafe and called Pte Estabrooks outside. We asked Estabrooks about the bottle and he pulled it out of his tunic saying "there it is and she's not getting it back" or words to that effect. I told him then there would be trouble and that I was going to report him. We then went back to the Cafe Bolognais and talked to Mme. Martin and brought her to report the incident to Major Norton, O.C. of "A" Company, 14 Canadian Field Ambulance.

"Cpl D.A. Raymond"

The accused declines to cross-examine the witness.

Sixth Witness G-47170 L/Cpl Jones, R.G., No.2 Section "A" Company, 14 Canadian Field Ambulance, sworn states:

I, G-47170 L/Cpl Jones, R.G., on the evening of 13th September, 1944, left my billets accompanied by Cpl Raymond and Pte Estabrooks and proceeded to Cafe Bolognais. On our way we picked up Pte Deroche. The four of us entered the cafe and had a few drinks of cognac and beer. Shortly after entering Pte Esterbrooks enquired where the toilet was. He and Deroche went out the back door towards the toilet. Not later than five minutes I went out to the toilet and they were not there. I heard a lady talking in the cellar and having to pass the cellar door on my way back into the cafe I looked down the cellar and at the bottom of the steps was Pte Esterbrooks and Pte Deroche. The lady was part way down the steps and was talking in French which I could not understand. I entered the cafe followed by the lady, Pte Esterbrooks and Pte Deroche. The lady went to the front door and locked it. In my absence Pte Richard and a couple of other boys had entered the cafe. I knew something was wrong when she locked the door as she was all excited. I told Pte Richard to ask the

trouble and she said these two men, which were Pte Estabrooks and Pte Deroche, had taken some of her cognac from the cellar. The proprietress of the cafe wanted to search the boys and while they were talking a bottle of cognac fell out of Pte Estabrooks' tunic onto the floor. He picked it up and wanted to buy it. The lady said that it was against her orders to sell it. Pte Estabrooks did not want to give it back to her. After we had talked to him for a few minutes he gave her back the bottle. Pte Estabrooks and Pte Deroche got up to leave the cafe, when the lady found the second bottle that was by Pte Deroche's feet. One of the ladies took the two bottles of cognac back to the cellar. She returned and stated that there were still two bottles of cognac missing. There was a lot of talking in French which I did not understand. After Deroche and Estabrooks had left the cafe, Pte Richard said that unless the two bottles were returned she would report it. Cpl Raymond and myself told her that we would see the fellows of whom she was convinced had taken her cognac. We went to another cafe and Pte Estabrooks and Pte Deroche were there. Cpl Raymond called Pte Estabrooks out and asked him to return the two bottles if he had them. Cpl Raymond stated the lady would report it to our officer if the bottles were not returned and it would cause a lot of trouble. Pte Estabrooks pulled a bottle out of his tunic and said "Here is one bottle she will not get" or words to that effect. He also said he was out to get drunk and he did not want us to bother him. Cpl Raymond and I tried to reason with him but he would not listen to us so we went back to the cafe and the proprietress wanted to have the incident reported. So Cpl Raymond and I, also Pte Richard, went up with her to see Major Norton. She reported to him about the whole affair.

"L/Cpl R.O. Jones"

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witness or witnesses.

Rules of Procedure 4(C),(D),(E) and (F) have been complied with. I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in writing in the presence and hearing of the accused this 14th day of September 1944.

"S. Glick, Capt"
Signature of officer taking Summary.

HF/101 "HCP"

FIELD GENERAL COURT-MARTIAL

CPA66 (To lieu of AFA31) 40/P 26 8/1608 (40/01)

4/38B

Convened by Order of Major-Gen D C SPRY Comd 3 Cdn Div dated 26 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G/47238	Pte		William Irvine ESTABROOKS		14 Cdn Fd Amb, RCAMC

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) France on (*date(s)*) 27 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any,~~ ACH assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted;(2) accused is (~~xx~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~xx~~) brought before the Court. At 1640 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court martial instead of being dealt with summarily by the CO(s).~~ ACH

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to be tried by any member of the Court? Ans No.

~~The Interpreter is sworn.(1) Do you object to~~ ~~The shorthand writer is sworn.(1)~~ ACH

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H C Pattison	9 Cdn Inf Bde Coy, RCASC
Member	Capt	J F Rutherford	3 Cdn Inf Div Sigs
Member	Capt	J G Hunter	7 Cdn FDS RCAMC
Judge-Advocate	Capt	A C Hall	ADJA 3 Cdn Inf Div
Prosecutor	Capt	S J Glick	14 Cdn Fd Amb
Defending Offr	Maj	H A Procter	HQ 3 Cdn Div

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (2) and fn 2 were not followed. See DI 8.)

A8. The accused G/47238 Pte Estabrooks, W I before arraignment make(s) (no) ~~xx~~ plea(s). ACH (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~xx~~) arraigned ~~xxxxxxx~~ on all charges in the charge sheet.(1) The accused does (~~xx~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A9a to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~xxxxxxx~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. France 1 page 84

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 80, 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(3), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(4), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(5)

President to accused : Do you wish to make a statement ? Ans _____

(1. RP 37(B). 2. RP 37(D) fn 3. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(D). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (i).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and entering on appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"H.C.P."

CHARGE SHEET

The accused--- G/47238 Pte William Irvine ESTABROOKS, 14 Canadian Field Ambulance, RCAMC, a soldier of the Canadian Army Overseas -- is charged with:

First Charge
Army Act
Sec 41

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING

in that he at about 1945 hrs 13 Sep 44 at Marquise, France, stole two bottles of cognac, the property of Mlle Lucienne Martin, Cafe Bolognais, Marquise, France.

"J.Tanzman"
(J Tanzman) Lt-Col
Commanding Officer
14 Cdn Fd Amb, RCAMC

In the Field
20 Sep 44

Approved on behalf of the JAG Cdn Army Overseas in accordance with K R (Can) 540 and Overseas RO 4756.

"A.C.Hall"
(A C Hall) Capt
ADJA 3 Cdn Div

In the Field
25 Sep 44

To be tried by Field General Court Martial

"D.C. Spry"
(D C Spry) Major-Gen
GOC 3 Cdn Inf Div

In the field
26 Sep 44

"H.C.P"

MEDICAL CERTIFICATE

27 Sep 44

I hereby certify that the undermentioned soldier was examined by me this date and is medically fit to undergo trial by F.G.C.M.

G-47238 Pte ESTABROOKS W I

"R.T. ?????"Major
Medical Officer

"H"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G/47238	Pte		William Irvine	ESTABROOKS	14 Cdn Fd Amb, RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Sep 44 endorsed by me, [illegible] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.C. Pattison	9 Cdn Inf Bde Coy, RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	J.F. Rutherford	3 Cdn Inf Div Sigs
Capt	J.G. Hunter	7 Cdn FDS, RCAMC
[illegible]		
	(Named or detailed, if any. RP 106.)	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	A.C. Hall	ADJA, 3 Cdn Inf Div

On Active Service in the Fd

In France (Country.)

"D.C. Spry" (Signed personally. RP 105 fn 2.) Major-General (Rank.)

(D.C. Spry)

Dat 26 Sep 44

Commanding 3 Cdn Inf Div
Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 95 (In lieu of AFA 31) 40/P & S/1497 (H1468)

(See overleaf for notes and notes for use on trial.)

Accused

"H C"

G-472386 William Ervin ESTABROOKS, 14 Cdn Fd Amb - charged with stealing 2 bottles of Cognac.

PLEA

Not Guilty

1st Witness F-88967 Pte De Roche, C.W.P.

I accompanied Pte Estabrooks, Cpl Raymond, Cpl Cook to the Cafe Bolognaise in Marquise, France. It was my first visit. Could not find toilet but ended up in the cellar looking for it. We did nothing there or took nothing there. I couldn't say whether Pte Estabrooke had a bottle with him when he arrived. I did not see him drop a bottle in the Cafe Bolognaise. We proceeded to another Cafe with Pte Estabrooke. He then produced a bottle of Cognac which Pte Estabrooke claimed to have purchased for about 400 francs from a man on the street. We there drank the bottle of cognac,

XXM

Left Cafe Bolognaise to go to Latrine but could not find it. It was possible to leave the courtyard by climbing a small fence without passing through the cafe.

I met Pte Estabrooke and Cpl Raymond on my way from barracks to the Cafe Bolognaise. Pte Estabrooke could have had a bottle in his tunic but I did not notice it. I did not notice a bottle at the foot of my chair before it was kicked over. Pte Estabrookes and I went to another Cafe where we bought a round of beer. I did not see Estabrooke purchase the bottle he had with him in the second Cafe. I could not recognise the man the bottle was purchased from. I gave Estabrooke the money to purchase the bottle of Cognac.

2nd Witness Mlle Lucienne Martin.

My mother owns the Cafe Bolognaise in Marquise, France.

On the evening of 13 Dec 44 while working at the Cafe Bolognaise in Marquise, France at about 7.30 I saw two soldiers come out from the yard, as the cellar door was open they entered the cellar. When they came up from the cellar I went out. Pte Estabrooke was on the cellar stairs and he called his friend and they entered the Cafe. I went down to the cellar to see how many bottles of cognac there were there. I saw there were four missing. I asked Pte Estabrooke and his companion if they had taken them. He answered no, meanwhile a bottle slipped out of his tunic and fell on the floor. My mother entered the Cafe at this time and she asked him to return the cognac and he refused. Madame Martin picked up the bottle that had fallen on the floor and Pte Estabrooke took it from my mothers hand. He placed the bottle on the table and my mother took it. After that they left the Cafe. When Pte Estabrooke left the Cafe I saw the form of a bottle still showing in his tunic.

XXM

My mother owns the stock in Cafe Bolognaise. The stock was last counted before the incident at noon that day. There was about 4 bottle of Cognac sold before the incident.
I did not see a bottle on his person when he left the Cafe.
Pte Estabrooke offered to purchase the bottle that fell on the floor but Mde Martin would not sell.

"HCF"

3rd Witness for the Prosecution Cpl Jones, R. G-47170, 1st Cdn Fd Amb, RCAMC.

On the evening of 15 Sep 44, I was in Cafe Bolognaise in Marquise, France, accompanied by Cpl Raymond, Pte Estabrooke and Pte DeRoche. After having a few drinks Pte Estabrooke and Pte DeRoche left the Cafe by the back entrance saying they were going to the toilet. About fime minutes later I went out the same door. At the entrance to the door were the steps leading to the cellar. At the foot of the cellar steps I saw Ptes Estabrookes and De Roche. About halfway down the steps was one of the ladies of the Cafe. She was talking to them in French which I could not understand. They all came up the cellar steps and entered the Cafe at the same time as I did . The lady upon entering locked the door. I asked Pte Richard to find out what was wrong as he could talk French. He said that the lady claimed that there was cognac missing from the cafe. He said that the lady claimed that Pte Estabrookes and Pte La Roche had it. On asking them if this was true they denied it. A bottle of Cognac slipped out of Estabrookes tunic on to the floor. The lady told Pte Richard that it was hers. Pte Estabrookes offered to buy the bottle. Mde Martin stated that she was not allowed to sell it. Pte Estabrookes allowed her to have it back. She then having found the second bottle of Cognac by Pte Des Roches feet. One of the girls returned the two bottles to the cellar. When she returned she told Pte Richard that there were still two bottles missing. Pte Estabrookes denied having any of it with him. He then left the Cafe accompanied by Pte Des Roches. The lady in the Cafe stated that she wanted to report that two bottles of Cognac had been stolen. Myself and Cpl Raymond told her that we would see these two fellows and see if they had it. We called at another pub where Pte Estabrooke and Des Roches were. Cpl Raymond called Pte Estabrookes outside and asked him if he had her Cognac. He did not say that it was hers but pulled a bottle out stating that this is one bottle she will not get. We told him that we would have to report the matter as the lady in the Cafe insist on it being reported unless it was returned.

XXX

Pros I did not notice any bulges on his person before entering the cafe Boulognaise or on leaving. I saw Pte Estabrooke pull a bottle out of his tunic at the second cafe.

Defence Pte Estabrooke re-entered the Cafe without force. There was not struggle when the bottle was given up. No attempt was made to get Estabrooke to return the bottle he showed at the second Cafe to Cafe Boulognaise.

4th Witness for Prosecution G-47149 Cpl Raymond, D.A. 1st Cdn Fd Am

Pte Estabrooke left billets in Marquise with me on the evening of the 13 Sep. There was no sign of any bottles on his person. We proceeded to the Cafe Bolognaise. He expressed the wish to go to the toilet. I did not hear him receive instructions as to the location of the toilet. I did notice a bulge in his tunic on he return from the yard and on questioning he stated he had nothing there. Pte Estabrooke then sat down and bent over and a bottle fell out of his tunic on to the floor. After a little argument he gave up the bottle. He claimed that he had bought the bottle but he had not done so to my certain knowledge at the Cafe Bolognaise or on the way there. I did not notice anything in his tunic when he left the Cafe.
I followed him to the Cafe because Madame Martin stated that if the other two bottles were returned to her she would forget the incident.

"HCP"

They were in the other Cafe. We called Pte Estabrooke out. On questioning he pulled a bottle out of his tunic stating in effect that here was one bottle that they would not get.

XXM

Pte Estabrookes re-entered the Cafe Bolognaise of his own free will.
The bottle that fell on to the floor could not be recognised by label or other sign.
I could not identify the bottle.
Pte Estabrooke resisted Madame Martins attempt to retrieve the bottle that had fallen from his tunic to the floor.
Pte Estabrooke offered to buy a bottle of Cognac from Madame Martin.
No real complaint was made by Pte Estabrooke when Madame Martin took back the bottle.

Defence

No witnesses for the defence were called.

No evidence or statement of character given by the accused.

Pte Estabrooke has a clean character and clean conduct sheet. The case is complicated by misunderstanding and language difficulties. His record has been good.

Judge Advocate addresses the Court "ACH"

The accused is charged with stealing. A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent at the time of such taking, permanently to deprive the owner thereof.

The prosecution alleges, and must prove, that the accused did those things alleged in the charge and moreover that those things constitute the offence charged. Witnesses have appeared before the court to give their testimony and you have had the opportunity of hearing and observing these witnesses and it is part of your judicial discretion to decide whether you believe them. The accused, is by law, presumed to be innocent until he has been proved otherwise. The burden of establishing guilt lies upon the prosecution and unless the prosecution satisfies you beyond all reasonable doubt that the accused is guilty, then you must find him innocent.

Reasonable doubt does not mean the vague, ephemeral doubt that a cowardly man could conjure up in his mind in order to evade an unpleasant responsibility. It is, on the other hand, that indecision, which when encountered in ordinary life, prevents you from taking positive action.

No. G47238 Name ESTABROOKS, WI Sqn, Battery, or Company — Corps R.C.A.M.C. — Date of enlistment 6-11-40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/PAS/136 (3428)

Date of last entry in Company Conduct Sheet Nil — No and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No 2 — Signature OC Company, etc "J Tanzman" Lt-Col — Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Previous sheet destroyed and no regimental entries brought forward 6 Nov 42					
				Awarded one G.C. Badge 6 Nov 42 Auth Part II Orders					

CERTIFIED TRUE COPY..."J. Tanzman" Lt-Col.

(PTO)

STATEMENT AS TO CHARACTER AND PARTICULARS
OF SERVICE OF ACCUSED

G-47238 Pte Estabrooks W.I. 14 Canadian Field Ambulance RCAMC

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months	Since enlistment or appointment
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There are no entries in the conduct sheets of the accused

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charge, for No days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which No days were spent in hospital.

5. The present age of the accused according to his record of service is 26 Years

6. The date of his attestation specified in his record of service is 6 November 1940

7. The service which the accused is allowed to reckon towards discharge is 3 Yrs 10 Mos 11 Days

8. ----------

9. The accused is in possession of or entitled to). State any military decoration or reward. CVSM and Clasp.

10. ----------

11. ----------

12. ----------

SCHEDULE

Note - A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 Seventeeth day of September 1944

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....

signed by the president, and annexed to the proceedings.

"HCP"

SUMMARY OF EVIDENCE IN THE CASE OF No.G-47238 Pte Estabrooks, W.I., No.2 Section "A" Company, 14 Canadian Field Ambulance, charged with theft (AA Section 41) and Conduct to the prejudice etc. (AA Sec 40).

By direction of the Commanding Officer the evidence is taken on oath.

First Witness — Mlle Lucienne Martin, Marquise, France, sworn states:

J'ai vue sorti deux soldats dans la cour, ils sont descendu dans la cave. A ce moment la j'ai sortie, ils remontaient de la cave, ils sont entrer dans le cafe, je suis aller voir a la cave ils mangnaient quatre (4) bouteilles de cognac. Je leur ai demander si c'etait eux. Ils ont repondu, non. A ce moment la une bouteille est sortie de sa reste, et l'autre avait mis l'autre bouteille sous la banc. A ce moment la ma mere est arrive, je lui ai dis, alor maman leur a demander le cognac. Ils ont disent au ils voulais acheter une bouteille. Ils ne voulais pas a le rendre. Leurs comrades leur ont dient que ce n'etait pas bien de faire cela, ils sont partient en apportant deux bouteilles les que l'ils avait encore de cacher. Les autres soldats sont renuent leur demander de rendre le cognac. Ils n'ont pas vouluent. C'est pour cela que nous sommes revenu ici.
J'assume qu'ils avaient encore deux bouteilles quand ils sont sortie du cafe parceque il y avait dix (10) bouteilles de cognac dans la cave, et quand j'ai descender il n'en restais que six (6). Mais je n'ai pas vu le bouteille grand. Je suis sortie, c'est lui. lui.

The accused declines to cross-examine the witness.

"Martin, Lucienne"

Second Witness — Mlle Janette Martin, Marquise, France, sworn states:

J'ai rien vue. J'ai seulement vue sa bouteille tomber de sa reste. C'est lui.

"Martin, Janette"

The accused declines to cross-examine the witness.

Third Witness — Mme. Gustave Martin, 25 Avenue Perber, Marquise, France, sworn states:

Je suis Mme. G. Martin, 25 Avenue Perber, Marquise. J'etais dans la cour le soldat etait assie il avait la bouteille de cognac dans sa main.
J'ai demander pourquoi avez vous descender dans la cave, il ma demander pour acheter la bouteille. Je lui ai dis, non, et j'ai repris la bouteille et il s'en alla tout de suite. C'est lui.

"Martin, G"

The accused declines to cross examine the witness.

Fourth Witness — G-63158 Pte Richard, J. No.2 Section "A" Company, 14 Canadian Field Ambulance, sworn states:

I am Pte Richard, J. of the 14 Canadian Field Ambulance. On the 15th September, 1944, at about 1930 hours, I was in the Cafe Bolognias where I saw Pte Esterbrooks and Pte Deroche. A girl came in, I can't remember her name. She said some cognac was missing and accused them of stealing her liquor. Then an older lady came in, which I think was her mother, and saw Esterbrooks with a bottle in his hand and pleaded to get it back. One of the ladies went to Deroche and accused him, and I saw a bottle under his seat. I saw the bottles but cannot say what the

contents were or whether they were full or empty.

"J. Richard".

The accused declines to cross-examine the witness.

Fifth Witness

G-47149 Cpl Raymond, D.A., No.2 Section "A" Company 14 Canadian Field Ambulance, sworn states:

I am Cpl D.A. Raymond, G-47149 of No.2 Section, "A" Company 14 Canadian Field Ambulance. At about 1915 hours 15 September 1944, L/Cpl Jones, G-47170, Pte Estabrooks B-47238, Pte Deroche F-38967 and myself entered Cafe Bolognias. After buying a drink, Pte Estabrooks and Pte Deroche went to the toilet. In the meantime four other soldiers came into the above cafe, one of them Pte J. Richard, G-63158, who we had interpret for us. When Pte Estabrooks and Pte Deroche came back into the cafe, the lady came in and locked the door and I knew there was something wrong and Pte Richard told us she said 4 bottles of cognac was missing. I then asked Pte Deroche and Pte Estabrooks about it and they said they didn't have it. Then Pte Estabrooks bent over in his chair and a bottle of cognac fell out of his tunic. He then picked it up and did not want to give it up at first, after arguing Mme Martin got the bottle of cognac. Pte Deroche sat on the bench behind the table and when he went to get up, he kicked a bottle of cognac on the floor which Mlle. Martin picked up. She then went to the cellar and came back and said there was still 2 bottles of cognac missing. We asked Pte Estabrooks and Pte Deroche about it but they said they didn't have it. They then left the cafe. After talking to Mme Martin, she said if the other two bottles were returned there would be no trouble. L/Cpl Jones and myself then went to another cafe and called Pte Estabrooks outside. We asked Estabrooks about the bottle and he pulled it out of his tunic saying "there it is and she's not getting it back" or words to that effect. I told him then there would be trouble and that I was going to report him. We then went back to the Cafe Bolognais and talked to Mme. Martin and brought her to report the incident to Major Norton, O.C. of "A" Company, 14 Canadian Field Ambulance.

"Cpl D.A. Raymond"

The accused declines to cross-examine the witness.

Sixth Witness

G-47170 L/Cpl Jones, R.G., No.2 Section "A" Company, 14 Canadian Field Ambulance, sworn states:

I, G-47170 L/Cpl Jones, R.G., on the evening of 15th September, 1944, left my billets accompanied by Cpl Raymond and Pte Estabrroks and proceeded to Cafe Bolognais. On our way we picked up Pte Deroche. The four of us entered the cafe and had a few drinks of cognac and beer. Shortly after entering Pte Esterbrooks enquired where the toilet was. He and Deroche went out the back door towards the toilet. Not later than five minutes I went out to the toilet and they were not there. I heard a lady talking in the cellar and having to pass the cellar door on my way back into the cafe I looked down the cellar and at the bottom of the steps was Pte Esterbrooks and Pte Deroche. The lady was part way down the steps and was talking in French which I could not understand. I entered the cafe followed by the lady, Pte Esterbrooks and Pte Deroche. The lady went to the front door and locked it. In my absence Pte Richard and a couple of other boys had entered the ca I knew something was wrong when she locked the door she was all excited. I told Pte Richard to ask th

trouble and she said these two men, which were Pte Estabrooks and Pte Deroche, had taken some of her cognac from the cellar. The proprietress of the cafe wanted to search the boys and while they were talking a bottle of cognac fell out of Pte Estabrooks' tunic onto the floor. He picked it up and wanted to buy it. The lady said that it was against her orders to sell it. Pte Estabrooks did not want to give it back to her. After we had talked to him for a few minutes he gave her back the bottle. Pte Estabrooks and Pte Deroche got up to leave the cafe, when the lady found the second bottle that was by Pte Deroche's feet. One of the ladies took the two bottles of cognac back to the cellar. She returned and stated that there were still two bottles of cognac missing. There was a lot of talking in French which I did not understand. After Deroche and Estabrooks had left the cafe, Pte Richard said that unless the two bottles were returned she would report it. Cpl Raymond and myself told her that we would see the fellows of whom she was convinced had taken her cognac. We went to another cafe and Pte Estabrooks and Pte Deroche were there. Cpl Raymond called Pte Estabrooks out and asked him to return the two bottles if he had them. Cpl Raymond stated the lady would report it to our officer if the bottles were not returned and it would cause a lot of trouble. Pte Estabrooks pulled a bottle out of his tunic and said "Here is one bottle she will not get" or words to that effect. He also said he was out to get drunk and he did not want us to bother him. Cpl Raymond and I tried to reason with him but he would not listen to us so we went back to the cafe and the proprietress wanted to have the incident reported. So Cpl Raymond and I, also Pte Richard, went up with her to see Major Norton. She reported to him about the whole affair.

"L/Cpl R.G. Jones"

The accused declines to cross-examine the witness.

The accused was cautioned as follows:

Q. Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

A. I do not wish to make a statement.

The accused does not call any witness or witnesses.

Rules of Procedure 4(C),(D),(E) and (F) have been complied wth. I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in writing in the presence and hearing of the accused this 14th day of September 1944.

"S. Glick, Capt"
Signature of Officer taking Summary.

File Wire Loose Sheets of Record

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)

(1. If "yes", see RP 39(A) for procedure. Statement of evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~his~~ ACH (no) opening address.(1)

(1. RP 39(B), 60(A)(B), 90, 92(C)(D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D)(E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima-facie case against the accused on the charge(s)(?) The Court withdrew and considered the submission.(2) The Court is re-opened, and the President announces that the submission on the charge(s) was disallowed, and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~ ACH

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. Neither Do you intend to call witnesses on your behalf?

Ans. No Are they witnesses as to character only? Ans. --

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of Guilty will be announced later, accordingly terminating the proceedings, subject to confirmation, and to the accused being subject to certain matters until the pass right of Honour.~~(1)

~~Or, The President announces that the accused is found Not Guilty of the charge, and is to be released forthwith (?), and that the proceedings are accordingly terminated. Part I of the Schedule is to that effect.~~

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No Sir.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. MFB 353 or AFB 296. 2. MCM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes by my Def Offr (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or say anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its purview, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 42. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 61(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(i), 68(1), KR Can 564. 2. RP 50 As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G/47238 Pte William Irvine ESTABROOKS, 14 Cdn Fd Amb, RCAMC

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 41	Not Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 64; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Awaiting under sentence for~~ HCP (1) (Incoming warrant date)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To Suffer Field Punishment for 90 Days and to Forfeit all Ordinary Pay for a Period 90 Days

(Sgd) "Alec C. Hall" Judge-Advocate, CAJF — Sept 27 - 44 Date awarded. (Sgd) "H.C. Pattison" Major President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Accts/sals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2). RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 571. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally: AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be released from custody forthwith under further order.~~ (1. AA 52A. Delete if not used.)

(Sgd) "D.C. Spry" Maj-Gen

Date 2 Oct 44 Commanding 3 Cdn Inf Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G-47238 Pte William Irving Estabrooks	10 Oct	"Jos Tanzman Lt-Col"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Special Finding under A[illegible]70(1) (ee) and RP.[illegible] in FGCM Proceedings, dated 27 Sep 44, in the Case of G.47238, Pte William Irvine ESTABROOKS, 14 Cdn Fd Amb RCAMC

The undersigned, being the competent Military Authority, do hereby, pursuant to the powers vested in me by P.C. 9229/44 and Section 70(1)(ee) Army Act, RP 57A and G.O. 93 of 1925, substitute for the finding of the within Field General Court-Martial the following finding:

"The accused, G.47238, Pte William Irvine Estabrooks, 14 Canadian Field Ambulance, RCAMC, is found guilty of the charge with the exception that the property stolen belonged to Mme Martin, Cafe Bolognais, Marquise, France, and not to Mlle Lucienne Martin, Cafe Bolognais, Marquise, France, as stated in the charge."

Signed at Ottawa, Ontario, this 21st day of December, 1944.

(Sgd) A.E.Walford Maj Gen
Adjutant-General

The above Special Finding has been promulgated to the Accused, G-47238, Pte William Irvine Estabrooks, 14 Cdn Fd Amb RCAMC, reflected in Unit Orders and the Accused's Records amended accordingly.

Signed in the Field this 5th day of ~~January~~ February 1945.

J.M. Meneil Lt Col

OC 14 Cdn Fd Amb

FOOW - 27 Sep 44
C.47238 Pte William Irvine Matabrooks
14 Cdn FG Amb RCAMC

WHEREAS the above mentioned soldier was tried in the field in France on 27 Sep 44, by field general court martial, on the following charge under AA 41, namely

"Committing a civil offence, that is to say, stealing in that he

at about 1945 hrs 13 Sep 44 at Marquise, France, stole two bottles of cognac, the property of Mlle Lucienne Martin, Cafe Bolognais, Marquise, France,"

and was found guilty thereof, and sentenced to suffer Field Punishment for 90 days and to forfeit all ordinary pay for a period of 90 days,

AND WHEREAS on 21 Dec 44 Major-General A.E. Walford, the Adjutant-General, under the authority vested in him by PC 9229/44 and Section 70(1)(ee) Army Act, RP 53A and QO 93 of 1925 substituted the following special finding for the finding of the court, namely

"The accused, C.47238 Pte William Irvine Matabrooks, 14 Canadian Field Ambulance, RCAMC, is found guilty of the charge with the exception that the property stolen belonged to Mme Martin, Cafe Bolognais, Marquise, France, and not to Mlle Lucienne Martin, Cafe Bolognais, Marquise, France, as stated in the charge."

AND WHEREAS it is necessary to impose a sentence for the offence involved in the new finding

NOW THEREFORE, I, under the authority vested in me by PC 1405 of 1945 and Section 70(1)(ee) Army Act and RP 53A impose the following sentence in place of the sentence imposed by the court-martial, the same to have effect as if imposed by the court-martial on 27 Sep 44, namely:

"The accused C.47238 Pte William Irvine Matabrooks is sentenced to suffer Field Punishment for 90 days and to forfeit all ordinary pay for 90 days"

Signed in the Field in Holland

this 31st day of March 1945.

(N.D.G. Crerar) General
The General Officer of the
Canadian Militia commanding
the First Canadian Army.

Promulgated and Extracts taken in the field,

.....
(date)

.....signature
.....rank
.....appointment
.....unit

5 K-138
Jas. Estey - S. D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-762 Tpr ESTEY, George Delwood - 2 CGRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which 14 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of Sixty (60) days

(Sgd) ..... Judge-Advocate, if any. 13 Aug 45 Date awarded. ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~(1) HB

(1. AA 57A. Delete if not used.)

Date 22 Aug 45 (Sgd) Hon Brownfield Brig

Commanding "C" Group, Can Reinforcement Units

Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G762 Tpr Estey G.D.	23 Aug 45	gsmith MAJOR. ADMIN. OFFR. 2 C.G.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 3 SEP 1945 MILITARY BRANCH G.M.H.Q.

RECORDED AT CMHQ IN AB 160 5R-138

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) 40/P & B/1696 (6144) 4/38B

Convened by Order of Brig HON Brownfield CBE MC Comd "C" Gp, CRU dated 11 Aug 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-762	Tpr	George Delwood	ESTEY	2 CGRU

PROCEEDINGS REVIEWED 3 Sept 45

PROCEEDINGS OF TRIAL.

Held at (place) ASSISTANT JUDGE ADVOCATE, JAG BRANCH C.M.H.Q. ENGLAND in (country) on (date(s)) 13 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs~~ under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to CPL F J DOUCETTE, M as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs~~ under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	D L REDMAN	HQ CRU
Member	CAPT	W H MARSHALL	2 CGRU
Member	LIEUT	H RUTHERFORD	2 CGRU
~~Judge Advocate~~			
Prosecutor	LIEUT	E C ENNIS	2 CGRU
Defending Offr	LIEUT	P H GREGGS	2 CGRU

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment makes(s) (no) (a) plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 15(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns .2 RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO, SIR.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*C*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 7.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. NO, I HAVE NOTHING MORE TO ADD.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*B*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71-(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 98, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused G762 Tpr George Delwood **ESTEY**, Canadian Armoured Corps, on the strength of "E" Coy., "D" Wing, No. 2 Canadian General Reinforcement Unit, a Soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE WHEN ON ACTIVE SERVICE

A.A. Sec 15(1) ABSENCE WITHOUT LEAVE

in that he,

in the Field, did absent himself without leave from 2300 hrs 16 Jun 45 to 0835 hrs 24 Jul 45 (Surrendered to R & D Office "D" Wing, 2 Repat Depot)

(Absent 37 days 9 hrs 35 mins)

Dated at Bordon, Hants, this 6th day of Aug 45.

(W. A. TOWNSLEY) Col RCA
Commanding Officer
No. 2 Canadian General Reinforcement Unit

To be tried by Field General Court Martial

Brigadier
Commanding "C" Group, Cdn Reinforcement Units
(Convening Officer

11 Aug 45
Bordon, Hants

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-762	Tpr		George Delwood	BETKY	2 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXXX] committed the offence[X] set forth in the Charge Sheet[X] attached and on (date) this date endorsed by me, ([XXXX

Medical Officers' Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No G762 (Rank) PTE. ESTEY, C.D (name)

of No 2 C.G.R.U. and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station FIELD.

Date 13TH AUGUST, 1945.

Sgd. ..... (Medical Officer)

C 162 Tpr Estey, H.D.

E-3

The defence wishes to enter a very strong plea of mitigation on three grounds:

1. The previous good record and operational service of the accused.
2. His mental instability as a result of said service.
3. Extenuating circumstances at the time of the crime.

Tpr Estey enlisted on 23 June 41 at the age of 19. His education consisted of 7 yrs public schooling and at the date of enlistment, he was working at the job to which he will return. He came overseas with the RCD's in Oct 42 and qualified as a wireless operator and obtained trades pay. He went to Sicily in Oct 43 with his unit and fought there and in Italy for a year. His unit being an armoured car regiment, he constantly worked well forward in close contact with the enemy and under most nerve-wracking conditions. His nerves began to get ragged in the Gothic line but he refused offers of evacuation in an effort to stay with the officers and men of his troop which he liked. Sudden shocks would cause a lapse of memory and finally after a particularly fierce action he had to be evacuated. He was re-boarded L3 for varicose veins which had bothered him considerably but about which he had not complained and S3 as his nervous system was adversely affected. He was assigned to various jobs back of the line and in Apr 45 was returned to the UK. He has only two former charges of AWL, the combined absence of which was two days; neither of these occurred when his unit was in the line. He is a good soldier.

One evening when off duty, Tpr Estey met an old friend whom he had not seen since before going into action and as a result of the ensuing celebration, he found himself in London. When in London, he called on his fiancée. He had become engaged in the spring of 1943, had given the girl a ring and had sent her money to buy articles for their future home. His mother and his fiancée corresponded. I wish to point out that this was a

genuine attachment and that consequently it came as a very severe shock when the girl then and there and without no previous intimation, severed the engagement. This misfortune, coupled with his already nervous condition was too much for Pfc Estey + he lost his sense of values and his judgement. He terminated his absence voluntarily.

I feel that Pfc. Estey's present dilemma would not have occurred but for the facts that I have outlined. He has spent four years in the army with only two days AWL; the war in Europe was over; he must have had been unbalanced to do this crazy act. While he has done wrong, he has also been wronged and at a time when he was least able to cope with it. I appeal for the utmost leniency the court may allow.

T H Griggs Capt

SUMMARY OF EVIDENCE in the case of G762 Tpr George Delwood ESTEY, on the strength of "E" Coy., "D" Wing, No. 2 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary Of Evidence is taken on oath.

FIRST WITNESS for the Prosecution

Capt. S. Whitaker, RCA, Administrative Officer of "D" Wing, No. 2 Canadian General Reinforcement Unit, Canadian Army Overseas, having been duly sworn, states:

I am Capt. S. Whitaker, RCA, of No. 2 Canadian General Reinforcement Unit, Administrative Officer of "D" Wing, and as such I produce from Wing Orderly Room files the following documents which have been shown to the Accused.

The first document, which is marked Exhibit "A", is a certified true copy of an Extract from No. 1 Canadian Artillery Reinforcement Unit, Part II Orders No. 160, dated 7 Jul 45 which declares in para 8, sub para (a) that G762 Tpr Estey, G. D., absented himself without leave from 2300 hrs 16 Jun 45 from his unit, No. 1 Canadian Armoured Corps Reinforcement Unit.

The second document which is marked Exhibit "B" is a certified true copy of an Extract from No. 2 Canadian General Reinforcement Unit, Part II Orders No. 4 dated 30 Jul 45, which declares in para 8, sub para (e) that G762 Tpr Estey, G. D., surrendered himself at 0835 hrs 24 Jul 45 to the R & D Office "C" Wing No. 2 Repat Depot.

.....
(S. Whitaker) Capt RCA

The Accused declines to cross-examine this Witness.

.....
(G762 Tpr Estey, G.D.)

The Accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given as evidence.

The Accused declines to make a statement and reserves his defence.

.....
(G762 Tpr Estey, G.D.)

I certify that the foregoing Summary of Evidence, consisting of one (1) page and two (2) Exhibits, was taken down by me in the presence and hearing of the Accused and that Rules of Procedure 4 (c)(d)(e) and (f) have been complied with.

.....
(C. E. Ennis) Lieut RCA
Officer Detailed to take the Summary of Evidence

Bordon, Hants
6 Aug 45

EX A

Exhibit "A"

CERTIFIED TRUE COPY OF EXTRACT OF ~~DF~~ NO. 2 C.A.R.U.
PART II ORDER No. 160 d/7 Jul 45.

Para 8(a) STRENGTH INCREASE:
T.O.S. from 1 C.A.C.R.U. wef 1 Jul 45, whilst AWL wef dates listed and times shown. (Auth: CRU Adm Instr #61 d/25 May 45.) Posted to Depot Bty.
G762 Tpr. Estey, G.D. (AWL) 2300 hrs 16 Jun 45.

Certified true copy of extract held in my possession.

5 Aug 45

(S.H. STEPHEN) CAPT
RECORDS OFFICER
No. 2 Canadian General Hft Unit

/HZ

Exhibit "B"

CERTIFIED TRUE COPY OF EXTRACT OF NO. 2 C.C.R.U.
PART II ORDER No. 4 d/30 Jul 45.

Para 8(e) ABSENT WITHOUT LEAVE:
Returned from wef 0835 hrs 24 Jul 45 (Surrendered to R&D Office, C/Wing, 2 Repat Depot). On strength "E" Coy.

G762 TPR. ESTEY G.D.

Certified true copy of extract
held in my possession.

5 Aug 45

(J.H. STEPHEN) CAPT
RECORDS OFFICER
No. 2 Canadian General Repat Depot

/HZ

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G762	Tpr	ESTEY George Delwood	No 2 CGRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the entries of Crimes in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec 15 (1) 2 times.

For A.A. Sec 4C 1 times.

For [redacted] [redacted]

For [redacted] [redacted]

Date of first entry in Field Conduct Sheet 13 Jan 44

Date of last entry in Field Conduct Sheet 30 Nov 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. [redacted]

4. The accused has been awaiting trial on the present charges [redacted] days in civil custody; and for 20 days in military custody, *i.e.*, 0 days in open arrest, 20 days in close arrest; [redacted] days were spent in hospital.

5. The present age of the accused is 23 yrs 3 mos 24 dys

6. The date of his attestation [redacted] is 23 Jun 41

7. The service which the accused is allowed to reckon is 4 yrs 1 mo 21 dys

8. The accused is in possession of: CVSM & Clasp

9. *(If the accused is a warrant officer or N.C.O.)* [redacted]

Date of Promotion.

I [redacted]

I [redacted]

I [redacted]

EXD MS

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

*Strike out if not applicable.

†State the military operations in which he is accused.

[illegible] W1.42126/4294 42,000 12/44 A.& E.W.Ltd. Gp.698 Forms F.S. & W.O.3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13th day of August 1945

J. Smith, Maj
Officer in Charge of Records 2664

No. G762 Name ESTEY, G.D. Sqn, Battery, or Company — Corps CAC — Date of enlistment 23-6-41 — GC Badges — Service or Proficiency Pay — 3/17 MFM 6 (AFB 122) 40/PAS/136 (7910)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
UK	18-10	Tpr		AA 15(1) (		28 days pay	13 Jan 44		Tot forf 29 days pay
Field	29-11	Tpr		AA 15(1)(Absent 1 day 1 hr 59 min) AA 40		9 days pay 7 days FP	30 Nov 44		

Certified true copy from of MFM 4 held in my possession.

9 Aug 45

(J.H STEPHEN) CAPT
RECORDS OFFICER
No. 2 Canadian General Hft Unit.

Received from Lieut. C. E. Ennis, RCA, Officer detailed to take the Summary of Evidence, one (1) copy of the Summary of Evidence and one (1) copy of the Charge Sheet, in the case of G762 Tpr Estey, G.D.

G. D. Estey

(G762 Tpr Estey G.D.)

LIST OF WITNESSES

PROSECUTION

Capt. S. Whitaker, RCA — No. 2 Canadian General Reinforcement Unit

DEFENCE

Nil

LIST OF EXHIBITS

"A" — Certified True Copy of an Extract from No. 1 Canadian Artillery Reinforcement Unit, Part II Orders No. 140 dated 7 Jul 45, para 8 sub para (a) as regards G762 Tpr Estey, G.D.

"B" — Certified True Copy of an Extract from No. 2 Canadian General Reinforcement Unit Part II Orders No. 4 dated 30 Jul 45, para 6, sub para (e) as regards G762 Tpr Estey, G.D.

STATEMENT OF THE ACCUSED IN ACCORDANCE WITH RP 14(B)

I, G762 Tpr Estey, G.D., of No. 2 Canadian General Reinforcement Unit, consent to have an Officer appointed by the Convening Officer to represent me at my trial by Court Martial.

.....
(G762 Tpr Estey, G.D.)

Z-105 (case #2)

GNR ESTEY I.R.

See P. 70 for 1st case

2-105 93

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 2nd day
of MARCH , 19 43

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN CORPS ARTILLERY , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[~~I am unable to appoint :—~~
~~*(1. Three Officers to form the Court.)~~
~~*(2. A Field Officer as President.)~~
for the following reasons, namely :—]

Appd. Genl. 22 Mar 43

30

NOTE.—The President must be named. The members and sitting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G. W. Greenwood	1 Cdn Lt A A Regt

Members.

Rank.	Name.	Regiment.
Capt	R. L. Williams	1 Cdn Lt A A Regt
~~Lieut~~	~~G. M. Reed~~	
Lieut	D A Officer	7 Cdn A Tk Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E C Plow
(E. C. Plow) Brigadier
Commanding C.C.R.A., 1 Cdn Corps
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G-49115 Gunner IRVINE RICHARD ESTEY 7 Cdn A Tk Regt	First Charge A.A. 15(1)	G. to 1st charge	Guilty to undergo 120 days det and cbf of appointment On completion of sentence Court recommends a medical board for accused Stoppages. Cost of apprehension 8/9. 3 March 43	Confirmed E I Plow Brig C.C.R.A.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) E I Plow (E. C. Plow) Brigadier C.C.R.A. *Commanding* 1 Cdn Corps *Convening Officer* (e)

(Signed) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Third day of March 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 3rd day of March 1943.

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this 3rd day of March 19 43~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 4th day of March 1943.

E I Plow
Confirming Officer C.C.R.A.

Promulgated and extracts taken in the case of 1.49115 Gnr Estey I.R. of the 104 Bty. 7 Cdn A Tk Regt., R.C.A.

(a) (Dated) 6 Mar 43. (Signed) Lt.Col. (A/Major) 7 Cdn A Tk Regt., R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

2...

152.

CHARGE SHEET

The accused No. G49115 Gunner IRVINE RICHARD ESTEY, 104 Bty., 7 Cdn A.Tk. Regt. R.C.A., a soldier of the Canadian Army (A.P.) Is charged with:-

First Charge

While On Active Service, Absenting himself without leave:-

in that he

While in the Field, did absent himself without leave from 2359 hrs. 14 Feb. 43 until apprehended by Cdn Provost Corps at 2200 hrs. 23 Feb. 43, thereby incurring the cost in his apprehension of eight shillings and six pence.

(Time Absent 8 days 20 hours 1 minute)

Signed in the Field this 26 day of Feb. 43

.....Lt.Co
(J.A. Gillies) Comd.
7 Cdn A.Tk. Regt. R.C.A.

To be tried by Field General Court Martial .

(E. C. Plow) Brigadier
C.C.R.A., 1 Cdn Corps

MEDICAL CERTIFICATE (K.R. (Can) 557)

I certify that I have this morning examined No. G49115
Gnr. Batey, I.R. of 7 Coy. A.T. Regt. and, in my opinion
he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date 3 March 1943

(M. Bruser) R.C.A.M.C. Capt.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a ~~Field General~~ Court-Martial held at [illegible] on the 3 day of March 19 43 by order of Brig E.C. Plow CCRA.

Commanding 1 AT Gp Engrs Artillery

dated the 2 day of March 19 43.

President.

Major J.W. Greenwood. 1st L AA Regt.

Members.

Capt R.L. Withers 1st L AA Regt

Lieut DA Officer 7th A/T Regt

Judge Advocate.

Trial of* 6 449115 Gnr Irvine Richard Edey 7th A/Tk Regt RCA.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt J Ryall.

Counsel‡ or defending officer† Lieut M.J. Longworth.

At 1030 o'clock the Trial commences.

The order convening the Court is read, and is marked A 2. signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible]

B

The President, members ~~and judge-advocate~~ are ~~duly~~ sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

The accused having pleaded Guilty to First charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:]

The accused
is found guilty of First charge.

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes by my defending officer See page 11.

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings:]

Instructions.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~ —

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt. J. D Hall. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* I produce AFB 294 a certified true copy Record M.F.M. 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked I ~ I., signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

Cross-examined by the accused. None.

[illegible]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

My Plea for Gnr Bisley is for lunacy
I would like to point out that this man
has been examined by a psychiatrist & found
to be a border line case. The psychiatrist
recommended that he be reexamined by the
personel selection board

H Hammond

M O'Hayward Lieut
Tdo A/It RCA

SUMMARY OF EVIDENCE

Summary of Evidence taken in the case of No. 349115 Gunner Irvine Richard ESTEY., 104 Bty., 7 Cdn A.Tk. Regt. R.C.A., a soldier of the Canadian Army (A.F.)

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

First Witness

G5119 Sjt. Scott, E.E., 104 Bty., 7 Cdn A.Tk. Regt., R.C.A. having been duly sworn states:-

"I am G5119 Sjt. Scott, E.E., on the night of 14 Feb. 43, I was Bty. Orderly Sjt. I checking the late passes at 2359 hrs. I found that Gnr. Estey was missing. I reported Gnr. Estey's absence to the R.S.M. I have not seen Gnr. Estey until today at 1400 hrs., 26 Feb. 43.

E.E. Scott - Sgt.

The accused declines to cross-examine this witness.

2nd Witness

345405 L/Upl. Hayes, D.D., #9 Provost Coy., Cdn Provost Corps.

"A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence."

Having regard to the exigencies of the service, the attendance of this witness cannot in my opinion be readily procured.

.....Capt.
(J.D. Hall) Investigating Officer

The Accused does not demand the attendance of this witness for cross-examination.

The Accused having been cautioned in accordance with Rule of Procedure 4(e) makes no statement.

J.R. Estey

Certified that Rule of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.
Taken down by me in the presence and hearing of the accused this....26.....day.of...Feb.....1943 at Field

.....Capt.
(J.D. Hall)
Officer Investigating.

The Accused requests that Lieut. M.V. Longworth be his Defending Officer.

J. D. Eddy

Capt. J.D. Hall will be prosecuting Officer.

CHARGE Exhibit "D" Army Form B 252
(See King's Regulations)

7 INTL TANK REGT R.C.A. Regiment / Battery / Squadron / Troop or Company

CHARGE against No. G 40115 Rank Gnr.

Name REEVE, L. A.

Place Guildford Date of Offence 25 Feb 43

OFFENCE N.C.A.S.

A.W.L.

O.C. 9 Demrest Coy.

Names of Witnesses:—

G 46405 L/Cpl. Meyer, D. D.

K 37376 L/Cpl. Albinson, A. H.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

EVIDENCE

G 49115 Gnr. Ratey, I. R.
7 Can A/T Regt, R.C.A.

On receipt of a phone call from Mrs. I.R. Ratey of 105 Ryders Hill Road, Guildford at 2200 hours 23 Feb 43, I proceeded to the above address accompanied by L/Cpl. Albinson where I arrested the a/m soldier who was A.W.L. since 14 Feb 43. We conveyed the a/m soldier to this unit guard room where he is held awaiting escort.

G 45405 L/C Mayes, D.D

Witness:

M 37376 L/Cpl. Albinson, A.

REMARKS

Result of charge to be forwarded direct to H.Q. of Formation.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B 49115 Rank Pte Name Estey L. Unit 7A/T Regt

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London.

Date	Particulars	Amount		
11 Feb 41	Escorts return fare from LONDON To Haywards Heath		5	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London to Haywards Heath		2	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000 5/5
40/P & S/483

No. G49119 Name Estey, I.R. Sqn., Battery, or Company 104 Bty Corps / Cdn A.A. Regt. R.C.A. Date of enlistment 14/3/41 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period for reckoning conduct freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. W.F. Blair Major | Character

M.F.M. 6 (A.F.B. 122) 30M—6-39 (7501) H.Q. 1772-40-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	No entries from previous sheet, destroyed on completion of six months service,								KR Can 1524 (C) 1.
Field	31/12/41	Gnr.		Sec. 15 (1)AWL from 0815 hrs. 31/12/41 until 0840 hrs.5/1/42	L/Sgt.Carlyle Sgt.Lifford	7 days F.P. 7 days Pay	7/1/42	Lt.Col.L.A. Devine	Forf 6 days pay F.R.I.149
Field	16/1/42	Gnr.		Sec.15 (1) AWL from 0840 hrs.16/1/42 until 1700 hrs. 5/2/42. Time absent 20 days,8 hrs. 20 mins	Sgt.Lifford	27 days F.P. 27 days Pay	7/2/42	Lt.Col.L.A. Devine	Forf 21 days pay FR&I 149
Field	29/3/42	Gnr.		Sec.15 (1) AWL from 1645 hrs,29/3/42 until 1630 hrs 1/4/42 Time absent 3 days 15 mins.	Sgt.Hanson Bdr. Hatt	14 days C.B.	3/4/42	Major Kennedy	Forf 4 days pay FR&I 149
Field	14/6/42	Gnr.		Sec.15(1)A.A. AWL from 0900 hrs 14/6/42 until 1930 hrs.24/6/42 Time absent 10days,10 hrs,30 mins.	Sgt. Munroe L/Cpl Black 7 Prov.Corps	21 days F.P. 21 Days Pay	29/6/42	Lt.Col.L.A. Devine	Forf.11 days pay FR&I 149.

(P10)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
Field	12/5/42	Gnr.		Sec.15 (1)A.A. AWL - 0830 hrs 12/5/42 - 2200 hrs. 18/5/42 Absent 6 days,13hrs.,30 mins.	Sgt.Lifford	27 days F.P.	19/5/42	Lt.Col.L.A. Devine	Forf. 7 days pay F.R.&I 149 (1) A.
Field	18/7/42	Gnr.		Sec.15 (1)A.A. AWL - 2359 hrs 18/7/42 until 0830 hrs.20/7/42 Absent 1 day 3 hrs.31 Mins.	Sgt.Lifford	7 days C.B.	22/7/42	Major S.B. Smith	Forf 2 days pay
Field	2/8/42	Gnr.		Sec.15(1)A.A.AWL 2300 hrs 2/8/42 until 0845 hrs. 3/8/42 Absent 9 hrs. 45 Mins.	Bdr.Currie	15 days F.P. 15 days Pay	4/8/42	Lt.Col.L.A. Devine	Forf. 2 days pay
Field	23/8/42	Gnr.		Sec.15(1)A.A. AWL - 2359 hrs.23/8/42 to 1200 hrs.25/8/42.Absent 1 day,12 hrs. 1 Min.)	L/Bdr Russell Bdr. Flack	21 days FP 21 days Pay	26/8/42	Major A.L. MacInnes A/C.O.	Forf. 2 days pay
Field	14/11/42	Gnr.		Sec.15(1)A.A. AWL from 2300 hrs 14/11/42 to 1320 hrs.16/11/42 (Absent 1 day 14hrs 20 Mins.	Documentary Bdr.Winter R.	14 days F.P. 14 days pay	16/11/42	Col.C.E.de Poncier	Forf 2 days pay FR&I 149 (1)A

No. G49115 Name Estey,I.R. Sqn., Battery, or Company 104 Bty. 7 Cdn.A.Tk Regt.,R.C.A. Date of enlistment 14/3/41 G.C. Badges: Service or Proficiency Pay: M F M. 6 (A F B 122)

Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine: Sheet No. 2 Signature O.C. Company, etc: W.F. Flair Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14/12/42	Cnr.		Sec.15(1)A.A. WOAS AWL from 0800 hrs.14/12/42 to 1120 hrs.15/12/42 when apprehended.Time absent 1 day 3 hrs., 20 mins.	Documentary	4 days C.B. Forf.4 days pay.	18/12/42	Col.C.B. de Poncier	Forf 2 days pay FR&I 149(1
Field	24/12/42	Cnr.		Sec.15(1)A.A. WOAS AWL from 0745 hrs. 24/12/42 until apprehended at 2000 hrs. 30/12/42.Absent 6 days,12 hrs. 15 mins.	Documentary Bdr.Mellars J.A. Sgt.Pounden W.J.	28 days Detention	2/1/43	Col.C.B. de Poncier	Forf.7 days pay FR&I 149 (1) (A)

Certified to be a true copy of the ~~entry~~ punishment.

Capt.

~~Adjutant.~~
7 Cdn A.Tk Regt R.C.A.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	15 9/42	Gnr		Sec 15 (1) WOAS - AWL from 1247 hrs 15/9/42 until 1700 hrs 21 Sep 42. (Absent 6 days 13 mins.)	Sgt Sanson.	70 days Detn.	28/9/42	F.G.C.M.	Forf 85 dys pay.

Certified that this is a true copy taken from the Regimental books in my possession.

Capt.

(J.D. Hall) Adjutant.
7 Cdn A.Tk., Regt., R.C.A.

I. Statement

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
949115	Bmr.	Batey, I.M.	7 Cdn A.Tk. Regt. R.C.A.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For Sec. 15 (1) A.A.	Nil times	Nil times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for Nil beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 3 days in military custody, making a total of 3 days, of which No days were spent in hospital.

5. The present age of the accused according to his record of service ~~service book~~ is 20

6. The date of his ~~enrolment~~ attestation specified in his record of service ~~service book~~ is 14 Mar 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... service.

9. The accused is entitled to reckon One service for the purpose of determining his pension, etc.

10. The accused is ~~in possession of~~ entitled to, no military decoration or military award (~~and has produced or~~ ~~stated to whom and~~ *military decoration or reward*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ..... dated ..... and in his regiment (*or corps or department*) the rank of ..... dated .....

(7/5240) W.3000/1/41 75,000 12/40 A.& E.W.Ltd. Op.470

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 949115 Rank Gnr. Name Eatey, I.R. of 7 a.Tk. Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be entered.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge or order of the dispensing authority	Punishment remitted
F.G.C.M.	Field 28/9/42	A.A. Sec. 15 (1) Absent without leave from 1247 hrs 15/9/42 until 1700 hrs. 21 Sept. 42 (Absent 6 days 13 mins.)	70 days Detention.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26 day of Feb 43

Capt

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of Date of Promotion

In the rank of years

In the rank of years

(Insert rank) (If any matter in any of the above paragraphs cannot be stated from the regimental book the paragraph must be struck out in the case of a trial by field general court martial, the information may be collected from such sources as are available and the paragraph inserted accordingly)

Offence Report (*Field Service only.*)

Army Form B. 2069.
(In Pads of 50.)

Corps

Squadron, Troop, Battery or Company	Army No.	Rank	Name	Place and Date of offence	Offence	By whom reported and Names of Witnesses	Initials of Officer Commanding Company &c.	Punishment awarded	Signature of Officer by whom ordered and date of award	Date of Entry in Conduct Sheet	Remarks
104 Bty.	G.49115	Gnr	Estey I.R.	Field. 14 Feb 43.	Sec 15 (1) A.A. WOAS. Absented himself without leave from 2359 hrs 14 Feb 43, until 2200 hrs 23 Feb 43, Time Absent 8 days 22 hrs 1 min.	Sgt Scott. Documentary	D/A	120 days detn.	F.O.C.M. 3 Mar 43	6 Mar 43	Forfeits 9 days pay under FR&I 149 (1) a.

D.J. Halfnight Major

N.B.—A horizontal line should be drawn the whole length of the Return after each day's offences are entered.

Wt. 34256/33. 40,000 3/39 H.A.S. & S. 51-3480. Forms S. 2052 33

70.P

Gen. Easley, D.C.

O. H. M. S.

4

M. F. B. 270

70 P

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 26th day of September, 1942.

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN CORPS ARTILLERY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

called Hugo

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~[I am unable to appoint :—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:—~~]

* Omit if not applicable.

PROCEEDINGS REVIEWED

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C.A.Peck	1 Cdn Corps Signals

Members.

Rank.	Name.	Regiment.
Captain	H.A.McBride	RMR (M.G.)
Lieutenant	R.W.Waud	RMR (M.G.)

* Must be signed personally by the Officer actually in command at the time, and all alterations to the composition of the Court to be initialled by him.

*Signed ~~(A.R.McCarter) Brigadier~~,
Commanding C.C.R.A. - 1 Cdn Corps.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
G-49115 Gnr. I.R. Estey 7 Cdn A/Tk Regt	First Charge A.A. Sec. 15 (1) See Charge Sheet annexed marked "A"	Guilty	Guilty — Cl. 70 days Detention. 28 Sep 42 - Cdr.	Finding and Sentence Confirmed (G.A.McCarter) Brigadier, C.C.R.A. - 1 Canadian Corps 29 Sep 42.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) A/Lt Col Major
President

(Signed) (G.A. ~~McCarter~~) Brigadier, C.C.R.A. Commanding 1 Cdn Corps.
Convening Officer (d)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

Page 13

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28th. day of September, 1942 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of ~~each~~ such person were as stated in the third and fourth columns of that Schedule.

R.P. 110(A) complied with Cdr. R P 35(B) has been complied with Cdr

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 28th day of Sept 1942

A/Lt Col Major
President of the Court Martial.

C. Certificate in case of death sentence

~~* See footnote (h) on page 248, M.M. to 14/21~~ I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Cdr

Signed this ~~day of~~ 19 .

Cdr
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 29th day of September 1942.

Confirming Officer.
(G.A.McCarter) Brigadier,
C.C.R.A. - 1 Cdn Corps.

Promulgated and extracts taken in the case of G-49115 Gnr Estey I.R.

(a) (Dated) 2 Oct 42. (Signed) A.B. Lunn Major LtCol.
for [illegible] C.R.A., Rest., R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Tue 1-41 W. & Co., Ltd. Gp. 748-2

"G"

CHARGE SHEET

Charge against No. G49115 Gnr. ESTEY, Irvine Richard, 104 Bty., 7 Cdn A.Tk. Regt. R.C.A., a soldier of the Canadian Army (A.F.)

FIRST CHARGE

While on Active Service, Absenting himself without leave:

in that he

while in the Field, absented himself without leave from 0900 hrs. 15 Sept. 42 until apprehended by the Provost at Guildford at 1700 hrs. 21 Sept. 42.

(Time absent 6 days and 8 hours.)

.....Lt.-Col.
(L. A. Devine) Comd.
7 Cdn A.Tk. Regt. R.C.A

To be tried by Field General Court Martial.

26 Sep 42.

(G.A. McCarter) Brigadier,
C.C.R.A. - 1 Cdn Corps

Exhibit "J" Page 12

This is to certify that 049115 Gnr. Estey, I.R.

is fit to undergo trial by Court Martial.

28 SEP 1942

J. M. Brown Capt. A.D.M.S.

7 Fd. Regt. R.C.A.

Trial of 6449115 Gnr. ESTEY, Irvine Richard.
104 Bty., 7 Cdn A Tk Regt. R.C.A.

LIEUT. J.D. HALL 7 Cdn A Tk Regt. R.C.A. appears as Prosecuting Officer.

LIEUT. L.T. STEAD 7 Cdn ATk Regt R.C.A. appears as Counsel.

R.P. 35(b) has been complied with.

Summary of Evidence has been read by the Court (marked "E")

Witness for Prosecution:- (called by Court pursuant to RP 34(D))

2611789 L/Cpl. WOODHOUSE P.G. Corps Military police Guilford.

Having been sworn states:—

On the 21st of Sep. 1942 at about 1700 hours, acting upon instructions, I proceeded to 105 Ryder Hill Road Stoughton near Guilford where I saw a Mrs Estey wife of the accused. I asked her if Gnr. Estey was in the house. She replied "Why, are you from the Canadian Government" I stated that I was a member of the Corps M.P. and that I had received instruction to apprehend a Gnr. Estey. After a few moments

Capt. Major
Mrs Estey shouted up
stairs, and then Gnr.
came down. I ordered
to produce his pass. This
he could not do. I asked
him if he had had one.
and he replied "no." I
then ordered him to
get properly dressed and
at that moment Mrs
Estey stated "You can't take
him. I have sent a telegram
to his Colonel to come and
fetch him. He is a Canadian
and you can't touch him."
I pointed out to her that
we had disciplinary action
over Canadians as well
as Imperial troops. I then
conducted Gnr. Estey to
Stoughton barracks where
I handed him over to the
N.C.O. i/c Regt. Police, Queens
Regiment, to be detained.

Signed [redacted]

Defending officer cross-examines witness.

Q. 1. "Did you have any trouble taking the accused into custody?"

A. "No"

Accused declines to cross-examine this witness.
Court is cleared to consider finding.

Lieut J. D. Hall, 4 Cdn. A. Tk. Regt.
Presenting officer.
R.C.A. Sworn, states:-

"I produce M.F.B 355, which I have compared with the Regimental Books, and which is a true statement as to character and particulars of service of the accused G49115 Gnr. Exley. L.R. 102 Bty 4 Cdn A Tk Regt R.C.A.

Evidence as to character etc.

and also M.F.M. 6. (MFB 355 and MFM 6 attached to proceedings as "F" and "H" respectively).

The accused declines to cross examine the witness.

On being asked if he had anything further to say as to character or mitigation of sentence-

Defending officer states:-

Gnr. Exley on being released from detention, went directly to his wife. His intentions were to stay only a short time, but on arrival his wife informed him that she was under medical care and there was question of

in operations for which she would require his consent.

He stated that if he returned to his Unit he would not be given necessary leave to attend and needed to stay with her. He stayed with his wife until 2/Lt. Woodhouse of C.M.P. put him under arrest, to which he submitted without any violence.

The Court is closed to consider the Sentence.

Sentence.

The court sentences the accused 5.4.9115 Gnr Exley J.R. 104 Bty 7 Cdn A.A. Regt R.C.A. to undergo detention for 70 days.

Signed into the field this 23rd day of September 1942.
C.A. Peck Major, President F.G.C.M.

Capt. Mayn "E" Page 8

SUMMARY OF EVIDENCE:-

SUMMARY OF EVIDENCE in the case of G-49115 Gnr Estey I.R. 104 Bty 7 Cdn Anti-Tank Regt., R.C.A. a soldier of the Canadian Army (A.P.).

FIRST WITNESS — Documentary Evidence:-

Being a statement of release from Corps Field Punishment Camp of G-49115 Gnr Estey I.R. purporting to be signed by Sgt R.M. Savage for Commandant Cdn., Corps Field Punishment Camp. Marked Exhibit "A" and attached to these proceedings.

"Certified that owing to the exigencies of the service the attendance of this witness could not readily be procured.

Lieut.
(J.C.Hall),
Officer Investigating.

The accused on being asked does not require the presence of this witness.

SECOND WITNESS — D-71055 L/Bdr Cabana G.R. 113 Bty., 7 A.Tk., Regt., R.C.A. having been duly sworn states as follows:-
I am D-71055 L/Bdr Cabana G.R., of the 113 Bty., 7 A.Tk., Regt., R.C.A; On Monday 22 Sep 42 I proceeded with an escort at 0900 hrs to Queens Regt., Guard Room Stoughton Barracks Guildford. On arrival there at 1015 hrs I took custody of Gnr Estey who had been in custody over-night.

The accused declines to cross-examine this witness.

Taken down in the hearing and presence of the accused this 23 day of September 1942; In the Field.

The accused on being asked declines to make a statement.

"Certified that Rule of Procedure 4 (c) (d) (e) and (g) have been complied with."

Lieut.
(J.C.Hall),
Officer Investigating.

Cashiered Major Exhibit F1 Page 9.

662

G.49115 Exley, J.R. 7 A.T. Regt.

You will be relieved from the Canadian Corps Field Instrument Camp and you will rejoin your unit, reporting to the orderly room upon arrival and hand in these orders. If, in any event, you are delayed by accident, sickness or other unavoidable circumstances, you are to report to the nearest military or civil police.

I hereby state that the above orders have been read to me and I also fully understand them.

J.R. Exley
Sgt Observer.

Good Good Fair

15/9/42
0900 hrs

for L.M. Savage Sgt

Page 11

Cabled Major "H"

No. 040115 Name Estey I.R. Sqn., Battery or Company 104 Bty Corps 7 A.Tk., R.C.A. Date of enlistment 14-3-41 G.C. Badges Service or Proficiency Pay M F M 6 (A F B 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. W.F.Blair Major. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No. entries from previous sheet destroyed 15-9-41 on completion of six months service.									KR Can 1824 C (1)
Field	31/12/41	Cnr		Sec 15 (1) A.W.L. from 0815 hrs 31/12/41 until 0840 hrs 5-1-42	L/Sgt Carlyle Sgt Lifford	7 days F.P. 7 Days Pay	7-1-42	Lt.Col. L.A.Devine	Forfeits 6 days pay PR&I 149.
Field	16/1/42	Cnr		Sec 15 (1) AWL from 0840 hrs 16/1/42 until 1700 hrs 5/2/42 Time Absent 20 days 8 hrs 20 min	Sgt Lifford	27 Days F.P. 27 Days Pay	7/2/42	Lt Col. L.A.Devine	Forfeits 21 days Pay PR&I
Field	29/3/42	Cnr		Sec 15 (1) AWL from 1645 hrs 29/3/42 until 1630 hrs 1/4/42 Time Absent 3 Days 15 Mins	Sgt Sansom Bdr Hatt.	14 Days C.D.	3/4/42	Major Kennedy.	Forfeits 4 Days pay PR&I 149.
Field	14/6/42	Cnr		Sec 15 (1) A.A. AWL from 0900 hrs 14/6/42 -1930 hrs 24/6/42 Absent 10 days 10 hrs 30 mins	Sgt Munroe L/Cpl Black 7 Prov Cps	21 days F.P. 21 days pay	29-6-42	Lt Col L.A.Devine	Forfeits 11 days pay PR&I

Place	Date of offence	Rank	Cause of absence (if given)	Offence	Name of witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12/5/42	Gnr		Sec 15 (1) A. A. AWL - 0830 hrs 18/5/42 - 2200 hrs 18/5/42 Absent 6 Days 13 hrs 30 mins	Sgt Lifford	27 Days F.P.	19/5/42	Lt Col L.A.Devine	Forfeits 7 days pay PH&I 149
Field.	18/7/42	Gnr		Sec. 15 (1) A.A. AWL - 2359 hrs 18/7/42 until 0830 hrs. 20/7/42 (Absent 1 d y 8 hrs. 31 mins.)	Sjt. Lifford	7 days C.B.	22/7/42	Major S.B. Smith	Forf 2 days pay
Field.	2/8/42	Gnr		Sec. 15 (1) AA AWL - 2300 hrs. 2/8/42 until 0845 hrs. 3/8/42 Absent 9 hrs. 45 mins.	Bdr. Currie	15 days F.P. 15 days pay	4/8/42	L.A. Devine Lt.-Col.	Forf 2 days pay
Field	23/8/42	Gnr		Sec. 15 (1) AA AWL - 2359 hrs. 23 Aug 42 to 1200 hrs. 25/8/42 Absent 1 day 12, hrs. 1 mins.)	L/Bdr Russell Bdr Flack	21 days FP 21 days pay	26/8/42	Major AL MacInnes A/C.O.	Forf. 2 days pay

Certified true copy:-

.....Lieut.
(J.D. Hall) A/Adjt.
7 Cdn A.Tk. Regt. R.C.A.

"F"

Capt Major

M.F.B. 385
40/F & B/675

Page 10

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G49115	Gnr.	Estey, I.R.	7 Cdn A.Tk. Regt. RCA

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For Sec. 15 (1) A.A.	8 times	8 times
For	times	times
For	times	times
For	times	times

[redacted]

or,

[redacted]

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Air Force Act / Army Act and dispensations with trial under A.F.A. 73 / A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for n-s beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 60 days in military custody, making a total of 60 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 20

6. The date of his attestation specified in his record of service is 14/Mar./41.

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon one service for the purpose of determining his pension, etc.

9. The accused is entitled to no air force / military decoration, or air force / military reward (or is in possession of or entitled to). State any air force / military decoration or reward. —

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of n-s

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, and in his regiment (or corps), the rank of n-a dated ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

n-a Date of promotion.

In the rank of n-a years.

In the rank of n-a years.

In the rank of n-a years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name N/A of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this n-a day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "F" signed by the president, and annexed to the proceedings.

F.G.C.M. - Trial: G-49115 Snr I.R. Batey, 7 Cdn A/Tk Regt, R.C.A.

Date of trial: 28 SEP 42

President of Court: Major G.A. Pack, 1 Cdn Corps Sigs.

1. For the information of the officers asked to sign below, the following irregularities are noted:-

(a) The full name of the accused is not set out in the schedule on page 2 of A.F.A.3.

(b) Medical certificate is not in the "approved" form. Specimen certificate is attached hereto.

(c) Names of the president and members of the Court are not recorded in the proceedings. (See M.M.L. p.741).

(d) R.P. 22 and 23 apparently are not complied with.

(e) The charge sheet does not state the date of signature by the commanding officer. (See M.M.L. p.764 para 3(f) and M.M.L. p.714).

(f) Minute of confirmation is irregularly expressed. (See first specimen minute, M.M.L. p.760).

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters, please.

O. C. 7 Cdn A/Tk Regt, R.C.A.	
Adjutant 7 Cdn A/Tk Regt, R.C.A.	
President of the Court	
~~A.D.J.A.~~ Cdn Div. C.C.R.A.	
Staff Officer for Convening Officer	
Staff Officer for Confirming Officer	

(A.W. Tambury) Major,
D.J.A., 1 Cdn Corps.

DISTRIBUTION:

C.M.H.Q.
C.C.R.A.
File

5Y-125 Sm. Esty. 2.

RECORDED AT CMHQ IN AG [illegible] 5/-1433 1012

RECEIVED JAG BRANCH CMHQ

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of APA31) 40/P & S/1698 (61144) 4/38B

Convened by Order of ~~COL W.T. IBBOTT MM ED~~ T/Comd "B" GP CRU dated 22 Jan 46
Brig K G Blackader CBE DSO MC ED Cdn Repat Units

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-21869	Gnr		Harold	ESTY	2 Cdn Repat Dep

PROCEEDINGS REVIEWED
4 Mar 46 C.F.L. Capt, Maj.
REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ENGLAND on (*date*(s)) 25 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(*s*) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter ? Ans -

~~The Interpreter is sworn.(1)~~ Do you object to ~~M. LAVOIE A/Sgt~~ ~~LIMITED~~ shorthand writer ? Ans ~~N/A~~ N/A
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N/A N/A (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	C.E. WOODROW OBE ED	HQ CRU
Member	Captain	J.L. MACHEY	1 Cdn Adm Tpt Coy
Member	Lieutenant	J. R. WALDRON	1 Cdn Sub Wksp
~~Judge-Advocate~~			
Prosecutor	LIEUT	P.A. PERRON	2 C REP DEP
Defending Offr	LIEUT	M. BECK	2 C REP DEP

Questions by President: Is the Prosecutor a lawyer ? Ans N/A Is the Defending Offr a lawyer ? Ans N/A (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (not) (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by use of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 4*(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. NO - SIR (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Instrs.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex /7, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (2).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and marking an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused E-21869 Gunner ESTY, Harold, Royal Canadian Artillery, on the strength of Number 2 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas is charged with:

~~FIRST CHARGE~~ WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

~~SECTION 15(1) Army Act~~

in that he

in the Field, In England, absented himself without leave from 0600 hours 10 December 1945 until apprehended by Civil Police in Hailsham, Sussex, at 1150 hours 16 January 1946, thereby incurring cost of return to Unit in the amount of £0:12:5

Total Absence: 37 days, 5 hours, 50 minutes.

in the Field
16 Jan 46

W. T. Ibbett
.....
(W. T. Ibbett) Col.
Commanding Officer
No. 2 Can Repat Depot

~~TO BE TRIED BY FIELD GENERAL COURT MARTIAL.~~

~~In the Field~~
22 Jan 46

W. T. Ibbett
(W.T. Ibbett) Col
~~T/Comd "B" Gp~~
Cdn Repat Units

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
22 Jan 46

G. Blackader
(G. G. BLACKADER) Brigadier
Comd
Cdn Repatriation Units

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy: AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E21869	Gnr		Harold	ESTY	2 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Jan 46 endorsed by me, ~~or on my behalf by my staff officer~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to obtain the assistance of a different convening offr~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I do also appoint (or direct Offr to do so) the Court, (b) a Fd Offr as President for the purpose of any~~ ~~accused's~~ ~~pleas.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I do also appoint as Judge Advocate to preside at Offr convened hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	C.E. WOODROW	OBE ED	HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO		1 Cdn ~~Adm~~ Tpt Coy
Lieutenant	to be detailed by CO		1 Cdn Sub Wksp
	~~WAITING ASSESSOR~~		
		(Named or detailed, if any. RP 106.)	
	~~JUDGE ADVOCATE~~		
		(Must be named, if any. RP 106.)	

On Active Service in the Fd

in England (Country.)

Dat 22 Jan 46

(Signed personally. RP 105 fn 2.)

(K.G. Blackader)

Commanding Canadian Repatriation Units

Brigadier (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 65 (Cdn Hdqrs of AFA 3) 40-F & E-1607 (61a))

(See overleaf for asstns and notes for use on trial.)

PLEA OF MITIGATION

IN THE CASE OF

R.21869 Gnr Esty H. 2 CDN REPAT DEPOT

Mr. President, members of the court, the accused Gnr Esty enlisted in April 1940, his present point score is 187. He is married with two children. He married in the United Kingdom. He is hoping to be discharged in the U.K. as he has a promise of a job as soon as he is available. He came overseas in Oct 41. He has been over here more than four years and was on the continent nine months returning to England in Aug 45. He was given a week-end pass and went home to visit his wife and family, he found that his wife and one of the children were sick with the flu, he had only a short week-end and as his main concern was over his family he failed to fulfill the obligations of a soldier and didn't ask for an extension of leave. I am making a plea of leniency for him, bearing in mind particularly his period of service which is five years and some months, the facts of his AWL inasmuch as his wife and one of his family were ill and also due to the fact that he seeks employment in the UK, for these reasons I ask that his punishment be minimized and any punishment be in the form of a pay stoppage, detention would hinder his re-establishment in civil life and I think we should help him in his return to civilian life.

Exhibit A.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of E-21869 Gnr ESTY, Harold, Royal Canadian Artillery on Transient Strength of No. 2 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS

For the Prosecution

Capt. R. M. Yee, Cdn Inf Corps, on strength of 2 Cdn Repat Depot, an Officer of the Canadian Army Overseas, having been duly sworn, states:

I a m Capt. R.M. Ye e, and am employed as Adjutant of 3 Wing-2 Cdn Repat Depot. Pursuant to Overseas R.O.5352, I present the following documents relating to the accused, E-21869 Gnr. Esty, H., whom I now recognize, which have been read over and shown to the accused and which are marked as Exhibits "A" "B" and "C".

Exhibit "A" Certified True Copy of the Declaration of a Court of Inq uiry held on 5 January 1946 which shows that the accused E-21869 Gnr Esty, H., absented himself without leave from 0600 hours 10 December 1945.

Exhibit "B" Certificate in accordance with Army Act Section 163 (1) (k) which shows that the accused was arrested by civil police at Hailsham, Sussex, at 1150 hrs 16 January 1946.

Exhibit "C" Expence Voucher showing expences incurred in apprehending and returning E-21869 Gnr. Esty H.

(R.M. Yee) Capt.

The accused declines to cross examine this witness.

The foregoing has been read back to the witness.

The accused was cautioned as follows: Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on oath.

I certify that the foregoing summary of evidence was taken down by me in the presence and hearing of the accused, and that rulesof procedure 4(c), (d), (e), (f) and (g) have been complied with.

(P.E.Perron) Lt.
Officer detailed to take Summary

Exhibit "B"

RECORD of the Declaration of a Court of Inquiry assembled at 3 Wing 2 Cdn Repat Depot on the 5th day of January 19 46, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E-21869 Gnr Esty, H.

DECLARATION

The Court declare that No. E-21869 Gnr Esty, H.

illegally absented himself without leave 3 Wing - 2 Cdn Repat Depot at 0600 hrs on the 10th day of December, 1945, that he is still so absent, and that on the 3 January 1946 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	Vocab Price	Appraised VALUE		ARTICLES	Vocab Price	Appraised VALUE	
Berets, Khaki	1 20		90	Knives, table	15		11
Anklets, Web	99		75	Razor	06		04
Battledresses, Blouse	13 00	9	75	Spoons, dessert	09		07
Battledresses, Trousers	13 10	9	80	Belts, waist, web	65		49
Boots, ankle, W/laces	6 64	8	73	Braces, web	60		45
Jersey, Pullover	1 79	1	34	Haversack	1 79	1	34
Socks, woollen, prs	46		35	Pack	1 84	1	38
Ties, black	19		14	Straps, sholder Hav	32		24
Badges, cap	09		07	Straps, web supporting	26		20
Braces, prs	32		24	Tins, mess set	32		24
Button Stick	04		03	Mugs, drinking	17		13
Brushes, hair	34		25	Capes, Anti-gas	2 76	2	07
Brushes, shaving	37		28	Knives, clasp	86		64
Brushes, shoe p[illegible]ishing	28		21	Discs, Identity, set	01		01
Brushes, tooth	11		08				
Combs, hair	04		03				
Fork, table	07		05				
Holdall	19		14				
Housewife	17		13	Total Value	49 27	40	68

Sgd B.M. Broad, Capt President

Sgd D.E. Woodburry, Capt Member

Signed at IN THE FIELD

Sgd John E. Murray, Lt Member

this 8th day of Jan 1946

Signature of Commanding Officer G.C. Howitt, Lt-Col

Certified true copy

Signature of Officer having custody of original record

3/608 MFB 375-AFB 115 40/P&L/392 (6610)

Exhibit B

SCHEDULE "E"

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (1) (k) of the ARMY ACT.

I CERTIFY that the person whose description is given below

Was arrested ~~surrendered~~ at ..HAILSHAM..... at ..11.50.. a.m. ~~p.m.~~ on the .....sixteenth..... day of .....January,.... 1946.

At the time of his ~~surrender~~ arrest he was wearing military uniform ~~civilian clothes~~

Regimental particulars of officer or soldier referred to above.

No. ...W/21619.....
Rank .Gunner.....
Name ..BUTT...Harold.....
Unit ..Royal Canadian Artillery..

Description .

Age ..27.....
Height ..5ft.6ins.....
Complexion ...fresh.....
Hair .....fair.....
Eyes .....blue.....
Marks .tattoo left forearm.....
.....

Signature of Officer in charge of Police Station where the above named person was taken or placed in custody on arrest/ ~~surrender~~.

B.F.Bridgeman
.....
Rank .....Inspector.....
In charge of .Hailsham.....
Police Station.

16 JAN 46 HAILSHAM

Strike out parts inapplicable.

Expense Voucher Re—

Ref: KR & O (Can) 539

Reg No E-21869 Rank Gnr Name Eddy, H. Unit 2 Can Provost Coy

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from London from Hailsham

Date	Particulars	Amount		
16 Jan 42	Escorts return fare from LONDON To Hailsham		8	3
	Prisoners single fare to LONDON From Hailsham		4	2
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	0	12	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

F. W. Thomson Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100-59 40-3 & 5-482 (6763)

Exhibit "B"

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
E-21869	Gnr	ESTY, H	RCA

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 607, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, consistence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	AA Sec 15(1) AWL	2 times 8 times
For	[redacted]	times times
For	[redacted]	times times
For	[redacted]	times times
For	[redacted]	times times
	or	
For	[redacted]	

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for [redacted] days in civil custody, and 8 days in military custody, making a total of 8 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 27

6. The date of his attestation specified in his record of service is 23 Apr 40

[redacted]

8. The accused is entitled to deferred pay or gratuity in respect of 42 months service.

[redacted]

10. The accused is in possession of [redacted] (*state any military decoration or reward*). France, Germany Star - CVSM & Clasp

[redacted]

W's 13621/1519 30M. 5/40. P. Ltd. 714-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-21869 *Rank* Gnr *Name* ESTY, H of RCA Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
Civil Court	Sussex Assizes 10 Jul 42	Dangerous driving	Forbidden to drive W.D. vehicle for 2 years from 10 Jul 42	N/A
F G C M	Field 23 Mar 43	AA Sec 15(1) AWL 20 days 23hrs 30 min	65 days detention	21 days
F G C M	Field 19 Jan 44	AA Sec 15(1) AWL 50 days 14 hrs 46 mins	9 months detention mitigated to 120 days by confirming Officer	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of Jan 1945

Army

Army

Army

NO 2 CANADIAN REPATRIATION DEPOT

Date 18 Jan 46

I, E-21869 Gnr ESTY, H desire

to have an officer to defend me at my forthcoming trial by FGCM.

I desire the services of _____

if he is available.

H Esty
(Signature)

No 2 CANADIAN REPATRIATION DEPOT

Date 18 Jan 46

This is to certify that I have received free of charge the following papers in connection with my forthcoming trial by FGCM.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

H Esty
(Signature)

Ltd

MEDICAL OFFICER'S CERTIFICATE

I certify that No. E-21869 Gnr ESTY, H., 2 Wing, 2 Cdn Repat Depot Regiment, is* fit to undergo trial by Court-Martial.

C H D Dixon Capt
25 Jan 46. Signature of the Medical Officer.

*Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc. Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President, one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 2 and 8 to be sent to the President.
(If the accused has elected to be tried under A.A. 46 (8), the fact should be recorded at the top of this form.)

7

3/62 MPB 321
43/P & S/660 (2044)

LIST OF WITNESSES & EXHIBITS in the case of E-21869 Gnr Esty, Harold, Royal Canadian Artillery, on the Transient Strength of 2 Canadian Repatriation Depot.

First Witness for the Prosecution

Capt R. M. Yee, Cdn Inf Corps, on strength of 2 Cdn Repat Depot.

EXHIBIT "A" Certified True Copy of the Declaration of a Court of Inquiry held on 5 January 46 which shows that the accused E-21869 Gnr Esty, H., absented himself without leave from 0600 hours 10 December 45.

EXHIBIT "B" Certificate in accordance with Army Act Section 163(1) (K) which shows that the accused surrendered himself to 2 Wing - 2 Cdn Repat Depot at 2100 hours 18 Dec 45.

EXHIBIT "C" Expense voucher showing expenses incurred in apprehending E-21869 Gnr Esty, H.

PLEA OF MITIGATION

IN THE CASE OF

R.81069 Gnr Esty H., 2 CDN REPAT DEPOT

Mr. President, members of the court, the accused Gnr Esty enlisted in April 1940, his present point score is 187. He is married with two children. He married in the United Kingdom. He is hoping to be discharged in the U.K. as he has a promise of a job as soon as he is available. He came overseas in Oct 41. He has been over here more than four years and was on the continent nine months returning to England in Aug 45. He was given a week-end pass and went home to visit his wife and family, he found that his wife and one of the children were sick with the flu, he had only a short week-end and as his main concern was over his family he failed to fulfill the obligations of a soldier and didn't ask for an extension of leave. I am making a plea of leniency for him, bearing in mind particularly his period of service which is five years and some months, the facts of his AWL inasmuch as his wife and one of his family were ill and also due to the fact that he seeks employment in the UK, for those reasons I ask that his punishment be minimized and any punishment be in the form of a pay stoppage, detention would hinder his re-establishment in civil life and I think we should help him in his return to civilian life.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (b), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....Do you intend to call witnesses on your behalf?
Ans.....Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(7) (a), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Defending Officer's plea in mitigation attached.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A.~~ if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 4(1)(f), MML p 130. When accused already under sentence of imprisonment or detention see AA 64(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-21869 Gnr ESTY, H. - 2 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on ~~(date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which 216 days were spent in hospital. (2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of one hundred and twenty (120) days and to be put under stoppages to the amount of 12/5 cost of return to his unit.

(Sgd) ..... Judge Advocate, if any.

25 JAN 46 Date awarded.

(Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, STA, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

Date 20 Feb 46 (Sgd) H Blackader. (H.G. BLACKADER) BRIG COMD CRW

Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused. E-21869 Gnr Esty, H

Date. 27 Feb 46 Signature of Offr. Bremner Major (A.F. Bremner)

No 8 Can Mil Prison & Detn Bks.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

AA-152

GNR ESTY H.

AA-152

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 22nd day of March, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 3 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [and that it is not practicable to delay the trial for reference to superior military authority]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

[I am unable to appoint—

Three Officers to form the Court

A Field Officer as President

for the following reasons, namely:—]

(91)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be stated. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.D. ROSS	12 Fd Regt RCA

Members.

Rank.	Name.	Regiment.
Capt.	W.L. LAWSON	14 Fd Regt RCA
Lieut.	J.E. DOCHAN	13 Fd Regt RCA
Waiting Member Lieut.	J. HUTCHINSON	3 A Tk Regt RCA

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.A.S. Todd) Brigadier,
Commanding C.R.A., 3 Cdn Div.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
E-21869 Gnr. ESTY, Harold. 3 A Tk Regt RCA	(1) Sec. 15 (1) A.A.	G.	Guilty. 22 March 43. 65 days detention 9.2. Ross, Major	Confirm Sharp Brig CRA 3 Cdn Div 23 March 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Sharp Brig (P.A.S. Todd) Brigadier, *Commanding, C.R.A., 3 Cdn Div* *Convening Officer (e)*

(Signed) J. D. Ross, Major. 12 Fd Regt R.C.A. *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 22nd day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 22nd day of March 1943.

J. D. Ross, Major
President of the Court Martial.

* See footnote (b) on page 370 K.R.& O. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentence.

Signed this day of 19 .

J. D. R.
President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(Direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ V.A.

Signed this 23 day of March 1943,

Sharp Brig
Confirming Officer.
(P.A.S. Todd) Brigadier,
C.R.A., 3 Cdn Div.

Promulgated and extracts taken in the case of

(*a*) (Dated) 25/3/43. (Signed) J. D. Ross, Major. O/C 3rd ANTI-TANK REGT R.C.A. [A.F.]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, E 21869 Gnr. Esty, Harold of the 94th Battery, 3 Cdn Anti-Tank Regiment, R.C.A., a soldier of the Canadian Army placed on Active Service is charged with:

First Charge
Sec 15 (1) AA. Absence Without Leave, in that he, in the field, was absent without leave from 1200 hrs. 26 February 1943 until 1130 hrs. 19 March 1943. (20 days, 23 hrs., 30 mins).

(J.P. Phin) Lt.-Col.
O.C. 3 Cdn Anti-Tank Regt.

In the Field
20 March 1943.

To be tried by Field General Court Martial.

(P.A.S. Todd) Brigadier
C.R.A. 3 Cdn Div.

MEDICAL CERTIFICATE (CIVIL)

DATE 22 Mar 43.

I certify that I have examined

E 21869, Pvt. Cody, H.

of the 3 A/Tk Regt, N.G.o.

He is physically & mentally fit and is free from communicable disease.

His category is A., his inoculations have been complete. The last inoculation was for ____ on ____.

E. Rhyne Capt.

3 Rem. Engr

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at 13 Edn Bd Regt RCA on the 22nd day of March. 1943. by order of

Brigadier. R. A. S. Foster.

Commanding R. E. A. 3 Edn Div

dated the 22nd day of March 1943.

President.

Major J. D. Ross, 12 Bd Regt. R.E.A.

Members.

Capt. W. L. Dawson. 14 Bd Regt. R.E.A.

Lieut. J. E. Moorhan 13 Bd Regt. R.E.A.

J. D. Ross Major

, ~~Judge Advocate~~ J & R

Trial of* F R 1869 Gnr Coty, Harold, 3 A.T. Regt. R.E.A

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

J. D. R

J. D. R ~~The Court satisfy themselves that~~ ~~is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut. W. J. Purvis.

GBR ~~Counsel for~~ defending officer† Lieut. P. J. Davis.

At 12.00 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q8274. W3/3662/28. 25,000 pds. 6/42. K. & S., Ltd. 646(731). Forms A 9(2).

B

J.D.R. The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut J. E. Kidd

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [~~first~~] charge against you, which you have heard read ? *Question to the accused.*

Guilty *Answer.*

J.D.R. ~~Are you guilty or not guilty of the second charge against you, which you have heard read ?~~ *Question.*

Answer.

J.D.R ~~Are you guilty or not guilty of the third charge against you, which you have heard read ?~~ *Question.*

Answer.

J.D.R. ~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ *Question.*

Answer.

J.D.R. Sec. Dept.

The accused having pleaded Guilty to ~~etc~~ 1 charge, the provisions of Rule of Procedure 35 (B) are here complied with. J.D.R.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

J. D. A.

The accused No. E 21869 Gnr Roby, Harold, 3 A.T.R. Regt RCA is found guilty of Absence without leave.

J. D. A.

†The summary (~~or abstract~~) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. J. D. A. The ~~accused~~ yes regarding offence in mitigation of punishment says:—

J. D. A. The accused is already impressed with the [~~he hands in a written statement, which is read, marked , signed~~ by the President, and attached to the proceedings.] gravity of his offence and has given his assurance that he will not repeat it.

J. D. Roy. Supt

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

No.

Answer.

Evidence as to character.

J. D. Rees. Sworn.

Summary of Evidence in the case of E 21869 Gnr. Esty, Harold of the 94th Battery, 3 Cdn Anti-Tank Regiment.

The accused E 21869 Gnr. Esty, Harold of the 94th Battery, 3rd Cdn Anti-Tank Regt., a soldier of the Canadian Army placed on Active Service charged with:

(1) Absence Without Leave, in that he, in the field, was absent without leave from 1200 hrs. 26 February 1943 until 1130 hrs. 19 March 1943. (20 days, 23 hours, 30 mins).

A.A. Sec. 15 (1)

First Witness for the Prosecution:

E 21801 B.S.M. Hanson, L.A., of the 94th Battery, 3rd Cdn Anti-Tank Regt. states:

"On the 25 February 1943, the accused E 21869 Gnr. Esty, Harold, whom I recognize, was granted a 24 hour pass which expired at 1200 hrs. Friday 26 Feb 1943. I saw and initialled the pass. He failed to report at 1200 hrs. 26 February 1943 and I personally checked that he had not returned. The accused did not report to this Battery in the field during the exercise "Spartan".

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

T. Hanson B.S.M.

Second Witness for the Prosecution:

E 21868 L/Sgt. Bobbitt, H., of the 94th Battery, 3rd Cdn Anti-Tank Regt. States:

"I am the Sergeant in charge of the Mens' Kitchen, 94th Battery. Gnr. Esty, whom I recognize, was employed in the kitchen under my charge. He did not report to the kitchen at 1200 hrs. 26 February 1943 or at any time thereafter until we went on the "Spartan" Exercise on the afternoon of 28 February 1943. Also he has not reported to the kitchen since the Battery returned from the "Spartan" Exercise on the night of 13 March 1943.

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

H. Bobbitt L/Sgt

Summary of Evidence in the case of E 21869 Gnr. Esty, Harold of the 94th Battery, 3 Cdn Anti-Tank Regiment

---

Third Witness for the Prosecution:

E 21812 Sgt. Doddridge, L., of the 94th Battery, 3 Cdn Anti-Tank Regt. states:

"I was in charge of the rear party for the 94th Battery, 105th Bty and # 35 L.A.D. during the period of the "Spartan" Exercise, from 28 February 1943 until 13 March 1943. During that period Gnr. Esty, whom I recognize, did not report to me".

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

L Doddridge Sgt.

Fourth Witness for the Prosecution:

E 21880 L/Bdr. Donnelly, W.J., of the 94th Battery, 3 Cdn Anti-Tank Regiment states:

"I was on duty in the Orderly Room at 1615 hrs. on Friday, 19 March 1943, when I got a telephone call from # 1 Provost Coy stating that they had picked up Gnr. Esty and asking if we would send an escort to get him and take him back to the 94th Battery. At 1715 hours I went with an escort of two men to the Cross-in-Hand and there received Gnr. Esty, whom I recognize, from Corporal Bliss of the # 1 Provost Coy. I placed Gnr. Esty under close arrest and brought him back to Steyning and handed him over to the Guard Commander."

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

W J Donnelly L/Bdr

Fifth Witness for the Prosecution

C 31001 Cpl. Bliss, J.D.M. of "F" Section, No. 1 Provost Coy., C.Pro. C.:

The signed statement of Cpl. Bliss, in exhibit "A" Attached, is read to the accused, Gnr. Esty.

The accused declines to cross-examine the witness. R.P. 4 (e) has been complied with.

Summary of Evidence in the case of E.21869 Gnr. Esty H. of the 94th Battery 3rd Cdn A.Tk. Regt.

E.21869 Gnr Esty H. of the 94th Battery, 3rd Cdn. Anti-Tank Regiment:

Do you wish to make any statement or to give evidence upon Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you may say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement or call any witnesses.
Rules of Procedure 4 (c) (d) (e) (f) and 83 (b) have been complied with.

Taken down by me in the presence of the accused and in his hearing, this 21st day of March 1943, at Wiston House, in the County of Sussex.

W.T. Purkis, Lieut. RCA.

(W.T.Purkis) Lieut.,
3 Cdn A.Tk. Regt. RCA.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~ J. D. R.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Question by the President.

Lieut. W. J. Purvis. is duly sworn.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

J. D. Rees, Major

yes - produces statement

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

yes

[Illegible]—If in reason of the length of the service of the accused or a disproportionate term of sentence, the hearing of the Court renders him liable to any exceptional punishment or addition it will be ascertained by the Court the prosecutor must call the attention of the Court to the fact, and the Court must separately take the nature and amount of that additional punishment.]

~~Forms examined by the accused.~~

J. D. R.

Declining officer declines to cross-examine

Question to the accused.

Do you wish to address the Court? *Answer.*

no

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused to 65 days detention Sentence.

J. D. Rus. Mags

3rd CDN ANTI-TANK REGIMENT, R.C.A., C.A. (A)

Summary of Evidence in the Case of E 21869 Gnr. Esty, Harold of the 94th Battery, 3 Cdn Anti-Tank Regiment.

E 21801	B.S.M. Hanson, L.A.	94th Bty, 3 Cdn A.Tk Regt.
E 21868	L/Sgt. Bobbitt, H.	94th Bty, 3 Cdn A.Tk Regt.
E 21812	Sgt. Doddridge, L.	94th Bty, 3 Cdn A.Tk Regt.
E 21880	L/Bdr. Donnelly, W.J.	94th Bty, 3 Cdn A.Tk Regt.

Exhibit "A" - Statement of C 31001 Cpl. Bliss, J.D.M. No. 1 Provost Coy.

Exhibit "H"

March. 20th. 1943.
19th

Re: Reg. No. E. 21869. Harold ESTY.

The above mentioned soldier was picked up by Cpl. Bliss, J.D.M. Reg. No. C 31001 and L-Cpl. Morrison A. of "F" Section No. 1 Provost Company at 1130 hrs 18th Mar 1943. upon information received.
19th

Cpl.
C 31001 J.D.M.Bliss.

Summary of Evidence in the case of E.21869 Gnr. Esty H. - 94th Battery 3rd Cdn. Anti-Tank Regt.

I, E.21869 Gnr Esty H. wish to have some officer detailed by the Convening Officer to represent me at my trial by Court Martial.

Dated this 20th day of March 1945.

H Esty

GNR. No. E21869 Name ESTY H. Sqn., Battery, or Company 94th Bty 3 Cdn A.Tk.Regt. Corps R.C.A. Date of enlistment 23.4.40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 1938M—7-41 (1269-3) H.Q. 1772-39-1602

Date of last entry in Company Conduct Sheet -- No. and date of last drunk -- Period not reckoning towards freedom from extra fine Nil Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Tracadie	15.6.1941	Gnr		AWL from 2200 hrs 15.6.41 until 2200 hrs 19.6.41 (4 dys) A.A. 15(1)	BSM Kemp P	7 dys CB	25.6.41	H.R.Turner Major	forfeits 4 dys pay
Debert NS	30.8.41	"		AWL from 0800 hrs 30.8.41 until 1240 hrs 30.8.41 (6 hrs 40 mins) Cost of apprehension Meals $1.20	Sgt Carpenter	5 dys CB	3.9.41	H.R.Turner Major	forfeits 1 dys pay plus $1.20 cost
Field	10.7.42	"		As from 10.7.42 forbidden to drive MD vehicles for 2 yrs. Found guilty of dangerous driving at Sussex Assizes July 10th 1942.			10.7.42	Justice Humpreys.	

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20.9.42	Gnr		AWL from 2359 hrs 20.9.42 until 1800 hrs 21.9.42 AA Sec 15(1)	BSM Hanson L	7 dys CB	23.9.42	H.R.Turner Major	forfeits 1 dys pay
Field	17.12.42	Gnr		AWL from 1200 hrs 17.12.42 until 2100 hrs 20.12.42 (3 dys 9 hrs) AA Sec 15(1)	Sgt Fraser G Sgt Smith W	14 dys CB 14 dys pay	29.12.42	Lt.-Col. Makenzie Waters.	

Certified true copy,

J.T. Wood Lieut.

(J.T.Wood) Lieut., A/Adjt.,
3 Can. Anti-Tank Regiment.
Officer i/c Regimental Documents.

M.F.R. 355
40/F & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E.21869	Gunner	ESTY H.	3rd Cdn Anti-Tank Regt.

1. The following is a fair and true summary of the entries in the [redacted] Battery Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L.	2 times	4 times
For Civil Offence 1 (Dangerous driving)	times	1 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct N/A

or,

[redacted]

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

[redacted] A.F.A. 73

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 2 days in military custody, making a total of 2 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 24 years 7 months attestation paper is

6. The date of his attestation specified in his attestation paper is 23rd April 1940

7. The service which the accused is allowed to reckon towards discharge is 2 years 10 months 28 days

8. The accused is entitled to reckon 2 yrs 10 mths 4 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is military military in possession of or entitled to). State any air force decoration or reward. military N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this MAR 2 1943 day of

K. L. Lucas, Lt.
OC 'A' Coy
3rd ANTI-TANK REGT. R.C.A. - [A.F.]

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

ZZ-127 (cam #2)

PTE ESTY H

See AA-162 for last cam

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-21869 Pte, Ha rold ESTY 1 CASCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for nine (9) months; To be put under stoppages of pay until he has made good the sum of thirteen shillings and five pence (0-12-5) Cost of apprehension

(Sgd) Judge-Advocate, if any. 18 Jan 44. Date awarded. (Sgd) F D Tweedie Lt Col. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is I Confirm the finding and sentence of the Court but mitigate the sentence to read one hundred and twenty (120) Days detention with Stoppages as awarded

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) F F Richards Brig.

Date 19 Jan 44 Commanding "B" Troops Canadian Active Units. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

C PARKINSON. Officer i/c Records. Can. A.C.C. Reinf. Unit.

Dn 17 to 21 Jan 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

Z 2427

FIELD GENERAL COURT-MARTIAL (CPA86 (In lieu of AFA3) 40/P.S.S./1808 (2604))

Convened by Order of P.R.Shields, Brigadier Comd "B" Gp.CRU dated 17 Jan.44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E-21869	Pte	Harold	ESTY	1 CASCRU

PROCEEDINGS REVIEWED

Stephenson Capt

27 Jan 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

IN REPLY PLEASE QUOTE B.G.H.Q. - 5-6-2/471 VOL

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 18 Jan.44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fmn BOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans

~~The Interpreter is sworn.~~(1) Do you object to Pte Jnr Burrows as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lieut-Colonel	F D Tweedie	HQ C R U
Member	Captain	W R Lawson	HQ 1st Gp CRU
Member	Lieutenant	C R Miller	3 C.A.T.U.
Judge-Advocate			
Prosecutor	Captain	R Mennie	1 CASCRU
Defending Offr	Lieutenant	A N Ouellette	1 CASCRU

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(E), 108), or as to the jurisdiction of the Court (RP 34, 35(4), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 52; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge( )(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Nil.(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on [illegible] charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY ~~are read~~ to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E on p 3.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. ~~President to accused: Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Nil.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him[s] ~~and the J.A. if any.~~(2)
(1. When several accused tried separately see RP 240A. One sentence only, comprised of the punishments or punishments laid down in AA 47, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564. Overseas AO 309, 2023, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 192. When accused already under sentence of imprisonment or detention see AA 44(6), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused E 21869 Pte Harold ESTY, RCASC on strength 1 Cdn A S C Rft Unit, a soldier of the Canadian Army Overseas, is charged with:

First Charge
A.A. Sec 15(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

at Farnborough, Hampshire, absented himself without leave from 2359 hrs 14 Nov 43 until 1445 hrs 4 Jan 44 when he was apprehended by the civil police at Wadleton, Sussex, dressed in civilian clothes, thereby incurring costs of apprehension in the amount of twelve shillings and five pence (£0-12-5).

Total time absent - 50 days 14 hrs 46 mins.

Farnborough, Hampshire,
11 January 1944

(L.C.Parkinson) Major,
O.C. C & B Wing
1 Cdn A S C Rft Unit.

TO BE TRIED BY FIELD GENERAL COURT

(F.R. Shields) Brig
Comd "B" Gp
Cdn Rft Units

17 Jan 44

F.G.C.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8) 40/FAR/1697 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-21869	Pte.	Harold	ESTY	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has [have] committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Jan 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [and that it is not practicable to delay the trial for reference to a superior qualified offr.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) [two] Offrs to form the Court, (by a Fd Officer Precedent) for the reason I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate [to act at the Offr mentioned] hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	F.D.Tweedie	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by	HQ "D" Gp
A Lieutenant	to be detailed by	1 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Active Service in the Fd		
Englnd		
(Country.)		
17 Jan.44	(Signed personally. RP 105 (n 2.)	(Rank.)

Commanding (F.R.Shields)Brigadier
"D" Gp.CRU Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No. B.2.E.21869.....

Pte (rank) ESTY H. (name) and in my opinion he is fit to undergo

trial by Court Martial.

Station:

Date: 18-1-44.

(Medical Officer)
1 Cdn A.S.C. Rft Unit

PLEA OF MITIGATION

in the case of

E 81869 Cnr Esty, H., 1 Cdn. A.S.C. Rft. Unit

"As Defending Officer for Pte. Esty, H. I wish to make a plea to the Court on this soldiers behalf. He realizes the fact that he has committed a crime against the Army Act. A crime committed in the Army is inexcusable but an explanation concerning the motive of this soldier's offence must be brought before this Court.

Over a year ago this soldier claims to have obtained permission to get married but through some neglect the papers were lost. The woman gave birth to a child approximately 9 months ago. Trying his best to marry the girl Pte. Esty after sheer desperation went A.W.L. a crime which he has already paid for dearly. After his release from detention, he put in another application to get married. Here again the marriage papers went astray and it was not until the 15 Jan 44 that they found their way to the C & R Wing of No. 1 Cdn. A.S.C. Rft. Unit. The accused fully understands that one cannot rectify a grievance by wrongful actions.

During my interview with the accused it was very apparent that this unnecessary prolonging of a settlement of his personal affairs was uppermost in his mind and on these grounds I plea that his state of mind as a result of this affair minimized in his opinion the seriousness of the crime that he has committed.

(J.N. Ouellette) Lieut.
Defending Officer.

7881.

LIST OF WITNESSES

for the prosecution

in the case of

R 81869 Pte. Esty, Harold, 1 Cdn ASC RPT Unit
Blenheim Barracks, Farnborough, Hampshire.

M.M. Hampston, Western Rd., Hailsham.

Capt. L.S. Greyson, Cdn Provost Corps, London

LIST OF EXHIBITS

in the case of

R 81869 Pte. Esty, Harold, 1 Cdn ASC RPT Unit
Blenheim Barracks, Farnborough, Hampshire.

EXHIBIT "A" - A.F.B. 115 - Record of Declaration of a Court of Inquiry held on 6 Dec 43.

EXHIBIT "B" - A.F.C. 1618 - Descriptive Return of an Absentee.

EXHIBIT "C" - Form CMHQ 1000:55 - Expense Voucher showing expenses incurred in apprehension.

481.

Exhibit "B"

Descriptive Return of § Harold ESTY (Gunner E.21869) who was arrested at Warbleton at (hour) 14.45 on the 4th day of January, 1944 and was committed to confinement at HAILSHAM.

on the 4th day of January, 1944 as a Deserter (or Absentee without leave) from the Bn. of the Royal Canadian Artillery Regiment of attached to Royal Canadian Army Service Corps.

Age	25	Height	5 feet 7 inches
Complexion	Fresh	Hair	Brown
Marks		Eyes	Blue
		In uniform or plain clothes	Plain clothes.

Probable date and place of enlistment	23rd April, 1940. Quebec, Canada.
Probable date of desertion or beginning of absence and from what place.	20th November, 1943. [illegible] Aldershot.
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured.	P.C. Douglas HOWARD, stationed at Warbleton, E.Sussex.

Particulars in the evidence on which the prisoner is committed, and shewing in what manner and upon what grounds he was apprehended. The fullest possible details to be given.

* Information received that this man was to take up employment as a farm labourer; suspected to be deserter, questioned and admitted it. He was in plain clothes and when arrested changed into uniform.

I do hereby Certify that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he † is an Absentee without leave from the before-mentioned Corps.

Signature [illegible] Committing Magistrate.
Residence Western Road.
Post Town HAILSHAM.
6th January 1944 Date of Signature.
Signature of Prisoner.
R. Fielder, Supt. of Police. Signature of Informant.

Or, where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming.

I hereby certify that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature
Residence
Post Town
Date of Signature.
Magistrate.

§ Care should be taken to insert Regtl. No. and rank.
‡ Insert "was apprehended" or "surrendered," as the case may be.
* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.
† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be.

PART II. Army Form C. 1818.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. of

Regiment at on by

who was committed as a Deserter (or Absentee without leave) on the

RECOMMENDATION FOR REWARD.

I recommend *

Address

for a reward of

Signature of Committing Magistrate.

Date

* The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules:—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time the reward may be increased to 10/- to 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it shall appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

Exhibit "C"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. E21869 Rank Pte. Name Esty, W. Unit 1C.A.S.C.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Hailsham

Date	Particulars	Amount		
2 Jan-44	Escorts return fare from LONDON To Hailsham		8	3
	Prisoners single fare to LONDON From Hailsham		4	2
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		12	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H.P.

L.S. Grayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000:55
40/F & S/483

SUMMARY OF EVIDENCE

Summary of Evidence in the case of E.21869 Pte. Harold ESTY, RCASC, on strength 1 Cdn A S C Rft Unit.

The Commandi ng Officer directs that the evidence be taken on oath.

The Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier, A.F.B. 115, assembled on 8th day of December, 1943, for the purpose of investigating and recording the absence without leave from his duty of the accused, E.21869 Pte. ESTY, H., declaring that the accused illegally absented himself without leave from Farnborough, Hampshire, at 2359 hrs, 14 November, 1943, is produced pursuant to the provisions of K.R.(Can) para 1513 (b) and is attached hereto and marked Exhibit "A".

(R.Kennie) Capt.,
1 Cdn A S C Rft Unit.
Officer taking Summary of Evidence.

FIRST WITNESS M.M. Hampston, Hailsham.

The evidence of M.M. Hampston, Hailsham, Magistrate, consists of a certificate, A.F.C. 1618, purporting to be signed by such Magistrate as the Police Officer in charge of the Police Station at Hailsham, where the accused was taken into custody upon his arrest at 1145 hrs, 4 January, 1944, and it is produced pursuant to provisions of C.A.R.C.(O) 2371 (2) and is attached hereto and marked Exhibit "B".

(R.Kennie) Capt.,
1 Cdn A S C Rft Unit
Officer taking Summary of Evidence

SECOND WITNESS Capt. L.S. Grayson, No. 6 Provost Company, Canadian Provost Company, London.

The evidence of Capt. L.S. Grayson, No. 6 Provost Company, Canadian Provost Company, London, consists of an Expense Voucher purporting to be signed by him, which is attached hereto and marked Exhibit "C". The said Expense Voucher was read to the accused and he stated that he did not require to cross-examine this witness.

I certify that owing to the exigencies of the service, including the expense and loss of time involved, the attendance of this witness can not be readily procured.

(R.Kennie) Capt.,
1 Cdn A S C Rft Unit
Officer taking Summary of Evidence

Ex A
401.

The accused was cautioned pursuant to R.P.4(E) as follows:

"Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you may give, will be taken down in writing and may be given in evidence".

The accused declined to make a statement.

(K.Mennie) Capt.,
1 Cdn A S C Rft Unit
Officer taking Summary of Evidence

I hereby certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence and hearing of the accused at Farnborough, Hampshire, on the 11th day of January, 1944, and that Rule of Procedure (c), (d), (e), (f) and (g) has been complied with.

(K.Mennie)Capt.,
1 Cdn A.S.C. Rft Unit.
Officer taking Summary of Evidence

I desire the convening Officer to appoint an Officer to defend me at my forthcoming F.S.C.M.

(E.21859 H.Esty) Pte.,
1 Cdn A S C Rft Unit

Farnborough, Hampshire,
11 January, 1944

401.

M.F.M. 6
(A.F.B. 122)
40/P.& S./136 (2637)

No. E-21869 Name ESTY, H. Sqn., Battery, or Company Corps Date of enlistment 23-4-40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. One. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19-9-42	Gnr.		AWL from 2359 hrs 19-9-42 to 1800 hrs, 30-9-42 (18 hrs) A.A. 15(1)		Forf 1 days py 7 days C.B.	25-9-42		
Field	17-12-42	Gnr.		AWL from 1200 hrs 17-12-42 until 2100 hrs 30-12-42. (3 days 9 hrs) A.A. Sec. 15(1)		14 days C.B. Forf 14 days pay FR&I 149(2)	12-1-43	Forf 4 days pay FR&I 149(1)(a)	
Field	26-2-43	Gnr.		AWL from 1800 hrs 26-2-43 until 1130 hrs 19-3-43 (20 days, 23 hrs 30 mins) A.A. Sec. 15(1)	F.G.C.M.:	Findings: Guilty. Sentence: 65 days Detn. Forfeitures: 88 days pay.		F.G.C.M.	
Field	8-5-43	Gnr.		Granted remission of 21 days		5-5-43 14 days F.P.	11-6-43		Forf 2 days pay FR&I 149
Field	7-6-43	Gnr.		AWL from 0600 hrs, 7-6-43 until 2000 hrs 8-6-43 (1 day, 14 hrs)		Forf 14 days pay Cost of Appr: 20/11/11			Total Forf 16 days pay
Field	30-7-43	Gnr.		AWL (17 hrs 46 mins) A.A. 15(1)		Admonished	30-7-43		Forf 1 days pay FR&I 149

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-9 43	Gnr.		AWL (7 days, 7 hrs, 30 mins) A.A. Sec. 15(1)		Forf 21 days pay 7-9-43 Stop of pay to account of £0/11/11 1 day concurrent 21 days F.P.			Forf 8 days pay FRAL 149(1)(a) Forf 4 dys for close arrest. Forf 2 days pay FRAI 149(1)(a) Forf 5 days pay for close arrest.
Field		Gnr.		AWL (7 days, 7 hrs, 30 mins) A.A. Sec. 15(1)		Forf 21 days pay . day concurrent Total Forf 33 days pay Stoppage of £0/11/11			

(8)-47 CERTIFIED TRUE COPY COMPILED FROM MEM 4 IN MY POSSESSION

Officer i/c Records,
1 Cdn ASC Rft Unit,
Cdn Army Overseas.

M.F.B. 355
22M—5-41 (ST.-S)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
E 21869	Pte.	Esty,H.	1 Cdn A.C.Rft Unit.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec 15(1) AWL	5 times	A.A.Sec.15(1) AWL	7 times
For		times		times
For		times		times
For		times		times

~~Nature of instances of gallantry or distinguished conduct.~~

or,

~~There is no entry in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act Air Force Act and dispensations with trial under A.A. 73 A.F.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for [illegible] beginning on the~~ ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 14 days in civil custody, and 79 days in military custody, making a total of 18 11 days in custody, of which N.A. days were spent in hospital.

5. The present age of the accused according to his record of service is 25 attestation paper is

6. The date of his commission specified in his record of service is 23 Apr 40 attestation paper

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon [illegible] service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the substantive rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force dated , and in his regiment (or corps), the rank of unit dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused, Number E 21669 Rank Pte Name ESTY, H. of 1 Cdn A.S.C. Rft. Unit. Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field	A.A.Sec 15(1) AWL 20 days 23 hrs .	65 days det ention	21 days

Officer i/c Records
1 Cdn. A.S.C. Reinf Unit.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14 day of

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

R3 Exhibit "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Napier Square on the 8th. day of December 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E-21869 Pte. ESTY, H. C & B Wing 1 Cdn. ASC Rft. Unit. Cdn.Army Overseas.

E-21869 Esty

DECLARATION.

The Court declare, That E-21869 Pte ESTY, H. 1 Cdn. ASC RU illegally absented himself without leave from Napier Square Barracks Farnborough Hampshire., at 2359 hrs 14 NOV 43 and that he is still so absent. And that on the 8th December 1943 he was deficient in kit to the amount of £ 5-11-0½. 75% of the vocabulary being £ 4-3-9¼

Attached is appendix "A" showing Kit Deficiencies.

(Capt M.J.Chilco) RCASC. President
1 Cdn. ASC Rft. Unit.

(Lt. W.H.Stuart) Member
1 Cdn. ASC Rft. Unit

Names of President and Members

(Lt. M.J.Campbell) Member
1 Cdn. ASC Rft. Unit.

Signature of Commanding Officer (H.F.Bonnick) Colonel,
Comd. 1 Cdn. ASC Rft Unit.

CERTIFIED TRUE COPY

Signature of Officer having custody of the Original Record

A.& A.W.Ltd. Gp.498
Forms/B115/56

KK.22
B-81326, Pte Eldridge D.P.

B.86326 Pte. Etheridge, D.P.
1 C.A.S.C.R.U.
BGHQ 5-6-2/213

Correspondence to be PINNED here.

Army Form A.8. KK-22.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighth day of JULY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of B GROUP CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the case for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:-
*(1.) Three Officers to form the Court.)
*(2.) A Field Officer as President)
(or the following reasons namely:-)]

* Omit if not applicable.

B GROUP HQ 13 JUL 1943

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	V.R. Jones, K.C.	1 C.A.S.C.R.U.

Members.

Rank.	Name.	Regiment.
A Captain	from	1 C.S.R.U.
A Lieutenant	from	1 C.R.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (R.R. Tyner) Colonel
A/Commanding B Group, C.R.U.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.86326 Pte. ETHERIDGE, David, Phillip, 1 C.A.S.C.R.U.	First Charge A.A. Sec. 22	GUILTY	GUILTY	Confirmed P.R. Tyner Brig 11 July 43
	Second Charge A.A. Sec. 15(1)	GUILTY	GUILTY. To undergo detention for ninety days. 10 Jul 43. R Lowe Maj Pres	
	See Attached Charge Sheet			

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) H.R. Tyner (Signed) R Lowe Maj
(H.R. Tyner) Colonel
A/ Commanding B Group, C.R.U. President.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the tenth day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 10 day of July 1943.

R Lowe Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 702 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 13 day of July 1943.

P.R. Tyner Brig.
Confirming Officer.

Promulgated and extracts taken in the case of B86326 Pte Etheridge D.P.

(*a*) (Dated) 16 July 1943 (Signed) W.R. Hebden Lt. Col.
Comd. 1 Tng V. Regt
1 Cdn. A.S.C. R.U.

Promulgated and extracts taken in the case of

(Dated) 20.173 17 July 43 (Signed) E.R. Stevenson Lt.
Officer i/c Records
1 Cdn. A.S.C. Reinf. Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

D

CHARGE SHEET

The accused, B-86326 Fte. David Phillip ETHERIDGE, RCASC, 1 Cdn. ASC Rft. Unit, a soldier of the Cdn. Army, Overseas, is charged with:

WHEN ON ACTIVE SERVICE

1st Charge
Sec. 22
A.A.

WHEN IN CONFINEMENT ESCAPING

in that he,
at Farnborough, Hampshire, on 27 June 43, when in confinement at Unit Guard Room, 1 Cdn ASC Rft Unit, escaped.

2nd Charge
Sec. 15(1)
A.A.

ABSENTING HIMSELF WITHOUT LEAVE

in that he,
at Farnborough, Hampshire, absented himself without leave from 0930 hrs, 27 June 43 until 0315 hrs. 1 July 43, when he was apprehended by the Corps Military police, London, England.
Total Time Absent - 3 days 17 hrs.45 mins.

W.C. Fletcher

(W.C. Fletcher, Lt-col.
Commanding, 1 Trng.Wing.
1 Cdn. ASC Rft. Unit.

Farnborough, Hampshire
3 July 43.

To be tried by Field General Court Martial.

H.R. Tyner

8 Jul 43

(H.R. Tyner) Colonel
A/Comd B Gp
Cdn Rft Units.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT [illegible] FIELD
ON THE 10th DAY OF JULY 1943

The accused 886326 Pte ETHERIDGE R.P. Unit A.C.A.S.C.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President MAJOR H.R. JONES. R.E. .....Unit A.C.A.S.C.R.U.

Members CAPT. VINCENT FRANK PEABODY. Unit A.C.A.S.C.R.U.

LIEUT. T.B. PATRICKSON .....Unit A.C.A.S.C.R.U.

The officers under instruction are duly sworn:-
LIEUT. A.M. SAMSON A.C.A.S.C.R.U.
LIEUT. R.M. PECK .....Unit A.C.A.S.C.R.U.

LIEUT. W.T.C. BOND .....Unit A.C.A.S.C.R.U.

Prosecutor LIEUT. R.V.C. ADAMS .....Unit A.C.A.S.C.R.U.

Defending Officer LIEUT. W.A. STUART ...Unit A.C.A.S.C.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

C/S R.C. was complied with. No 3262
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

.....

Medical Officers' Certificate.
K.R. (Can.) Form 557

I certify that I have this morning examined No. B86326 Pte Etheridge. R.P. of H.Q. A.S.C. R.U. and in my opinion he is fit to undergo trial by court martial.

Station. Aldershot Bks.
Date. 10 July 43

C. V. Fraser Surgeon Lieut.
(Medical Officer)

Address of Defending Officer

Plea for Mitigation of Sentence
in the case against B 86326 Pte.
David Phillip Etheridge, RCASC, 1 Cdn
ASC Rft. Unit.

Sir: The accused is a soldier rather badly bitten by disillusionment. When war was declared, he joined up, as did so many others, eager to get into the fight and get back into civilian life. He has passed a series of misdemeanours were credited against him. Discipline without an immediate compensation became more and more irksome. To-day he looks upon his future military career with nothing but disappointment and loathing. True, he has caused his own hardships. The majority of us, more fortunate in background, environment and character, can restrain ourselves in patience until the hour for action arrives. But to such a man as the accused, this is impossible, witness his past. The defence submits that an expeditionary posting to a unit already in, or going into action be obtained. And though I realize that this may not help his case, nevertheless I feel bound to say that a future of imprisonment can only aggravate this man's already unhealthy attitude towards the army. Conversation with the accused has revealed to me that the only solution to this case is to satisfy the ~~man's~~ desire to get into action. Lengthy imprisonment, sir, will not help this man or the Canadian Army.

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42.

I CERTIFY that No. B-86326, Rank Pte, Name Etheridge, D.P.

Unit No.1 C.A.S.C.R.U. was arrested at London (Place)

at 0315 hrs (hour) on 1 July 43 (date) and that at the time of his arrest he was wearing (Military Uniform) or (Civilian Clothes).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
1 July 43

(W. Allen) D. A. P. M.,
London Area

Capt.

Exhibit "A"

CHARGE

A.F.O. Form B 252
(See King's Regulations)

No.1 C.A.S.C.R.U. Regiment / Battery / Squadron / Troop or Company

CHARGE against No. B-86326 Rank Pte

Name Etheridge D.P.

Place London Date of Offence 1 July 43

OFFENCE W.O.A.S. was A.W.L. from 7 until apprehended by the Cdn.Provost Corps at the Kingsway Hotel, Guildford St., at about 0315 hrs.

Names of Witnesses:—

Cpl.Power, R.A. Cdn.provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Rank

By Order

Adjutant.

F.T.O.

Statement of **EVIDENCE** in the case of

W-6/326,Pte.Etheridge,D.F.
No.1 C.A.C.R.U.

Sir:At London at about 0315 hrs.,on the 1 July 43 I was on duty at the Kingsway Hotel,Guildford St., when I saw the a/m soldier.

I approached him and requested to see his pass. He could not produce one,and admitted being A.W.L. when questioned.

I placed him under arrest and he was escorted to No.6 (Area) Coy.,Gds.Provost Orgs Detention Room where he was handed over to the R.S.O. i/c cells to be detained.

O.R.Power ..... Cpl.

London
1st July 43

7-21125,Cpl.Power,O.R.

REMARKS

E

SUMMARY OF EVIDENCE

In the case of,
B-86326 Pte. David Phillip ETHERIDGE, 1 Cdn ASC Rft Unit, Blenheim Barracks, Farnborough, Hampshire.

The Commanding Officer, Colonel J.M.Pocock, 1 Cdn ASC Rft Unit, directs that the evidence be taken on oath:

I am Lieut. P.V.C. Adams, RCASC, 1 Cdn ASC Rft Unit and I produce the undermentioned documents:

Exhibit "A"
Certificate in accordance with P.C. 2797 purporting to be signed by Capt W. Fern, D.A.P.M. London Area, showing the accused, B-86326 Pte. Etheridge, D.P. being apprehended at 0315 hrs 1 July 43.

Exhibit "B"
A.F.B. 292, purporting to be signed by Cpl. Power, R.A. Cdn Provost Corps and countersigned by Capt. W. Fern, D.A.P.M. London Area, giving evidence as to the apprehension of the accused, B-86326 Pte. Etheridge, D.P.

I certify that in my opinion the attendance of Capt. W. Fern and Cpl Power, R.A. are, owing to the expense and loss of time involved, not readily procurable, and a written statement of their evidence, signed by them, has been read to the accused, and marked Exhibit "A" and "B" and attached hereto.

P.V.C. Adams Lieut.
(Lieut P.V.C.Adams) RCASC,
1 Cdn ASC Rft Unit.

I do not require the attendance of the above witnesses for the purpose of cross examination.

D.P. Etheridge
(B-86326 Pte. Etheridge, D.P.)
1 Cdn ASC Rft Unit.

SUMMARY OF EVIDENCE in the case of B-86326 Pte. ETHERIDGE, D.P.

1st Witness for the Prosecution

M-66489 L/Cpl Patterson, R.L., RCASC, 1 Cdn ASC Rft Unit, having been duly sworn, states:

I am M-66489 L/Cpl Patterson, R.L., 1 Cdn ASC Rft Unit. I was in charge of the desk of #2 Guard Room, 1 Cdn ASC Rft Unit, from 0800 hrs 26 June 43 until 0800 hrs 27 June 43. I went to bed at about 2359 hrs 26 June 43 and rose at about 0545 hrs 27 June 43.

Pte. E.J.D.Elliott woke me and had already opened the door of the big room and given the men their clothes. I counted the men at about 0615 hrs 27 June 43. Twenty one were present at that time which was the correct number. The prisoners had breakfast and we had our breakfast at about 0645 hrs. I was relieved of my duty at 0800 hrs 27 June 43. The first I knew of the escape of the accused, B-86326 Pte. Etheridge, D.P., whom I now recognize, was at about 0930 hrs 27 June 43 when Cpl Bonnah, W.J. came and told me.

The accused cross examines this witness:

Q.1 "You say that at 0615 hrs 27 June 43, the roll was correct. At that time, I was practically in London?"

A.1 "I counted twenty one men at that time which was the correct total but I may have been mistaken."

End of Cross examination.

R.L. Patterson
(M-66489 L/Cpl Patterson, R.L.)
1 Cdn ASC Rft Unit.

2nd Witness for the Prosecution

K-46048 Pte. Elliott, E.J.D., RCASC, 1 Cdn ASC Rft Unit, having been duly sworn, states:

I am K-46048 Pte. Elliott, E.J.D., 1 Cdn ASC Rft Unit and was on duty in #2 Guard Room of 1 Cdn ASC Rft Unit from 0800 hrs 26 June 43 to 0800 hrs 27 June 43. During my tour of duty from 0300 hrs 27 June 43 to 0530 hrs 27 June 43, I did not open the trap door in the big detention room at all. I had never been informed that this was part of my duty.

The accused declines to cross examine this witness.

E.J.D. Elliott
(K-46048 Pte. Elliott, E.JD)
1 Cdn ASC Rft Unit.

SUMMARY OF EVIDENCE in the case of B-86326 Pte. ETHERIDGE, D.F.

1st Witness for the Prosecution

M-66489 L/Cpl Patterson, R.L., RCASC, 1 Cdn ASC Rft Unit, having been duly sworn, states:

I am M-66489 L/Cpl Patterson, R.L., 1 Cdn ASC Rft Unit. I was in charge of the desk of #2 Guard Room, 1 Cdn ASC Rft Unit, from 0800 hrs 26 June 43 until 0800 hrs 27 June 43. I went to bed at about 2359 hrs 26 June 43 and rose at about 0545 hrs 27 June 43.

Pte. E.J.D.Elliott woke me and had already opened the door of the big room and given the men their clothes. I counted the men at about 0615 hrs 27 June 43. Twenty one were present at that time which was the correct number. The prisoners had breakfast and we had our breakfast at about 0645 hrs. I was relieved of my duty at 0800 hrs 27 June 43. The first I knew of the escape of the accused, B-86326 Pte. Etheridge, D.F., whom I now recognize, was at about 0930 hrs 27 June 43 when Cpl Bonnah, W.J. came and told me.

The accused cross examines this witness:

Q.1 "You say that at 0615 hrs 27 June 43, the roll was correct. At that time, I was practically in London?"

A.1 "I counted twenty one men at that time which was the correct total but I may have been mistaken."

End of Cross examination.

R.L. Patterson L/Cpl
(M-66489 L/Cpl Patterson, R.L.)
1 Cdn ASC Rft Unit.

2nd Witness for the Prosecution

K-46048 Pte. Elliott, E.J.D., RCASC, 1 Cdn ASC Rft Unit, having been duly sworn, states:

I am K-46048 Pte. Elliott, E.J.D., 1 Cdn ASC Rft Unit and was on duty in #2 Guard Room of 1 Cdn ASC Rft Unit from 0800 hrs 26 June 43 to 0800 hrs 27 June 43. During my tour of duty from 0300 hrs 27 June 43 to 0530 hrs 27 June 43, I did not open the trap door in the big detention room at all. I had never been informed that this was part of my duty.

The accused declines to cross examine this witness.

E.J.D. Elliott Pte.
(K-46048 Pte. Elliott, E.JD)
1 Cdn ASC Rft Unit.

SUMMARY OF EVIDENCE in the case of B-86326 Pte ETHERIDGE, D.P.

3rd Witness for the Prosecution

C-12230 Cpl Bonnah, W.J., RCASC, 1 Cdn ASC Rft Unit, having been duly sworn, states:

I am C-12230 Cpl Bonnah, W.J. 1 Cdn ASC Rft Unit, NCO i/c #2 Guard Room, 1 Cdn ASC Rft Unit. I came on duty at 0930 hrs 27 June 43, and it was reported to me at approximately 0930 hrs by Cpl Adolph that the accused, B-86326 Pte. ETHERIDGE, D.P., whom I now recognize, was missing. I immediately reported this to Sgt. Snider, NCO i/c of all guard rooms. I also reported to the Orderly Officer and then returned back to #2 Guard Room.

The accused declines to cross examine this witness.

W.J. Bonnah Cpl.
(C-12230 Cpl Bonnah, W.J.)
1 Cdn ASC Rft Unit.

4th Witness for the Prosecution

L-8378 Cpl Adolph, C., RCASC, 1 Cdn ASC Rft Unit, having been duly sworn, states:

I am L-8378 Cpl Adolph, C., 1 Cdn ASC Rft Unit. I went on duty at 0800 hrs in #2 Guard Room, 1 Cdn ASC Rft Unit, on the 27 June 43. I neglected to call the roll at this time and did not discover that the accused, B-86326 Pte. Etheridge, D.P., whom I now recognize, was absent until the bath parade at 0930 hrs. I immediately informed Cpl Bonnah, W.J., NCO i/c of #2 Guard Room.

The accused declines to cross examine this witness.

Cpl. C. Adolph
(L-8378 Cpl Adolph, C.)
1 Cdn ASC Rft Unit.

SUMMARY OF EVIDENCE in the case of B-86326 Pte. ETHERIDGE, D.P.

5th Witness for the Prosecution

M-17118 Sgt. Snider, J.C. RCASC, 1 Cdn ASC Rft Unit, having been duly sworn, states:

I am M-17118 Sgt. Snider, J.C., 1 Cdn ASC Rft. Unit and am N.C.O. in charge of Regimental Police of this unit. At about 0945 hrs 27 June 43, Cpl. Bonnah, W.J. reported to me that the accused, B-86326 Pte. Etheridge, D.P., whom I now recognize, was missing from No. 2 Guard Room. I visited the guard room and checked the prisoners and the accused was missing. I ordered Cpl. Bonnah to notify the Orderly Officer and I notified the civilian police and the D.A.P.M. I examined the guard room and found an iron bar in the grill covering the window of the latrine had been completely sawed off and set back into place so that it would have been hard to notice. This left an opening large enough for a man to crawl through.

The accused declines to cross examine this witness.

J. Snider Sgt.
(M-17118 Sgt. Snider, J.C.)
1 Cdn. ASC Rft. Unit.

Thomas
Maj.
President

SUMMARY OF EVIDENCE in the case of B-86326 Pte. ETHERIDGE, D.P.

The accused, B-86326 Pte. Etheridge, D.P. was then warned in accordance with R.P. 4(e):

"Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

A. "I do not wish to make any statement at this time."

.....
(B-86326 Pte. Etheridge, D.P)
1 Cdn ASC Rft Unit.

I hereby certify that the foregoing Summary of Evidence was taken down by me in writing on the 3 July 43 at 1 Cdn ASC Rft Unit in the presence and hearing of the accused, and that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

.....
(Lieut P.V.C.Adams) RCASC,
1 Cdn ASC Rft Unit.

I, B-86326 Pte. Etheridge, D.P., RCASC, 1 Cdn ASC Rft Unit, desire the assignment of an officer to represent me at my forthcoming trial by Court Martial.

.....
(B-86326 Pte. Etheridge, D.P)
1 Cdn ASC Rft Unit.

LIST OF WITNESSES
For the Prosecution: M-66489 L/Cpl Patterson, R.L.
K-46048 Pte. Elliott, E.J.B.
C-12230 Cpl Bonnah, W.J.
L-8378 Cpl Adolph, C.
M-17118 Sgt. Snider, J.C.
[redacted]

LIST OF EXHIBITS
Exhibit "A" - Certificate of apprehension, P.C.8797.
Exhibit "B" - A.F.B. 252
[redacted]

Farnborough, Hampshire
3 July 43

I

A.F.M. 6
(A.F.B. 1251)
40/P & S/1361 (2637)

No B-86326 Name Etheridge D.F. Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 11-9-39 | G.C. Badges | Service or Proficiency Pay | Prepared

Date of last entry in Company Conduct Sheet | No. and date of last drunk 12-9-40 | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Sept. 40	Pte.		AWW 3011 Awarded 28 days Det. for A.W.L.		28 days det.	25-9-40		Forf. 28 days pay 149(1)(b)
Field	7-5-41	Pte.		A.W.L. from 2230 hrs. 12-4-41 to 1020 hrs. 26-4-41 (S.C. 15(1)		21 days F.P.	7-5-41		Forf. 21 daysper FW&I 149(1)(b)
									Forf. 13 daysper FW&I 149(1)(a)
									Forf. 10 daysper FW&I (1)(c)(11)
						Cost of apprehension £3-0-2 FW&I 158 (2)			

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14-12 41	Pte.		A.A. Sec 12 Desertion from 2300 hrs. 14-12-41 to 1600 hrs. 31 Dec. 41 A.A. Sec. 4(Close Arrest 1600 hrs.31 Dec.41 to 1000 hrs. 12 Feb. 43.	F.C.C.-Date Trial 12-2-42 Guilty on both charges Awarded 2 years detention Forf. 729 days pay 14/- (1)(b) Forf. 17 days pay 14/-(1)(a) Forf. 43 days pay 14/-(1)(a)(11)				
		Pte.		Civil court' County London Sessions Two offences of house breaking and possessing house breaking equipment. BOTH CHARGES TO RUN CONCURRENT. CERTIFIED TRUE COPY.		Date of trial: 25 March 42. Sentence 3 years in Borstal prison, Forf. 366 days pay 14/- (1)(b) and 710 days pay concurrent with award of F.C.C.A. 12 Dec. 42. Release from Civil prison 24 March 43.			

Sheet No. 2.

M.F.M. 6

No. B-86328 Name Etheridge, D.E. Sqn., Battery, or Company — Corps R.C.A.S.C. — Date of enlistment — O.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc.

(A.F.B. 121) 40/F & S/138 (2697)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15 May 43	Pte.		Sec. 15(1) AWL 2330 hrs. 15 May 43 to 1045 hrs. 17-5-43 Total Time Absent 1 day 10 hrs. 45 mins. Sec. 40 2 charges.	Tried by F.G.C.M. Date of trial - 10 June 43. Sentence - 60 days detention. Confirmed "B" Gp 11 June 43. Promulgated 14 June 43.	Forf. 2 days pay 1.0(1)(a) 60 days pay 149(1)(b) 28 days pay 149(1)(c)			

CERTIFIED TRUE COPY. OF ALL DOCUMENTS IN MY POSSESSION.

D.E. Etheridge Capt.

(P.T.O.)

H. Holmes Major Regimental

A.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-86326	Pte	ETHERIDGE, D.F.	1 Can Ass Rft Unit

1. The following is a fair and true summary of the entries in the ~~Regimental and Squadron, Battery~~ Service and General or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	NIL	times	Sec. 18(1) AWL	2 times
For		times		times
For		times		times
For		times		times

~~Number of entries of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. ~~The accused is not under sentence at the present time.~~

The accused at the present time is under sentence for 60 days detention beginning on the 10th day of June 43

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24 yrs old.

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 11 Sept 1939

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
..... dated ....., and in his regiment (or corps), the rank of
..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number R-86326 Rank Pte Air Force Unit
Name ETHERIDGE, D.F. of 1 CAn ASC Rft Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 12-8-42	Sec.12 Sec.40	2 yrs detention	Released from Prison 24 Mar 43
Civil Court	London 25-3-42	Civil offence Housebreaking	3 yrs Borstal Imprisonment	
		Both charges to run concurrent		
F.G.C.M.	Field 10-6-43	Sec.15(1) Sec.40 - 2 Charges	60 days detention	N/A

10 Jul 43.
Officer i/c Records
W.H. Melwood Capt.....
1CDN ASC Rft Unit.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked 14 signed by the president, and annexed to the proceedings.

54-77

Ste. Enbridge, D. P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.86326 Pte David Phyllip ETHERIDGE LMO

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

[redacted] (1) LMO

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which nil days were spent in hospital.(1) LMO

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labor for two years.

(Sgd) ..... 20 Apr 45 (Sgd) "L.M. Orge Major"

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

[redacted] JCS

(Sgd) J.C. Stewart Brigadier

Date 23 Apr 45 Commanding GIC Cdn Sec 1st Echelon AFHQ

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B.86326 Pte ETHERIDGE D P 2 Cdn NETD	28 Apr 45	D.J. Burgoyne, Major OC No. 2 Cdn NETD

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

(2ND SWORD) CAPTAIN
CDN SEC 1 ECH AFHQ
2 MAY 45

5G-77

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40/P & S 1608 (3664)

Convened by Order of Col S.A. Lee A/Comd Cdn Sec 1 Ech AFHQ dated 18 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt. A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B.86326	Pte		David Phyllip	ETHERIDGE	2 Cdn NETD

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 20 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnm ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) LMO
The Court is satisfied that it is properly convened and constituted(2), accused is [redacted] amenable to military law, and LMO
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (ARE) [redacted] brought before the Court. At 1020 hours trial commences. LMO

A4. The Prosecutor produces a Medical Certificate that accused is ([redacted]) fit to undergo trial by court-martial.(1)
[redacted] LMO

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: [redacted] LMO

[redacted] LMO

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2) LMO

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	L.M. Orge (Gen List)	Cdn Sec 1st Ech AFHQ
Member	[redacted]	[redacted]	[redacted] LMO
Member	Capt	T.B. Harrison (RCA)	2 Cdn NETD
Member [redacted]	Lieut	G. Clerk (CIC)	2 Cdn NETD LMO
Prosecutor	Lieut	D.M. Nichol (RCA)	2 Cdn NETD LMO
Defending Offr	Lieut	F.A. King (CAC)	2 Cdn NETD LMO

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2) LMO

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See DI p 3.)

A8. The accused ---------- before arraignment make(s) (no) [redacted] plea LMO

(1.)

(1. If a special plea is made for separate trial w2 one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the evidence made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is [redacted] arraigned (separately) on all charges in the charge sheet.(1) The accused does[redacted] LMO
not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" LMO

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

0.90

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5) LMO
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

[redacted] LMO
[redacted] LMO
[redacted] LMO
[redacted]
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty [redacted] (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) LMO
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A" initialled and read aloud by the President.(1) LMO
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(C), 44(E).*)

C2. The charges on which accused pleaded GUILTY are read to him: (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

•Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement of evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114 ; ER Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(2).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para. D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 44(A)(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) LMO
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [redacted] of Conduct Sheet [redacted](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3) LMO LMO
(1. *MFR 353 or MFR 296.* 2. *MFM 6.* 3. *RP 46, KR Can 553. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement [redacted] and Conduct Sheet [redacted] and in mitigation of punishment ?(1) Ans Yes, through my defending officer (2) LMO LMO
(1. *RP 37(C), 44(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments (not down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 40. As to sentences see AA 44, 138, 182, RP 40-50, 69, 118, 119(A), KR Can 304, 330, 563-564. Overseas RD 304, 2323, 3606, p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(10), 68(7), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"LMO"

CHARGE SHEET

The accused, B.86326, Private David Phyllip ETHERIDGE, No 2 Canadian Non Effective Transit Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field in Italy, at approx 2215 hrs 9 Jan 45 absented himself without leave until about 0200 hrs 15 Mar 45.
(Total Absence: 64 days, 3 hrs, 45 min).

SECOND CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field in Italy, at approx 1045 hrs 28 Mar 45 absented himself without leave until about 1215 hrs 10 Apr 45.
(Total Absence: 13 days, 1 hr, 30 min).

D.J. Burgoyne

In the Field
16 April 45

(D.J.Burgoyne) Major
Commanding Officer
No 2 Cdn N.E.T.D.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
Italy
18 Apr 45

"S.A. Lee"

(S. A. LEE) Colonel
A/OIC Cdn Sec 1 Mob AFHQ

"LMC"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/FMR/1697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MAM, Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt	Full Christian Names.	Surname.	Unit.
B.86326	Pte		David Phyllip	ETHERIDGE	2 Cdn NETD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 18 Apr 45 endorsed by me [redacted] "To be tried by Field General Court-Martial"; SAL

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted] SAL
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

[redacted] SAL
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

[redacted]
(RP 106(E). Delete, if none appointed.) SAL

PRESIDENT.

(Rank.)			(Unit.)
Major	L.M. ORGE	(Gen List)	Cdn Sec 1 Ech AFHQ
	(Must be named. RP 106.)		

MEMBERS.

(Rank.)			(Unit.)
Capt	D.L. Watts	(CE)	2 Cdn NETD
Capt	T.B. Harrison	(RCA)	2 Cdn NETD
	(Named or detailed. RP 106.)		

WAITING MEMBER.

(Rank.)			(Unit.)
Lieut	G. Clerk	(CIC)	2 Cdn NETD
	(Named or detailed, if any. RP 106.)		

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
	(Must be named, if any. RP 106.)	

On Active Service in the Fd

in Italy
(Country.)

"S.A. Lee"
(Signed personally. RP 105 fn 2.)

Colonel
(Rank.)

Dat. 18 Apr 45

(S.A. Lee)
[redacted] A/OIC Cdn Sec 1 Ech AFHQ
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(K.R. (CAN) 557) .

"EMC"

I certify that I have this morning examined No. B.86326

Rank Pte Name ETHERIDGE D P of No. 2 Cdn NETD 1 CEMGp and

in my opinion he is fit/~~was~~ to undergo trial by Court Martial.

In the Field
Date 20 Apr 45

(sgd) "N.S. Sedgwick, Capt"
(Medical Offr)

Due to the exigencies of the service, Capt D.L. WATTS, CIC, 2 Cdn NETD, was not available. The waiting member, Lt C. CLERK, CIC 2 Cdn NETD, was sworn in as a member of the Court.

(sgd)"L.M. Orge, Major"

Apr 20 1945.

President of the Court

SUMMARY OF EVIDENCE

In the case of B-86326 Private David Phyllip ETHERIDGE No. 2 Canadian Non Effective Transit Depot, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

FIRST WITNESS For the PROSECUTION

A.104046 Cpl. Wells, N.K. having been duly sworn states:-

"I am A.104046 Cpl. Wells, N.K. employed as clerk in the Legal Office No. 2 Cdn, NETD and as such I have custody of regimental documents. I present a certified true copy of a Record of the Declaration of a Court of Inquiry dated 31 Jan 45 (Appended hereto as Exhibit "A") and a certificate in accordance with the Army Act, Sec.133(1)(jj) purporting to be signed by the O.C. 279 Provost Coy, C.W.Police (Appended hereto as Exhibit "B"); a certified true copy of X-9 List Part II Order No. 25 dated 3 Apr 45 (Appended hereto as Exhibit "C") and a certificate in accordance with the Army Act, Sec.133(1)(jj) purporting to be signed by an officer of 111 Provost Coy, C.W.Police (Appended hereto as Exhibit "D") all these documents pertaining to B.86326 Pte. Etheridge, D.P."

(N. K. Wells)

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS.

QUESTION TO THE ACCUSED. - "Do you wish to make a statement or give evidence on oath? You are not obliged to make a statement or give evidence on oath, but if you do make a statement or give evidence on oath, it will be taken down in writing and may be brought up in evidence."

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence, consisting of one (1) page, was taken in the presence and hearing of the accused and that R.P.(4)(c),(d),(e) and (f) have been complied with.

(R. D. Russell) Capt.
Officer detailed to take Summary of Evidence.

In the Field.
16 April 45.

THIS IS EXHIBIT "A" REFERRED TO BY ME IN THE CASE OF B.86326 Pte ETHERIDGE D P

"R.D. Hutsell" Capt
Offr detailed to take Summary of Evidence

"LMC"

RECORD of the Declaration of a Court of Inquiry assembled in the Field, in ITALY, on the 31st day of JANUARY 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or clothing of No.B.86326 Pte David Phyllip ETHERIDGE, of 32 Cdn Corps Troops Composite Company, RCASC, CMF

D E C L A R A T I O N

The Court declare that No. B.86326 Pte David Phyllip ETHERIDGE, illegally absented himself without leave from his quarters at 2215 hrs, on the 9th day of JANUARY 1945, and that at 2215 hrs 30 JANUARY 1945, he was still so absent and that he was deficient, and that he is still deficient of the following articles:-

ARTICLES	VALUE £ - S - D	ARTICLES	VALUE £ - S - D
1 pr Anklets web	0-5-4	1 Brush hair	0-1-6
1 Blouse Battle dress	1-3-6	1 brushes shaving	0-1-8
2 pr Boots ankle	2-8-10	1 brush blackening	0-1-3
1 pr Boots DR	1-10-3	1 brush tooth	0-0-6
1 Beret	0-5-9	1 brush polishing	0-1-6
2 pr drawers woollen	0-10-9	1 cap comforter	0-1-6
1 pr gloves woollen	0-2-1	1 comb hair	0-0-2
1 Greatcoat	2-11-8	1 Field Dressing	0-1-1
1 Jersey pullover	0-8-0	1 fork table	0-0-4
2 shirts angola drab	0-18-2	1 Holdall	0-0-10
4 pr socks	0-6-8	1 Housewife complete	0-0-9
4 Blankets	2-15-0	1 knife clasp	0-3-10
1 Ground sheet	0-13-2	1 knife table	0-0-8
1 Leather Jerkin	1-5-10	1 razor safety	0-0-3
1 pr Breeches DR	1-7-6	1 spoon	0-0-4
1 Helmet crash	0-14-10	2 towels hand	0-2-10
1 pr trousers serge	1-4-1½	1 belt waist	0-3-4
2 vests woollen	0-10-9	1 Bottle water	0-3-8
1 cap badge	0-0-4½	1 Haversack	0-8-0
1 Kit bag	0-4-7	1 carrier water bottle	0-2-4
1 pr braces	0-1-4	1 pack large	0-8-3
1 brass cleaning	0-0-2	1 straps shoulder (R)	0-1-5
1 brushes button	0-1-2	1 straps shoulder (L)	0-1-5
1 brushes clothes	0-2-2	2 straps web supporting	0-1-2
		1 set mess tins	0-1-7
		TOTAL	22-2-2

Signed (D.W. Harris) Capt PRESIDENT
32 Cdn Corps Tps Composite Coy
RCASC

Signed (J.G. McLaughlin) Lieut MEMBER
32 Cdn Corps Tps Composite Coy
RCASC

Signed (J.R. Greinger) Lieut MEMBER
32 Cdn Corps Tps Composite Coy
RCASC

Signed (W.H. Baker) Major
Officer Commanding
32 Cdn Corps Tps Composite Coy RCASC

Signed at Field in ITALY
This 12 day of FEBRUARY 1945

CERTIFIED TRUE COPY

"J.R. Greinger" Lieut
Officer i/c Regtl Records
32 Cdn Corps Tps Composite Coy RCASC

"LMO"

THIS IS EXHIBIT "B" REFERED TO BY ME IN THE CASE OF B.86326 Pte ETHERIDGE D P

"R.D. Hutsell" Capt
Offr detailed to take summary
of Evidence

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163(1)(ii)

I certify that

No. B.86326 Rank L/Cpl Name ETHERIDGE D.

of the 32 Corps Troops Transport Coy RCASC

was arrested at ROME at 0200 hrs.

on the 15th day of MARCH 1945

"????????" Captain
OC 279 Provost Coy, CM Police

Date
17th March 1945.

"LMO"

THIS IS EXHIBIT "C" REFERED TO BY ME IN THE CASE OF B.86326 Pte ETHERIDGE D P

"R.D. Hutsell" Capt
Offr detailed to take Summary of Evidence

Last Order	X-9 LIST	This Order
No. 24	Part II Orders Issued by	No. 25
27 Mar 45	Canadian Section 2 Echelon AFHQ	3 Apr 45

"B" OTHER RANKS

5. ABSENT WITHOUT LEAVE

(k) AWL from 1045 hrs 28 Mar 45. Still absent 1045 hrs 29 Mar 45
B.86326 Pte Etheridge, D.P. (1st day)

"G.A. Boyle" Captain
for Officer i/c Det Cdn Sec
2nd Echelon AFHQ

CERTIFIED TRUE COPY
"J.E.D. Sword, Capt 17 Apr 45
Discipline Section
Officer having custody of the original
Cdn Sec 1st Echelon AFHQ
Date of Certification:

"LMO"

THIS IS EXHIBIT "D" REFERRED TO BY ME IN THE CASE OF B.86326 Pte ETHERIDGE D P
"R.D. Hutsell" Capt
Offr detailed to take
Summary of Evidence

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT SEC 163(1)(jj)

I certify that

No. B.86326 Rank Private Name ETHERIDGE D P

of the ROYAL CANADIAN ARMY SERVICE CORPS

was arrested at NAPLES at 1215 hrs

on the 10th day of APRIL 1945

"?????" Captain
Commanding 111 Provost Company, CM Police

Date 10th April 1945

Ex "B" "LMO"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
B.86326	Pte	David Phyllip ETHERIDGE	#2 Cdn MaTD

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA Sec 15 (1) 5 times.

For AA Sec 40 3 times.

For ~~GWA~~ times.

For ~~GWA~~ times.

Date of first entry in Field Conduct Sheet ~~GWA~~

Date of last entry in Field Conduct Sheet

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*~~3. The accused has not previously been convicted for~~ ~~military service~~

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 9 days in military custody, i.e., ~~days in open arrest,~~ days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 25

6. The date of his attestation is 11 Sep 39

~~7. The accused's service with the Colours, or in the Reserve, or in the Militia, is~~

*State the military decorations (if any) held by accused.

8. The accused is in possession of † CVSM & Clasp

~~9. The accused was promoted to the rank of~~ ~~date—~~

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

INSTRUCTION.—If any matter in any of the above paragraphs cannot be verified from the regimental books the paragraph must be struck through.

Wt. 13479/2857 30,000 5/44 H&S 51-455 Forms/B (Re-Print)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Fd 12-2-42	(1) AA Sec 12 Desertion from 2300 hrs 14 Dec 41 to 1600 hrs 31 Dec 41 (2) AA Sec 40	2 years detention	
Civil Court	County London Session 25 Mar 42	Two offences of house-breaking and possession house-breaking equipment	3 yrs in Borstall prison. Released from Civil Prison 24 Mar 43 on suspended sentence.	
	On 3 Jul 43, re-committed to Borstall Prison to serve balance of suspended sentence.			
FGCM	Fd 15-6-43	AA Sec 15 (1) AWL 1dy, 10 hrs, 46 min AA Sec 40 2 charges	60 days detention	
FGCM	Fd 10-7-43	AA Sec 22 A Escaping when in confinment AA Sec 15 (1) AWL	90 days Detention Released 21-10-43,	Remission earned 229 days.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 20th day of April 45

"Geo. W. Akehurst" Capt & Adjt
Officer i/c Regtl Books & Records 2 NETP

EXHIBIT "C" "JMO"

No. B.86326 Name ETHERIDGE, David Phyllip | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 11 Sep 39 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/126(5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	25 Sep 40	Pte		AFW 3011 Awarded 28 days det for AA Sec 15 (1) AWL		28 days Detn	25-9-40		Forf 28 dys pay 149(1)(b)
Field	7-5-41	Pte		AWL from 2230 hrs 12 Apr 41 to 1020 hrs 26 Apr 41 (Sec 15 (1)		21 days FP	7-5-41		Forf 21 dys pay 149(1)(b) Forf 13 dys pay 149(1)(a) Forf 10 days pay 149(1)(c)(ii)
						Cost of App.£3-9-2,FR&I 58(2)			
Field	14-12-41	Pte		AA Sec 12 Desertion from 2300 hrs 14 Dec 41 to 1600 hrs 31 Dec 41 , AA Sec 40, Close Arrest: 1600 hrs 31 Dec 41 to 1000 hrs 12 Feb 42		FGCM Date trial 12-2-42 Guilty on both charges Awarded 2 yrs detn Forfs 729 dys pay 149(1)(b) 17 dys pay 149(1)(a) 43 days pay 149(1)(c)(ii)			

Total forf 789 days pay.

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Pte		Civil Court - County London Session: Two offences of house breaking and possessing house breaking equipment BOTH CHARGES TO RUN CONCURRENT		Date of trial - 25 Mar 42. Sentence 3 yrs in Borstal prison Forf 386 dys pay (149(1)(b), and 710 dys pay concurrent with award of FGCM 12 Dec 42. Release from Civil Prison 24 Mar 43 on suspended sentence (Auth: CMHQ 10/Etheridge DP/1(AG5) d/5 Jul 43. Committed to Borstal Institution wef 3 Jul 43 to serve balance of suspended sentence (Ath: CMHQ10/Etheridge DP/1 (AG5)d/5 Jul 43)			
	3 Jul 43	Pte		Re-committed to Borstall Inst					
Field	15 May 43	Pte		Sec 15(1)AA L 2359 hrs 15 May 43 to 1045 hrs 17 May 43 TTA: 1 D 10 hrs 46 min (Sec 40 2 charges)		Tried by FGCM Date of trial: 10 Jun 43 Sentence- 60 days detn Confirmed "B" Gp 11 Jun 43 Promulgated 14 Jun 43.		Forf 2 dys pay 149(1)(a) 60 dys pay 149(1)(b) 23 dys pay 149(1)(c)	

3/17 MFM 6 (AFB 122) 40/PAM/125 (5413)

B.86326 ETHERIDGE D P — Sqn, Battery, or Company: — Corps: RCASC — Date of enlistment: 11 Sep 39 — GC Badges: — Service or Proficiency Pay: — Character

No. — Name — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature OC Company, etc

Date of last entry in Company Conduct Sheet	No. and date of last drunk

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	27-6-43	Pte		Sec 22 A Escaping when in confinement Sec 15 (1) AWL from 0930 hrs 27-6-43 until 0315 hrs 1-7-43. (Released 21-10-43. Remission earned 229 days)	Tried by FCCM Sentence 90 days detn Confirmed 13 Jul43	Date of trial 10 Jul 43 Forf: 4 dys pay 149(1)(e) 90 dys pay 149(1)(b) 34 dys to run concurrent with sentence 10 Jun 43			
Field	29-11-43	Pte		Sec 15 (1)AWL for 13 hrs from 0830 hrs 28/ 11/43 until 2130 hrs 28/11/43	Sgt Miville RS	14 dys CB 10 dys Py 1 dys Auto forf	29-11-43 FR&I 29 Nov 43	Major Nairn	
Field	29 Nov 43	Pte		AWL from 0830 hrs 28 Nov 43 to 2130 hrs 28 Nov 43. Total Absence 13 hrs	Sgt Miville RS	14 dys CB 10 dys Pay 1 dys pay total 11 days pay			

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Nature of Witnesses	Punishment awarded	Date of award or if under Suspension with Trial	By whom awarded	Remarks
							29 Nov 43	Maj McMurchie	
Field	30 Nov 43	Pte		AA Sec 40 Out of Bounds AA Sec by Commanding Officer. AA Sec 40 threaten to use TMG against person or persons unknown	Sgt Powell GS Sgt Byers TP Pte Serson ED	28 dys FP 28 dys Pay FRAI	(1)(b) 23 Jan 44	Capt J.G. West A/OC 32 Cdn CT Coy RCASC	
Field	22-1-44	Pte		Sec 14 (1) AA AWL from 1330 hrs to 1700 hrs 22 Jan 45. TA 3½ hrs Se Sec 40 AA Conduct to the prej etc in that he appeared on OC's Parade unshaven, on 23 Jan 44	L/Sgt Cochrane CSM Hewitt	14 dys FP 14 dys pay			

"Certified to be a true copy of the Regtl Books in my Custody" 16 Apr 45
"Geo W. Akehurst Capt & Adjt" Officer i/C Regtl Books & Records
No. 2 Cdn RETD

"LMO"

PLEA of mitigation in the Case of B.86326 Pte Etheridge, D.P.

President and members of the Court.

Pte Etheridge has pleaded guilty to both charges of AWL and I submit this plea of mitigation in hopes that the court will take a few things into consideration before pronouncing sentence on the accused.

First of all I would ask the court to not be influenced too much by the past record of the accused. Pte Etheridge got off to a bad start in the Army in that although he enlisted in September 1939 he found that he and the Army just didn't click. There were a couple of minor charges which led to the Accused running quite short of pay and then things got from bad to worse. These things continued pretty well until the accused came overseas, that is to the Italian theatre in November 1943. Then there were no other crimes until the date of this charge. He served for one year in the 32 Transport Company RCASC, his Commanding Officer found him reliable, placed him in charge of the motorcycles and promoted him to L/Cpl. His conduct all this time was good as you can see by reviewing the Crime Sheet of the accused.

In January of this year he was given 7 days leave and he went back at the end and then left, with the intention of getting married and then returning. However after a few days of married life he decided to put it off.

Now as the accused obviously turned over a new sheet when he came to this theatre and went into action I would ask the court to consider this as his first crime and on that, base as lenient a punishment as possible. The accused has married without Army Permission and I think that although he has done wrong in this he should be given the chance of getting out and supporting her as quickly as possible.

"F.A. King" Lt
(F.A. King) Lieut
Defending Officer

"LMO"

I, B.66326 Private David Phillip ETHERIDGE, request that my Commanding Officer appoint "Lt F.A. King" to defend me at my forthcoming trial by Field General Court Martial

Date 16 Apr 45

"ETHERIDGE DP"
D.P. Etheridge

Accused's receipt for his copy of summary of evidence and charge sheet

I, B.66326 Private David Phyllip ETHERIDGE, acknowledge receipt for a copy of Summary of Evidence and Charge Sheet in connection with my forthcoming trial by Field General Court Martial.

Date 16 Apr 45

"ETHERIDGE DP"
(D.P. Etheridge)

KK-2

B-86326-Pte Eldridge D.P.

B.86326 Pte. Etheridge, D.P.
1 Cdn. A.S.C. R.U.
BGHQ 5-6-2/213

K.K.21

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 8th day of JUNE, 1943

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of B GROUP CANADIAN REINFORCEMENT UNITS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable

*[redacted]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.		
Rank.	Name.	Regiment.
Major	A.D. Langmuir	1 C.E.R.U.
Members.		
Rank.	Name.	Regiment.
A Captain	from	1 C.S.R.U.
A Lieutenant	from	1 C.A.S.C.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.R. Shields) Brig
Commanding B Gp Cdn Rfr Units
Convening Officer.

Major
President F.G.C.M.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.86326 Pte. ETHERIDGE, David Phillip, 1 Cdn A&C RU	First Charge A.A.Sec.15(1)	Guilty	~~Guilty~~ 60 Days Detention	Confirmed P.R. Shields Brig
			~~2 Days I.B.C. P.R.I. 10~~	A.H. 11.6.43
	Second Charge A.A.Sec.40	Guilty	Guilty	
	Third Charge A.A.Sec. 40	Guilty	Guilty	
			10 June 43	A.H. Lamontagne major

SEE ATTACHED CHARGE SHEET

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) P.R. Shields (P.R. Shields) Brig — *Commanding* B Gp CRU — *Convening Officer* (*e*)

(*Signed*) A.H. Lamontagne major CERV — *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10 day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
~~2. The witnesses~~ A.T.L. v. Witness A.T.L.
*~~(3. The interpreter)~~ A.T.L.
*(4. The officers under instruction)

were duly sworn.

Signed this 10 day of June 1943.

A.H. Lamontagne major.
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

* See footnote (b) on page 762 M.M.L. 1929.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 11 day of Jun 1943

P.R. Shields Brig

Confirming Officer.

Promulgated and extracts taken in the case of D 86326 Pte Etheridge D.P.

(a) (Dated) 14 June 1943 (Signed) A.H. Lamontagne Capt

Promulgated and extracts taken in the case of D 86326 Pte Etheridge D.P.

(Dated) ~~Do 14~~ 14 June 43 (Signed) A.H. Lamontagne Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, B-86326 Pte. David Phillip ETHERIDGE, RCASC, 1 Cdn ASC Rft Unit, a soldier of the Cdn Army, Overseas is charged with:

WHEN ON ACTIVE SERVICE

1st Charge
A.A.
Sec.15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he,
at Farnborough, Hampshire, absented himself without leave from 2359 hrs 15 May 43 until 1045 hrs 17 May 43 when he was apprehended by the Civil Police London, England.
Total time absent, 1 Day 10 Hrs 46 Mins.

2nd charge
A.A.
Sec.40

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,
at London, England, on 17 May 43 was in possession of a document purporting to be a genuine pass, well knowing that it was not genuine.

3rd charge
A.A.
Sec.40

AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,
at London, England on or about the 16th May 43 did alter M.B.M.1, Page 17 and did insert an entry in M.B.M.1, Part 11 on pages 6 and 7, knowingly and with intent to deceive.

(H.P.Bonnick) Lt-Col.
Commanding, 2 Trng Wing.
1 Cdn ASC Rft Unit.

Farnborough, Hampshire,
3rd June 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(P.R.SHIELDS) BRIG
COMD B GROUP
CDN RFT UNITS

8 Jun 43

Lt Langevin Insp
President F.G.C.M.

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT FIELD
ON THE 10 DAY OF JUNE 1943

The accused B86326 Pte. ETHERIDGE W. Unit. 1 G.A.S.C.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following ~~constitute~~ constitute the Court:-

President Major A.D. LANGMUIR ..... Unit. 1 C.E.R.U. .....

Members. Capt. F.A. DENISET ..... Unit. 1 G.S.R.U. .....

Lieut. H.E. HOPE ..... Unit. 1 C.A.S.C.R.U.

The officers under instruction are duly sworn:-

Lt. W.J. DIXON ..... Unit. R.C.A.S.C.R.U.

Lt. D.L. COWAN ..... Unit. 1 C.E.R.U. ...
Lt. M.J. CHILCO 1 C.A.S.C.R.U.

Prosecutor. Lt. R.K. SULLIVAN .... Unit. 1 C.A.S.C.R.U.

Defending Officer Lt. J.E. MULLER ... Unit. 1 C.A.S.C.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 365, AFB 296 and MFM 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~Makes a statement in mitigation of punishment.~~ N.O.L.
(b) ~~Calls witnesses as to character.~~ N.O.L.
(c) ~~Calls witnesses in mitigation of punishment.~~ N.O.L.
(d) Addresses the Court by his Defending Officer.

O/S R.O. was complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

SEE ATTACHED.

A.D. Langmuir major
President D.G.C.M.

Medical Officers' Certificate.
M.R. (Cam.) Form 557

I certify that I have this morning examined No. B.86316 Pte Eldridge, S.P.
of 1 C.A.P.S.C. Kth and in my opinion he is fit to undergo
trial by court martial.
station. Blenheim Barracks
Date. 10 June 1943

Sgd. [signature] (Medical Officer)

Plea by the Defending Officer in the case of
B-86326 Pte David Phillip Etheridge RCASC - 1 Cdn ASCRU

Members of this court you have before you the Sworn statement and evidence against the accused. He does not wish to say anything in his defense because he has already signed the aforementioned statement. On his behalf I wish to offer these few words.

At the start of the war the accused enlisted of his own accord in Canada, and was a good soldier with a good record prior to his Landing in England. Like many other youths, he thought he was going into action, and on finding out, that in England it was the same as being in Canada, he became restless and thus started his crime sheet. This youth full of life and energy found himself tied down to the dull days of training and routine found in army CAMPS. Unable to make friends and not interested in sports, he became unsatisfied with army routine and went A.W.L. While in detention the thought of freedom took precedent and, later, thinking that he would not make a good soldier and must get back to civilian life overstayed his official Leave and was apprehended by the Civil authorities who turned him over to the Provost.

It is true that he altered his pass and pay book but this WAS done not to defraud but merely to make things look genuine if he was accosted by the Service Police. The three Rund (23) with AWL entry in the pay book shows that he was actually saving the government money, not trying to defraud or do anything with criminal intent.

Yes, he spent time at the Borstal Institution, but there and at the other places where he was in detention he proved by his good behavior that he could be a good soldier if he tried, but every time he is released his pent up energy comes forth and he seeks freedom from the army and what it does to him.

I beg that this court in deciding sentence to take into account that the accused is very young, and got to make a good soldier where he put to work in a branch of the service that would keep him occupied, and where his surplus energy can be expended to good cause. I also recomend that he be given an interview and be examined by Capt. Huculak

D.L. Langhan Maj
Pres Def Off

Exhibit A

Certified True Copy
...W.N.Donald...Lieut
(W.N.Donald, Lieut. RCASC,
1 Cdn ASC Rft Unit.

LAST D.O. NO. 122 20 May43

1 CDN.A.S.C. REINFORCEMENT UNIT
Canadian Army Overseas
Daily Orders Part II
issued by
Colonel J.M. Pocock, Commanding

THIS D.O. NO. 123 21 May43

SECTION "A"

1. STRENGTH DECREASE

(a) Lieut. L. Begin — SOS to 2 Cdn.Div,Tps.Coy.RCASC wef 9 Feb43 (Auth: EA2/4663 d/19 May 43)

(b) Lieut. R.J. Dancey — SOS to 46 Cdn.Gen.Tpt.Coy.RCASC wef 20 May43 (Auth: 99/6/Rotation/1/3 d/15 May 43)

(c) Capt. P.L.C. Douthwaite — SOS to H.Q. Comd.1 Cdn.Corps Tpt.Col.RCASC wef 24 Apr 43. (Auth: MS 5447 d/28 Apr 43)

(d) AMENDMENT — D.O.114 para 2(a) d/11 May 43 in so far as it refers to "Major W.H. Colling" is amended by: Delete: 1 Cdn.Corps Tps Carrying Coln. RCASC. Sub: H.Q. Comd. 1 Cdn.Corps Tpt.Col. RCASC

2. ATTACHMENTS

(a) Lieut. L. Begin — Ceases to be attached for all purposes to 18 Cdn.Fd.Amb.RCAMC wef 9 Feb 43 on being SOS.

(b) Lieut. G.C. Gamey — Attached for all purposes to RASC Officers Trng.School. Attending CMHQ Course #508 Ser.6 (W/S Officers) 17 May 43 to 1 Jun 43.

(c) Lieut. J.T. Grierson — Attached for all purposes to RASC Officers Trng.School. Attending CMHQ Course #518 Ser.22 (M/C Instructors Officers) 17 May 43 to 1 Jun 43.

(d) Lieut. J.B. Patton — Attached for all purposes to Army School of Physical Trng. Attending CMHQ Course 706 C.W. 41 (P.T.) 4 May 43 to 21 May 43.

(e) Capt. J.M.Snowball — Attached for all purposes to No.4 Sub Depot 1 CBOD wef 11 May 43 (Auth: MS/5690 d/10May43)

3. LEAVE OF ABSENCE

(a) The undermentioned Officers are granted 7 days Privilege Leave and 48 hrs. short leave from 21 May 43 to 30 May 43 and money allowance in lieu of rations (Total leave and entitlement - 9 days) Art. 789(3)(4) FRI as amended by O.R.O. 2459.

Lieut. L.C. Farmer — Lieut. F.C. Gascoigne

4. APPOINTMENTS

(a) Lieut. V.C. Pearce — To be Instructor No.2 Coy. (P.E.) wef 20 May43

(b) Capt. J.G. Ryerson — Vacates the appointment of Instructor No.2 Coy(P.E.) wef 20 May 43.

(c) A/Capt. H.A. Stilwell — Vacates the appointment of Asst. Records Officer wef 4 Mar 43. (P.E.)(R.H.Q.)

(d) Lieut. J. Young — Vacates the appointment of Instructor No.5 Coy(P.E.) wef 17 May 43.

5. QUALIFICATIONS

(a) Major W.J. Beek — Having attended CMHQ Course #519 Ser.31 (Officers Vehicle Mastership) from 9 May 43 to 15 May 43, qualified as "Distinguished" (93%)

SECTION "B"

4. STRENGTH INCREASE

(a) M-83303 (Cook "C") Cpl. Belisle, C.A. — TOS from 3 Cdn.Inf.Bde.W/S RCOC wef 8 May 43 (Auth: EA2/4176 d/7 May 43)

Exhibit 'A'

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STRENGTH INCREASE (Cont'd)

(b) K-75487 Pte. Callaghan, L.J. — TOS from Seaforth Highrs. wef 17 May 43 pending transfer to RCASC (Auth: 99/6/ASC/2 (A.7) d/5 May 43.)

(c) B-84185 Pte. Dickson, S.D. — TOS from 4 Cdn.Fd.Amb.RCAMC wef 13 May 43. (Auth: EA7/2344 d/11 May 43)

(d) U-1508 (Cook "C") Pte. Gilpin, R. — TOS from 16 Cdn.Gen.Hosp. wef 18 May 43. (Auth: Rec/U-1508 d/12 May 43)

(e) B-22048 Pte. Glen, S. — TOS from 2 Cdn.Provost Coy, wef 21 May 43 (Auth: EA2/4634 d/19 May 43)

(f) D-91695 Pte. Joly, J.R. — TOS from 85 Cdn.Bridge Coy.RCASC wef 28 Apr43 Admitted to 1 Cdn.Gen.Hosp. wef 27 Apr 43.

(g) B-89224 Pte. Kelly, B.R. — TOS from desertion wef 0100 hrs. 7 May 43.

(h) F-14207 (Cook "C") Gnr. Knockwood, J. — TOS from 5 Cdn.Med.Regt.RCA wef 7 Apr 43. Admitted to 10 Cdn.Gen.Hosp. wef 6 Apr 43.

(i) C-11380 Pte. Marshall, W.W. — TOS from 41 Cdn.Gen.Tpt.Coy.RCASC wef 21 May 43 (Auth: EA7/2469 d/14 May 43)

(j) B-82694 Pte. Melito, R. — TOS from 46 Cdn.Gen.Tpt.Coy.RCASC wef11May43. Admitted to 10 Cdn.Gen.Hosp. wef 10 May 43.

(k) M-63032 Pte. McDonald, S.A. — TOS from 1 Cdn.Army Tank Bde.Coy.(83 Coy) RCASC wef 20 Apr 43. Attending CMHQ Course #524 Ser.16 (C.A.M.S.) 4 weeks.

(l) C-11966 Pte. Pitt, E. — TOS from 8 Cdn.Inf.Bde.Coy. RCASC wef 15 Apr 43. Admitted to Mil.Hosp. Maidstone wef 14 Apr 43

(m) L-7400 Pte. Rabbetz, J. — TOS from 1 Cdn.Army Tank Bde.Coy (83 Coy) RCASC wef 10 May 43. Admitted to 7 Cdn.Gen.Hosp. wef 9 May 43.

(n) M-35197 (Elect."C") Pte. Rennie, W.J. — TOS from 69 Cdn.Tank Tptr.Coy.RCASC wef 10 May 43. Attending CMHQ Course #1053 (Electricians)

(o) H-77423 Tpr. Scott, J.H. — TOS from 18 Cdn.Armd.Car Regt. wef 20 May 43 pending transfer to RCASC (Auth: CL 96 d/21 Aug 42)

(p) M-63248 Pte. Sinclaire, G.M. — TOS from 1 Cdn.Army Tank Bde.Coy. (83 Coy) RCASC wef 12 May 43. Admitted to 7 Cdn.Gen.Hosp. wef 11 May 43.

(q) C-42666 (Elect."A") Pte. Way, A.G. — TOS from 1 CORU wef 9 Mar 43. (Auth: 99/6/Ord 2/ (A.7a) d/22 Feb 43)

(r) AMENDMENT — D.O.22 para 6(c) d/25 Jan 43 in so far as it refers to the undermentioned personnel is amended by: Delete: wef. 24 Jan 43 Sub: wef 26 Jan 43.

B-86732 Pte. Martin, D.G.	A-23055 Pte. Petroff, J.
D-115390 Pte. Pierchalski, M.	H-52003 Sgt. Sinclair, A.
D-115323 Pte. Tourgeneau, E.E.	D-106825 Pte. Turcotte, C.A.
D-121135 Pte. Valade, J.P.C.	M-66358 Pte. Young, L.F.

(s) AMENDMENT — D.O.61 para 6(b) d/11 Mar 43 in so far as it refers to "C-11730 Pte. Boucher, M." is amended by: Delete: TOS wef 25 Feb 43. Admitted to Hosp. wef 24 Feb 43. Sub: TOS wef 26 Feb 43. Admitted to Hosp. wef. 25 Feb 43.

(t) AMENDMENT — D.O.22 para 6(c) d/25 Jan 43 in so far as it refers to "D-121123 Pte. Chateauvert, R." is amended by: Delete: wef 24 Jan 43. Sub: wef 26 Jan 43.

STRENGTH INCREASE (Cont'd)

(u) AMENDMENT — D.O.63 para 4(b) d/13 Mar 43 in so far as it refers to "D-114926 Pte. Gendron, M.M." is amended by: Add: Cook "C".

(v) AMENDMENT — D.O.53 para 6(t) d/2 Mar 43 in so far as it refers to "B-98418 Pte. Knight, G." is amended by: Delete: Cook "C" Sub: Butcher "C".

(w) AMENDMENT — D.O.23 para 6(x) d/26 Jan 43 in so far as it refers to "C-70550 Pte. Larocque, V.J." is amended by: Delete: wef 25 Jan 43 Sub: wef 24 Jan 43.

(x) AMENDMENT — D.O.42 para 5(1) d/17 Feb 43 in so far as it refers to "H-87212 Pte. Moor, J." is amended by: Add: Dr/Mech "C".

(y) AMENDMENT — D.O.101 para 6(y) d/26 Apr 43 in so far as it refers to "L-1545 Pte. Trefiak, R." is amended by: Delete: 16 Cdn.Gen.Hosp. Sub: 14 Cdn.Gen.Hosp.

(z) AMENDMENT — D.O.48 para 6(p) d/24 Feb 43 in so far as it refers to A-104 Pte. Ware, E.T." is amended by: Delete: Cpl. Sub: Pte.

(aa) CANCELLATION — D.O.73 para 7(ac) d/25 Mar 43 in so far as it refers to A-54508 Gnr. Glorioso, F." is CANCELLED.

(ab) CANCELLATION — D.O.61 para 6(k) d/11 Mar 43 in so far as it refers to "D-121123 Pte. Chateauvert, R." is CANCELLED.

7. TRANSFERS

(a) AMENDMENT — D.O.85 para 6(a) d/7 Apr 43 in so far as it refers to "A-104 A/Cpl. Ware, E.T." is amended by: Delete: Cpl. Sub: A/Cpl.

8. STRENGTH DECREASE

(a) The undermentioned personnel are SOS to 1 Cdn.Adm.Tpt.Coy.RCASC wef 20 May 43. (Auth: Rec/34/Units/417 d/14 May 43).

E-14008 Pte. Beland, F. (Fitter "A")
B-80617 Pte. Harris, A.B.
M-55628 Pte. Smith, E.F.

(b) The undermentioned personnel are SOS to 14 Cdn.Army Tank Regt. wef 20 May 43. (Auth: Demand No. 9475 d/18 May 43).

B-28140 Spr. Beaulieu, A.O. (Cook "C")
M-61696 Pte. Smith, W.C. (Cook "C")

(c) The undermentioned personnel are SOS to 1 Cdn.Spec.Base Depot wef 20 May 43 (Auth: EA2/4567 d/16 May 43).

M-103300 Pte. Miner, L.L.
K-67145 Pte. Leduc, J.
A-282 Tpr. Ranger, J.L.(Cook "C")

(d) The undermentioned personnel are SOS to units shown wef 20 May 43 (Auth: EA2/4593 d/17 May 43).

B-86548 A/Cpl. Demers, R.J. — 2 Cdn.Div.Tps.Coy. RCASC
G-11536 CQMS Frosts, G.A. — 32 Cdn.Corps Tps.Coy RCASC
B-88654 Sgt. Miller, T.J. — 47 Cdn.Gen.Tpt.Coy. RCASC
D-26901 Cpl. Richardson, W.M. — 82 Cdn.A.A.Bde.Coy. RCASC

(e) U-1501 A/Cpl. Barnes, A.W. — SOS to S.T.3 CMHQ wef 15 May 43. (Auth: EA7/2539 d/17 May 43)

(f) C-63303 (Cook "C") Cpl. Belisle, C.A. — SOS to 9 Cdn.Inf.Bde.Sp.Bn. (Cam.Highrs. of Ottawa) wef 20 May 43 (Auth: Demand No. 9398 d/16 May 43).

STRENGTH DECREASE (Cont'd)

(g)	K-52692 Pte. Burns, J.B.	SOS to H.Q. "C" Group wef 8 Apr 43. (Auth: CRU/A-524 d/7 Apr 43)
(h)	A-63260 (Dr/Mech"C") Pte. Gevier, R.A.	SOS to 4 Cdn.Armd.Bde.Coy.RCASC wef 5 Apr 43 (Auth: EA2/2828 d/1 Apr 43)
(i)		N I L
(j)	M-3980 (Cook "C") Gnr. Hansen, A.	SOS to 1 Cdn.Army Tank Bde.Sub Pk. wef 20 May 43. (Auth: Demand No. 9358 d/16 May 43.)
(k)	A-63312 Cpl. Layman, E.H.	SOS to 4 Cdn.Armd.Bde.Coy.RCASC wef 5 Apr 43. (Auth: EA2/2828 d/1 Apr 43)
(l)	F-14207 (Cook "C") Gnr. Knockwood, J.	SOS to 3 Cdn.Inf.Bde.Sp.Group (SLI) wef 20 May 43. (Auth: Demand No. 9350 d/16 May 43)
(m)	C-11966 Pte. Pitt, E.	SOS to 8 Cdn.Inf.Bde.Coy. wef 20 May 43. (Auth: Demand No. 9472 d/16 May 43)
(n)	A-9982 Cpl. Tolman, G.W.	SOS to 45 Cdn.Gen.Tpt.Coy.RCASC wef 4 May 43 (Returned direct to unit from Course) (Auth: EA5/1647 d/19 May 43)
(o)	AMENDMENT	D.O.74 para 5(a) d/26 Mar 43 in so far as it refers to "C-10624 L/Cpl. Bradley, D.B." is amended by: Delete: wef 28 Jan 43. Sub: wef 21 Jan 43.
(p)	AMENDMENT	D.O.53 para 8(h) d/2 Mar 43 in so far as it refers to "L-51095 Pte. Mullock, R." is amended by: Add: Cook "C".
(q)	AMENDMENT	D.O.80 para 9(ba) d/1 Apr 43 in so far as it refers to "A-104 A/Cpl. Ware, E.T." is amended by: Delete: Cpl. Sub: A/Cpl.

9. ATTACHMENTS

(a) The undermentioned personnel are attached for all purposes from units shown wef 16 May 43. Attending M.C.O.'s Refresher Course.

D-81704	L/Cpl. Ball, R.W.	31 Cdn.Corps Tps.Coy.RCASC
B-84810	Cpl. Dunbar, W.A.	32 Cdn.Corps Tps.Coy.RCASC
H-57844	L/Cpl. Rose, W.V.	1 Cdn.Motor Amb.Convoy.RCASC

(b)	L-64230 Pte. Beckley, V.A.	Ceases to be attached for all purposes to H.Q. First Cdn.Army wef 16 Mar 43. Attached for all purposes to H.Q. 1 Cdn.Corps wef 17 Mar 43. (Auth: EA2/4651 d/18 May 43)
(c)	C-63303 Cpl. Belisle, C.A.	Attached for all purposes to 3 C.I.B.W/S SCOC wef 8 May 43 to 17 May 43.
(d)	H-53015 Sgt. McGimpsey, L.G.	Attached for all purposes except Regt'l Duties from 15 Cdn.Base Dental Coy wef 19 May 43. (Auth: CRU/A-1530 d/19 May 43)
(e)	CANCELLATION	D.O.78 para 7(c) d/30 Mar 43 in so far as it refers to "L-64230 Pte. Beckley, V.A." is CANCELLED.
(f)	CANCELLATION	D.O.92 para 9(f) d/15 Apr 43 in so far as it refers to "K-52692 Pte. Burns, J.B." is CANCELLED.

10. COURSES

(a) The undermentioned personnel returned from CMHQ Course 1042 (Dr/Mechs) wef 20 May 43.

M-65449 Pte. Brown, E.W. C-32331 Pte. Landon, D.A.

(b) M-63032 Pte. McDonald, S.A. Returned from CMHQ Course 524 Ser.16 (Cook) wef 18 May 43.

11. HOSPITALS

(a) The undermentioned personnel were Admitted/Discharged to/from Hospitals shown wef dates indicated.

		ADMITTED	HOSPITALS	DISCHARGED
M-14527	Pte. Dobbins, G.		1 General	23 Apr 43.
B-143[illegible]	[illegible]	23 Apr 43	1 Neuro	19 May 43.
			Highgrove Isol.	20 May 43.
C-31236	Pte. Empey, W.G.		16 General	20 May 43.
C-12447	Pte. Hone, H.		1 General	8 May 43.
D-91695	Pte. Joly, J.R.		10 General	11 May 43.
F-14207	Gnr. Knookwood, J. (Cook "C")		3 C.M.C.	20 May 43.
H-100915	Pte. Landmesser, J.P.		15 General	20 May 43.
B-84497	Pte. Levesque, A.		8 General	18 May 43.
B-85929	Pte. Merlihan, W.L.			
B-85929	Pte. Merlihan, W.L.	18 May43	1 Conv.Depot	
B-131075	Pte. MacCrimmon, D.F.		Bognor Isol.	20 May 43.
D-126966	Pte. Norton, R.		3 C.M.C.	20 May 43.
B-87980	Cpl. Page, J.W.		8 General	20 May 43.
C-11966	Pte. Pitt, E.		Mil.Hosp.Maidstone	2 May43.
M-63020	Pte. Preston, J.E. (Fitter "A")		10 General	18 May 43.
G-22674	Pte. Ryan, E.C.		16 General	20 May 43.
D-91325	Pte. Samson, E.K.		14 General	18 May 43.
D-91325	Pte. Samson, E.K.	18 May 43	Alton.Conv.	
M-55692	L/Cpl. Seward, A.E.		Mil.Hosp.Oxford	12May43.
M-55692	L/Cpl. Seward, A.E.	12 May 43	Basingstoke Neuro Pl.Surg.	
B-86137	Pte. Syme, W.S.		Bognor Isol.	20 May 43.
B-86418	A/Cpl. Taylor, D.	14 May43.	Royal Victoria Infirm. Newcastle-on-Tyne.	
H-37673	Pte. Tench, M.A.		16 General	20 May 43.

(b) CANCELLATION D.O.121 para 12(a) d/19 May 43 in so far as it refers to "L-100669 Pte. Lesser, C." is CANCELLED.

12. LEAVE OF ABSENCE

(a) The undermentioned personnel are granted 7 days Privilege Leave and 48 hrs. short leave from 20 May 43 to 29 May 43 and money allowance in lieu of rations (Total leave and entitlement - 9 days) Art. 789(3)(4) PR&I as amended by O.R.O. 2459.

L-8880	Pte. More, D.P.	(Adm.Wing)
M-61617	A/Cpl.Robinson, J.H.	(Adm.Wing)
L-66365	Pte. Sewell, H.R.	(Adm.Wing)
C-120022	Pte. Topping, E.S.	(Adm.Wing)
B-130028	Pte. Vaughan, D.C.	(Adm.Wing)
A-63239	Pte. Walker, A.M.	(Adm.Wing)
C-63011	Pte. Ward, G.R.	(Adm.Wing)

(b) The undermentioned personnel are granted 7 days Privilege Leave and 48 hrs. short leave from 21 May 43 to 30 May 43 and money allowance in lieu of rations (Total leave and entitlement - 9 days) Art. 789(3)(4) PR&I as amended by O.R.O 2459.

C-37341	Pte. Perisien, C.P.	(Adm.Wing)
M-17091	Pte. Pickrell, T.	(Adm.Wing)
B-81541	Pte. Prentice, J.	(No14,Coy
G-3064	Gnr. Robichaud, J.	C.A.T.C.)
B-85017	Pte. Todd, H.A.	(Adm.Wing)
M-42023	Pte. Wise, W.E.	(Adm.Wing)

D22

LEAVE OF ABSENCE (Cont'd)

(c) B-98489 Pte. Lazaroff, G. — Granted 7 days Privilege Leave and 48 hrs. short leave from 10 May 43 to 19 May 43 and money allowance in lieu of rations (Total leave and entitlement - 9 days) Art. 789 (3)(4) FR&I as amended by O.R.O. 2459.

(d) AMENDMENT — D.O.49 para 12(a) d/25 Feb 43 in so far as it refers to H-37491 A/L/Cpl. Martin, F.A. is amended by: Delete: Pte. Sub: A/L/Cpl.

13. ABSENT WITHOUT LEAVE

(a) M-20726 Pte. Anderson, M.P. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

(b) K-52029 Pte. Barnett, C.F. — Ceases to be AWL wef 0600 hrs. 18 May 43.

(c) B-84359 Pte. Beckett, M. — AWL from 2100 hrs. 11 May 43 (8th day) still absent.

(d) F-31803 Pte. Boyce, B.J. — Ceases to be AWL wef 1435 hrs. 17 May 43.

(e) G-397 Pte. Burns, J.H. — Ceases to be AWL wef 2340 hrs. 18 May 43.

(f) F-3942 Pte. Butler, R.S. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

(g) L-7245 Pte. Collins, J. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

(h) B-77005 Pte. Dey, R.L. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

X (i) B-86326 Pte. Etheridge, D.P. — AWL from 0600 hrs. 16 May 43 (24 hrs.) still absent.

(j) B-86232 Pte. Farnham, R.A. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

(k) B-85640 Pte. Forsey, W.W. — AWL from 2200 hrs. 18 May 43. (24 hrs.) still absent.

(l) B-84309 Pte. Halladay, G.H. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

(m) A-22902 Pte. Lamont, R.J. — AWL from 1900 hrs. 18 May 43 (24 hrs.) still absent.

(n) G-52913 Pte. Lager, C.J. — Ceases to be AWL wef 1730 hrs. 19 May 43.

(o) D-16627 Pte. Letts, L. — AWL from 2200 hrs. 1 May 43 (24 hrs.) still absent.

(p) B-89565 A/Sgt. Morrow, J.F. — Ceases to be AWL wef 1345 hrs. 18 May 43.

(q) D-117522 Pte. McIver, J.E. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

(r) F-97639 Pte. MacPherson, W.A. — AWL from 0600 hrs. 17 May 43 (24 hrs.) still absent.

(s) B-98534 Pte. Phillips, J.M. — Ceases to be AWL from 0140 hrs. 19 May 43.

(t) D-123338 Pte. Riendeau, L. — AWL from 2200 hrs. 17 May 43 (24 hrs.) still absent.

(u) B-98501 Pte. Rosen, D.S. — Ceases to be AWL wef 0140 hrs. 19 May 43.

(v) K-73606 Pte. Russell, R.S. — AWL from 2200 hrs. 18 May 43 (24 hrs.) still absent.

(w) ABSENT WITHOUT LEAVE (Cont'd)
H-61043 Ceases to be AWL wef 2340 hrs. 18 May 43.
Tpr. Yellowlees, N.A.

(x) AMENDMENT
D.O.122 para 14(c) d/20 May 43 in so far as it refers to "H-38749 Pte. Marcinow, H." is amended by: Delete: 0015 hrs. Sub: 0005 hrs.

(y) AMENDMENT
D.O.111 para 18(i) d/7 May 43 and D.O.117 para 16(e) d/14 May 43 in so far as they refer to "B-84286 L/Cpl. Taylor, G.E." are amended by: Delete: 2230 hrs. Sub: 2200 hrs.

(z) CANCELLATION
D.O.121 para 13(d) d/19 May 43 in so far as it refers to "H-101206 Pte. Cornes, F." is CANCELLED.

(aa) CANCELLATION
D.O.121 para 13 (l) d/19 May 43 in so far as it refers to "L-101984 Pte. Dallyn, H.A." is CANCELLED.

(ab) CANCELLATION
D.O.121 para 14 (g) d/19 May 43 in so far as it refers to "B-94350 Cpl. Holman, W.J." is CANCELLED.

(ac) CANCELLATION
D.O.121 para 14(i) d/19 May 43 in so far as it refers to "B-36740 Pte. Pinchak, P." is CANCELLED.

(ad) CANCELLATION
D.O.122 para 14 (i) d/20 May 43 in so far as it refers to "B-86418 A/Cpl. Taylor, D." is CANCELLED.

14. QUALIFICATIONS

(a) The undermentioned personnel having attended D&M School at Unit "I" Sec.No.1 Trng.Wing qualified as MC.SC Drivers i/c (Wheeled) wef 19 May 43.

(No.3 Coy)
D-113457 A/L/Cpl. Brouillard, J.S. K-46261 Pte. Ewer, H.

(No.4 Coy)
B-73825 A/Cpl. Seymour, S.P.

(No.5 Coy)
B-58916 Pte. Benson, A.L.
F-75750 Pte. Fernell, G.G.
F-34624 Fus.Messervey, D.W.
D-121481 Pte. Roy, R.A.
B-88736 Sgt. Slade, A.
B-73522 Pte. Brinning, H.A.
D-127246 Pte. Larocque, J.F.A.
M-104672 Pte. Nickason, B.W.
D-127354 Pte. Shenker, B.

(b) The undermentioned personnel having been Trade Tested in Trades and Groups shown qualified/failed wef. dates shown: (Auth: TTB/H.Q/CRU d/19 May 43).

U-1750	Pte. Ayres, E.G.	FitterMV	"B"	Qual.	18 May 43.
U-1750	Pte. Ayres, E.G.	M/Mech	"B"	Qual.	18 May 43.
C-32579	Pte. Bolduc, R.	FitterMV	"A"	Failed	18 May 43.
C-32579	Pte. Bolduc, R.	M/Mech	"B"	Failed	18 May 43.
M-67655	Pte. Borschyk, M.	FitterMV	"A"	Failed	18 May 43.
M-67655	Pte. Borschyk, M.	M/Mech	"B"	Failed	18 May 43.
M-67761	Pte. Bradford, R.C.	FitterMV	"A"	Failed	11 May 43.
L-7018	Pte. Brady, L.F.	FitterMV	"A"	Failed	11 May 43.
K-85208	Pte. Briscoe, I.G.	FitterMV	"B"	Qual.	18 May 43.
K-85208	Pte. Briscoe, I.G	M/Mech	"B"	Qual.	18 May 43.
A-58123	Pte. Brutzki, H.L.	Fitter	"A"	Qual.	11 May 43.
L-100945	Pte. Buckberger, H.	FitterMV	"A"	Failed	11 May 43.
B-85236	Pte. Campbell, W.M.	M/Mech	"B"	Qual.	8 May 43.
A-59657	Pte. Casimir, J.A.	FitterMV	"B"	Qual.	18 May 43.
A-59657	Pte. Casimir, J.A.	M/Mech	"B"	Qual.	18 May 43.
K-63802	Pte. Cox. L.H.	FitterMV	"C"	Qual.	11 May 43.
L-8900	Pte. Edworthy, T.E.	FitterMV	"A"	Failed	11 May 43.

DRL

(c) QUALIFICATIONS (Cont'd)

The undermentioned personnel having been Trade Tested in Trades and Groups shown qualified/failed wef. dates shown (Auth: TTB/HQ/CRU d/19 May 43).

M-67446	Pte. Fellers, V.A.	FitterMV	"B"	Qual.	18 May 43.
M-67446	Pte. Fellers, V.A.	M/Mech	"B"	Qual.	18 May 43.
M-36838	Pte. Findlay, J.E.	FitterMV	"C"	Qual.	11 May 43.
C-20977	Pte. Fraser, D.	FitterMV	"C"	Qual.	11 May 43.
L-51215	Pte. French, R.B.	FitterMV	"B"	Qual.	11 May 43.
E-14323	Pte. Gagne, L.I.	FitterMV	"B"	Qual.	18 May 43.
E-14323	Pte. Gagne, L.I.	M/Mech	"B"	Qual.	18 May 43.
C-92184	Pte. Goodwin, R.E.	FitterMV	"B"	Qual.	18 May 43.
C-92184	Pte. Goodwin, R.E.	M/Mech	"B"	Qual.	18 May 43.
H-65702	Pte. Guilbault, H.	FitterMV	"A"	Qual.	11 May 43.
B-84218	Pte. Madill, B.	M/Mech	"C"	Qual.	18 May 43.
B-84218	Pte. Madill, B.	FitterMV	"C"	Qual.	18 May 43.
B-82234	Pte. Mallette, J.A.	FitterMV	"A"	Qual.	11 May 43.
B-92512	Pte. Mosley, M.B.	Dr/Mech	"C"	Qual.	16 May 43.
L-7435	Pte. McClellan, K.M.	FitterMV	"B"	Qual.	11 May 43.
B-86006	Pte. McWhirter, D.	M/Mech	"B"	Failed	18 May 43.
B-86006	Pte. McWhirter, D.	FitterMV	"A"	Failed	18 May 43.
B-80635	Pte. Nesbitt, K.G.	M/Mech	"B"	Qual.	18 May 43.
B-80635	Pte. Nesbitt, K.G.	FitterMV	"B"	Qual.	18 May 43.
G-53968	Pte. Patriquen, G.A.	M/Mech	"B"	Failed	18 May 43.
G-53968	Pte. Patriquen, G.A.	FitterMV	"A"	Failed.	18 May 43.
A-58363	Pte. Petterson, C.	FitterMV	"A"	Failed	11 May 43.
K-70930	Pte. Pennicott, F.	FitterMV	"A"	Qual.	11 May 43.
B-81154	Pte. Perkins, H.J.	FitterMV	"A"	Failed	11 May 43.
A-57881	Pte. Smith, A.H.	M/Mech	"C"	Qual.	18 May 43.
A-57881	Pte. Smith, A.H.	FitterMV	"C"	Qual.	18 May 43.
B-84123	Pte. Strachan, W.H.	M/Mech	"B"	Qual.	18 May 43.
B-84123	Pte. Strachan, W.H.	FitterMV	"B"	Qual.	18 May 43.
M-53852	Pte. Swanson, P.I.	FitterMV	"A"	Failed	11 May 43.
M-67352	Pte. Wittmack, E.	M/Mech	"C"	Qual.	18 May 43.
M-67352	Pte. Wittmack, E.	FitterMV	"C"	Qual.	18 May 43.

(d) The undermentioned personnel having been Trade Tested qualified as Cooks Group "C" wef 6 May 43 (Auth: TTB/HQ/CRU d/8 May 43).

C-9424 Gnr. Winkie, A.D. A-21413 Pte. Masarock, S.

(e) M-16360 Pte. Arnett, W.A. — Trade Tested qualified as Cook Group "C" wef. 15 May 43. (Auth: TTB/HQ/CRU d/18 May 43)

(f) B-94773 Pte. Aske, W. — Trade Tested qualified as M/Mech "C" wef 16 Mar 43. (Auth: TTB/HQ/CRU d/2 Mar 43).

(g) A-57823 Pte. Carter, R.G. — Trade Tested qualified as Electrician Group "A" wef 11 May 43 (Auth: TTB/HQ/CRU d/13May43)

(h) U-1508 Pte. Gilpin, R. — Trade Tested qualified as Cook Group "C" wef. 26 Jan 43 (Auth: TTB/HQ/CRU d/8 Feb 43)

(i) M-52889 Pte. Huff, A. — Trade Tested Failed as Blacksmith Group "B" wef 17 May 43 (Auth: TTB/HQ/CRU d/18 May 43)

(j) L-93464 A/Cpl. Magson, J.A. — Trade Tested qualified as Printer (Compositor) Group "B" wef 5 May 43 (Auth: TTB/HQ/CRU d/12 May 43)

(k) AMENDMENT — D.O. 69 para 9(a) d/20 Mar 43 in so far as it refers to "A-104 A/Cpl. Ware, E.T." is amended by: Delete: Cpl. Sub: A/Cpl.

15. APPOINTMENTS

(a) C-32231 Pte. Barton, R.S. — Relinquishes appointment to P.E. (Adm. Wing) wef 18 May 43.

(b) D-135755 A/L/Cpl. Johnson, D. — Relinquishes appointment of A/L/Cpl. wef. 17 May 43 at his own request.

(c) L-8285 A/L/Cpl. Mills, J.E. — Appointed to rank of A/Cpl. with pay wef. 19 May 43 (RHQ)

(d) M-55872 Cpl. Saunt, J. — Appointed to P.E. (No.3 Coy) wef. 30 Apr 43.

16. TRADES PAY

(a) L-101386 Spr. Benin, W.R. — Granted Trades Pay as Butcher "C" on quota basis wef 15 May 43 (Art. 147(5) FR&I).

(b) A-54508 Gnr. Glorioso, F. — Granted Trades Pay as Cook "C" wef 15 Mar43 on quota basis. (Art. 147(5) FR&I).

(c) D-76558 Pte. Lewis, H. — Granted Trades Pay as Cook "C" wef 28 Apr43 on quota basis (Art. 147(5) FR&I).

(d) B-82630 Pte. Revoy, P.R. — Granted Trades Pay as FitterMV Group "A" wef 19 Apr 43 on quote basis.

(e) AMENDMENT — D.O.69 para 16(a) d/20 Mar 43 in so far as it refers to "A-104 A/Cpl. Ware, E.T." is amended by: Delete: Cpl. Sub: A/Cpl.

17. PAY AND ALLOWANCES

(a) The undermentioned personnel are granted increase in Regt'l Pay from $1.30 per day to $1.50 per day wef 1 Jan 43, having completed 6 months proficient service. (Auth: G.O. 486/42).
L-5560 Pte. Hickey, F.R.
M-34956 Gnr. Roy, A.R.
M-55615 Pte. Cochrane, K.G.

(b) The undermentioned personnel are granted increase in Regt'l Pay from $1.30 per day to $1.40 per day wef dates shown, having completed 4 months proficient service. (Auth: G.O. 486/42).
G-3432 Pte. Daigle, A. — 12 Mar 43.
A-104162 Pte. Foren, R.E. — 1 Jan 43.

(c) The undermentioned personnel are granted increase in Regt'l Pay from $1.40 per day to $1.50 per day wef dates shown, having completed 6 months proficient service. (Auth: G.O.486/42).
G-24036 Pte. Albert, L.J.A. — 29 Jan 43.
G-3432 Pte. Daigle, A. — 12 May 43.
A-104162 Pte. Foren, R.E. — 25 Feb 43.

(c) CANCELLATION — D.O.79 para 16(a) d/31 Mar 43 in so far as it refers to "H-37359 Pte. Bowser, G.W." is CANCELLED.

18. TRADESMEN'S RATES PAY

(a) B-84456 Pte. Bryant, F. — Granted Tradesmen's Rates of Pay of $1.75 per day wef. 1 Jan 43 ; having completed 6 months proficient service (Auth:G.O. 486/42) (Cook "C")

19. PUNISHMENTS

(a) L-84573 Pte. Emery, H.E. (Hold.Coy) — Was, on 19 May 43 awarded 7 days C.B. for AWL from 2359 hrs. 16 May 43 to 1350 hrs. 18 May 43 (Absent 1 day 13 hrs. 51 mins) A.A.,Sec.15(1).
Forfeits 2 days pay Art. 149(1)(e) FR&I.

BTL

PUNISHMENTS (Cont'd)

(b) B-89224 Pte. Kelly, B.R. (Adm.Wing)

Was, on 17 May 43 awarded 28 days detention and forfeiture of 28 days pay for AWL from 2359 hrs. 6 Apr 43 to 0100 hrs. 7 May 43 (Absent 30 days 1 hrs. 1 min.) A.A.Sec. 15(1) A.A.
Under close arrest from 0100 hrs. 7 May 43 to 1330 hrs. 17 May 43.
Forfeits 31 days pay Art. 149 (1)(a) FR&I.
Forfeits 28 days pay Art. 149 (1)(b) FR&I.
Forfeits 9 days pay Art. 149 (1)(c) (ii) FR&I.
Total forfeiture of pay 68 days.

(c) H-38749 Pte. Marcinow, H. (No.1 Coy)

Was, on 19 May 43 awarded a forfeiture of 6 days pay for AWL from 0600 hrs. 15 May43 until 0005 hrs. 18 May 43 (Absent 2 days 18 hrs.5 mins.) A.A.Sec.15(1).
Forfeits 6 days pay Art. 149(2) FR&I.
Forfeits 3 days pay Art. 149(1)(a) FR&I.
Total forfeiture of pay 9 days.

(d) C-12527 Pte. Meers, L. (Hold.Coy)

Was, on 19 May 43 awarded 7 days C.B. for AWL from 2359 hrs. 16 May 43 to 2200 hrs. 18 May 43 (Absent 1 day 22 hrs. 1 min.) A.A.Sec.15(1).
Forfeits 2 days pay FR&I 149 (1)(a).

(e) B-89565 A/Sgt. Morrow, J.F.

Was, on 19 May 43 reverted to the permanent rank of Pte for AWL from 1400 hrs. 14 May 43 until 1345 hrs. 18 May 43 (Absent 3 days 23 hrs. 45 mins.) A.A.Sec.15(1).
Forfeits 4 days pay Art. 149(1)(a).

(f) B-29264 Pte. Ralston, C.G. (Hold.Coy)

Was, on 13 May 43 awarded a forfeiture of 7 days pay and costs of apprehension in the am't of £0-4-2. for (1) an offence contrary to A.A.Sec.15(3) and (2) for an offence contrary to A.A.Sec.40.
Forfeits 7 days pay Art. 149(2) FR&I.
Placed under stoppage of pay in the am't of £0-4-2. Costs of apprehension Art. 172(8)FR&I.

(g) C-12148 Pte. Rockburn, A.E. (Hold.Coy)

Was, on 19 May 43 awarded 7 days C.B. for AWL from 2359 hrs. 16 May 43 until 1350 hrs. 18 May 43 (Absent 1 day 13 hrs. 51 mins.) A.A.Sec.15(1).
Forfeits 2 days pay Art. 149(1)(a) FR&I.

(h) C-17177 Pte. Taylor, E.A. (Hold.Coy)

Was, on the 18 May 43 awarded 7 days C.B. for AWL from 2359 hrs. 16 May 43 until 1920 hrs. 17 May 43 (Absent 19 hrs. 21 mins) A.A.Sec.15(1).
Forfeits 1 days pay Art. 149 (1)(a) FR&I.

(i) B-84286 A/L/Cpl. Taylor, G.E. (Hold.Coy)

Was, on 18 May 43 reverted to the rank of Pte. and awarded costs of apprehension in the am't of £0-3-6 for AWL from 2200 hrs. 3 May 43 until 1315 hrs. 15 May 43 (Absent 11 days 5 hrs. 15 mins.) A.A.Sec.15(1).
Forfeits 12 days pay Art. 149(2)(a).
Placed under stoppage of pay in the am't of £0-3-6.Costs of apprehension. Art. 172(8)

(j) AMENDMENT

D.O.84 para 19(a) d/6 Apr 43 in so far as it refers to "D-46810 Tpr. Zurowski, M." is amended to read: AWL from 2200 hrs. 2 Apr 43 until 0630 hrs. 3 Apr 43. (Absent 8 hrs. 30 mins) A.A.Sec.15(1).
Forfeits 2 days pay Art. 149 (1)(a).FR&I.
Forfeits 2 days pay Art. 149 (2) FR&I.
Total forfeiture of pay 4 days.

1 CDN.A.S.C. REINFORCEMENT UNIT
Canadian Army Overseas

20. DETENTION

(a) B-84232 Pte. Campbell, M.E. — Released from H.M. Prison Lewes wef 7 May 43. Earned remission of 107 days.

(b) B-86232 Pte. Farnham, R.A. — Released from detention wef 17 May 43. Earned remission of 82 days.

(c) B-83484 Pte. Leuzon, N.J. — Released from detention wef 17 Apr 43. Earned remission of 57 days.

(d) E-14507 Pte. Morin, J. — Released from detention wef 18 May 43. Earned 78 days remission.

21. BIRTHS

(a) B-81251 Pte. Church, G.C. — BORN, a daughter (Evelyn Joy) to Mrs. Evelyn Minnie Church, (Wife) at Orillia, Ont. on 20 Apr 43.

22. MARRIAGES

(a) B-83783 Pte. Carmichael, A.G. — Married at Rainham Twp. Haldimand County Ontario Canada, on 24 May 1938 to Gladys Kathleen Grey.

23. NEXT-OF-KIN

(a) M-40538 Pte. Neilson, T. — Correct name and address of next-of-kin: Mrs. Winnifred Mary Neilson, (Wife) Rosemary, Brookhill, Cepthorne, Sussex, England

(b) L-8203 Pte. Watchorn, W. — Change of address of next-of-kin: Mrs. Viola Watchorn (Wife) New Address: 1079 - 3rd Ave.N.E. Moose Jaw Sask.Canada.

(c) AMENDMENT — D.O.97 para 21(a) d/21 Apr 43 in so far as it refers to "H-66513 Pte.McFarlane, H." is amended by: Delete: Mrs. Mabel Eleanor Treadway (Wife) Sub: Mrs. Mabel Eleanor McFarlane (Wife).

24. (a) HONOURS & AWARDS

The undermentioned personnel having completed 2 Years Service without entry on Regt'l Conduct Sheet are entitled to wear one (1) Good Conduct Badge in accordance with R.O. 308 wef dates shown:

K-73797	Pte. Coleman, A.	10 May 43.
L-8148	Pte. Dunbar, J.A.	7 May 43.
C-5470	Pte. Reid, H.E.	7 Nov 41.

C O N C L U D E D

for (J.M. Pocock) Colonel,
Commanding,
1 Cdn.ASC Reinf. Unit.
Canadian Army Overseas.

Major
President DAC'n.

CERTIFICATE IN ACCORDANCE WITH P.C. 2787 of 10 Apr 43.

I CERTIFY that No. B.06326 Rank Pte. Name WITHERIDGE J.F.

Unit No. 1 C.A.S.C.R.U. was arrested at London (Place)

at 1045 hrs (hour) on 17 May 43 (date) and that at the time of his arrest he was wearing (Military Uniform) or [redacted]

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of the Canadian Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

Exhibit "B" 172 Langstaff

Pte

(W. Edm) D. . . P. . . Capt.
London Area

S.I.S. C.M.H.Q. Provost.

London. 20 May 43.

1 CDN. A.S.C. REIN. UNIT
26 MAY 1943
Canadian Army Overseas

Reg. No. B-86326, Pte. ETHERIDGE, D.P.

1 C.A.S.C.R.U.

ABSENTEE. ALTERATIONS IN N.B.M. 1 PARTS 1 & 2.

42/SIS/T-2-272

1. The s/m soldier was absent without leave from his Unit since the expiration of a nine days leave pass which terminated at 2359 hrs. 15 May 43, until apprehended by the Civil Police on 17 May 43 in LONDON.

2. When arrested ETHERIDGE had in his possession his original leave pass which he had altered to read 1000 hrs. 16 May 43 to 2359 hrs. 25 May 43. This was accomplished by placing the figure one before the six, and the figure two before the five. He had also made an alteration in his N.B.M.1 Part 1. And in his N.B.M. Part 2, pages six and seven, line nine, ETHERIDGE has admitted, as will be seen by the statement below, he has made an entry dated 14 May 43 to read that he was paid £3-0-0 and has forged the pay-masters signature to same. This was done he says to mislead anyone who might ask to see his pass and pay-book.

3. On 17 May 43, the writer saw ETHERIDGE who was detained by No 6 Provost Coy., and the following statement was obtained from him under caution:

BEGINS: I have been cautioned by Sgt. TAYLOR, S.I.S. that I need not say anything unless I wish to do so, anything First I do say will be taken down in writing and may be used as evidence.

To show I understand this caution I sign my name hereto.

(Sgd) D.P. ETHERIDGE.

I was released from Borstal Institution at NOTTINGHAM on 24 March 43 after serving one year sentence. I left NOTTINGHAM about 0730 hrs. by train and came to LONDON. I had to wait for a train about one hour, then I caught a train from WATERLOO Station for ALDERSHOT and arrived at ALDERSHOT about 1500 hrs. same day.

I reported to records Office on same date and was sent to No 6 Reception Hut C.A.S.C.R.U. On the following day I paraded before Col. BONNICK and Lieut. SMITH (Adjt.) and the M.O.

I was attached to C.A.S.C.R.U. until I went on leave on 6 May 43. I came to LONDON on leave stayed at Russell Square for three days or four, then I came down to 406 Portobello Road, Kensington, and was there until the Civil Police picked me up on 17 May 43.

On 16 May 43, I altered my pass from 6 May 43 Nil to 15 May 43, to read 16 May 43 to 25 May 43, this was done by putting a 1 before the 6, and changing the 1 to 2 before the five. The alteration in N.B.M. 1 Part 1 of my pay-book I also made at this time. I also made another entry in my N.B.M. 1 Part 2, to read that I had been paid the sum of £3-0-0 on 14 May 43. The reason I altered both parts 1 and 2 of my pay-book was so [illegible] they would not be suspicious.

[illegible] girl friend who I stayed with at 406 Portobello Road, Kensington that I was on 14 days leave.

cont. overleaf

Exhibit 'C'

If a calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

No. 4010 Regiment 1 CDN. A.S.C. REIN. UNIT

Army Form. Blank
(In pads of 100)

PASS

No. B86326 (Rank) Pte (Name) Etheridge J.R.

has permission to be absent from his quarters/duty, from

10 hrs 16 May 2359 hrs 25 May 43

for the purpose of proceeding to London.

(Signed) [illegible]

(Date) 15 MAY 1943

OFFICER IN CHARGE

1 CDN. A.S.C. REIN. UNIT

* Delete whichever is not applicable.

* Particulars not required when duration is to extend to more than seven days unless authorized by [illegible]

Exhibit "D"

COPYRIGHT

[illegible] Major
Provost

Militia Book M.1. (Part I)
40/PAS8/279 (12/40)

SOLDIER'S SERVICE BOOK

(Soldier's Pay Book, Militia Book M. 1 (Part II) will be issued for active service.)

Every entry in this book (other than those on page 24 of this part of Militia Book M. 1, connected with the making of a Soldier's short form of Will) is to be made under the superintendence of the Officer Commanding the Squadron, battery or company to which the man belongs or is attached.

Alterations in any of the entries will be initialled by an officer.

INSTRUCTIONS TO SOLDIER

1. You will be held **personally responsible** for the custody of this book.

2. You will **always carry this book** on your person when on duty, and on active service.

3. You must produce this book whenever called upon to do so by a competent authority, viz.: Officer, Warrant Officer, N.C.O., Military Policeman or Civilian Police.

4. You must not alter or make any entry in this book (except as regards short form of Will on page 24; see instructions on pages 20 to 23), and disobedience of this order will be treated as a serious offence.

5. Should you consider that any entry is lacking or incorrect, or should you lose the book, you will report the matter to your immediate military superior.

6. You will be permitted to retain this book after discharge as a record of your services, but should you lose the book after discharge it cannot be replaced.

(I) SOLDIER'S NAME AND DESCRIPTION ON ATTESTATION

Regtl. No. B-86326

Surname (in capitals) ETHERIDGE

Christian Names (in full) Walter, Phyllis

Date of Birth 9 March 192

Place of Birth Hamilton, Ont. Canada

Trade on Enlistment Mat. Packer & Horse Guardsman

Nationality of Father at birth American

Nationality of Mother at birth English

Religion Church of England

Enlisted at Hamilton, Ont. Canada

Date 11 September 1939

Particulars of former service (if any) i.e. Regtl. No., Corps and period. Nil

Signature of Soldier W. E. Etheridge

Signature of Officer W. Tisdall Lieut

Place Aldershot Date 3 May 43

(II) NEXT OF KIN

Any change becoming known is to be duly noted with date of

NOTE.—No entry in these pages has any legal

Nearest degree of relationship		Names	Date
1st	Wife		
	Children		
2nd	Father	Deceased	
	Mother	Dorothy Etheridge	
3rd	*Brothers and Sisters		
4th	Other Relations (state relationship)		

*State whether brothers are older or younger.

NOW LIVING

each change and reported by O.C. Unit to the Officer in Records.

effect as a Will (see pages 20 to 23)

Latest known Address in full

250 Elgin Street Sothern Perth

(III) RANK and APPOINTMENT

Date	Rank and Appointment	Substantive, Temporary, Acting, or Local (with or without pay)	Authority of Part II Orders	Signature of Officer
15 Sept 15	Pte	—	Bn Orders	

(IV) Certificate Applicable to all Arms, to be completed and signed by the C.O. Bn., etc., before a Soldier proceeds Overseas

TRAINED (insert Infantry Course as laid down for his arm of the Service), except that he requires further Training in—*

Qualified in addition as under :—

Date

* If no further training required, strike out words in italics and initial.

(VII) EDUCATIONAL QUALIFICATIONS

Certificate, Specialist Qualifications, etc.	Place	Date	Signature of Officer
Grade VIII	Granville St.	1935	[illegible]

(VIII) TRADE RECORD

(For men in receipt of tradesmen's rates of pay only)

Trade	Group	Class	Remarks, e.g., On additional; Re-classified; Re-mustered, etc.	Date	Signature of Officer

(XIV) PROTECTIVE INOCULATIONS

Nature of Vaccine, "T. A. D." Cholera, Plague, etc.	Date	Signature of Medical Officer
T.A.D. Vaccine 1st	26-8-39	
T.A.D. " 2nd	28-9-39	
T.A.D. " 3rd	4-10-39	
Typh. Inj. 1st	17-1-40	
Typh. Inj. 2nd	27-2-40	

(XV) VACCINATION

Date Vaccinated	Signature of Medical Officer
26 Aug 39	

(XVI) MISCELLANEOUS ENTRIES

(For entries for which space is not otherwise provided)

NOTE.—No entry on this page has any legal effect as a WILL

Particulars	Date	Signature of Officer
Roy Chat Maj	20 Dec	
Sporting Leave	28-4-40	
Sick Leave	14-1-41	
Sick Leave	1-4-41	
[illegible]	[illegible]	[illegible]
Leave	Duty Cancelled	
Privt Leave	6 May 41	[illegible]

EXHIBIT "F" "A.B.Langmuir" Major
Pres F.G.C.M.

SOLDIER'S PAY BOOK. Pages 6 & 7.

Soldier's Signature D.P. Etheridge.
Book opens on 25 Mar 43 Balance Cr.or Dr. as below. Paymaster's Signature "illegible"

Date 1943	Particulars. Credits	Cash Payments and other Charges: Local Currency	Cash Payments and other Charges: Canad'd Currency.	Assigned Pay	Deferred Pay and/or Restricted Pay	BALANCE: Debit	BALANCE: Credit	Signature of Paymaster or Officer Making Award.
Payments to be restricted to 10/- per Pay day - awaiting Trans Balance.								
	Bals.Br't Forward.							
	MFM 513							
25 Mar	Mar 43		08			08		"illegible" Lieut.
31 Mar	A.R.169	10/-	2.24			(x) 2.30		"illegible"
1 Apr 43	Apr Pay	39.00			20.00		16.70	"illegible"
~~13-4~~	~~A.R.8~~	~~1/10/6~~	~~6.82~~	NO ENTRY			~~66.88~~	"illegible" Capt.
13-4	A.R.8	10/6	2.35				14.35	" illegible"
	MFM 513							
16 Apr	Apr 43		.74				13.61	"illegible"
18 Apr	A.R.12	3/	13.41				.20	"illegible"
	May	40.30			20.00		20.50	"illegible"
~~12 May~~	~~A.R.169~~	~~5~~	~~14.41~~		~~Delete~~		~~6.09~~ 20.50	~~"illegible" Capt.~~
18 June	June Pay	39.00			20.00		39.50	"illegible "
	C.O.144/43							
18 June	FORF 85 days		110.50			71.00		"illegible"
	TOTALS	118.30	129.32		60.00	(x)71.02		

Cut from here copy of the appropriate page in original exhibit sent to Ottawa by Capt Jay Cmr

24 July 43

SUMMARY OF EVIDENCE

in the case of

B-86326 Pte. David Phillip ETHERIDGE, RCASC, 1 Cdn ASC Rft Unit, Blenheim Barracks, Farnborough, Hampshire.

The Commanding Officer, Colonel J.M.Pocock, 1 Cdn ASC Rft Unit, directs that the evidence be taken on oath:

1st Witness for the Prosecution

Lieut. R.K.Sullivan, RCASC, having been duly sworn states:

I am Lieut. R.K.Sullivan, RCASC, 1 Cdn ASC Rft Unit, and have knowledge and am custodian of certain documents pertaining to this case and relative to the accused.

I produce herewith:

Exhibit "A"
Certified copy of Daily Order Part II, No. 123, dated 21st May 43, issued by Colonel J.M. Pocock, Commanding, 1 Cdn ASC Rft Unit, which shows the accused, B-86326 Pte. Etheridge, D.P., whom I now recognize, absented himself from 0600 hrs 16th May 43.

Exhibit "B"
A certificate in accordance with P.C. 2797 purporting to be signed by Capt. W. Fern, D.A.P.M. London area, showing the apprehension of the accused.

Exhibit "C"
A statement, dated 20 May 43, purporting to be signed by the accused, B-86326 Pte. Etheridge, D.P. and C-42046 A/Sgt Taylor, C.A.E (SIB), Cdn Provost Corps, CMHQ and countersigned by the Asst. Provost Marshall, CMHQ, pertaining to his apprehension.

Exhibit "D"
A.F.B. 295, Pass No. 4010, a document purporting to be a pass, issued to B-86326 Pte. Etheridge, D.P. and signed by Lieut. B.H.Tobin, for Officer, i/c Records, 1 Cdn ASC Rft Unit.

Exhibit "E"
M.B.M.1, Part 1, a document purporting to be a Soldier's Service and Pay Book issued to the accused, B-86326 Pte. Etheridge, D.P.

Exhibit "F"
M.B.M.1, Part 11, a document purporting to be a Soldier's Pay Book, issued to the accused, B-86326 Pte. Etheridge, D.P.

SUMMARY OF EVIDENCE in the case of B-86326 Pte ETHERIDGE, D.P.

I certify that in my opinion, the attendance of Capt. W. Fern, D.A.P.M. London Area, C-42046 A/Sgt. Taylor, C.A.(SIS) Cdn Provost Corps, CMHQ and Capt. R.J.Kidston, Asst. Provost Marshall, CMHQ, are, owing to the expense and loss of time involved, not readily procurable and a written statement of their evidence, signed by them, have been read to the accused and is attached hereto marked Exhibits "B" and "C"

R.K. Sullivan Lt

.....
(Lieut. R.K.Sullivan)
1 Cdn ASC Rft Unit.

I do not require the attendance of the above mentioned for the purpose of cross examination.

D.P. Etheridge

.....
(B-86326 Pte. Etheridge, D.P.)
1 Cdn ASC Rft Unit.

2nd Witness for the Prosecution

Capt. F.J. Ottley, RCAPC, having been duly sworn states:

I am Capt. F.J. Ottley, RCAPC, Paymaster 1 Cdn ASC Rft Unit and wish to state that neither I nor any other officer under my jurisdiction signed the entry made in M.B.M.1,Part II of Pay Book on line 10, page 7, issued to the accused, B-86326 Pte. Etheridge, D.P. and which is marked Exhibit 'F'. This entry represents a payment made 14 May 43 on A.R. 160 for three pounds (£3) Canadian equivalent fourteen dollars and fourty-one cents ($14.41). Further, that the payment entered was not made by any of the sub staff in my office. I might also point out that the conversion value of £3 is $13.41 and not $14.41 as shown.

F.J. Ottley

.....
(Capt. F.J.Ottley), RCAPC
Paymaster, 1 Cdn ASC Rft Unit.

The accused declines to cross examine this witness.

The accused was then warned in accordance with RP 4(e).
"Do you wish to make any statement on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence?"

A. "I do not wish to make any statement at this time."

D.P. Etheridge

.....
(B-86326 Pte. Etheridge, D.P)
1 Cdn ASC Rft Unit.

RKS

Sheet #3

SUMMARY OF EVIDENCE in the case of B-86326 Pte. ETHERIDGE, D.P.

I hereby certify that the foregoing Summary of Evidence was taken down by me in writing on the 3rd of June 43, at 1 Cdn ASC Rft Unit, in the presence and hearing of the accused and that RP 4 (c)(d)(e)(f) and (g) have been complied with.

R.K. Sullivan Lt.
.....
(Lieut R.K.Sullivan)
1 Cdn ASC Rft Unit.

I, B-86326 Pte. Etheridge, D.P., RCASC, 1 Can ASC Rft Unit, desire the assignment of an officer to represent me at my forthcoming trial by Court Martial. I request the assignment of Major L.H.Smith, RCASC, 1 Cdn ASC Rft Unit, if available.

D.P. Etheridge
.....
(B-86326 Pte Etheridge, D.P.)
1 Cdn ASC Rft Unit.

LIST OF WITNESSES

Lieut. R.K.Sullivan, RCASC, - 1 Cdn ASC Rft Unit, Farnborough, Hants.
Capt. W. Farn, D.A.P.M. - CMHQ - London, England.
C-42046 A/Sgt. Taylor, C.A.E (SIS) Cdn Prov.Corps, CMHQ London, England.
Capt. R.J.Kidston, Asst. Provost Marshall, CMHQ, London, England.
Capt. R.J.Ottley, RCAPC, 1 Cdn ASC Rft Unit. Farnborough, Hants.

LIST OF EXHIBITS:

Exhibit "A" - Part II Daily Order #123 d/21 May 43.
Exhibit "B" - Certificate in accordance with P.C.2797
Exhibit "C" - Statement signed by A/Sgt Taylor (SIS), and countersigned by Capt. R.J.Kidston.
Exhibit "D" - A.F.B. 295.
Exhibit "E" - M.B.M. 1 Part 1.
Exhibit "F" - M.B.M. 1 Part II.

Farnborough, Hampshire,
3rd June 43.

R.K. Sullivan Major
President GCM.

No. B86326 Name ETHERIDGE D.P. Sq., Batty., or Company | Corps R.C.A.S.C. | Date of enlistment 11 Sept. 39 | Sheet No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk 12-9-40 | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Army Form B.122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order disposing with trial	By whom awarded	Remarks
Field	25 Sept 40	Pte		AFW 3011 Awarded 28 Days det. for A.W.L.		28 days det.	25-9-40		Forf 28 days pay. 149(1)(b)
Field	7-5-41	Pte		A.W.L. from 2230 hrs 12-4-41 to 1020 hrs 26-4-41 (Sec 15(1))		21 days F.P.	7-5-41		Forf 21 days pay 149(1)(b) Forf 13 days pay 149(1)(a) Forf 10 days pay 149(1)(c) (ii)
									£3-9-2

Cost of apprehension

FR 1158 (2)

[P.T.O.

Wt. 39249/793, 2m.m. 11/40, S.P. Co., 81-7951

Place	Date of offence	Rank	Cause of Dress-ensuess	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14-12 41	Pte		A.A. Sec 12 Desertion from 2300 hrs 14 Dec 41 to 1600 hrs 30 Dec 41 A.A.Sec 40 Close arrest 1600 hrs 31 Dec 41 to 1000 hrs 12 Feb 42		F.G.C.M.-Date Trial 12-2-42 Guilty on both charges. Awarded 3 years detention. Forfeitures; 729 days pay 149 (1)(b) 17 days pay 149 (1)(a) 43 days pay 149 (1)(c)(ii) Total Forf; 789 days pay.			
		Pte		Civil Court;County London Sessions; Two offences of house breaking and possessing house breaking equipment.		Date of Trial; 25 March 42 Sentence 3 years in Borstal Prison. Forfeitures: 366 days pay 149 (1)(b) and 710 days pay concurent with award of F.O.C.M. 12 Dec. 42 Release from Civil Prison 24 March 43			

BOTH CHARGES TO RUN CONCURENT.

Officer i/c Records
Cdn. A.S.F. Hqrs. Unit

CERTIFIED TRUE COPY.

M.F.B. 355
(OM—5-41 (572-3)
H.Q. 1773-39-620
A.F.B. 226

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-86326	Pte	ETHERIDGE, D.P. 1 Cdn ASC Rft Unit	

1. The following is a fair and true summary of the entries in the ~~Regimental and Company~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

~~Within the last two years~~ Since enlistment or appointment

For NIL times Sec.15(1) A.A. 2 times

For ..... times ..... times

For ..... times ..... times

For ..... times ..... times

Number of instances of gallantry or distinguished conduct

or NIL

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time 23 yrs 87 days.

or

~~The accused at the present time is under sentence for ..... beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 19 days in military custody, making a total of 19 days in custody, of which 8 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper 11 Sept 1939

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any air force decoration or reward. N/A military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number E-66326 Rank Pte Unit

Name EMBRIDGE, D.F. of 1 Con Asc Rft Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 10-2-43	Sec.12	2 yrs.	
		Sec.40	detention.	
Civil Court	London 25-3-43	Civil Offence	3 yrs.	Released from
		Housebreaking	Borstal	Prison 24 Mar
			Imprisonment.	1943.
		Both charges to run concurrent.		

Officer i/c Records
1 Cdn. A.S.C. Reinf. Unit.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with(s) is read, marked ..... signed by the president, and annexed to the proceedings.

KKK-109

PIE ETHERINGTON D.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: H 7231 Pte David Claude Etherington

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~(date)~~ beginning on ~~(date)~~ (1)

(1. ~~Insert sentence being served, or delete, if not applicable.~~ See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Nine months detention

(Sgd) Judge-Advocate, if any. 11 May 44 Date awarded. (Sgd) J.D. Horne Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 758-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the court but remit three months

I direct that the accused be not committed to prison or detention barracks until further orders.(1) Harry (1. AA 57A. Delete if not used.)

(Sgd) Harry Crerar

Date 11 May 44 Commanding 6 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
H-7231 Pte Etherington D.C.	13 May 44	A.D. Kirk Capt Adjt Canadians 6 Cdn Inf Bde

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

RECORDED AT CMHQ IN AB 160 - KKK-109

RECEIVED 1 JUN 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA21) 45/P & S/1698 (2004)

Convened by Order of Brig. H. A. Young Comd 6 Cdn Inf Bde dated 10 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Permt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H 7231	Pte	David Claude	Etherington	Can Sec GHQ 21 Army Gp

PROCEEDINGS REVIEWED
J. Rufiguelas, Capt.
23 July 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED JAG BRANCH C.M.H.Q. Date 1 JUN 1944

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 11 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 1/118

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations in NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation as made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 102-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0940 hours trial commences. JAH JAH

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ~~an interpreter?~~ Ans — JAH

~~The interpreter is sworn~~ (1). Do you object to ~~a shorthand writer?~~ Ans — JAH

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.D. Horne	RCAC attd 5 Coy
Member	Capt	M. Grand	Fus M.R.
Member	Capt	J.C. Tambum	Q.O. H. Fus M.R.
Judge-Advocate			
Prosecutor	Capt	E.R. Talbot	Can SC 6
Defending Offr	Capt	V.L. Chapin	Can SC 6

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 3.)

A8. The accused H 7231 Pte David Claude Etherington before arraignment makes(s) (no) (1) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet (3). The President records the pleas in Part I of the Schedule. JAH

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 6 JAH

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Nil.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court ~~decides (not)~~ to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2 (2).
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, and thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 70(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para. If submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 82 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 116.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40, fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Nil.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A A 163(f) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 1 and Ex 2 respectively.(3)
(*1. MFR 255 or MFR 294. 2. MFR 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7/7/
(*1. Where several accused tried separately see RP 49(B). One sentence only, comprised of the punishment or punishments laid down in AA 46, 48 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 49, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2123, 2124, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 547. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

H-7231 Private DAVID CLAUDE ETHERINGTON, THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA, a soldier in the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

In the Field, at about 0600 hrs on the 29th of March 1944, absented himself without leave until he was apprehended by Civil Authorities at Brighton at about 1030 hrs on the 24th of Apr 1944, thereby incurring expenses for his apprehension and return to the unit in the amount of £1-0-4.

Absent 26 days, 4 hrs, 30 mins.

In the Field
8 May 44

(N.H. Ross) - Lt-Col,
Comd Camerons of C

To be tried by FIELD GENERAL COURT MARIAL

Date...10 May 44.....

(H.A. Young) Brigadier
Commander 6 Cdn Inf Bde

FIELD GENERAL COURT-MARTIAL

CFAO5 (In lieu of AFAB) 40/FAB/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
H 7271	Pte.		DAVID CLAUDE	ETHERINGTON	Can of C.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Feby 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". Hary

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) Hary

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ Hary

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder~~ Hary

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	J.D HORNE	R.C.A.R.C att. S SEC R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CAPT	M. GRAVEL	4 Fd Amb. R
CAPT	J.C. PAMBRUN	C.I.C. att 7 Fd A.R

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
CAPT	J.K KEMP	S.S.A.S.A.R

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in UK (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 10 Feby 44 Commanding 6 Cdn Inf Bde. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

J.D.H.

Statement of H-7231 Pte David Claudy Etherington

I knew they were going to get rid of me because my company commander had told me so. I had three strikes on me in the unit so I decided to take a day off and forget the whole thing. I knew that because of the way he felt about me it wouldnt make any difference in their punishment if I were away one day or ten. I was on my way back to the unit when picked up in Brugelette.

Pte Etherington H7231

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can) para 577

I certify that I have this morning examined: No H-7231

Rank Pte Name Etherington, D C and in my opinion

he is fit/~~unfit~~ to undergo Trial by Court Martial.

Station Field

Date 14 May 44

F W Hayter Capt
(Medical Officer)

EXHIBIT "A"

CERTIFICATE IN ACCORDANCE WITH SEC. 163 (1)(m) of the ARMY ACT.

I certify that the person whose description is given below was arrested at (place) Preston Road at (time) 10.30am on Monday the 24th day of April 19 44 by War Reserve Constable No. 97. Dudeney

Regimental Particulars of officer or soldier referred to above.

NUMBER. H - 7[illegible]

RANK. Private

NAME. David Claude WORTHINGTON

UNIT. Queens Own Cameron Highlanders of Canada.

Description. AGE. 26 years

HEIGHT. 5' 9"

COMPLEXION. Fresh

HAIR. Brown

EYES. Blue

MARKS. ——

UNIFORM OR PLAIN CLOTHES. Plain Clothes.

Signature. [signature]
Police Const. 19.

Officer in charge of Brighton Police Station.

SUSSEX CONSTABULARY 20 APR 1944 SUPERINTENDENT'S OFFICE BRIGHTON DIVISION

EXHIBIT "A"

EXHIBIT "B"

EXHIBIT "B"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. H 2231. Rank Pte Name Edessenglow, D. Unit Queens Own Canadian Hussars

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (½ portion)	Amount		
	Escorts return fare from LONDON To Shipbuilders Yard		5	6
6 May 44	Prisoners single fare to LONDON From			
	Prisoners fare from London To Shipbuilders Yard		5	6
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

F. A. Stinson Capt.

Officer Issuing Railway Warrant and Expense monies

R. J. STINSON
ADMIN. OFFICER - D.P.M's BR.
C. M. H. Q.

No. 6 Area Provost Company, Canadian Provost Corps, [illegible]

C.M.H.Q. 1000-55
40(P & S)45(c)(297)

EXHIBIT "B" EXHIBIT "B"

Expense Voucher Re— Ref. K.R. & O. (Can) 539

Reg. No H7232 Rank Pte. Name Ellerington, D.C. Unit Camerons of Canada.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Brighton

Date	Particulars (Portion)	Amount		
25 Apr. 44	Escorts return fare from LONDON To Brighton		5	4
	Prisoners single fare to LONDON From Brighton		4	0
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		9	4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

F. H. Johnson LIEUT.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

R. J. STINSON
ADMN. OFFICER - D.P.M's BR.
C.M.H.Q.

C.M.H.Q. 1000-25
40(P & R)(485/3297)

SUMMARY OF EVIDENCE

In the case of H-7231 Pte DAVID CLAUDE ETHERINGTON, THE QUEEN'S OWN CAMERON HIGHLANDERS OF CANADA, a soldier in the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs and the accused demands that the evidence be taken under oath.

FIRST WITNESS for the prosecution: H-33086 Cpl Erickson, C.G., Camerons of Canada, having been duly sworn, states:

"Whilst acting as Coy Orderly Sjt on 29 Mar 44 at approx 0600 hrs I was making the regular reveille check up of coy personnel and found that the accused Pte Etherington, whom I now recognize, to be absent from his quarters."

The accused declines to cross-examine.

C.G. Erickson
(H-33086 Cpl Erickson, C.G.)

SECOND WITNESS FOR the prosecution: H-19136 CSM Cheetham, P., Camerons of Canada, having been duly sworn, states:

"I present"
Certificate of apprehension purporting to be signed by J.C. James, Police Sjt, Brighton Div, Sussex Police Force. (att as Exh "A")
Certificates of costs of return purporting to be signed by Lt R.J. Stinson, Adm Offr - DPMs Br, CMHQ (att as Exh "B"),
Both of which relate to the accused, whom I recognize."

The accused declines to cross-examine.

P. Cheetham
(H-19136 CSM Cheetham, P.)

The accused, having been duly cautioned in accordance with RP 4(e) says:
"I have nothing to say".

C.G. Etherington
(H-7231 Pte Etherington, D.C.)

Certified that RP 4 have been complied with.

In the Field
8 May 44

E.R. Talbot
(E.R. Talbot) - Capt,
Offr detailed to take the summary.

J.D.K.

MFM 6
(AFB 1227
40/PAS/136 (2428)

No H-7231 Name Etherington, D Regt. Battery or Company C Corps Infantry Date of enlistment 9 Jan 42 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 1 May No and date of last drunk Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc E.P. Thompson Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				LAST SHEET DESTROYED 9 JUL 42					
Terrace	9 Aug 42	Pte		AWL from 2230 hrs 9 Aug 42 to 1930 hrs 23 Aug 42 (13 days 21 hrs) Sec 15(1)	Doc'y	14 days CB	24 Aug 42	Lt-Col J.A. Wislon	forf 14 days pay
Field	20 Aug 42	Pte		AWL from 0900 hrs 20 Aug 43 to 2300 hrs 21 Aug 43 (1 day 14 hrs) Sec 15(1)	H-20358 Cpl Endert, E.	7 days pay	23 Aug 43	Lt-Col A.T. law	forf 2 days pay
Field	7 Oct 43	Pte		Conduct to the prejudice of good order and military discipline, in that he, carved names on the butt of his rifle Sec 40	H-19136 A/CSM Cheetham, F.	fined 5 days pay	20 Oct 43	Lt-Col A.T. Law	he is to pay for butt
Field	10 Nov 43	Pte		Absenting himself without leave in that he, did absent himself from 1845 hrs 10 Nov 43 to 2100 hrs 12 Nov 43 (2 days 2 hrs 15 mins Sec 15(1)	H-20772 Cpl Rhoades, J.H.	10 days pay	23 Nov 43	Lt-Col A.T. Law	forf 3 days pay

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Mar 44	Pte		Conduct to the prejudice, in that Lt P. the did appear on parade unshaven Kenway and with dirty boots Sec 40 XXXX

Substitute for AFB296
or MFB355

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No H-7231 Rank Pte Name Etherington, D.C. Unit Camerons of C

Age 24 yrs 11 months Married or Single S No of dependents Nil

Date of attestation 9 Jan 42

No of days in close arrest awaiting trial 17

Civil 7 Military 10 Hospital N/H Total 17

Dates of appointments, promotions etc (if any)

In the Field
11 May 44

[illegible] Capt
Officer IC Records
Camerons of C
Unit

"Y"
Jon

RR-73
GNR ETHIER J.F.

C-48632 Gnr Joseph Francis
ETHIER, C.T.S.

RR-23

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this NINTH day of OCTOBER 19 FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [redacted]

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the initials, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.		
Rank.	Name.	Regiment.
MAJOR	A.S. PETTAPIECE	HQ CRU
Members.		
Rank.	Name.	Regiment.
A CAPTAIN	FROM	1 CARU
A LIEUT.	FROM	2 CARU

*Must be signed personally by the officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.H. Roberts
(J.H. Roberts) Maj-Gen.,
Commanding Cdn Rft Units.
Convening Officer.

Arthur S. Pettapiece, Maj a/c

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C-48632 Gnr Joseph Francis ETHIER, RCA, C.T.S.	FIRST CHARGE Sec 18(4) A.A.	Not Guilty	Guilty	
	SECOND CHARGE (ALTERNATIVE) Sec 40 A.A.	Not Guilty	Not Guilty	Confirmed. J.W.L.
	THIRD CHARGE Sec 24(4) A.A.	Not Guilty	Not Guilty Sentenced to undergo detention for a period of Four (4) months 13 Oct 43	

See Charge Sheet Attached.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) J.W. Roberts (Signed) Peter Mettgenis Major
(J.W. Roberts) Maj-Gen., Commanding Cdn Rft Units.
Convening Officer (a) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of October 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. The officers under instruction).

were duly sworn.

*Omit if not applicable.

Signed this 11th day of October 1943.

Peter Mettgenis, Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (a) on page 762 M.M.L. 1929.

*I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 ,

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 12 day of Oct. 1943.

J.W. Roberts
Confirming Officer.
J. M. ROBERTS, Maj-Gen.
Comd Cdn Rft Units

Promulgated and extracts taken in the case of C-48632 Gnr Ethier J.F. C.T.S.

(a) (Dated) 13 October 43 (Signed) Hazel Barber Lieut. O.T.S.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No C.48632, Gnr Joseph Francis ETHIER, Royal Canadian Artillery, posted to Canadian Training School, a soldier of the Canadian Army Overseas, is charged with,

FIRST CHARGE Sec 18 (4) Army Act

When on Active Service, stealing goods belonging to a person subject to military law

in that he

at Havannah Barracks, Bordon, Hampshire, at approximately 1630 hrs on 27 Sep 43, found a Gladstone wrist watch in Ablution Room No 8, this watch being the property of C.21103, Sgt Morel, G.C., a person subject to military law, made no reasonable efforts to locate the owner, did not notify any responsible authority, and sold the watch to G.51227, Pte Byram, A., at approximately 1500 hrs on 28 Sep 43 at Havannah Barracks, Bordon.

SECOND CHARGE Sec 40 Army Act Alternative to First Charge.

When on Active Service, conduct to the prejudice of good order and military discipline

in that he

at Havannah Barracks, Bordon, Hampshire, at approximately 1500 hrs on 28 Sep 43, was in improper possession of a watch, the property of C.21103, Sgt Morel, G.C., a person subject to military law.

THIRD CHARGE Sec 24 (4) Army Act

When on Active Service, losing by neglect his equipment and regimental necessaries

in that he

at Havannah Barracks, Bordon, Hampshire, on 6 Oct 43, was deficient kit and necessaries to the value of three pounds, seven shillings and four pence (£3.7.4.)

Grant Barber

(G. Barber) Lt Col, R.A.S.C.,
A/Commandant,
Canadian Training School

Havannah Barracks,
Bordon, Hants.

7 Oct 43.

To be tried by Field General Court-Martial on the 1st and 2nd Charges only.

J.N. Roberts

(J.N. Roberts) Maj-Gen.,
Comd
Cdn Rft Units.

In the Field,
9 Oct 43

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Kaymead Barracks, Borden, Sask.
ON THE 11th DAY OF October 1943

The accused C-46632 Gnr. Ethier, J.P. Unit. C.T.S.P.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by R.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. Maj. A.J. Fitzgerald ..Unit. M.G. C.A.C.
Members. Capt. W.C. Scott .....Unit. 1 CARU
Lt. J.L. Leroy .....Unit. 2 CARU

~~The officers under instruction are duly sworn.~~ AHP
..... ~~Unit~~ ..... CHP
..... ~~Unit~~ ..... CHP

Prosecutor. Lt. K.S. McLellan ....Unit. C.T.S. .....
Defending Officer. Lt. A. Langis ...Unit. C.T.S. .....

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads guilty to the charge(s) and R.P. 35(a)~~ AHP
is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFR 355, AF3 296 and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

~~..... CHARACTER EVIDENCE and ADDRESS~~ CHP

CTS/113

MEDICAL OFFICER'S CERTIFICATE

I hereby declare that I have to-day examined:

No. C-46632, Gnr. Ethier J.P. R.C.A.

Regiment, ~~attached~~ posted to Canadian Training School and certify that I found him Medically fit/~~unfit~~ to undergo trial by Court-Martial.

11 Oct, 1943
Borden, Sask.

W.D. McLellan Capt
Medical Officer,
Canadian Training School.

(To be signed in duplicate)

The accused pleads "Not Guilty" to both charges.
R.P. 89(4) is complied with.
The Prosecutor proceeds to call witnesses.

~~The Prosecutor announces that he has no evidence to submit as to the 2nd charge~~

1st Witness for Prosecution C-21103 Lt Wood, J.C. of C.T.S. having been duly sworn, states:-

On 27 Sep 43 about 1 hrs I went into No 811 Athletic Room of Hammond Barracks and I took off my watch to wash. I washed and then went away. The Prosecutor that I had left it in the Athletic Room. This was about 10 min. after I had left the Room. The watch was not there. Next I inquired for it & then if he had seen the watch. I said he would to identify him. All I know is he was wearing a tailored and appeared to be a dispatch rider. It was a Gladstone watch and I could identify it by the wrist strap on it. I did not see the watch again until R.S.M. Finney showed it to me again a week later. I think it was a Tuesday. I identify Exhibit "A" as the watch. My loss was published in Part I order of the unit with instructions to return it to the Asst's office.

Cross-examination

I identify this watch by an extra hole being

punched in the strap

2nd Witness for Prosecution

41837 A/Sgt 37 Fiume, N.B. O.C.T.S. having been duly sworn, state:-

On 29 Sept 43 I had occasion to take the accused. I had Exhibit "A" with me. I got the outfit from Pte Byrne about 2 p.m. on 29th Sept 43. In the presence of the accused Pte Byrne. I gave him to understand to the outfit from the accused for £2-0-0. The accused did not deny the Byrne also paid that he had accepted to give the accused another £1-10-0 on pay day. This was all said in the presence and hearing of the accused whom I now recognise. Sgt. Moat also was present and he identified it as his outfit, the ~~accused had left~~. The accused did not deny this.

Cross-examination - nil

2nd Witness for Prosecution

G 51229 Pte Byrne, A. of C. T.S. having been duly sworn, state:-

On 29th Sept. 43 the accused had a outfit to sell. Exhibit "A" is the outfit. I offered him £2 and I gave him £1-10-0 and promised him 10/- the next pay day. I paid him the £1-10-0 in front of Pte. Fiume. I gave me the outfit. the next day when I demanded by Orders that the outfit was bad. I reported the whole matter to Cpl. Mullet

Eventually I turned on the water to R & M. Fiore. When the accused called me the water he told me it was his.

Cross-examination:

The accused said that he owned the water.

4th Witness for Prosecution

The Prosecutor, being duly sworn, says:-

I was the officer who took the summary. I produce the statement the accused made after the caution and oath (the Summary of Evidence)

Cross-examination

I did not caution him in French but he appeared to understand and indeed he did say that he did understand. He also said that he understood the statement when he signed. He did not tell me that he did not understand English, and in fact he does understand English as you can see.

The Prosecution is closed

R.P. 410 is complied with

The Defence proceeds to call its witness.

1st Witness for Defence

The accused, being duly sworn, states:-

The water was abandoned. I picked it up and made no attempt to conceal it. I did not know who owned it. I found it in

No 3 Ablution Room. Q. I had not thought that it was abandoned I would not have eaten it. I thought that I owned it.

Cross-examination

I did not report the finding of the water to anyone.

I left Pte Bryan in the room.

By the Court

I identify Exhibit "A" as the water I found in the ablution room.

The Defence is closed.

The Prosecutor makes a closing address (attached hereto).

The Defending Officer replies (attached hereto)

The Court is closed for consideration of finding.

The Court is re-opened and it is announced that the accused has been found "Not Guilty" of the 2nd charge.

Queens R.O. 3262 is complied with.

The Prosecutor produces the MFD353 and MFM 6 of the accused.

The Defending Officer addresses the Court (attached hereto)

The Court is closed for consideration of sentence.

Arthur L. Bettyjones
Major

Re. FGCM of C48632 Gnr Eckin J.F.

E.T.S.

Received from president of the court one Gladstone wrist watch used as Exhibit "A"

K&M Arthur Lt
CMP

Prosecutors closing Address.

Mr President.

The accused has based his actions on fact that because a watch had been left by the owner for a few moments that it was "abandoned" I would refer the court to Chapter VII. MML para 37 the definition of stealing by finding. The accused by his own admission in court has said that he made no reasonable effort to find the owner of the watch

It is therefore the opinion of the prosecution that as Ethiel made no effort to find the owner and by selling the watch within a day or so of finding it that he is therefore guilty of Stealing by finding.

K McCutcheon Lt.

CANADIAN YMCA

ON ACTIVE SERVICE

Loan of Lyn Ethier,
R.A.F.
Final address of Defence.

Sir,

The charge against Lyn Ethier is one of stealing a watch. In order to convict the accused it must be proven that he deliberately and with intent to gain ownership to his own use some thing which he had reason to believe belonged to someone else. The defence will point out that Ethier saw the watch lying, to all intents and purposes abandoned on the shelf in the washroom. There was nobody present in custody of the watch in washroom when the accused removed it. The prosecution state that it was left in washroom 8. Perhaps it is another watch that was left in washroom 8. The prosecution don't even see when the watch was left.

In his own mind Ethier was quite sure that he had obtained prope[illegible] title to it. He was reasonably certain that it had been abandoned and according to M.M. Lo page 119 para 6 sec 51 "No one can steal an abandoned article" If the person finding it or afterwards

PLEASE WRITE ON BOTH SIDES

1

it, he is not guilty of stealing it
the former owner had really abandoned
and it or if he thought he had lawfully
believed that he had abandoned it.

2 The jury's actions when and after
taking it were not those of a man
who was trying to steal a watch.
He wore it quite conspicuously, did not
make any attempt to hide or conceal
it openly and later offered it for sale openly. Does this appear to be the
action of a dishonest man? Submit that it is not.

2 The court finding identifying
marks on the watch. The owner's name
or number went engraved on the
outside and the accused opened the
watch to see if there was any number
on the inside. When even the thief of
a man who wanted to know the owner
so he could identify what he
had believed to be abandoned.

See on page 27 Pages 22 & 23 of
M.M.L. state that the intention
trial must be established. There is a
point worth considering carefully and
asking yourself closely whether the
evidence or the subsequent actions
point to "intent to steal" This fact
must be clearly established.

CANADIAN YMCA

ON ACTIVE SERVICE

He merely found ~~them~~ the watch in an abandoned condition without any name or mark on ~~them~~ it by which the owner could be found. Such being the case in his own mind the accused was honestly convinced he had property title to the watch by virtue of the method by which he obtained it and his subsequent disposal of the watch or what he did with it or to whom he sold it are immaterial and irrelevant to the case. He thought it was his and as such, I submit, being the guiding factor in the unauthorized disposition, he had every right to sell it.

I may point out at this point that the notice that such a watch had been lost did not appear in last Daily Orders until the day after Ethier had sold the watch to the Byrons. I attach a copy of School Post Daily Orders as Exhibit "A" to this defence. The date of "Exhibit A" is left out.

In his summary of evidence Ethier stated that some unknown soldier owed him on the night of the twenty-second

PLEASE WRITE ON BOTH SIDES

if the watch he was wearing was
the one he found in the washroom
Ethan answered quite openly that
it was. And he further
asked his question "Why". His question
as to whose name he does not, or did not
know, did not answer. So Ethan
didn't know the watch had been
wanted for months after he found it
and he left it till next day thinking
by might hear something about it
& not hearing anything he sold it
quite openly.

After Ethan had established in his
own mind that the watch was his, it
was immaterial and irrelevant what he did
with it, whether he sold it, left it, or
gave it away. Therefore regret that
charge two (in the alternative) be with-
drawn and as it seems to me that the
Prosecution ~~has~~ will be able to prove
intent to steal that Ethan be
acquitted on the first charge. There
doesn't seem evidence to support the
charge that Gunner Ethan stole or
intended to steal the watch as no one
can steal an abandoned article.

For the Defence.

Allen Symons Lt.
R.C.A. 6.21

CANADIAN ARMY YMCA

ON ACTIVE SERVICE R.P. 4(E)

According to ~~A.M.O.~~ A.O.R.O. 1424 the accused [illegible] a French Canadian should be cautioned in French before the investigation of the charge by the commanding officer and before the accused makes any voluntary statement and when the summary of evidence is taken. I submit, the proof of the warning should show that this has been done.

You will observe that the record does not show this has been done. The interpreter did not understand the question put to the witness, what it was for or if he knew that anything he said was being given in evidence. I submit he did not understand what the witness were talking about and as no French interpreter was present at any of the investigation or summary of evidence [illegible] he did not know what was happening or was being said. The whole case is shaky as it appears to me. You can't charge a man in a language he doesn't understand and admit his evidence to be admissible especially when he has not been cautioned in a language he understands.

PLEASE WRITE ON BOTH SIDES

I have checked to me regarding when the watch was abandoned and found it was in Ablution room 3 that Thurdin found it. On examining the watch there was identifying marks on it to indicate ownership and also opened the back of it to me I there was engraving marks to show to whom it belonged. Finding none more he assumed it had been abandoned and so aquired possession and what he had on his own mind thought was proper title to it.

In order to prove that he knew that he was not holding still had title proper to the article. While the subsequent actions do not indicate that he tried to hide the watch or conceal it, but he wore it for a whole day and then quite openly held it to Mr Ingram showing that he thought and by conversation in his own mind that he was the owner of the watch.

The matter about the watch having missing did not appear in D. C. Court until the 29 Sept. the day after the had [illegible] and the watch to Ingram.

CANADIAN YMCA

ON ACTIVE SERVICE

Pte in Internment.

Gunner Ethan Joseph Abraham. Army in Sept 1942. He has assigned $23.00 per month home to his mother who, despite straitened circumstances has not yet been able to draw dependents allowance. Ethan has made application for the same but has not yet heard of successful result.

His family history as it affects him personally is rather a tragic one. His father, a veteran of the last war in which he was a metal plate in his head as a result of war wounds is at present in a civil prison serving a life sentence on a charge of acting in which he was found to be irresponsible and a danger to society. Ethan was a child of seven when his father was imprisoned for attack on his Mother.

Before being imprisoned Ethan's father had displayed a bent for organized crime. This led to his acquiring a criminal record which led him to such things as breaking

PLEASE WRITE ON BOTH SIDES

jewellery windows and removing
watches and similar glittering objects.
He never attempted to conceal them
but carried them openly. He had
also been known to break open
windows and steal the glittering
glass frames that adorn display
in this type of tradesman's window.
Ethics Bathy seemed to be
certain that all bright, glittering
objects were for his rich amusement
The fantasy I presume was a result
of his mental affliction.
I request the court to take this
into consideration in how it might
affect Ethics actions.

For the defense
Allan Sanger 1st.
R.C.A.

EXTRACT FROM OVERSEAS RO

1424 - MILITARY LAW - CAUTION IN FRENCH UNDER R.P. 4 (E)

1. The following is the translation of the caution laid down in R.P. 4 (E), which will appear in the edition in French of M.M.L. now in course of preparation.

2. It should always be used when the accused is a French-Canadian, both in the investigation of the charge by the Commanding Officer before the accused makes any voluntary statement, and in the taking of a summary of evidence. The record of the summary should show that it has been used in such cases.

3. Translation:- Desirez-vous faire une declaration ou rendre temoignage sous serment? Vous n'etes pas oblige de dire quoi que ce soit ni de rendre temoignage a moins que vous ne le desiriez mais tout ce que vous direz ou toute deposition que vous ferez sera pris par ecrit et pourra servir de preuve.

(29-/Summaries/1).

Exhibit B
for defence of
Lyn; & Athe.

DAILY ORDERS
BY
LT.-COL. F. BARBER, MC, DCM, R.M.R.RANG
A/CO RAYDENT
CANADIAN TRAINING SCHOOL

PART I ORDERS — WED 29 SEP 43 — NO 230

1. BLACKOUT: Commences..... 1913
Ends..... 0629

2. DETAIL OF DUTIES:

Field Officer of the Day - 29 Sep 43 - Capt G.N. Bowman
Next for Duty - 30 Sep 43 - Capt W.A. Dalrymple
Next for Duty - 1 Oct 43 - Capt R. Kenworthy
Next for Duty - 2 Oct 43 - Major C.J. Peckham

Orderly Officer of the Day 29 Sep 43 - Lt. G.V. Redd
Next for Duty -30 Sep 43 - Lt. I.W. Burrows
Next for Duty -1 Oct 43 - Lt. J.H. Jamieson
Next for Duty -2 Oct 43 - Lt. R.F. Twiss

Orderly Sergeant of the Day - 29 Sep 43 - S/Sgt Parkins, A.H.
Next for Duty - 30 Sep 43 - Sgt Poyner, A.J.
Next for Duty - 1 Oct 43 - Sgt Rhodes, J.L.
Next for Duty - 2 Oct 43 - Sgt Ritchie, S.D.

Orderly Corporal of the Day - 29 Sep 43 - L/Cpl Stills, W.
Next for Duty - 30 Sep 43 - Bdr Horan, G.F.
Next for Duty - 1 Oct 43 - Cpl Elgar, R.J.
Next for Duty - 2 Oct 43 - Cpl Low, J.

3. OUT OF BOUNDS:

1. Effective forthwith the wooded property known as "The Park" immediately behind Alexandra Fish Saloon, Borden and NE of rd junc 235549 is placed out of bounds to all rks.

EXHIBIT "A" for the defense.

S A MacKay Capt
(S.A. MacKay) Capt., Can Int
Adjutant,
Canadian Training School

NOTICE

LOST: Silver Gladstone wrist watch in Adjutants Room in No 1 Wing. Brown leather strap. Finder please return to Adjutant.

/AM

CTS/74

CANADIAN TRAINING SCHOOL
Canadian Army Overseas
Records Office

.....194.....

To/
Officer Commanding,

REQUEST FOR DOCUMENTS (First/Second request)

1. May documents, as indicated, for the u/m, presently ON STRENGTH/ATTACHED this Unit, be forwarded please.

EXHIBIT "U" for [illegible]

JHD/RWW
DRLS/post

(C.W.DEVEY) Colonel, Ld. S.H.,
Commandant, Canadian Training School.

CTS/74

CANADIAN TRAINING SCHOOL
Canadian Army Overseas
Records Office

.....194.....

To/
Officer Commanding,

REQUEST FOR DOCUMENTS (First/Second request)

1. May documents, as indicated, for the u/m, presently ON STRENGTH/ATTACHED this Unit, be forwarded please.

(C.W.DEVEY) Colonel, Ld. S.H.,
Commandant, Canadian Training School.

JHD/RWW
DRLS/post

EXHIBIT "J"

CANADIAN SPIRIT YMCA

ON ACTIVE SERVICE

6-10-43

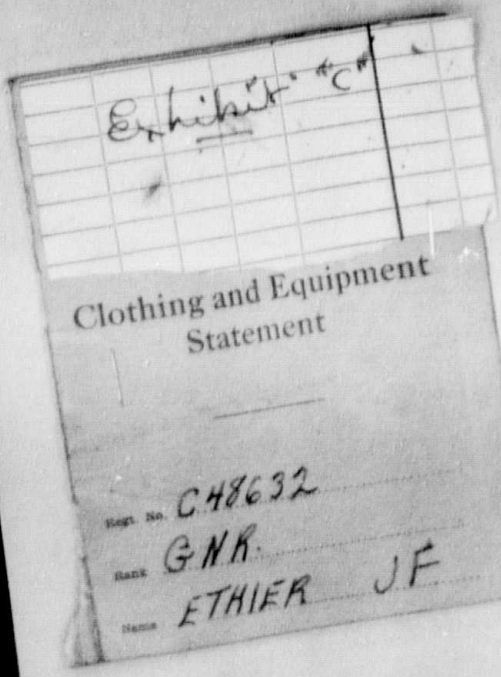
The following articles were found to be deficient in the kit of Pte 6th Mtr. R.C.A at inspection held in the Guard room Canadian Training School on this date;

Battle Dress Blouse	(1)
Drawers Woollen	(2)
Socks	(1)
Vests Woollen	(2)
Badges hat	(1)
Dressing Field	(1)
Housewife	(1)
Knives Clasp	(1)
Shorts Lyon	(1)
Mint Tins	(3 tins)
Belts Waist	(1)
Outfits Anti-dim	(1)

Allan Singer, Lt.
R.C.A.

Adm Offr Canadian Trg School.

PLEASE WRITE ON BOTH SIDES


Exhibit "C"

Clothing and Equipment
Statement

Regt. No. C48632
Rank GNR
Name ETHIER J.F.

Exhibit "B"

School Quartermaster Stores

6 Oct 43

1. The following is a list of deficiencies found at a kit inspection C-48632 Gnr Ethier J.F., taken this date(6 Oct 43).

2.

Blouses,Battle Dress	1	@ 27/8	£ 1. 7. 8
Drawers woollen prs.	2	@ 5/3	10. 6
Socks Prs.	1	@ 1/8	1. 8
Vests, Woollen	2	@ 5/1	10. 2
Badges, Cap	1	@ 8d	. 8
Dressings, Field	1	@ 1/1	1. 1
Housewife	1	@ 2/3	2. 3
Knives, Clasp	1	@ 5/2½	5. 2½
Shorts, Cyman	1	@ 1/11	1. 11
Unit Titles	½ 3 Prs	@ 9/7	1. 9
Belts, Waist,small	1	@ 4/4	4. 4
Outfits, Anti-Dim.	1	@ 0/1½	. 1½
		TOTAL----------	£ 3 - 7 - 4.

J.E. Ethier

U 1661 CAPT THOMSON, R.M.

List Of Exhibits: - "B" List of deficiences with price
"C" K.F.B. 1 Part III
"D" List of deficiences.

List of Exhibits - "A" Gladstone wrist watch.

List of Witnesses:
For the Prosecution - C- [illegible]
U-1001 Cpl. Thomson, K.E.
Lieut. S.A. Singer
Both of C.I.S.

List of Witnesses:
For the Prosecution - C-21103 Sgt. Merel, C.C.
U-1637 A/RSM H.H. Finnie.
C-51227 Pte. Byram, A.
D-13529 Bdr. Rosch, K.F.
C-18745 Pte. Fraser, W.L.
D-32015 Cpl. Povey, C.L.
R-86310 Sgt. Bigley, G.
M-15570 CSM. B.H. Summers.
all of Canadian Training School.

SUMMARY OF EVIDENCE

in the case of,
C-48632 Gnr. Joseph Francis ETHIER, R.C.A.,posted to Canadian Training School, Havannah Barracks, Bordon, Hants.

The Commanding Officer, Lt.-Col., F.Barber, M.C., D.C.M., Canadian Training School, directs that the evidence be taken on oath:

1st Witness for the Prosecution. C-21103 Sgt. Morel, G.C., Cameron Highlanders of Ottawa, posted to Canadian Training School, having been duly sworn, states:

I am C-21103 Sgt. Morel, G.C., posted to No.1 Wing, C.T.S.

On Monday 27 Sep 43., at approximately 1830 hrs. I went into No.8 ablution room to wash and I removed my wrist watch and placed it on the shelf. Then I went back to my room and about 10 minutes later I missed my watch and went back to the ablution room to get it. I could not find my watch and asked a man there if he had seen it or anyone taking it. He said "no"

I then reported the loss to R.S.M. Finnie, and the next day I had a notice published in Part I Orders to the effect that my watch was lost.

On Wednesday 29 Sep 43., R.S.M. Finnie showed me a watch which I identified as my missing watch.

In the afternoon of 29 of Sep 43., I was called to Admin Wing Orderly Room where R.S.M. Finnie,C.S.M. Summers asked me to again identify the watch, which I did. I was then ordered to appear at 0830 hrs. next day for Orders.

Question by Officer taking Summary:

Q."Do you recognize this article?"
A."Yes, that is positively my watch".
Q."Are there any definite marks?".
A."Yes, the wrist strap was put on by S/Sgt.Barnard when he repaired the watch, and I put in an extra hole to make it fit. Also, the name, Gladstone".
(Watch marked Exhibit "A")

The accused declines to cross examine this witness.

C-21103 Sgt. Morel, G.C.
C.M.of C.

2nd Witness for the Prosecution. U-1837 A/R.S.M. R.M. Finnie, R.C.E., posted to Canadian Training School, having been duly sworn, states:

I, U-1837 A/R.S.M. R.M. Finnie, am R.S.M. OF No.1 Wing, C.T.S.

On the 27 sep 43., Sgt. Morel reported that his watch had been stolen from No.8 ablution room. On Wednesday,29 sep 43., at 0915 hrs.,Cpl. Hall of Admin Wing reported that Pte. Byram had bought a watch from a man whose name he did not know, and that the description was the same as the watch notified in Orders as being lost.

I then went with Cpl. Hall to Pte. Byram in the cook house. Byram showed me the watch and it was the same as the one Sgt. Morel reported lost. I took it to have it identified.

At approximately 1300 hrs. I had Pte. Byram Bdr. Roach, Sgt. Morel, Gnr. Ethier in the office of C.S.M. Summers. This was the first time I had seen the accused whom I now recognize.

I then said to Ethier,"Where did you get the watch?"

He replied, "I found it".
I then asked him, "Where?"
To which he said, "I am not sure, I think I found it in a wash house".

SUMMARY OF EVIDENCE in the case of C-48632 Gnr. ETHIER,F.F.

2nd Witness for the Prosecution, continued.

I asked him which wash house. He said, "The one near your office". This is ablution room No.8.

I then asked him when he found it and he said, "When I was washing out your office." This office is No.1 Wing Orderly Room.

I then asked him why he kept the watch and why he sold it.

He replied, "I kept it a couple of days and no one asked for it, so I thought I'd sell it."

I then said,"Don't you think it would have been wiser to take it to someone responsible and try to have the owner found?"

He said,"No, because no one did that when I lost my watch".

I then asked Pte. Byram if he recognized the watch in my hand as the one he bought. He did. I asked him how much he paid for the watch.

Byram said,"Two Pounds, one pound ten down and the other ten shillings on pay-day".

Byram then said,"I asked Ethier where the watch had come from when I bought it and Ethier said he had brought it from Canada".

Then Byram told me he had again checked with Ethier in the morning of 29 Sep 43., and had again been told that it had come from Canada.

I then asked Sgt. Morel if he had ever seen this watch before, and he replied,"Yes, it is mine".

I then asked him how he could tell it was his. He said "It is a Gladstone, secondly, the strap had an extra hole which I made myself, thirdly, the strap is a new one which had just been put on when the watch was repaired.

I then ordered C.S.M. Summers to [illegible] a charge against the man and place him in cl[illegible]r-est.

The accused declines to cross examine this witness.

U-1837 R.H. Finnie, A/R.S.M.
R.C.R.

3rd Witness for the Prosecution.

G-51227 Pte. Byram, A., Carleton & York Regiment, posted to Canadian Training School, having been duly sworn, states:

"I am G-51227 Pte. Byram, A., of the Carlt & York R., posted to the C.T.S.,Admin Wing.

On the 28 Sep 43., at approximately 1500 hrs. I went into the main kitchen where I am employed. I saw the accused, Gnr. Ethier, J.F. whom I now recognize, show a watch to the cooks and fatigue men present. I then asked Gnr. Ethier, J.F. how much he wanted for the watch. He replied £2-0-0(Two Pounds). As all I had was £1-10-0(One Pound Ten Shillings), I offered it to him, and told him I would give him the other ten shillings on pay day. He agreed to this and I took the watch and gave him the money later in the presence of Pte. Fraser, W.L. The following day (29 Sep 43). Cpl. Povey told me a watch similiar to the one I bought was reported on Part I Orders as being lost from ablution room No.8, in CCTU Wing. I then went to Bdr. Roach and asked him to take me to the Orderly Room to enquire about the watch. Cpl. Hall, H.W. in the Adm.Wing Mail Room went and got A/R.S.M. Finnie, as there was no one in Adm.Wing Orderly Room at the time. A/R.S.M. Finnie took the watch and had it identified by the owner.

SUMMARY OF EVIDENCE in the case of C-48632 Gnr.ETHIER,J.F.

3rd Witness for the Prosecution, continued.

On the afternoon of the 29 Sep 43., I saw Gnr. Ethier and asked him,"What about that watch you sold me, was it yours or a watch you found?".
He answered, "The watch was mine, I brought it from Canada".
As I did not know Ethier's name, I got Sgt. Bigley to come to the kitchen and point out the man who had sold me the watch, he is the man now present".

Question by Officer taking Summary:
Q. Do you recognize this article?
A. Yes, it is the watch that I bought from Gnr. Ethier.
(Exhibit "A"
The accused declines to question witness.

A Byram
C-51227 Pte. Byram, A.
Carlt & York R.

4th Witness for the Prosecution.

D-13529 Bdr. Roach, M.F., R.C.A., posted to Canadian Training School, having been duly sworn, states:

I am D-13529 Bdr. Roach, M.F., posted to C.T.S. as a cook.
On 28 Sep 43., at approximately 1430 hrs. Gnr. Ethier whom I now recognize came into the kitchen with a watch which he wanted to sell. He showed it to 4 or 5 of us who were standing in the kitchen. Pte. Byram, a cook there said that he would like to buy it, but he didn't have enough money. After a discussion on it, Pte. Byram asked Ethier if he would take One Pound Ten Shillings cash and Ten Shillings on pay day. Ethier agreed to this.
Next morning(29 Sep 43) Cpl. Povey told me that there was a watch lost exactly like the one which Byram had bought.
I then took Byram to the Orderly Room to report the watch,we reported to Cpl. Hall. Later A/-R.S.M. Finnie came to the kitchen to talk to Pte. Byram.
That afternoon I went to C.S.M. Sumner's office with Pte. Byram. A/R.S.M. Finnie questioned Ethier as to where he had got the watch and Ethier said he found it in a wash room.
I was then ordered to appear for Orders at 0830 hrs. on 30 Sep 43.
The accused declines to question this witness.

M J Roach
D-13529 Bdr. Roach, M.F.
R.C.A.

5th Witness for the Prosecution.

C-18745 Pte. Fraser, W.L., Carlt & York R., posted to Canadian Training School, having been duly sworn, states:
I am C-18745 Pte. Fraser, W.L., posted to C.T.S. and am employed as a cook in the men's mess.
On 28 Sep 43(afternoon) I was in the main kitchen when I heard Pte. Byram offer to buy the watch that Ethier had for sale, but he didn't have enough money. I then gave Pte. Byram ten shillings which I owed him. Later in the afternoon in C.R. 21 I loaned Pte. Byram a further ten shillings and I saw him pass it to Ethier.
I then left the room and know of nothing further that took place.
The accused declines to question this witness.

W L Fraser
C-18745 Pte. Fraser, W.L.
Carlt & York R.

SUMMARY OF EVIDENCE in the case of C-48638 Gnr. Ethier, J.P.

6th Witness for the Prosecution.

D-32015 Cpl. Povey, G.L., R.C.C.S., posted to Canadian Training School, having been duly sworn, states:

I am D-32015 Cpl. Povey, G.L., posted to C.T.S. and employed as Cpl. Butcher.

On 29 Sep 43., at approximately 1130 hrs. I was in the main kitchen of C.T.S. and Pte. Byram showed me a watch which he had bought. I went from the kitchen to the hallway where School Orders are posted. I noticed on Part I Orders where a watch had been lost. The description tallied with that of the one that Pte. Byram was wearing.

I went back and a gain looked at the watch and was further convinced tha t it was the watch in question on the Orders. Then, in the company of Bdr. Roach and Pte. Byram we again went to read the Orders. Then, deciding that it must be the watch, Bdr. Roach and Pte. Byram went to Admin Wing Orderly Room to report the matter.

S.L Povey

D-32015 Cpl. Povey, G.L., R.C.C.S.

7th Witness for the Prosecution.

B-88310 Sgt. Bigley, G., 2 Div. Sup. Bn.(Tor Scot)posted to Canadian Training School, having been duly sworn, states:

I am B-88310 Sgt. Bigley, G.,2 Div.Sup.Bn. (Tor Scot)posted to C.T.S. and I am employed as General Duties Sgt. in Admin Wing, C.T.S.

On the afternoon of 29 Sep 43., I was detailed by C.S.M. Summers of Admin Wing, C.T.S. to accompany Pte. Byram to the NAAFI to name the man Pte. Byram claimed to have bought the watch from.

We found him in the main kitchen getting hot water and I identified his as Gnr. Ethier whom I recognizedas the accused now present.

Question by Officer taking Summary:

Q. "How do you know Ethier?"
A. "All generalmen pass through my control and I know Gnr. Ethier from personally detailing him to various fatigues".

G Bigley Sgt

B-88310 Sgt. Bigley, G.,2 Div.Sup.Bn(Tor Scot)

8th Witness for the Prosecution.

M-15770 C.S.M. Summers, B.E.,Loyal Edmonton Regt.,posted to Canadian Training School, having been duly sworn, states:

I am M-15770 C.S.M. Summers,B.E. of Loy.Edmon. Regt. and am C.S.M. of Admin Wing, C.T.S.

On 29 Sep 43., at approximately 1300 hrs A/R.S.M. Finnie came in and told me one of my cooks, Pte. Byram had purchased a watch from some person unknown at the time and there was every reason to believe that the watch was one which had been left in an ablution room by a Sgt. in No.1 Wing. With him was Pte. Byram who said the man was working in the NAAFI. I went Sgt. Bigley with Byram to bring the man to my office. They returned with Ethier whom I now recognize as the accused.

On being questioned by A/R.S.M. Finnie, Ethier stated he had found the watch in an ablution room while working as a defaulter in No.1 OCTU Wing. Ethier said he had found it about 3 days previous and as no one made any enquiries, he had sold it to Byram.

SUMMARY OF EVIDENCE in the case of C-48632 Gnr. Ethier, J.F.

5th Witness for the Prosecution, continued.

I was ordered by A/R.S.M. Finnie to lay a charge against Gnr. Ethier and I placed him in close arrest.

The accused declines to question this witness.

B.R. Summers.
L-15570 C.S.M. Summers, B.R.,
Loy.Edmon.Regt.

The accused, C-48632 Gnr. ETHIER, J.F. was then warned in accordance with R.P. 4(e).

"Do you wish to make any statement or give evidence on oa th? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence?"

"I wish to make a statement under oath".

~~6th Witness for the Prosecution~~

C-48632 Gnr. Ethier, J.F., R.C.A., posted to Canadian Training School, having been duly warned and sworn, states:

On the 27 Sep 43., I was working on Field punishment which I started at 1600 hrs. At approximately 1630 hrs. I went to No.8 ablution room and got some hot water to wash R.S.M. Finnie's office. At that time I saw the watch on the shelf under the mirror and then I looked around and there was no one there so I took the watch and went back to R.S.M. Finnie's office and continued my work.

At approximately 2100 hrs. I was leaving for the Guard room to report. On my way to the Guard room I put the watch I found on my wrist. Beside me was another Defaulter who I know well but I don't know his name. He asked me, "did you find that watch in the wash room?"

I said "Yes, how do you know?", but he did not answer me.

If he had answered my question I would have taken it back the same night after defaulters parade. So, I didn't know and kept the watch until I will hear something about the missing watch or someone comes for it.

On 28 sep 43., in the afternoon at approximately 1400 hrs. I went to the main mess and asked if anyone wanted to buy a watch.

One of the cooks told me to see Bdr. Roach. Bdr. Roach asked me to open the watch to see the inside. Then Pte. Fraser, W.L. came to me and told me that if the Bdr., Roach, was not going to buy the watch he would, and offered me £2-0-0.(Two pound) plus his ring.

Then Pte. Byram came in the mess and took a look at the watch and asked me how much I wanted for it. I replied,

"2-0-0(Two pound)".

He said,

"The only thing I can do is to give you a £1-10-0.(One pound ten shillings)now and £0-10-0(ten shillings) the fifteenth". He told me to take it or leave it.

So I turned to Pte. Fraser and told him I would sell it to Pte. Byram as he had cash. Then we went up to B.R. No.21 and Byram gave me three ten shilling notes. Afterwards he offered to me a pair of brown boots and me to give him ten shillings, and we would call it square. I said no, just the cash.

Then I went back to my duties.

SUMMARY OF EVIDENCE in the case of C-48632 Gnr. ETHIER, J.F.

~~6th Witness for the Prosecution.~~

The next day Sgt. Bigley took me from the kitchen to the Orderly Room and R.S.M. Pinnie called me over and showed me a watch and asked me if it belonged to me. I said to him, "in a way, yes, and in a way, no" He asked me what I meant and I told him, "Sir, I found that watch the night I was working in your office".

Then he asked me why I sold it.

I told him I waited and on one claimed it. C.S.M. Summers asked me why I didn't read Orders that day, that they said a watch was missing and to be turned in to the Adjutant's offices.

I then told him, "Sir, last night I was on Field punishment and did not have time to read the Orders".

Then the C.S.M. told the C.S.M. to put me under close arrest.

J. Ethier

(C-48632 Gnr. Ethier, J.F.)
R.C.A.

I hereby certify that the foregoing Summary of Evidence was taken down by me in writing on the 1st day of Oct 43 at Canadian Training School, in the presence and hearing of the accused, and that R.I. 4(c)(d)(e)(f) and (g) have been complied with.

K.McArthur

(K.S. McArthur)Lt., RCASC.,
Canadian Training School.

All

Savannah Barracks,
Bordon, Hants'ire.
4 Oct 43.

SUMMARY OF EVIDENCE in the case of C-45632 Gnr.ETHIER,J.F.
Supplementary evidence on second charge.

10th Witness for the Prosecution.

U-1661 CQMS Thomson, K.H. 2 Div.Sup. Bn.(Tor Scot),P posted to Canadian Training School, having been duly sworn, states:

I am U-1661 CQMS Thomson,K.H. and am employed as CQMS of Admin Wing. I took a kit inspection of Gnr. Ethier on 6 Oct 43., and found him deficient the following items, valued at £3-7-4.

Battle Dress:Blouse,	1 @	£1. 7. 8.	-£1. 7. 8
Drawers,woollen, prs.	2 @	5. 3	10. 6
Socks, "	1 @	1. 8	1. 8
Vests,woollen,	2 @	5. 1	10. 2
Badges,Cap,	1 @	8	8
Dressings,Field,	1 @	1. 1	1. 1
Housewive,	1 @	2. 3	2. 3
Knives,clasp,	1 @	5. 2½	5. 2½
Shorts,gym, "	1 @	1.11	1.11
Unit Titles "	1 @	7	1. 9
Belts,waist,small	1 @	4. 4	4. 4
Outfits,anti-dim.	1 @	1½	1½
		TOTAL.....	£3-7-4.

Exhibit "B"

I also present Gnr,Ethier's N.P.B.I, Part III. (Exhibit "C"

The accused declines to cross examine this witness.

U-1661 CQMS Thomas,K.H.,2 Div.Sup.Bn.(Tor Scot)

11th Witness for the Prosecution.

Lt. S.A. Singer, R.C.A., attached to Canadian Training School, having been duly sworn, states :

I am Lt. S.A. Singer, R.C.A. and am employed as Administrative Officer in Admin Wing, C.T.S. On 6 Oct 43., I accompanied CQMS Thomson of Admin Wing Stores to the guard room where we made a kit inspection of Gnr. Ethier's kit and found the following items were deficient:

Battle Dress: Blouse	-	1
Drawers,woollen,	prs.-	2
Socks,	"	1
Vests,woollen		2
Badges, Cap.		1
Dressings, Field.		1
Housewive.		1
Knives, Clasp.		1
Shorts,gym,	"	1
Unit Titles	"	3
Belts,waist,small		1
Outfits,anti-dim.		1

Exhibit "D"

The Accused declines to cross examine this witness.

Allan Singer, Lt.
Lt. S.A. Singer,
R.C.A.

The accused,C-45632 Gnr.ETHIER,J.F. was then warned in accordance with R.F. 4(e).

"Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence?"

SUMMARY OF EVIDENCE in the case of C-48632 Gnr. ETHIER, J.F.

7. A. "I do not wish to make a statement at this time".

J. Ethier.

(C-48632 Gnr Ethier, J.F.)
H.C.A.

I hereby certify that the foregoing Summary of Evidence was taken down by me in writing on the 6th day Oct 43 at Canadian Training School, in the presence and hearing of the accused, and that R.P. 4(c)(d)(e)(f) and (g) have been complied with.

K Sm'Arthur

(K.S. McArthur) Lt., RCASC.,
Canadian Training School.

Arthur L. Pettapiece
Major

Savannah Barracks
Borden, Hampshire.
6 Oct 43.

M.F.M. 6
(A.F. B.127)
40/P & /8136 (1665)

SHEET DESTROYED 5 May 43.

No. C.48632 | Name ETHIER, J.F. | Sqn., Battery, or Company: Corps A-1, C.A.T.C. | Date of enlistment: 11 Sept 42 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Petawawa	30 Mar 43	Gnr		AWL from 0600 hrs 30 Mar 43 until surrendering himself at Toronto Ont at 2150 hrs 31 Mar 43 Cost of Apprehension $ 20.31 Losing clothing and equipment $ 26.43	Documentary	168 hrs Detention	6 Apr 43	F V M Hinman Lt-col R C ACA	2 days F R & I
Petawawa	2 May 43	Gnr		(1) Failing to appear at place of parade ordered by his Commanding Officer. Sec 40 AA	Sgt Cooper R.F.	3 days C.B.	3 May 43	Lieut GGG Reynolds, R.C.A.	
				Special Leave & Furlough Warrant issued		May 8 1943		D.C. Bysell Lt. C C "G" BATTERY CATC(A-1)	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12 Aug 43	Gnr		WOAS Conduct to the prejudice etc was found urinating in the shower	Bdr MacFarlane,D.H.	7 days C.B.		Major W.G. Hanson MC	
Field	20-9-43	Gnr		A.A.Sec 40 Cond Prej etc at 0805 29-9-43, appeared on regt'l Parade with dirty boots	Cpl Harris,F.H.	7 Days C.B.	21-9-43	Major E.C. Peckahm	Allan Singer Lt.
Field	21-9-43	Gnr		A.S. Sec 15 (1) AWL From Defaulters Parade at 1800/21/9/43	Documentary Gnr Barton,D.A. CSM Summers,B.R.	14 days F.P. 14 days Pay	23 Sep 43	Major E.C. Peckahm	
Field	28-9-43	Gnr		AA Sec 15(1) AWL From Defaulters Parade at 1800/28/9/43	L/Bdr Willis,J.C. Documentary	28 Days F.P. 28 Days Pay	29 Sep 43	Major E.C. Peckham	

CERTIFIED TRUE COPY

Allan Singer Lt.
for E.C. Peckham Maj

M.F.H. 355
3254—5-41 (572-2)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
C-48632	Gnr	Ethier J.F.	R.C.A.

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec.15(1)	5 times	times
For Sec.24(2)	1 times	times
For Sec.40	5 times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

or,

~~THERE ARE NO ENTRIES IN THE CONDUCT SHEETS OF THE ACCUSED.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial *or* a civil court, of summary awards under ~~Air Force Act~~ ~~A.A. 73~~ Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. ~~THE ACCUSED IS NOT UNDER SENTENCE AT THE PRESENT TIME~~

or,

The accused at the present time is under sentence for 28 days F.P. beginning on the 28 day of Sept 43

4. The accused has been in confinement awaiting trial on the present charges, for 13 days in civil custody, and ~~Nil~~ days in military Air Force custody, making a total of ~~13~~ days in custody, of which ~~Nil~~ days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 19 yrs 5 mos

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 11 Sept 40

7. ~~The service which the accused is allowed to reckon towards discharge is~~

8. The accused is entitled to reckon 1 yrs service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~for which he is in possession of or entitled to~~. State any ~~air force~~ military decoration or reward. NIL

10. ~~(If the accused is a warrant officer.)~~ The accused ~~before he was made a warrant officer~~ has held ~~the following rank~~ Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated..... and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused: Number..... Rank..... Unit Regiment Name..... of.....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Eleventh day of October 1943.

Allan Finegan. Lt. R.C.A.

The above statement with the schedule of convictions and of cases in which trial has been dispensed with is read, marked Exhibit "S" to the evidence of Maj. signed by the president, and annexed to the proceedings.

RECEIPT FOR SUMMARY OF EVIDENCE AND CHARGE SHEET

I, No. C-48632 , Gnr , Ethier Joseph Francis
R.C.A. Regiment
~~attached~~/posted to Canadian Training School, hereby admit receipt of a copy of the Summary of Evidence in the forthcoming case against me, and state that my rights under Rules of Procedure 14(b) in the Manual of Military Law as to preparing my defence have been explained to me by Capt D.A. MacRae

I also admit receipt of a copy of the Charge Sheet in the said case and state that said Charge Sheet has been explained to me in accordance with Rules of Procedure 15(b) by the above mentioned Officer. This Summary of Evidence and Charge Sheet have been handed to me and explained this 7 day of October 1943 at 1710 hours.

J. J. Ethier.

(To be signed in duplicate)

To/
Commandant,
Canadian Training School.

With reference to my pending trial by Field General Court-Martial,

(a) ~~I propose to call counsel for the purpose of commenting on evidence.~~ @

(b) I wish @ ~~to call witnesses~~ that an officer be assigned to act as defending officer.

(if either) @

(or)@

Lt. A A Sunyer adm HQ is available, I wish that he may be assigned for this purpose)

7 Oct 1943 J Ethier.
Gordon, Hants.

(to be signed in duplicate)

@ Delete where necessary

CHARGE SHEET

The accused No C.48632, Gnr Joseph Francis ETHIER, Royal Canadian Artillery, posted to Canadian Training School, a soldier of the Canadian Army Overseas, is charged with,

FIRST CHARGE
Sec 18 (4) Army Act

When on Active Service, stealing goods belonging to a person subject to military law

in that he

at Havannah Barracks, Bordon, Hampshire, at approximately 1350 hrs on 27 Sep 43, found a Gladstone wrist watch in Ablution Room No 8, this watch being the property of C.81103, Sgt Morel, G.C., a person subject to military law, made no reasonable efforts to locate the owner, did not notify any responsible authority, and sold the watch to C.81287, Pte Byrne, A., at approximately 1500 hrs on 28 Sep 43 at Havannah Barracks, Bordon.

SECOND CHARGE
Sec 40 Army Act Alternative to First Charge.

When on Active Service, conduct to the prejudice of good order and military discipline

in that he

at Havannah Barracks, Bordon, Hampshire, at approximately 1500 hrs on 28 Sep 43, was in improper possession of a watch, the property of C.81103, Sgt Morel, G.C., a person subject to military law.

THIRD CHARGE
Sec 24 (4) Army Act

When on Active Service, losing by neglect his equipment and regimental necessaries

in that he

at Havannah Barracks, Bordon, Hampshire, on 6 Oct 43, was deficient kit and necessaries to the value of three pounds, seven shillings and four pence (£3.7.4.)

Jean Barber
(J. Barber) Lt Col
A/Commandant,
Canadian Training School.

Havannah Barracks,
Bordon, Hants.

7 Oct 43.

To be tried by Field General Court-Martial on the 1st and 2nd Charges only.

(J.H. Roberts) Maj-Gen.,
Comd
Cdn Rft Units.

In the Field,
9 Oct 43

48. 8

Bte Ettinger J. f.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: S 52762 Private James Ira Ettinger

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence to~~ for (FF) ~~beginning on (date)~~ (FF) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labor for one (1) year

(Sgd) ..... 16 Jan 45 (Sgd) I F Douglas Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is

I confirm the finding and sentence but remit six months imprisonment

I (direct that the accused be not committed to prison or detention barracks until further orders.) (1) (Sgd) .....

(1. AA 57A. Delete if not used.)

JAN 24 1945 COMMANDER

Date ..... Commanding 1 CDN BASE RFT GROUP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
S 52762 Pte Ettinger J I	26 Jan 45	L L Crawford
WNSA (CMCBAP)		2 Cdn Reinforcement Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 45-5

FIELD GENERAL COURT-MARTIAL CFA96 (To lieu of AFA3) 40 P & R (1808) (2864)

Convened by Order of 2 Lt Col L J Flynn Comd 4 Cdn Armd Bde dated 11 Jan 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
S 52762	Private	James Ira	Ettinger	4 Cdn Armd Bde 1 CBRG

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 16 Jan 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2H-49

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (1) (FF)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ (FF) ~~an interpreter?~~ Ans ~~No~~ (FF)

~~The Interpreter is sworn.~~ Do you object to 52323 Sgt Rodgers S H as shorthand writer? Ans No Sir

~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused. President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	I F Douglas	4 Cdn Armd Bde
Member	Capt	J A Cunningham	4 Cdn Armd Bde
Member	Capt	W Zwig	4 Cdn Armd Bde
Judge-Advocate			
Prosecutor	Capt	H S Hoppe	4 Cdn Armd Bde
Defending Offr	2 Lieut	J Belanger	4 Cdn Armd Bde

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) cxcl fn 2 were not followed. See D1.)

A8. The accused S 52762 Pte Ettinger J I before arraignment make(s) (no) (~~a~~) plea.

(1. If a special plea is made (for separate trial as one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. NIS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(1)
(1. *RP* 35 fn 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No Sir.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1)~~ The Court decides (not) to advise accused to change his ~~(their) plea(s) of Guilty to Not Guilty on~~ charge(s). The accused is (are) ~~so informed, and he (they) change(s) his (their) plea(s) to~~ Not Guilty on the charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "C", initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114; *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans .....
Do you intend to call witnesses on your behalf?
Ans .....
Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), ~~and extracts true copy (copies) of Conduct Sheet(s)~~ purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D ~~and Ex respectively.~~(2)
(1. *MFB* 355 *or MFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) ~~and Conduct Sheet(s)~~, and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or state anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded in cases all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 1323, *RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 1323, *RP* 48. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 98(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ

CHARGE SHEET

THE ACCUSED, NUMBER F52762 PRIVATE JAMES IRA ETTINGER, OF 4 CDN RFT BN, 1 CDN BASE RFT GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, ALLIED ARMIES IN ITALY, IS CHARGED WITH:

1ST CHARGE
A A Sec 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, in Italy, absented himself without leave from 0900 hrs 3 Dec 44 until apprehended at approx 1000 hrs 1 Jan 45 (Total time absent 29 days 1 hr).

L J Flynn

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

In the Field
11 Jan 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

L J Flynn

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

In the Field
11 Jan 45

FIELD GENERAL COURT-MARTIAL

CFA35 (In lieu of AFA3)
40/PAS/1097 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F52762	PRIVATE		JAMES IRA	ETTINGER	4 Cdn Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has/~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Jan 45 endorsed by me, (~~the Convening Officer~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that the exigencies of the service do not permit the postponement of the trial.~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint officers who are not members of the Regular Force as members of this Court.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed substitutes to certain members of this Court.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.		Unit.
Major	I F DOUGLAS (Must be named. RP 106.)	4 Cdn Rft Bn

MEMBERS.

Rank.		Unit.
Capt	J A CUNNINGHAM	4 Cdn Rft Bn
Capt	W ZWIG (Named or detailed. RP 106.)	4 Cdn Rft Bn

WAITING MEMBER.

Rank.		Unit.
Lt	P M T SKRIMSHIRE (Named or detailed, if any. RP 106.)	4 Cdn Rft Bn

JUDGE-ADVOCATE.

Rank.		Unit.
	(Must be named, if any. RP 106.)	

On Active Service in the Fd.

in ITALY (Country.)

(L J Flynn) (Signed personally. RP 105 fn 2.)

Lt-Col (Rank.)

Date 11 Jan 45

Commanding 4 Cdn Rft Bn - 1 Cdn Base Rft Group
Convening Officer. CMF

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

PLEA IN MITIGATION

Pte Ettinger joined the army in Aug 43. He came overseas in Feb 44 to England and to Italy in Apr 44. He served with his regiment during the Hitler and Gothic Lines. The accused had asked for a short leave very often but never got one. The accused was last in his unit in Sep 44. After the Gothic Line he went to the Holding Unit and from there to 4 Bn where he went A.W.L.

This man has never refused a draft or a transfer and he is always willing at any time to go back with his regt because he is a fighting man. If given a chance he will prove to his superiors that he is still the same good soldier as he was before. I would ask the clemency of the Court in giving this man the minimum of sentence.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) Para 557

JAN 16th 1945

I hereby certify that I have this morning examined No F52762 PTE ETTINGER J.I on strength 4 Cdn Rft Bn, 1 C B R Gp, and in my opinion he is FIT/~~UNFIT~~ to undergo trial by Court Martial

Capt
Medical Officer 4 ~~Cdn~~ Rft Bn.

Ex "C" 150

Summary of Evidence in the case of F52762 Private Ettinger J I, of 4 Cdn Rft Bn, 1 C B R G, who is charged with WOAS Absenting Himself Without Leave, A A Sec 15(1).

By direction of the Commanding Officer, the evidence is taken upon oath:

1st Witness — A3885 Pte Knowles H, of 4 Cdn Rft Bn, having been duly sworn, states:

I am A3885 Pte Knowles H, File Clerk, 4 Cdn Rft Bn.

I produce a certified true copy of a declaration of a Court of Inquiry purporting to relate to the accused and showing that F52762 Pte Ettinger J I absented himself without leave from 0900 hrs 3 Dec 44. (Produced, shown to accused, marked Exhibit 'A' and attached hereto).

I further produce a certificate under A A Sec 163 (1)(JJ) purporting to relate to the accused and showing that Pte Ettinger J I was arrested at Rome at 1000 hrs 1 Jan 45. (Produced, shown to accused, marked Exhibit 'B' and attached hereto).

H. Knowles
(Pte Knowles H)

The accused declines to cross-examine this witness

Question to Accused

Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but anything you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer by Accused

I have nothing to say at this time.

I certify that R P 4 (c) (d) (e) and (f) have been complied with.

I certify that this summary of evidence was taken down by me in the presence and hearing of the accused.

H S Hopper
(H S Hopper) Capt
Officer taking Summary

In the Field
11 Jan 45

Army Form B 115 49

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at 4 Cdn Rft Bn on the 30th day of December 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F52762 Pte Ettinger J I

DECLARATION.

The Court declare that No. F52762 Pte Ettinger J I, West NSR on strength of 4 Cdn Rft Bn illegally absented himself without leave from 0900 hrs at Field, Italy, on the 3rd day of December 44 and is still so absent

Certificate in accordance with the Army Act Sec. 105 (1) (iii)

I certify that

No F/52762 Rank PRIVATE Name ETTINGER J.I.

of the WEST NOVA SCOTIA REGIMENT

was arrested at ROME at 1000 Hrs.

on the 1st day of JANUARY 1945

Signature of P. M., A. P. M., or other Officer into whose custody the above named person was taken on arrest. C. A. Lyle

Rank Captain

Appointment (if any)

Commanding 111 PROVOST COMPANY, C.M.POLICE

Date 1st January 1945

PBSM 7713/5-44/2,500

Exhibit "B" Attorney Capt

Names of President and Members			
	Capt A W F K	Wilson	President
	Capt F A	Neal	Member
	Lt B	Bean	Member

Signed at Field Italy

Signature of Commanding Officer Signed "L J Flynn" Lt-col

this 9th day of Jan 45

CERTIFIED TRUE COPY.

(A E Davidson) Capt & Adj't A"

Signature of Officer having custody of the Original Record.

Extracted by A.C. Hopper Capt

PSSR/1481/4 44/10.000

Ex "D" 80

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F52762	Private	Ettinger J I	4 Cdn Fd Bn - 1 C D R G

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this statement may be completed from the field conduct sheet.

The conduct sheet(s) produced should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., Inst.

* The accused's service should include only the service of enlistment to the conduct sheets produced to the court with the addition of extra and most recommended special acts of gallantry or distinguished conduct.

Instruction.—If the charge is in two separate parts the matters for each should be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	No MFM 6 available times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or the sentence of which is not known~~ from 1000 hrs 1 Jun 45

4. The accused has been in confinement awaiting trial on the present charges for nil days in civil custody, and 15 days in military custody, making a total of 15 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20

6. The date of his ~~attestation~~ specified in his ~~record of service~~ is 19 Aug 43 ~~42~~

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or award)*). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (*or corps or department*) the rank of dated

(Various) W.C.(1952) 250 (2) 6/42 A.H.Q. (Gp.858)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F52762 Rank Private Name Ettinger J I of 4 Cdn Rft Bn Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charge upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		No MFM 6 available		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of January 1945

(A E Davidson) Capt & Adjt
4 Cdn Rft Bn - 1 C D R C

18. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of ..... Date of Promotion .....

In the rank of ..... years .....

In the rank of ..... years .....

(Note.—If any matter in any of the above paragraphs ceases to stand from the regimental books the paragraph must be struck through, except when the case is that of a Pay by full period complete, the information may be collected from such records as are available and the paragraph corrected accordingly.)

RECEIPT FOR CHARGE SHEET & SUMMARY OF EVIDENCE

I hereby certify that I have this date 11 Jan 194 3 received from 4 Cdn Rft Bn, 1 C B R Gp, 1 copy of Charge Sheet and Summary of Evidence referring to charge (s) of J.J. Ettinger

A.W.L. AA 15(1)

for which I was remanded for Court Martial.

J.J. Ettinger
(Sig of Accused)

REQUEST FOR DEFENDING OFFICER

I hereby request that Lieut L. Belanger if available, act in my defence. If this officer is not available I request that the Commanding Officer of 4 Cdn Rft Bn, 1 C B R Gp appoint an officer to act in my behalf.

J.J. Ettinger
(Sig of Accused)

Pursuant to Chap V Sec V Sub Sec 95 of MML, I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

(Sig of Accused)

RRR-34

PTE EVANS C.E

RECORDED AT CAIRO IN AD 160... K.R.R. 3

CPAM/1 (To Dirs of Army Forms 401/P 30 M/1608 (AG/AG)

FIELD GENERAL COURT-MARTIAL

4/38A

RECEIVED 12 JUL 1944 AG BRANCH

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 25 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-58041	Pte	Carl Eric	EVANS	RCOC, 13 CBR Bde

PROCEEDINGS REVIEWED

PROCEEDINGS REVIEWED 4 JUL 44 Date

Cdns Base Army Gp

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 27 JUN 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns to RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 15 15 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ... as interpreter?~~ Ans ~~... as shorthand writer?~~ Ans

~~The Interpreter is sworn.(1) Do you object to~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(2) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (3)

(1. RP 110. 2. If no objection, waiting member retires, RP 60(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J D HANNEN	13 CBR Bn
Member	Capt	E M Brough	12 CBR Bn
Member	Lieut	F A McKay	11 CBR Bn
Judge-Advocate			
Prosecutor	Lieut	D L Anderson	13 CBR Bn
Defending Offr	Lieut	W A Pringle	13 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans Yes (2) Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 23.)

A8. The accused B 58041 Pte EVANS CE before arraignment make(s) (no) (the following) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~ jointly) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared) and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol 1/ [illegible] P 134

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 1. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-58041 Pte CARL ERIC EVANS, R.C.O.C., 13 Bn., 2 C.B.R.C., a soldier of the Canadian Army Overseas is charged with:-

First Charge
Sec. 15 (1)
A.A.

WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field absented himself without leave from 0800 hrs 5 Jun 44 until 1330 hrs 19 Jun 44 when he surrendered himself to the Civil Police at Sutton.
(Total time absent (14 days 5 hrs 30 mins)
Cost of Apprehension $0.2.9

(W.J. Stewart) Lt. Col.,
Commanding,
13 Bn., 2 C.B.R.C.

In the Field
24 Jun 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
25 Jun 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-58041	Pte		Carl Eric	EVANS	RCOC, 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person ~~s~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence ~~s~~ set forth in the Charge Sheet ~~s~~ attached and on (date) 25 JUN 44 endorsed by me, (~~or by an offr of my staff for me~~)," To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence ~~s~~ should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets where not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person ~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete any whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major *(Rank.)*	J D HANNAN *(Must be named. RP 106.)*	13 CBR Bn *(Unit.)*

MEMBERS.

Capt	to be detailed by OC 12 CBR Bn	12 CBR Bn
Lieut *(Rank.)*	to be detailed by OC 11 CBR Bn *(Named or detailed. RP 106.)*	11 CBR Bn *(Unit.)*

WAITING MEMBER.

Capt *(Rank.)*	to be detailed by OC 13 CBR Bn *(Named or detailed, if any. RP 106.)*	13 CBR Bn *(Unit.)*

~~JUDGE ADVOCATE~~

(Rank.)	*(Must be named, if any. RP 106.)*	*(Unit.)*

On Active Service in the Fd

in ENGLAND *(Country.)*

Date 25 JUN 44

G Francoeur Brigadier
(Signed personally. RP 105 fn 2.) *(Rank.)*

(G Francoeur)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Formerly 13a Sch of AFAI) 60-P-M-671867 (A2)

(See overleaf for oaths and notes for use at trial.)

D 2 1944

F.G.C.M. 5304 Pte. Evans C.E. # 2C.B.R.G.

Opening address by the prosecution.

It is the intention of the prosecution to prove the absence and the commencement of the absence and to produce documents to prove the place and time terminating the absence, and the cost of apprehension.

1st witness for the prosecution - M 40879 Sgt. Fellows W.J.H.
13 Bn. 2C.B.R.G.

Q. Do you recognise the accused?

A. Yes sir.

Q. What is his name and what unit does he belong to?

A. 65 Coy. 13 Bn. 2C.B.R.G. Pte Evans C.E.

Q. How were you employed on the 6 June 44.?

A. Orderly sergeant of 65 Coy.

Q. Will you tell the court what happened that day with reference to the accused?

A. We had the usual roll call in the morning at 0800 hrs called by the platoon sgt. This roll call is turned in to me. We have a fatigue book that we use to see if a man has reason to be absent from parade, if there is not and we check the lines and we do not find the man he is then marked absent. His name, number and rank are turned in to the orderly room Cpl. for records then his name is put on the list in the A.W.L. book with the time that he went AWL and on the tattoo report which is turned in to the R.A.M.'s office, then his kit is taken to the A.M.stores.

Q. How long were you orderly Sgt.

A. Approximately 3 weeks.

Q. Are you still orderly Sgt?

A. No I left about 2 weeks ago andSgt Kelly took over my duties.

Q. Did you go through all this procedure on 5 June 44?

A. Yes sir.

Q. On the morning of 5 June 44. what did you find on the report turned in by the platton Sgt.

A. A Blank sir.

Q. by the defence. Did you know the accused by sight before the 5 June 44?

A. No sir.

Q. Were you on parade morning on 5 June 44?

A. Yes sir.

Q. Did you call the roll in the platoon in which Evans was ?

A. No sir

MEDICAL OFFICERS CERTIFICATE

104

(KR(Con) Form 557)
(CMHQ Cl. 173)

I certify that I have this day examined B58041 (No.)

PTE (Rank) EVANS C.E. (Name) and in my opinion he is

R2 ~~unfit~~ fit to undergo trial by Court-Martial.

Station FIELD

Date. 22-6-44

R Laing Capt. (Sgd)
Medical Officer
(unit) 12 Fd Amb RAMC

A. No sir I called no rolls at all.

Q. On the morning of 5 June you did not know whether Evans was on parade or off parade or even whether he was with 13 Bn.

A. On the roll board he was marked off parade.

Q. But YOU did not know whether the accused was on or off parade on the 5 June 44.

A. We go by the roll call book, I don't know every man on the parade.

Q. You took some one elses word that this man was not on parade.

A. Yes sir.

Q. You have no direct evidence yourself that this man was not on parade.

A. Only the roll call book.

Q. Did you look for the accused?

A. Yes sir.

Q. If you did not know him by sight how did you expedt to find him?

A. By a tent book which tells what tent every man is in.

Q. How did you look for the man?

A. We went through the lines calling his name and inquiring if he had been around and I went to his tent.

Q. Will you admitthat the accused might have been in the lines?

A. If he was he did not answer his name.

Q. You detail the men for fatigues in your company?

A. I do sir.

Q. Do you keep the roster yourself?

A. Yes sir.

Q. By the court. - Did you search the ablution rooms, latrines etc., in your lines in the search for Evans?

A. No sir.

Q. Your search did not extend to the Regimental lines where the man might have been?

A. Just our own lines.

2nd witness for the prosecution C 16692 Sgr. Kelly G.F. 13 Bn. 2C.B.R.G.

Q. Do you recognize the accused?

A. Yes sir.

Q. Tell me his name and unit.

A. Pte. Evans of 13 Bn. 2C.B.R.G.

Q. Will you tell the court anything that happend on the morning of 5 June regarding Pte. Evans?

A. Sgt. Fellows was orderly Sgt. and I was helping him, He came to me and asked me if I would go down to the lines and check Evans' kit. We checked the kit and found that the mess tins were dirty and caked and he then asked me to turn the kit into kit stores.and get a receipt for it, which I did and returned the receipt to the orderly room.

Q. What is your position now in the Coy?

A. Coy. orderly Sgt.

Q. From whom did you take over the duties of Coy. orderly Sgt?

A. From Sgt. Fellows.

Q. Since you have been orderly Sgt. has the name of Evans appeared on the tattoo reports?

A. Yes sir.

Q. When did it appear?

A. Up until the 19th of June 44.

Q. When did you take over the duties as orderly Sgt?

A. About 10 June 44.

D.Q. Do you know the accused by sight?

A. I saw the accused to know him by sight the day after he reported in.

Q. When was that?

A. The 20th June is the day after he came in.

Q. You did not know the accused previous to the 5th June 44?

A. No sir.

Q. When you gathered a man's kit on 5 June, as far as you knew it was just a kit with the name of Evans on it.

A. Yes sir.

Q. You had no reason except that you were ordered to gather up kit?

A. No sir I obeyed an order.

Q. Do the fatigues in your Coy go on parade in battle order?

A. Some do.

Q. Do the kitchen fatigues?

A. They don't go on parade at all.

Court asks - Was this kit reissued to the accused at a later date?

A. Some of it was I believe--what he needed.

Q. Do you know the date on which it was reissued?

A. No sir.

D6

ACCUSED wishes to make a statement Not under oath.

I was in camp all morning and met a couple of friends of mine and quite a few of the fellows that I knew. This was on the morning of 5 June 44. I met a friend that morning from my former Regt.

DEFENCE calls 2nd witness B 124674 Pte.Sellers T.A.
13 Bn. #2C.B.R.G.

D.C. Do you recognize the accused behind you?

A. Yes sir.

Q. What is his name?

A. He is Pte. Evans of 13 Bn. 2 C.B.R.G.

Q. How long have you known the accused?

A. Three months.

Q. Was he with you in 3rd Div. Ord. Field Park?

A. Yes sir.

Q. Did you see Evans on Monday morning 5 June 44.

A. Yes sir.

Q. Where did you see him?

A. At the NAAFI - 13 Bn. 2C.B.R.G.

Q. At what time did you see him?

A. Between 1000 hrs and 1100 hrs.

Q. Are you certain that you saw Evans at the time and place you mention?

A. Yes sir.

P.C.When did you next see Evans?

A. I did not see him after that until today.

Q.C.Where were you, Pte. Sellers between 7 and 20 June 44?

A. At 2 Cdn Corps Workshop.

CLOSING address by the defence.

There are only two points in my closing address -- first that the evidence produced by the prosecution does not show that the accused was reported absent by the person who called the platoon roll call. The other point is that the defence has proved by a reliable witness that the accused was in camp on the morning of 5 June 44.

CLOSING address by the prosecution:

I would like to state that although the man who called the roll is not here today to give evidence, his report as orderly Sgt. went into the platoon Sgt. showing that the accused Evans was not on parade, in addition to that the orderly Sgt. had not assigned him to any special duty or fatigue and also that the accused has been shown absent on the platoon tattoo report from the 5th June until he was returned to the unit on the 20th June 44.

E3
JRH

PLEA FOR MITIGATION OF SENTENCE

B58041 Pte EVANS, C.E

The abn Pte enlisted as a volunteer for active service in Jan. 1942 and arrived overseas with his own Unit, 3rd Div. Tpt Pk A.C.C. early in May 1942

After serving faithfully with his Unit for two years and as the time of action was approaching he had the misfortune to suffer a motor cycle accident this accident kept him in hospital for a month and he was of course S.O.S his unit

On discharge from hospital he was sent to a reinforcement unit in May and after repeated attempts to rejoin his former unit, with which he had always expected to go overseas, he was refused this and sent to 2 CBRD. At this time he became very discouraged and decided that a personal contact with his Unit might bring the desired result

It is respectfully requested that full consideration be given this soldiers overseas record and that his misplaced zeal in taking time off to take matters into his own hands be not too severely dealt with

W.J. Rayburn Pte

R.C.O.C

I CERTIFY that the man whose personal description is given below surrendered himself to* [illegible] at [illegible] at (hour) 1830 hrs on the 19th day of June 1944 as being No. 3580411 (Rank and Name) Pte. Evans, C.C. a deserter (or absentee without leave) from [illegible] and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22 Height 5 Feet 10 Inches

Complexion Dark Hair Dark

Eyes Dark

Marks Scar R. Arm

In uniform or plain clothes [illegible]

Probable Date and Place of Attestation	1940 Toronto Ont.
Probable Date of Desertion or beginning of absence, and from what place	2.0 hrs 20th June Work Camp Work Camp Borden

[illegible] June 1944

Signature of Officer of Police in charge of [illegible] Station

19 June 44 Date of Signature

EXHIBIT "B"

Expense Voucher Re—: Ref. K.R. & O. (Can) 539

Reg. No. B58047 Rank Pte Name Evans, C E Unit 2 C B K Q

The following expenses were incurred in apprehending and returning the ~~NFN~~ Soldier to ~~his Unit From~~ London from Sutton

Date	Particulars		Amount		
19 June 44	Escorts return fare from LONDON To	Sutton		1	10
	Prisoners single fare to LONDON From	Sutton			11
	Prisoners fare from	To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares				
		Total £		2	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W E Birch Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

W. E. BIRCH,
ADMIN. OFFICER—D.P.M.'s BR.
C.M.H.Q.

C.M.H.Q. (1000-5)
60/P & T.6/63(3287)

SUMMARY OF EVIDENCE IN THE CASE OF B-58041 PTE CARL ERIC EVANS R.C.O.C., 13 BN., 2 C.B.R.C., A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

By direction of the Commanding Officer all evidence is given on Oath.

1st Witness for Prosecution. Lieut. W.A. Murray, Records Officer, 13 Bn., 2 C.B.R.C., having been duly sworn, states:-

"I am Lieut. W.A. Murray, Records Officer, 13 Bn., 2 C.B.R.C., and present the following documents pertaining to the accused B-58041 Pte Evans C.E.

(1) Certificate od surrender A.F.C.1617 showing that B-58041 Pte Evans C.E. surrendered himself to the Civil Police at Sutton.

(2) CMHQ form 1000:55 Statement of expense for return of B-58041 Pte Evans C.E.

W.A. Murray

(W.A. Murray) Lieut.

The accused declines to cross examine this witness.

2nd Witness for Prosecution M-40879 Sgt. Fellows W.J.H., having been duly sworn, states:-

"I was Orderly Sergeant of 65 Coy of 13 Bn., 2 C.B.R.C. on 5 Jun 44., the day that the accused Pte Evans was reported absent on the morning Pl roll call sheet at 0800 hrs. I tried to locate Pte Evans in his Tent and I examined his equipment which had not been used and inquired of the other fellows in his Tent if they had seen him around. They had not I then asked Sgt. Kelly to have the man's equipment removed to the Q.M. which he did. After that the accused's name went on the tattoo and reveille reports as absent. I also checked the duty roster to see if he was on any special duty and he was not. The camp was also checked and he was found to be missing. I was at 65 Coy until about 10 Jun and Pte Evans was still absent."

Cross examined by the accused.

Q.1 Was I on any special duties on the 5 Jun?
A.1 No.

W. Fellows

(M-40879 Sgt. Fellows W.J.H.)

3rd Witness for Prosecution C-16692 Sgt. Kelly G.F., having been duly sworn, states:-

"On the morning of the 5 Jun 44 Sgt Fellows asked me to check the tent of Pte Evans C.E. and decided that his equipment had not been used that morning and as he could not be located he asked me to turn his Kit in to Kit Stores, which I did and brought the receipt back to the Coy Orderly Room. I am permanent Orderly Sergeant of 65 Coy, 13 Bn, 2 CBRC, RDOC, and took over that job when Sgt. Fellows left the Coy. As Orderly Sergeant I check the Tattoo reports and Pte Evans name has not appeared on it since the time of his absence and I did not see him since until he appeared at camp on the 20 Jun after surrendering.

Geo Kelly

(C-16692 Sgt. Kelly G.F.)

The accused declines to cross examine the witness.

The accused was cautioned in accordance with Rules of Procedure 4 (e) of the Army Act.

The accused declines to make a statement at this time.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c)(d) & (e) have been complied with.

J.E. Miller Lt.

(J.E. Miller)Lieut.
Officer Taking Summary of Evidence.

In the Field
24 Jun 44.

15 x 8

MFM 6 (AFB 122) 40/PAS/136 (1438)

No. B58041 Name Pte EVANS Carl Eric | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 26-1-42 | OC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 23-3-42 | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc B.M. Gunn Lieut

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
The Field	19-7-43	Pte		AA15(1) WOAS AWL - absent from 2359 hrs 19 Jul 43 to 1500 hrs 22 Jul 43(Total absence 2 days 15 hrs)	M28857 Cpl Grover EC L9137 CSM Clunie GEA	3 days auto. forf. pay FR&I 149 (1)(a) 7 days forf. pay. FR&I 149 (2) 23 Jul 43			
The Field	21 Sept 43	Pte		AA11 Wearing black beret outside of camp area contrary to Camp Standing Orders.	Lieut. Houston Lieut. Cloutier	7 days CB	22 Sep 43		
The Field	5 Dec 43	Pte	(1)	Sec 15 (1) AA AWL from 2359 hrs 5-12-43 until apprehended at 1430 7 Dec 43 Total absence of 38 hrs 31 mins (2 days). Cost of apprehension 12 shillings, 1 pence. Close arrest from 1430 hrs 7 dec 43 to 1530 hrs 8 Dec,43.Total 25 hrs(2 days)	Documentary Evidence	28 days F.P. (FR&I 149 (1)(a). Forf. 2 d.p. under FR&I 149 (C)	9-12-43	Capt. W.E. Strachan	Forf. 28 d.p. under FR&I 149 (1)(b). Forf. 2 d.p. under

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Nature of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Dec 43	Pte		(2) Sec.25 (2)A.A. Knowingly and with intent to defraud, altering a document which it was his duty to preserve	Documentary Evidence				Cost of Appr. 12 shillings 1 pence. Total Forf. of 32 d.p. & £0.12.1
Field	2 Apr 44	Pte		Sec.15 (1) AA WOAS - AWL from 2215 hrs 2 Apr 44 until 1610 hrs 6 Apr 44. Absent 3 days 18 hrs 55 mins.	Documentary	Awarded forf. 4 days pay.	8 Apr 44	T.J.Warner Major	Auto forf 4 days pay.

CERTIFIED TRUE COPY J. Miller Lt June 24th 1944
13 Bn. 2 C.B.R.S.

Ex 17

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B-58041	Pte	EVANS C.E.	RCOC. 13 Bn. 2 C.B.R.G.

* 1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For A.A. Sec. 15 (1)	3 times
For A.A. Sec. 11	1 times
For A.A. Sec. 25 (2)	1 times
For	times

Date of first entry in Field Conduct Sheet 23 Jul 43

Date of last entry in Field Conduct Sheet 8 Apr 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

†3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 8 days in military custody, i.e., days in open arrest, 8 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 22

6. The date of his attestation ~~enlistment or prior military service~~ is 20 Jan 42

7. The service which the accused is allowed to reckon is 2 yrs 5 months

8. The accused is in possession of

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of	N/A
In the war substantive rank of	N/A
In the acting rank of	N/A

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable.

† State the military decorations (if any) held by accused.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Discription of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
		------ N I L ------		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental roll in my custody, are correct to the best of my knowledge and belief.

Signed this 27 day of June 44

J.E. Miller

(J.E. Miller) Lieut. 13 Bn., 2 C.B.R.D.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) ~~(no)~~ opening address.(1) Noted
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)~~
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Yes. Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. No.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)~~
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on ~~one or more~~ of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement[s] as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet[s](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3)
(1. MFB 255 or AFB 296. 2. MJM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement[s] and Conduct Sheet[s], and in mitigation of punishment?(1) Ans. Yes - written copy submitted by Def. Offr.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~.(2)
(1. When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 69, 114, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-58041 Pte Carl Eric EVANS, RCOC, 13 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15 (1)	Not Guilty	Guilty	Special finding: — That the Accused without leave did not remain at Camp on the charge but at the relevant time on the 2nd of Jun 44 upon the bus [illegible] was about to leave Tatton (1200 hrs); Jun 44 until 1100 hrs 19 Jun 44
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ... beginning on (date) ... (1) N/A

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(2)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

Nine (9) Days Detention and ~~the loss~~ N/A of Pay to cover apprehension (£0-2-9)

(Sgd) ... Judge Advocate, if any. 27 Jun 44 Date awarded. (Sgd) ... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567 577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 34. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ N/A

(1. AA 57A. Delete if not used.)

Date 3 Jul 44 (Sgd) ... (G. Francoeur) Brig Comd 2 Cdn Base Rit Gp

Commanding ... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B58041 Pte Carl Eric Evans	4 July 44	M. L. Fraser Capt

C.R. 328 (R.O.C.) 10/5.1.44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

S.P.S.

Mt. Evans, B.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-58041 Pte Carl Eric EVANS X-4 List RCOC att 1 Cdn Discipline Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd	Guilty	Guilty	
4th	Guilty	Guilty	
5th	Guilty	Guilty	
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~Autrefois convict to the charge of deserting~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned, with hard labor for 2 years

(Sgd) _____ Judge-Advocate, if any. 19 Jun 45 Date awarded. (Sgd) "A E LeFroy" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be ... and that the sentence ... be carried into execution~~ JSL (1. AA 57A. Delete if not used.)

Date 3 Jul 45 (Sgd) "J S Lind" (J S H Lind) Brigadier Commanding 3 CDN BASE RPT GP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B.58041 Pte CARL ERIC EVANS	4 Jul 45	"VSJ Richmond" Lt-col Comd 1 Cdn Discipline Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 162 5P-5

FIELD GENERAL COURT-MARTIAL

CPA66 (To Recs of AFA31) 40/P & S/1868 (40/01) 4/38B

Convened by Order of Brig J S H LIND Comd 3 CBRG dated 14 JUN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-58041	Pte	Carl Eric	EVANS	X-4 List RCOC att 1 Cdn Discipline Centre

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 19 Jun 45 AEL

34/31

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~extra Member if any, and Offr under instr, if any~~ assemble, and the AEL Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~were~~ amenable to military law, and AEL each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1230 hours trial commences. AEL

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by ... instead of by ...~~ AEL ~~summary proceedings~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~As President to accused: Do you object to ... be tried by me or by any of the Members of the Court?~~ AEL

~~The accused says ... Do you object to ... as Judge-Advocate of the Court?~~ AEL ~~The accused says ...~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No-Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~Judge-Advocate and Offr under instr, if any, are sworn~~(1) The following are the ranks, names and units of the offrs composing the Court, viz:

President	Major	A E LEFROY	Seaforth Highrs - Cdn C M Centre	
Member	Capt	M R M DALE	Cdn C M Centre	
Member	Capt	RCL MILES	RCA	Cdn C M Centre
Judge-Advocate	Capt	C. ...		Cdn C M Centre
Prosecutor	Capt	G T GALE		Cdn C M Centre
Defending Offr	Capt	R R BROWN		Cdn C M Centre

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See Dir p 2.)

A8. The accused B-58041 Pte Carl Eric EVANS before arraignment make(s) (not) ~~(1)~~ plea AEL (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB notes and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~do~~ AEL not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A66 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is~~ closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B" AEL

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ 3 CBRG Vol 1 p.116

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 87(*B*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No - sir. (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ~~ charge(s). Part I of the Schedule is amended accordingly.~~ AEL
(1. *Court may be closed to consider the statement.* Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1) AEL
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. 'A', initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*C*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B3 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES. AEL

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*b*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 60(*A*), *see* 60(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*c*). *See Notes on Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) AEL
Ans. No. Sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy(ies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport so to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. 'B' and Ex. 'C' respectively.(3) AEL
(1. *MFB* 255 *or AFB* 296. 2. *MFB* 4. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, in mitigation of punishment by Defending Offr. AEL
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then the JA (if any)~~. AEL
(1. *When several accused tried separately see RP* 71 (5). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 142, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2322, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(1), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Convening Offr see KR Can* 562. *As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICERS CERTIFICATE MFB 246 AEL

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined B.58041 Pte EVANS, C. E. and in my opinion he is fit to undergo trial by Court-Martial.

Station Field

Date 19-6-45

" M Manns" Capt (sgd)
(Medical Officer)

Unit 1 Cdn Disc Centre

AEL

CFAO 5 (In lieu of AFAE) 40/PAD/1707 (2nd)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a seperate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see FA 182, 183, fns, NR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-58041	Pte		Carl Eric	EVANS	X-4 List, RCOC, att 1 Cdn Discipline Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Jun 45 endorsed by me, ~~(undersigned duly appointed for such)~~ "To be tried by Field General Court-Martial". JSL

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is undesirable that the accused should be kept in close custody for such time as would be necessary to enable a Court of Inquiry to be assembled and to report)~~ JSL

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~It does not appear to me necessary to appoint any Offrs to form the Court, other than a Fd Offr as President, for the reasons I have stated below.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I do not appoint an Judge Advocate, for the reasons stated hereunder.~~ JSL

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	A E LEFROY	Seaforth Highrs	Cdn C M Centre

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	M R M DALE		Cdn C M Centre
Capt	R G L MILES	RCA	Cdn C M Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

"J S Lind" (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(J S H LIND)

Date: 14 Jun 45

Commanding 3 Cdn Base Rft Gp Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Pro. G.C.C.

CHARGE SHEET

The accused, B-58041 Pte Carl Eric EVANS, X 4 List, RCOC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

~~FIRST CHARGE~~
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

guilty

in the Field, absented himself without leave from 1300 hrs 27 Nov 44 until apprehended at 0300 hrs 25 Dec 44.

(Total absence: 27 days 14 hrs)

~~SECOND CHARGE~~
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

guilty

in the Field, absented himself without leave from 1845 hrs 25 Dec 44 until apprehended at 0000 hrs 26 Dec 44.

(Total absence: 6 hrs 15 minutes)

~~THIRD CHARGE~~
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

guilty

in the Field, absented himself without leave from 1600 hrs 30 Dec 44 until apprehended in HERSTAL, Belgium at 2325 hrs 2 Apr 45.

(Total absence: 93 days 6 hrs 35 minutes)

~~FOURTH CHARGE~~
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

guilty

in the Field, absented himself without leave from 2359 hrs 10 Apr 45 until 0001 hrs 25 Apr 45.

(Total absence: 14 days 2 minutes)

~~FIFTH CHARGE~~
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

guilty

in the Field, when in arrest, absented himself without leave from 1 Cdn Discipline Centre from 1600 hrs 18 May 45 until 1400 hrs 22 May 45.

(Total absence: 3 days 22 hrs 10 minutes)

(J A Sharp) Major
A/Comd
1 Cdn Discipline Centre

In the Field
6 Jun 45

To be tried by Field General Court-Martial

PLEA IN MITIGATION

Pte Evans joined up in Jan 42 and came overseas in March 42. He came to this theatre in Nov 44 and joined the 1 C.C.C.D.

Pte Evans is only 21 yrs old although his record shows him as 22. It is evident that he has developed a persecution complex and has decided that he is of no more use to the army or the army to him. He offers no plea in mitigation, but throws himself on the mercy of the Court.

"R R Brown" Capt
Defending Officer

(1) "Exhibit "A" AEL

Summary of Evidence in the case of B-58041 Pte EVANS CE, X-4 List RCOC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charges - Absence without leave (5 charges)

By direction of the CO the evidence is taken on oath

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt 11 Order No 93 dated 7 Jun 45

Exhibit "B"- Certified true copy of Extract from Pt 11 Order No 93 dated 7 Jun 45

Exhibit "C"- Certified true copy of Extract from Pt 11 Order No 29 dated 21 Feb 45

Exhibit "D"- Certificate of arrest dated 2 Apr 45

Exhibit "E"- Certified true copy of Extract from Pt 11 Order No 42 dated 2 May 45

Exhibit "F"- Certified true copy of Extract from Pt 11 Order No 53 dated 6 Jun 45

FIRST WITNESS

M-62232 Sjt KENGAN W L 1 Cdn Discipline Centre sworn states:

On the afternoon of 18 May 45 the accused B-58041 Pte EVANS C E, whom I now recognize, was present and working around the cell block. I saw him several times during the afternoon. I missed him after the break that day when I called the roll at 1600 hrs 18 May 45. B-58041 Pte EVANS C E was not present. I checked everywhere and established the fact that he had escaped. The next time I saw B-58041 Pte EVANS C E was on 23 May 45 when he was handed over to me at the cell block.

The accused declines to cross-examine this witness

W. L. Kengan
M-62232 Sjt KENGAN W L

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

M. Rousseau Capt
(Maurice Rousseau) Capt

In the Field
18 [illegible]

"Exhibit "A"
"M. Rousseau" Capt

PART II ORDER EXTRACT FORM

8 Jun 45

TO: OC
1 Can Dis Centre

EXTRACT FROM: UNIT X-4 Lieu RCOC
Pt II Order No 93 Dated 7 Jun 45

ABSENT WITHOUT LEAVE App 0300 hrs 25 Dec 44
AWL from 1300 hrs 27 Nov 44
B56041 Pte EVANS CE

Certified to be a true extract from the regimental books and documents in my custody
"WH LAUGHLIN" Capt
Officer ic Records X
Can Sec 2 Ech HQ 21 A Gp

Certified true copy of Exhibit "A"
M Rousseau Capt

CHARGE SHEET

Pro. 622.

The accused, B-58041 Pte Carl Eric EVANS, X 4 List, RCOC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

Guilty

in the Field, absented himself without leave from 1300 hrs 27 Nov 44 until apprehended at 0300 hrs 25 Dec 44.

(Total absence: 27 days 14 hrs)

SECOND CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

Guilty

in the Field, absented himself without leave from 1845 hrs 25 Dec 44 until apprehended at 0000 hrs 26 Dec 44.

(Total absence: 6 hrs 15 minutes)

THIRD CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

Guilty

in the Field, absented himself without leave from 1600 hrs 30 Dec 44 until apprehended in BRUSSELS, Belgium at 2325 hrs 2 Apr 45.

(Total absence: 93 days 6 hrs 35 minutes)

FOURTH CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

Guilty

in the Field, absented himself without leave from 2359 hrs 10 Apr 45 until 0001 hrs 25 Apr 45.

(Total absence: 14 days 2 minutes)

FIFTH CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

Guilty

in the Field, when in arrest, absented himself without leave from 1 Cdn Discipline Centre from 1600 hrs 18 May 45 until 1400 hrs 22 May 45.

(Total absence: 3 days 22 hrs 10 minutes)

In the Field
10 Jun 45

(T J Sharp) Major
A/Comd
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

"Exhibit "A" ABL

Summary of Evidence in the case of B-58041 Pte EVANS GE, X-4 List RCOC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charges - Absence without leave (5 charges)

By direction of the CO the evidence is taken on oath

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt 11 Order No 93 dated 7 Jun 45

Exhibit "B"- Certified true copy of Extract from Pt 11 Order No 93 dated 7 Jun 45

Exhibit "C"- Certified true copy of Extract from Pt 11 Order No 29 dated 21 Feb 45

Exhibit "D"- Certificate of arrest dated 2 Apr 45

Exhibit "E"- Certified true copy of Extract from Pt 11 Order No 42 dated 2 May 45

Exhibit "F"- Certified true copy of Extract from Pt 11 Order No 53 dated 6 Jun 45

RST WITNESS

M-62232 Sjt KERGAN W L 1 Cdn Discipline Centre

sworn states:

On the afternoon of 18 May 45 the accused B-58041 Pte EVANS G E, whom I now recognise, was present and working around the cell block. I saw him several times during the afternoon. I missed him after the break that day when I called the roll at 1600 hrs 18 May 45. B-58041 Pte EVANS G E was not present. I checked everywhere and established the fact that he had escaped. The next time I saw B-58041 Pte EVANS G E was on 23 May 45 when he was handed over to me at the cell block.

The accused declines to cross-examine this witness

W. L. Kergan
M-62232 Sjt KERGAN W L

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say

The accused does not call any witness

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C)(D)(E)(F) and (G) have been complied with.

In the Field 18 May 45 M. Rousseau Capt
(Maurice Rousseau) Capt

"Exhibit "A"
"M. Rousseau" Capt

PART II ORDER EXTRACT FORM

8 Jun 45

TO: OC
1 Cdn Dis Centre

EXTRACT FROM: UNIT X-4 List RCOC
Pt II Order No 93 Dated 7 Jun 45

ABSENT WITHOUT LEAVE
AWL from 1300 hrs 27 Nov 44 App 0300 hrs 25 Dec 44
B56041 Pte EVANS CE

Certified to be a true extract from the regimental books and documents in my custody
"WH LAUGHLIN" Capt
Officer ic Records X
Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of Exhibit "A"
M. Rousseau Capt

PAR: II ORDER EXTRACT FORM "Exhibit "B"
"M.Rousseau"
Capt

8 Jun 45

TO: OC
1 Cdn Dis Centre

EXTRACT FROM: UNIT X-4 List RCOC
Pt II Order No 93 dated 7 Jun 45

ABSENT WITHOUT LEAVE
AWL from 1615 hrs 25 Dec 44 App 0030 hrs 26 Dec 44 by Belgian Police
B56041 Pte EVANS CE

Certified to be a true extract from the regimental books and documents in my custody
"WH LAUGHLIN" Capt
Officer in Records X
Cdn Sec 2 Sch HQ 21 A Gp

Certified true copy of Exhibit "B"
M. Rousseau Capt

PART II ORDER EXTRACT FORM

TO: Discipline & Pay

"Exhibit C"
"M. Rousseau" Capt

EXTRACT FROM: UNIT XList R000
Part 11 Order No 29 dated 21 Feb 45

6. ABSENT WITHOUT LEAVE
(a) AWL from 1640 Hrs 30 Dec 44
B58041 Pte EVANS CE (X-4 List 9 Bn)

Certified to be a true extract from the regimental books and documents in my custody.
"N N ONLY" Capt
Officer ic Records F
Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of Exhibit "C"

M. Rousseau Capt

"Exhibit D"
"M. Rousseau" Capt

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT SECTION 103(1)(11)

I certify that No 5804i Pte EVANS CE of Att 1st Cdn C Ord Depot Cdn Army was arrested at Brussels at 23.15 hrs on 2nd April 45. He was dressed in uniform

Date 2nd April 1945

"J BLENKHAM" Lt
Commanding 120 Prov Coy CHQ

Certified true copy of Exhibit "D"
M Rousseau Capt

PART II ORDER EXTRACT FORM "Exhibit E"

TO: Discipline & Pay 5 Jun 45 "M. Rousseau" Capt

EXTRACTS FROM: UNIT X 9 List
Part II Order No 42 dated 2 May 45

ABSENT WITHOUT LEAVE
AWL from 2359 hrs 10 Apr 45 Ret from AWL 0001 hrs 25 Apr 45

B 58041 Pte EVANS CE RCOC

Certified to be a true extract from the regimental books and documents in my custody
"MCLAUGHLIN" Capt
Officer ic Records X
Cdn Sec 2 Edn HQ 21 A Gp

Certified true copy of Exhibit "E"
M Rousseau Capt

"Exhibit F"
"M. Rousseau Capt"

PART II ORDER EXTRACT FORM

6 Jun 1945

To : OC
1 Cdn Dis Centre

EXTRACT FROM: UNIT X-9 List
Part II Order No 53 dated 6 Jun 45

ABSENT WITHOUT LEAVE

AWL from 1000 hrs 18 May 45 Rec 1410 hrs 22 May 45
B58041 Pte EVANS CE RCOC

CERTIFIED to be a true extract from the Regimental books and documents in my custody

"Wm LAUGHLIN" Capt
Officer ic Records X
Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of Exhibit "F"
M. Rousseau Capt

Exhibit "B" AEL

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
~~B-58641~~	~~Pte~~	~~EVANS GE~~	~~X-4 List RCOC~~

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For ~~15(1) AWL~~ ~~2~~ ~~5~~ times

For ~~11~~ ~~1~~ times

For ~~25(2)~~ ~~1~~ times

For _____ _____ times

Date of first entry in Field Conduct Sheet ~~23 Jul43~~

Date of last entry in Field Conduct Sheet ~~21 Oct 44~~

2. Previous convictions of the Accused by a Cour-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for ~~NIL~~

beginning on the ~~N/A~~ day of ~~N/A~~.

4. The accused has been awaiting trial on the present charges for N.I. days in civil custody and for - 28 - days in military custody, i.e. N.I. days in Open Arrest - 29 - days in Close Arrest, of which N.I. days were spent in hospital.

5. The present age of the accused is 22 years 10 months 25.

6. The date of his Attestation is ~~26 Jan 42~~.

7. The service which the accused is allowed to reckon _____.

8. The accused is in possession of C.V.S.M. with Clasp.

9. (If the accused is a Warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substantive rank of ~~IIIII~~	_____
In the War substantive rank of ~~IIIIII~~	_____
In the acting rank of ~~IIIIII~~	_____

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT OF SUMMARY AWARD UNDER SEC 47AA AND OF CASES IN WHICH TRIAL WAS DISPENSED WITH OF ACCUSED

Description of Court by which tried	Date & Place of Trial	Charges upon which tried	Sentence of the Court	Punishment remitted or sentence suspended
FGCM	Field 27Jun44	15(1) AWL 14 dys 5 hrs	90 days detn	29 days remission

I hereby certify that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief.

Signed this day of Jun 45

W A Cooke, Capt

(W A Cooke) Capt
Officer ic Regtl Books
1 Cdn Discipline Centre

Exhibit "C"

No. B56041 Name Pte EVANS Carl Eric | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 26/1/43 | GC Badges | Service or Proficiency Pay | AEI 7/17 MFM 6 (AFB 122) 49/PAA/138 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19-7-43	Pte		15(1) AWL from 2359 hrs 19Jul43 to 1500 hrs 22 Jul 43(2 dy 15hrs)	Cpl Grover CSM Glunie	3 days stt forf 23Jul43 7 days pay 149(2)			
Field	21Sep43	"		AA 11 wear. black beret ott of camp area cont. to stand. ord.	Lt Houston Lt Cloutier	7 days CB	22Sep43		
Field	5Dec43	"		(1) 15(1) AWL from 2359, 5-12-43 to 1430 hrs 7 Dec43 (56 hrs 31min) (2) 25(2) Know. & with Intent altered a doc it was his dut. to preserve	Document. Document.	28 days FP Cost of app CO-12-1	9-12-43	Capt WE Strachan	28 days FP 149(1)(b) 2 days pd 149(1)(a) 2 dy pay 149(a)
Field	2Apr 44	"		15(1) AWL from 2215 hrs 2Apr44 to 1610 hrs 6Apr44(3 days 18hrs55min)	Document.	4 days pay	6 Apr44	TJ Warner Maj	4 days pd guilty of fact
Field	27Jun 44	"		15(1) AWL from 0600 hrs 5 Jun44 to 1330 hrs 19 Jun 44 (14dys 5 hrs) remission earned 29 days		90 days detn	27Jun44		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18Sep44			15(1) AWL from 1315 hrs 18Sep44 to 2300 hrs 1 Sep44(9hrs 45min)	Cpl Hearty	14 ds CB	2-9-44	(FM Hearn) Lt col	1 ds auto forf
Field	30Oct44	Pte		15(1) AWL from 2200 hrs 3 Oct44 to 1400 hrs 18 Oct44(14dys 16 hrs)	Doe	28 dys FP 28 dys pay	21Oct44	FM Hearn Lt col	auto forf15 dys 3 dys for Cost

Certified true copy of original MFW 6 in my possession

M A Cooke, Lt

(M A Cooke) Lt
Officer ic Retl Docs
1 Cdn Discipline Centre

289-b. Pte. Evans D.A.

Correspondance to be PINNED here.

289 B

Original 289 B. 27

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this 23rd.

of May, 1941, day

A. Order convening the Court

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY

, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable that the trial should take place by reference to a superior military officer;]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

B

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court)

*(2. A Field Officer as President)

*(3. Three Officers having more than one year's service)

for the following reasons, namely:—]

C

President.

Rank.	Name.	Regiment.
Major	C.C. Patterson	No.1 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J.C. Neil	No.3 Cdn Inf Hldg Unit
Lieutenant	C. Fritz	No.3 Cdn Inf Hldg Unit
Lieutenant	J.M. Chicoine	No.7 Cdn Inf Hldg Unit

*Signed L. [illegible] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

* To be signed personally by Officer convening it and at the head all officers on appointed to be detailed

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-82640 PTE. EVANS, D.R. No.1 R.C.A.S.C. Hldg Unit.	First Charge A.A. Sec 15(1) as per charge sheet	GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF SIX MONTHS.	Confirmed D

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) L. F. Ruffee, Brigadier (Signed) ...

Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (c)

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

9

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26th day of May, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 26th day of May 1941.

W. Patterson Maj
President of the Court Martial.

C. Certificate in case of death sentence

~~I certify that the terms of S.A.C.I. 590 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.I. 1929.

Signed this day of 19

~~*President of the Court Martial.*~~

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 28th day of May 1941.

L. F. Ruffee, Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) Aug. 16th 1941 (Signed) OFFICER I/C RECORDS
1 R.C.A.S.C. HOLDING UNIT.

Promulgated and extracts taken in the case of

(Dated) ... (Signed) ...

Promulgated and extracts taken in the case of

(Dated) ... (Signed) ...

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

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CHARGE SHEET.

The accused B-82640, Pte.Evans,D.R. No.1 R.C.A.S.C. Holding Unit C.A.(O) is charged with,W.O.A.S.

Charge. Absenting himself without leave,
Sect 15(5)
Army Act

in that,he absented himself without leave from 5th Canadian General Hospitable,Taplow Bucks. at 1530 Hours on Feb.3rd,1941 until apprehended by the Military Police at Pontypridd on 6th May 1941 at 1200 hours.

J.M.Pocock
.....
(J.M.Pocock) Lt.Col.
Commanding.
No.1 R.C.A.S.C.Holding Unit.
Canadian Army,(O).

Bordon Hants.
May 15th 1941.

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units

Bordon,Hants
This 23rd day of May 41.

Confirmed
President F.G.C.M.

appendix A

Date 26/5/41

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This is to certify that:-

No. PR 204 Pte Evans DR

is fit to undergo Court Martial.

Signed W Fonock Capt

Medical Officer.

B-82640, Pte. Evans, D.R., No. 1 R.C.A.S.C. Holding Unit, tried by Field General Court-Martial at Bordon, Hants., on the 26th day of May, 1941. 20

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. W.D.S. Carelees
Defending Officer - Lieut. L. Ruddell

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Guilty, sir.

R.P. 35(B) is complied with by the Court.

Q4 - Do you wish to make any statement in mitigation of punishment?
A4 - No, sir.
Q5 - Do you apply to give evidence yourself or to call any witnesses as to character?
A5 - Yes, sir.

B-82640, Pte. Evans, D.R., No. 1 R.C.A.S.C. Holding Unit, being duly sworn, is examined by the defending officer.

Q6 - I want you to give your regimental number, name, initials and unit.
A6 - B-82640, Pte. Evans, D.R., 1 Cdn. Troop Carrying Company, R.C.A.S.C.
Q7 - Your present unit?
A7 - No. 1 R.C.A.S.C. Holding Unit.
Q8 - When did you join the army?
A8 - September 6, 1939.
Q9 - Where?
A9 - Toronto.
Q10 - Will you tell the Court what happened after you joined up?
A10 - I had previous trouble with my ears -- perforated ear drums -- and I had to go before a medical board and they wouldn't accept me and I was getting medical treatments in Toronto. The day before my unit pulled out the medical officer wouldn't sign my papers to come overseas.
Q11 - You say you joined the army?
A11 - Yes, sir.
Q12 - You had had a medical inspection and passed to get into the army?
A12 - Yes, sir, but I didn't have much of an examination of the ears, sir.
Q13 - You say you went to the M.O. about your ears because of the trouble you had during your civilian occupation and one of your M.O's was.....?
A13 - Major McGart.
Q14 - What was his duty?
A14 - M.O. in the Medical Arts Building, Toronto.
Q15 - He pronounced you as unfit to proceed overseas?
A15 - Yes, sir.

Q16 - And you stated that the morning the draft were warned to move you w
told by him that you were unfit to go overseas?
A16 - The day before, sir.
Q17 - Did you have a medical examination before coming over?
A17 - I had an examination in the York Armouries and he wouldn't pass me.
Q18 - Did you have any further examination?
A18 - Before we left I didn't have any examination.
Q19 - So that you didn't expect to come overseas?
A19 - I was told that.
Q20 - But in spite of that you were sent overseas?
A20 - Yes, sir.
Q21 - Had you any objection to coming overseas?
A21 - No, sir, not at that time.
Q22 - You proceeded overseas, and then what happened?
A22 - I had to go on sick parade with my ears and from that time in February when we landed I have been on sick parade and in hospitals.
Q23 - Is it a permanent affliction?
A23 - Since nine years old. I have been to Taplow, 15th General and Cambridge Hospitals.
Q24 - What did they tell you?
A24 - They treated it the best way they could and told me to treat it myself with alcohol and peroxide.
Q25 - In between hospitals you were with the 1st Troop Carrying Company and had to treat your ears as best you could?
A25 - Yes, sir, and I went to the M.O. each morning.
Q26 - Your whole army career has been spent in hospitals or treating your ears yourself?
A26 - Yes, sir.
Q27 - Tell us where you were immediately prior to the 3rd February, the day you went a.w.l?
A27 - The 5th General Hospital, Taplow.
Q28 - What were your instructions at that time?
A28 - To go back to my unit and treat my ears the same as I had been doing.
Q29 - What in fact did you do?
A29 - Instead of going back I got it into my head I couldn't go back to try and do something I couldn't do.
Q30 - What did you do?
A30 - I went a.w.l. to Wales.
Q31 - Why?
A31 - I was tired of going back to M.O's and carrying on a treatment which wasn't doing me any good.

The prosecutor declines to cross-examine this witness.

Lieut. W.D.S. Careless, No. 1 R.C.A.S.C. Holding Unit, is duly sworn.

Q32 - Have you any evidence to produce as to the character and particulars of service of the accused?
A32 - Yes, sir, A.F.B. 296 and M.F.M. 6.
Defending Officer - I object to the admissibility of the M.F.M. 6 as it contains entries which are not regimental entries.
President - The Court has considered the objection of the defending officer and the objection is over-ruled.
Q33 - Is the accused the person named in the statement which you have heard read?
A33 - Yes, sir.
Q34 - Have you compared the contents of the above statement with the regimental books?
A34 - Yes, sir.
Q35 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A35 - Yes, sir.

The accused declines to cross-examine.

Q36 - Do you wish to address the Court?
A36 - Yes, sir. (Defending Officer) My statement in mitigation of sentence of the accused is concerned with his story. He joined the army with this ear disease intending to come overseas but was apparently pre-

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nounced unfit for this purpose and it was understood he would not be sent on draft. He had no objection because that was why he joined the army. His whole history in the army has been one long period of attending to this disease and it has not been conducive to good soldiering. In fact, he has not been able to be a good soldier as he has spent periods in hospital and when discharged has been told he would have to come back again. That happened repeatedly. He did his best to attend to his ears, reporting daily on sick parade and trying to carry on his duties at the same time, and on the last occasion when he had orders to rejoin his unit he was fed-up with the whole business feeling it was another round of attending to himself and having improper treatment and having to come back to hospital anyway. I suggest that frame of mind should be borne in mind when considering sentence. I would ask the Court to recommend that this man be reboarded because it seems definitely unfair that this man should have to attend to himself and returning him to hospital is not the intention of the military authorities, and if it is within the province of the Court to recommend that he be reboarded, this plea will have had some effect.

The Court is closed for the consideration of the sentence.

[signature] Maj
President F.G.C.M.

SUMMARY OF EVIDENCE IN THE CASE OF B-82640 Pte.EVANS.D.R. No.1 R.C.A.S.C.HOLDING.UNIT C.A.(O). 17

THE COMMANDING OFFICER DIRECTS THAT EVIDENCE SHALL BE TAKEN ON OATH.

1st Witness. L/Cpl.Carter,D. No.7667355 Canadian Military Police

2nd.Witness. L/Cpl.Fretter,A.No.1654217 Canadian Military Police.

I certify that in my opinion the attendance of L/Cpl Carter and L/Cpl.Fretter,owing to the expense and loss of time involved,are not readily procurable and a written statement of their evidence signed by them has been read to the accused and is attached herewith.

W.D.S.Careless.....
(W.D.S.Careless)Lieut.

I do not require the presence of these witness for the purpose of cross-examination.

David R. Evans.
(D.R.Evans)Pte.

3rd.Witness. Lieut J.R.Wilson No.1 R.C.A.S.C Holding Unit C.A.(O) Officer i/c Records. Having been duly sworn states.

On May 12th 1941 I interviewed the accused B-82640 Pte Evans D.R. whom I reconize.He wished to make a free confession.I warned him in accordance with the provisions of R.P.4(e). I also explained to him that his confession must be free and voluntary and that he could expect no favour or other advantages to be consequence on his confession. He stated that he fully understood.He then made a confession which I took down in writing. He signed this confession which,I witnessed. I produce this confession of the accused as evidence.

I also produce as Officer i/c records the certied copy of Declaration of Absence as declared by Court of Enquiry held at 8th Canadian General Hospitable Taplow Bucks on April 1st 1941. and A.F.B.85S relative to this case.

.....
(J.R.Wilson)Lieut.

The accused declines to cross-examine this witness.

I certify that the foregoing Summary of Evidence was taken down by me in writing in the presence of the accused and that the rules of procedure 4 (c) (d) (e) and (f) have been complied with.

W.D.S.Careless.....
(W.D.S.Careless)Lieut.
Officer taking down Summary.

May 12th 1941
Bordon Hants.

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CONFESSION OF B-82640 PTE.EVANS D.R. No 1 R.C.A.S.C. HOLDING UNIT?C.A.(O)

I B-82640 Pte Evans,D.R. having been duly cautioned R.P.4(e) wish to make the following confession under oath.

On Feb.3rd 1941 I left the 5th Canadian General Hospitable Taplow,Bucks at approx 1230 hours,and stayed away until apprehended by the Military Police in Pontypridd at 1200 hours on May 5th 1941.

David R. Evans
(D.R.Evans)Pte.

This is the confession so refered to in my evidence.

.....
(J.R.Wilson) Lieut.

May 15th 1941
Bordon,Hants.

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I, Pte Evans, D.R. B-82640 desire to have an Officer assigned to represent me at my Courts Martial.

David R. Evans
(D.R.Evans) Pte.

List of exhibits.

One A.F.B. 252.
One declaration of absence as per Court of Enquiry.

Witness for the Prosecution.

L/Cpl Carter C.M.P.
L/Cpl Fretter C.M.P.
Lieut J.R.Wilson No.1 R.C.A.S.C. Holding Unit C.A.(O)

E49

MAJOR.

CHARGE D.A.P.M. S. WALES AREA Army Form B 252

(See King's Regulations)

Royal Canadian Army Service Corps Regiment

1st. Holding Unit. ~~Battery~~ ~~Squadron~~ ~~Troop~~ ~~Company~~

CHARGE against No. B 82640 Rank Driver.

Name EVANS.D.R.

Place Pontypridd Date of Offence 5/5/41

OFFENCE When on active service.

(1) Absent from 7.0.3/41 until apprehended by the Military Police at No. 91 QUEEN STREET at about 1200hrs on Monday, 5th May 1941.

(2) Conduct to the prejudice of good order and military discipline,i.e. Making a wilfully false statement to a N.C.O. of the Military Police.

Names of Witnesses

76 87 355 Lcpl. Carter. C.M.P.

1654217 Lcpl. Prettier. C.M.P.
(Statement attached)

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

Attention is drawn to K.R.'s 562 (b) 1940

W/No.1062 P.T.O.

Statement of **EVIDENCE** in the case of:-
No. B82640 Dvr. EVANS.D.R.
1st. Holding Unit,
Royal Canadian Army Service Corps,
BORDON. Aldershot.

Sir,

At PONTYPRIDD on the 5th May 1941 at about 1200hrs.I was on duty in Queen Street in company with Lcpl. Fretter, C.M.P. Acting upon information received I proceeded to No. 91 Queen Street, where I saw the above named soldier.

I asked him if he was on leave, and he replied, " Yes, I am on sick leave". I asked him to produce his leave pass but he said, " I have lost it". I then said that he would have to accompany me to the Civil Police Station for further questioning but to this he said, " I will tell you the truth, I am absent from my unit without leave".

He was then conducted to the Civil Police Station at Pontypridd to await the arrival of a conveyance from C.MP. Hqrs. Cardiff. On its arrival he was taken to the I.T.C. Welch Regt. Guardroom at Whitchurch Barracks, Cardiff, where he was handed over to the M.C.O. in charge to be detained.

7687355 Dvr. Lcpl.
Corps of Military Police.
CARDIFF.
5/5/41

Sir,

I have read over and corroborate the above statement.

1854217 A.J. Lcpl.
Corps of Military Police.
CARDIFF.
5/5/41

REMARKS

Whilst C. in

No. B02640 Name Evans. D. R. Squ., Batty., or Company R. C.A.S. C. Corps Date of enlistment 6.9.39 Sheet No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ordered.	7.7.40	Pte		Failing to appear at a place of Parade 21.30 Hrs to 22.30. Hrs 7/7/40	Cpl: Cook	6 days C.B. 4 days Loss Pay.	8.7.40	Maj: Hallam.	
Godstone.	4.9.40.	"		A.A.40 Neglect to the Prej: in turning over his 15 cwt Lorry to his spare Driver leaking 25 galls: of Petrol, etc;	Capt Colling Cpl: Cook. * Cairs.	Wages to be a driver Mechanic.	12.9.40.	Maj: Hallam.	?
Godstone.	11.9.40.	Pte		A.W.L. 0600 Hrs 11.9.40 to 1430 Hrs 12-9-40. Absent. 32½ Hrs.	C pt: Collong. Cpl Cook.	2 days Jess of pay.	13/9/40	Maj: Hallam.	

Certified true copy. A. V. Wilson, Officer i/c Records.
No. 2 P.C. A.A. S. S. Holding Unit. London.

Army Form B.122

P.T.O.

Exhibit D

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Taplow, Bucks. on the 1 day of April 19 41, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-82640 Pte. Evans D.R. No. 1.C.T.C.C. R.C.A.S.C. Canadian Army (Overseas)

DECLARATION.

The Court declare that B-82640 Pte. Evans, D.R. No.1 C.T.C.C. R.C.A.S.C. Canadian Army (Overseas) illegally absented himself without leave at Taplow, Bucks. on 3 Feb. 1941, that he is still so absent.

Declaration of Absence received in my evidence

Names of President and Members

Major A.St.C. Rumball, R.C.A.M.C. — President.
Capt. S.A. Boyd, R.C.A.M.C. — Member
No. 5 Cdn. General Hospital, R.C.A.M.C.
Capt. P.L. Tisdale, R.C.A.M.C. — Member.
No. 5 Cdn. General Hospital, R.C.A.M.C.

Signature of Commanding Officer

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

(2844) WL 34/2/5/5002 75,000 10/39 A.G.E.W.Ltd. Gp.478 Forms/B115/26
(2844) WL 42/2/5/760 225,000 1/40

Exhibit B. mf

Army Form B296.

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Statement as to Character and Particulars of Service of Accused.

B-82640 Pte Evans D.R. of the No.1 R.C.O.S. Holding Unit C.A.(O)

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but will not be handed in to the proceedings.

Army Form. 364, A.R. 1929.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, preference being given to the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

	*Within last 12 months.	*Since Enlistment.
For AWL	1 times	1 times.
For Neglect to prejudice	1 times	1 times.
For Failing to appear	1 times	1 times.
For	times	times.

Number of instances of gallantry or distinguished conduct, NONE

or,

There are no entries in the Conduct sheets of the accused. NONE

2. The accused has not been previously convicted. NONE

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement. NONE

W.O. Armament Guard. 2,441. M. & L.O. 11—1941.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of May 1941

W.S. Evans Lieut.

Adjt. 27/5/41

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for ~~77~~ days in Civil Custody,

and 621 days in Military Custody,

Total 621 days.

Of which none days were spent in hospital.

5. The present age of the accused according to his $\frac{\text{record of service}}{\text{attestation paper}}$ is 29y- 5m 7d.

6. The date of his $\frac{\text{commission}}{\text{attestation}}$ specified in his $\frac{\text{record of service}}{\text{attestation paper}}$ is Sept 6/39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service.

9. The accused is entitled to reckon ..... years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to .....]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion
In the rank of	years,	.....
In the rank of	years,	.....
In the rank of	years,	.....

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the .....

Note.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted*

Description of Court by which Tried, or Status of Officer dispensing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

10

[*Continued overleaf*]

5 K- 18

C. G. M. L. Evans, D. K.

RECORDED AT CMHQ IN AB 160. 5R-18

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40-P-R-14698 (2884)

RECEIVED 14 AUG 1945 JAG BRANCH C.M.H.Q.

Convened by Order of Brigadier K G Blackader Comd 13 CITB dated 31 Jul 45
DSO, MC, ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-31581	CQMS		Donald Richard	EVANS	CIC 9 Cdn Repat Dep

PROCEEDINGS REVIEWED wmws
J. Rutherford Capt
20 Aug 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.
England

PROCEEDINGS OF TRIAL.

(Place of trial (in full)) on (date) 1 AUG 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure where a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for duties and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 54, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (are) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 11 2. 0 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans _____

~~The interpreter is sworn.~~(1) Do you object to C Hill Capt as shorthand writer? Ans Nil
The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil-Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	O L	REDMAN	HQ CRU
Member	CAPT	CHH	PRIEUR	4 CITA
Member	LIEUT	CAG	PEAT	7 C REPD
~~Judge Advocate~~				
Prosecutor	LIEUT	J E	DEHART	7 C REPD
Defending Offr	LIEUT	L A	SMITH	7 C REPD

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Govt Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment unless RP 99 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused _____ before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 24, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M-31581 CQMS Donald Richard EVANS - CIC - 9 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~As present under sentence for~~ ~~beginning on~~ (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) Fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Reduced to the Rank of Sergeant and to forfeit all Ordinary Pay for a period of Sixty (60) days.

(Sgd) _____ 1 Aug 45 _____ President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~The sentence will be put into execution by order of Quartermaster (Insert rank)~~ (1. AA 57A. Delete if not used.)

Date 2 Aug 45 (Sgd) H Blackader Brig
Commanding "D" Sp C.A.V.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
CQMS. R.R. Evans CIC.	2 Aug 45	Capt Adjt, CMH

Promulgated in Pt II DO 9 Cdn Repat Depot
10 d/4 Aug 45. ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 80(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 85-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~as JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO SIR (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~charge(s) his (their) plea(s) on ..... charge(s).~~ Part I of the Schedule is amended accordingly.~~

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial ~~charge~~ proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. RP [illegible] 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(7) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO SIR

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (i) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Nay, [illegible] (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to speak on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)

(1. When several accused tried separately see RP [illegible]. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 109, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(8), 98(2), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of records after trial see orders on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M-31581 CQMS Donald Richard EVANS, Cdn. Inf. Corps, on the strength of 9 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC 15(1)
ARMY ACT

When on active service, absenting himself without leave,

in that he,

In the Field, absented himself without leave from 2359 hours on the 20th day of June 1945, until apprehended by the Military Police at Tooting at 1515 hours on the 17th day of July 1945.

Total time absent: 26 days, 15 hours, 16 minutes.

Lt-Col.
(R. White)A/Commander,
9 Cdn. Repat. Depot.

In the field,

26th day of July 1945.

To be tried by Field General Court Martial.

(E/C Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
31 Jul 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M-31581	CQMS		Donald Richard	EVANS	CIC 9 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[x] named above as the accused, being subject to military law, has [illegible] committed the offence[s] set forth in the Charge Sheet[x] attached and on (*date*) 31 Jul 45 endorsed by me, [illegible]" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence[s] should be tried by an ordinary General Court-Martial ; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[s], and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
LT COL	D L REDWAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	4 Cdn Inf Trg Regt
Lieutenant	to be detailed by Comd	9 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Comd	4 Cdn Inf Trg Regt

[illegible]

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

Dat 31 Jul 45

K G Blackader
(Signed personally. RP 105 fn 2.)
(K G Blackader)
Brigadier
(Rank.)
Commanding 13 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PA 98 (In lieu of AFA 3) and P & E 1697 (1942)) *(See overleaf for oaths and notes for use on trial.)*

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. M/3128[illegible] ... R.C.N.S. ... Evans D.R. .....

of ..... 9 Repat Depot ... and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station. Fraser .....

Date. 1 Aug 43 .....

B.B. Bermudez Capt
Medical Officer

FWM

M 31581 C.Q.M.S. Evans D.R.

Sir:

This case is one of the many that are coming up quite often these days as it stands to reason a person who is used to hard work and heavy responsibility all his life is suddenly doing nothing, despondency sets in and the feeling of being useless takes hold of a person. The expression "Browned Off" is often used to describe this state of affairs. Such is the case of the accused.

He was stationed on the West Coast of Canada, being attached to the Air Force at detached stations, having the power and authority of a R.Q.M.S. working long hours with the satisfaction that he was accomplishing something in this War. He then came to England took eight weeks Infantry Training while on this course he had no Mess Privileges etc. and was treated as a private soldier by the other N C O'S, later on while hoping to see action he was put in charge of a platoon of "browned Off" NCO's which in itself is a marked tragedy. All this time he was required to do a CQSM's job but allowed no privileges of an NCO such as the use of the Mess etc. The attitude taken by this training Regt. was that these recently arrived NCO's were "Zombies" simply because they were in Canada so regardless of how long they have been in the service.

The accused obtained four days leave and while on this leave ran into friends on R.L.A. leave from the continent and while renewing old friendships in the pubs in the days that followed. Worry and Despondency really settled down in the accused's mind and day after day seemed to slip by, with the accused never realizing that his leave was up, was beside himself with worry of his family at home as things aren't as well as they should be. Prior to coming overseas the accused's embarkation leave was of 34 hours duration and thus many things were left undone.

Would the court bear in mind when deciding on this case that that the accused has an excellent record as to his service and fulfilling his job in the Army.

Upon talking to R.Q.M.S. L. Wibberly, he stated that "I have known C.Q.M.S. Evans since 1940 and found him a hard-working and capable soldier, very earnest and conscientious in his work. CQMS Evans had trouble at home as he has had compassionate leave several times, this trouble seemed to worry him a great deal". Would the Court consider the accused's age and his worry over his post-war plans starting out afresh with a family at his age is enough to create plenty of worry, especially when a person doesn't know when shipment home is due. The fact that the accused has been in custody for 17 days could be considered when awarding sentence.

E-3

SUMMARY OF EVIDENCE

In the case of M-31581 CQMS Evans, Donald Richard, Cdn. Inf. Corps, on the strength of 9 Cdn. Repat. Depot, a soldier of the Cdn. Army Overseas.

By direction of the Commander, this Summary of Evidence is taken on oath.

FIRST WITNESS for the PROSECUTION

Lt. W.E. Shields, Asst. Admin Officer, 9 Cdn. Repat Depot, an Officer of the Cdn. Army Overseas, having been duly sworn states:

I am Lt. W.E. Shields, Asst. Admin Officer, 9 Cdn. Repat Depot. I produce certified true copy of a declaration of a court of Inquiry purporting to be signed by Colone J.A. Wilson, which relates to the accused. This document is marked exhibit "A" and is duly initialled by me for purposes of identification. This document shows the accused as absenting himself without leave from 2359 hrs on the 20th day of June 1945. I also produce a certificate in accordance with the Army Act 163 (1)(jj) which is dated 17 July 45, purporting to be signed by Major F.C. Smith, Assistant Provost Marshall, London District. This document is marked exhibit "B" and is duly initialled by me for purposes of identification. This document shows that the accused was arrested at 1515 hrs on 17 Jul 45.

The accused declines to cross examine this witness.

W.E. Shields
(W.E.Shields) Lt.

The accused having been duly cautioned in accordance with rule of procedure 4(e) reserves his defence.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

J.E. deHart Lt
(J.E. de Hart) Officer detailed to take Summary of Evidence.

26th July 1945.

In the Field.

E. A
DWS

Exhibit A

W63.

RECORD of the Declaration of a Court of Inquiry assembled at 1 Cdn Inf Trg Regt on the 12th day of July 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. M-31581 CQMS Evans, D.R. - 1 Cdn Inf Trg Regt

DECLARATION

The Court declare that No. M-31581 CQMS Evans, D.R.

OF 1 CDN INF TRG REGT

illegally absented himself without leave from 1 Cdn Inf Trg Regt

at 2359 hrs on the 20th day of June 1945,

that he is still so absent, and that on the 25th day of June 1945 he was deficient, and that he is still deficient of the following articles :—

ARTICLES		Vocat VALUE			Appraised Value			ARTICLES	VALUE	
Anklets web, prs	1	0	4	5	0	3	3½			
Battle Dress Trousers	1	1	1	1½	0	18	11½			
Battle Dress Blouse	1	1	3	6	0	17	7½			
Drawers, Cell	2	0	1	11	0	1	6½			
Braces, prs	1	0	1	4	0	1	0			
Brushes, button	1	0	1	2	0	0	10½			
Brushes, shaving	1	0	1	6	0	1	3			
Brushes, polishing	1	0	1	3	0	0	11½			
Brushes, tooth	1	0	0	6	0	0	4½			
Comb, hair	1	0	0	2	0	0	1½			
Discs, Identity	3	0	0	1	0	0	0½			
Holdall	1	0	0	10	0	0	7½			
Razor	1	0	0	3	0	0	2½			
Towels, Hand	1	0	1	5	0	1	0½			
Strap Web &Supporting	2	0	0	7	0	0	5½			
Mugs, Drinking	1	0	0	7	0	0	5½			
TOTAL		3	3	9½	2	8	3½			

A/Capt. H.W. Noble — President

Lt. F. Koshrysh — Member

Signed at 1 Cdn Inf Trg Regt

Lt. E.N. Bailes — Member

this 16th day of July 19 45

Signature of Commanding Officer (J.A. Wilson) Colonel

Certified true copy

Signature of Officer having custody of original record — Capt

(R.W.E. Plant) A/Adm Offr
1 Cdn. Inf. Trg. Regt.

3/60B HFB 375-AFB 115
40/P&S/392 (6610)

CERTIFICATE IN ACCORDANCE WITH THE ARMY ACT, Sect 163 (1) (1955)

I certify that No.M.31581...Rank ....CSM..Name ..EVANS. D.E.....

No.1..C.I.T.E..... Unit, was arrested at MITCHAM.RD..TOOTING.....

at .1515.. hours on ...17th.JULY.1945.....

Assistant Provost Marshal,
London District.

C.I.WDD.
Whitehall.S.W.1.
Date..17th.JULY.45.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at 1 CITR, In the Field, preliminary to my trial by Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 1 CITR
In the Field
this 27th day
of July 194

W E Evans

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of _____ if he is available.

LIST OF EXHIBITS IN THE CASE
OF M31581 CQMS EVANS D.R.

EXHIBIT "A" - Record of a declaration of a court of Inquiry
" "B" - certificate of apprehension

LIST OF WITNESSES IN THE CASE
OF

1st WITNESS - LT. W. E. SHIELDS - 9 Con. Repat. Depot.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M-31581	CQMS	EVANS D.R.	9 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereinafter stated should correspond with the number of entries in the Field Conduct Sheet, precautions being given to the omission of offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For N ..... times.
For I ..... times.
For L ..... times.
For ..... times.
For .....

Date of first entry in Field Conduct Sheet Nil

Date of last entry in Field Conduct Sheet Nil

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for ~~[illegible]~~ beginning on the ..... day of .....

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 45 days in military custody, *i.e.*, nil days in open arrest, 45 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 34

6. The date of his ~~attestation~~ ..... is 7 Nov 40

7. The service which the accused is allowed to reckon is 4 yrs 263 days

8. The accused is in possession of: CVSM & Clasp

†State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date

	Date of Promotion.
In the substantive rank of CQMS	1 Apr 43
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

E+B

E+B

Under: W1.42128-4200 45,000 11/41 A.F.H.Q.Ltd. Gp.679 Forms/7.2.5/Wash.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 1st ~~28th~~ day of Aug ~~July~~ 1945

Capt.
(J.H.Galloway) Records Offr
9 Cdn. Repat. Depot.

No M31581 Name EVANS, D?R. Sqn, Battery, or Company | Corps CIC | Date of enlistment 7 Nov 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY OF ORIGINAL MFM6

AUG 1 1945 J H Galloway Capt.
(J H Galloway) Records Officer.
1 Canadian Infantry Trg Regiment.

(PTO)

SP-34.

Re: Evans, C. E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A50360 Pte E E EVANS H L I OF C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 12(1)(a)	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under or liable to ~~[illegible]~~ "NIL" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 25 days, of which no days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To suffer penal servitude for the term of three (3) years.

(Sgd) "E B Bull" Major — Judge-Advocate, if any. 4 Jul 45 — Date awarded. (Sgd) "B M Thomson" Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation.

Date 4 July 45 (Sgd) "N M Gemmell" Lt-Col Commanding 9 C I B

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 63. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) H D G Crerar
(H D G Crerar) General
Commanding 2 Cdn Corps
Confirming Officer

Date 16 July 45

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
A50360 Pte E E Evans	sentence promulgated and extracts taken 20 July 45.	H Warby Capt/Asst

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 21 July 45 [illegible]

RECORDED AT CMHQ IN AB 149

5-P-34

CFA86 (1 to 3 incl. of AFA81) 40-P-M-S-12658-(40701) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Col N M GEMMEL Comd 9 Cdn Inf Bde dated 29 Jun 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A50360	Pte		Ernest Edward	EVANS	H L I OF C

PROCEEDINGS REVIEWED
J.R. Migneault Capt
30 July 45
REVIEWING OFFICER, JAG BRANCH, CMHQ

CERTIFIED TRUE COPY
H B Batcheva

PROCEEDINGS REVIEWED 2 Aug 45

25 Jul 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) N.W. EUROPE on (date(s)) 4 JUL 45
Cdn. Sec. I Corps, HQ. 21 Army Gp.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 34/123

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ~~as interpreter~~? Ans ~~as interpreter~~

~~The Interpreter is sworn.(1)~~ Do you object to ~~as shorthand writer~~? Ans ~~as shorthand writer~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	B M THOMSON	S D & G HIGHRS
Member	LT	D M MACDONALD	HQ 9 CDN INF BDE
Member	LT	K L MOLLISON	Nth N S HIGHRS *
Judge-Advocate	MAJOR	E B BULL	DJA 3 CDN INF DIV
Prosecutor	CAPT	W D TIPPER	H L I OF C
Defending Offr	CAPT	D A PEARCE	H L I OF C

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be remarked separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 2.)

7Jul45 jwb A8. The accused ~~stands~~ before arraignment makes(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 mark and name of the accused making the plea.)

A9. The accused is ~~each~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

* Capt D MacDonald, the senior member, being unavailable to sit due to exigencies of the service, the waiting member takes his place on the court.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 1 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete while or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~no~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The ~~Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ ..... charge(s).(2) The Court ~~is closed, and considers the submission.~~(3) The Court is re-opened, and the President ~~announces that the submission is disallowed on the~~ ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... i.e. Are they witnesses as to character only? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf RP* 5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes re Part I of Schedule.* 2. *RP* 46(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s)~~ of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. *AA* 54(3) (*a*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~a~~ statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 162(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB* 315 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to give on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 40(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1) (*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see inside of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"BMT"

CHARGE SHEET

The accused No. A-50360 Private Ernest Edward EVANS, The Highland Light Infantry of Canada, a soldier of the Canadian Army Overseas, is charged with:-

CHARGE
Sec 12(1)(a)
Army Act

WHEN ON ACTIVE SERVICE,

DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 4 March 1945 while proceeding to a forward battle area, with intent to avoid so proceeding, absented himself without leave from 2200 hrs 4 March 1945 until reporting to his Company at approximately 0700 hrs 11 June 1945 at Baarn, Holland.

In the Field
27 Jun 45

"RD Hodgins" Lt-col
(RD Hodgins) Lt-col
CO The H.L.I. of Canada

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

In the Field
29 Jun 45

"N.M. Gemmell" Lt-col
(N.M. Gemmell) Lt-col
Comd 9 Cdn Inf Bde

"BMT"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-50360	Pte		Ernest Edward	EVANS	HLI of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, "NMG" being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 29 Jun 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial". "NMG"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it would not be practicable to delay the trial of such person(s) to a subsequent sitting of a) "NMG" "NMG"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed "NMG" or detailed hereunder.

4. I am unable to appoint an three offrs as members of the Court, other than the President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	B.M. Thomson	SD & G Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	G. MacDonald	Nth NS Highrs
Lt	D.M. MacDonald	HQ 9 Cdn Inf Bde

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	K.L. Mollison	Nth NS Highrs

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	E.B. Bull (DJA)	3 Cdn Inf Div

On Active Service in the Fd

in	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
	Holland	"N.M. Gemmell" (NM Gemmell)	Lt-col

Date 29 Jun 45 Commanding Comd 9 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FABS 17b Sect of AFAS) 40.9 & 8/1867 (4021)

(See overleaf for oaths and notes for use on trial.)

"SMT"

July 4 1945

A-50360 Pte Evans E.E.

This is to certify that I have examined this man to-day and find him fit to stand court martial.

"GG Kerster"
Geo. G. Kerster Capt
MO, H.L.I of Can.

First Witness for Prosecution: No A37513 CSM Wilson WJ, HLI of C, being duly sworn, is examined by the Prosecutor:

I am as above. I recognize the accused as A50360 Pte Ernest Edward Evans. On 3 Mar 45, "B" Coy was sitting in Udem, Germany. I was CSM of "B" Coy. The accused was the OC's batman. The Coy moved forward to the Hochwald Forest which was our FUP at approx 1300 hrs on 3 Mar 45. When we got there the 8 Bde had pushed a little further than we thought and it was changed into an assembly area. The Coy stayed there until approx 2000 hrs and word came through we had to move up to a new FUP. At this time I was approx 200 x from Coy. This was due to condition of ground. When word came through at 2000 hrs to move, I went to see Coy Comdr and he was moving the Coy at that time to the new FUP. I went back to my carrier and moved it up into the convoy. I went back to where Coy had been and asked Pte Robb why his truck was not in the convoy. The accused was present at this conversation. He explained his veh was stuck and he couldn't get it out up the hill into road. So I said to him when he did get up to bring the accused with him. The accused was standing about 3 ft away and could hear this conversation. When Pte Robb reported to FUP at approx 2300 hrs the accused was missing. On the following morning at approx 0500 hrs the Coy moved fwd into battle to take a high feature, and the accused was not present. I know this of my own knowledge as I checked the area for him, as far as I could. I did not see accused from the time in assembly area until he reported back to unit on 11 June 45, I think. The Coy was still in sight when I went back first to assembly after being warned we were going fwd to a new FUP. The second time I went back, that is the time I spoke to Pte Robb in presence of accused, the Coy was not still in sight. The accused was 3 or 4 ft from Pte Robb when I gave the instructions to bring him up.

XX

When I warned Pte Robb to bring acc. up with him the Coy was on the way to 2nd FUP. Robb is a truck dvr in "B" Coy. I warned Robb to bring up acc as Coy was not in sight at that time. This was 2nd time I went back. It was dark. It was a little darker than dusk, it wasn't really black. It was 2000 hrs when we moved to 2nd FUP. It was 2300 hrs when Robb reported to FUP. There was no other engagement with enemy at this time. I am not sure of date. I am not sure whether it was 3 or 4th Mar 45. I said acc was not present at 0500 hrs next morning because I was with Coy at that time. I did not move fwd at this time. I went back and checked Coy Area. I was told to by Coy Comdr. It was just breaking morning. It was lighter than when we moved night before. It was about half light at 0500 hrs on 4 or 5 Mar 45, whichever it was.

Court:

I don t know why accused was not with Coy Comdr at time. I spoke to Robb. It may be Coy Comdr told him to stay with veh. that sometimes happened. It was usual for Coy Comdr to take batman into battle with him. I don't know whether accused is a batman or batman-runner. I think Coy Comdr used acc. as runner. They used artificial moonlight at that time.

JA

I am positive artificial moonlight was used when we moved fwd to FUP. At the time I was talking to Robb in presence of accused their was some shelling of our locality. The acc. couldn't see what direction the Coy was proceeding when I spoke to Robb in his presence. The Coy was briefed about 1930 hrs that night, i.e. the pl comdrs and myself. - the men weren't there. I don't know whether acc knew where Coy was going or not. I would say assembly area was approx. 3 miles from enemy, altho there were some enemy snipers in the area. The direction the coy was going could have been seen from the place where I spoke to Robb about 15 or 20 minutes before. They Coy went towards front. In assembly area, the men dug in and the "B" truck came in & ration were

unloaded. I am not sure of the date, but whatever date the acc. absented himself was the night before the attack. The attack was the only one by the coy during or around that time.

RP 83 (b) complied with.

2ND WITNESS FOR PROSECUTION: A37404 CQMS HOWITT J E HLI OF C having been duly sworn is examined by the Prosecutor:

I am as above, CQMS of "B" Coy. On or about 4 Mar 45 I was "B" Coy clerk. I recognize the accused. On the morning of 5 Mar 45 I went to "B" Coy where they were at their position. On arrival I rec'd a report on acc. I checked all personal at Coy area, and found acc. was not present. I reported to the Bn Orderly room. This document is a MFB 375, certified true copy of a record of Ct of Inq. dealing with accused. I present it to court.

MFB 375, is presented to court, read by President, marked exhibit "A" and annexed to proceedings.

Cross Exam:

I don't know whether he had the articles listed or not. They were not in his kit he left behind. I had no record actually of what had been issued. Normally men are not charged with deficiences in action.

Court:

When I arrived at Coy Area they were holding a position after consolidating, after an attack. I knew acc. was HQ personell. I checked Coy HQ myself, but I didn't check platoons personally.

JA

I reached Coy at approx 1000 hrs on morning of 5 Mar 45. The last time I saw Coy proper was about 1700 hrs night before in an area. The coy went into an attack between then and when I saw them again the next morning.

Cross Exam: (with permission)

I don't think Pte Hobb returned to cooker with veh. I didn't see him. He could have been at cooker without me seeing him, but he didn't come up with convoy of vehs.

RP 83 (b) complied with.

3RD WITNESS FOR PROSECUTION: A37225 CSM McLEOD J P HLI OF C Being duly sworn is examined by the prosecutor:

I am above, and am CSM of "B" Coy. I recognize the accused. On the morning of 11 June 45 at approx 0700 hrs, the accused reported to me in my quarters in "B" Coy lines, HLI of C, at Basin Holland. I put him under close arrest, took him to guard room and turned him over to guardsergeant.

Cross exam:

The acc. was properly dressed, but did not have gaiters.

JA

All he said was he was back.

RP 83 (b) complied with.

4TH WITNESS FOR PROSECUTION: (Notice given to acc under RP 76) B118730 Pte R L MIDSDELL HLI of C, being duly sworn, is examined by the Prosecutor:

I am as above. I am a member of "B" coy, 11 pl #4 sec. On 3 Mar 45 we came into Hochwald Forest at approx 1630 or 1700 hrs. There was heavy shelling. We dug in and stayed till following night until around 2200 or 2300 hrs and we were given orders to move up to a FUP for another attack. When it was dark, and in the bush it was very hard to see. It was difficult during move up to keep in contact. While on the move, we had a little shelling causing us to dig in frequently.

Cross exam:

I couldn't say for sure that I was warned for an attack. I wasn't briefed on an attack. Moves were under complete darkness. In bush it was very dark. On road, it was dark but you could make out where you were going. There were searchlights on part of the time. "B" Coy was on right of

road more or less in bush when we dug in. We moved up road to best of my knowledge.
Court:
It was difficult to keep contact in bush because of darkness - when we started out. It wasn't too bad on road. We dug in approx 4 or 5 times from leaving assembly area to the attack. I understood we were in assembly area.
JA
When we were in assembly area on evening of 4 Mar 45, I understood we were going forward. I can't remember if I was told. I don't know accused. We were told we were "moving up" and I took it for granted it was an FUP.
RP 83 (b) complied with.

1ST WITNESS FOR DEFENCE: H1612 PTE PEDDERSEN H, HLI of C, being duly sworn, is examined by the Def Offr:

I am as above and member of "B" Coy of HLI. I saw Pte Robb on the night of 4 Mar 45. Pte Robb and I were coming up from cooker when jeep was stuck. Pte Robb went ahead to bring veh down to push me out, but I was able to get out myself and I went up there. I saw Robb trying to get his veh out of woods to get on road with convoy. I left Robb after he got out on road and I followed "B" Coy to the next FUP. Robb was alone in truck. He said nothing of accused. At this time we leaving a FUP where we had already spent one night until 8 o'clock next night. I rejoined the Coy myself, but Robb never rejoined until next day, and then it was our other "B" truck that had moved up to another area that he rejoined.
Cross exam:
When I came to "B" Coy after my veh was stuck, they were still in woods and just forming up to leave. Robb's truck was not still stuck at this time, it was on road waiting for truck to move off. The anm coy carrier rejoined troop about same time as I did. It came a little ahead of me. As far as I know Robbs truck rejoined convey. I didn't see Robb's truck until next day.
Court:
Robb was driving 15 cwt. I didn't see anything of Evans. I went back to cooker truck next day at approx 1700 hrs, and saw Robb there then. That is why I say he did not rejoin coy before. I drive Coy jeep. I helped Robb get on to road. When he got on road Coy had proceeded ahead approx 1 mile and I caught up with convoy. When I was getting Robb out of woods, the Coy left.
JA
I didn't see CSM Wilson until I rejoined convoy on road. I had a good idea where we were going. There is only one road and we were going north on it towards the enemy. There had been some shelling while I was helping to get Robb's truck out of woods. I know accused. I didn't see him there at all.
RP 83 (b) complied with.

2ND WITNESS FOR DEFENCE (CHARACTER) A37225 CSM McLEOD, J B HLI of C, being duly sworn is examined by the Def Offr:

I know the acc. I first knew him in fall of 1943. I was then a cpl and evans was a private in my section. He served with me from then until the invasion on all kinds of soldiering and training and at no time did I have any trouble with acc. He came in with Coy on "D" day, and up to time of present charge he has done a good job in the coy. That is all
Cross exam:
Acc went to coy HQ as batman or batman runner before "D" day. I became CSM of "B" Coy on 18 Apr 45.
Court:
We were closely associated with Coy HQ. I was a pl sgt.

RP 83 B complied with.

CLOSING ADDRESS BY DEF OFFR

Mr President and members of the court:

We have had the evidence presented by the prosecution and the defence and in no instance has the evidence even hinted that the accused showed intent to desert His Majesty's Service.

At the particular time of the accused's absence he did have no possible way of knowing the company was going into battle. He was not briefed by anyone nor was he told that the company was going to contact the enemy. He was not even warned of a move. Therefore it cannot be proven that he intended to miss a special service or action required of him.

Circumstances surrounding the instance show that it was nothing other than another move which according to the evidence were quite frequent at this time, as they had moved and dug in again on several occasions immediately prior to this.

In summing up I would like to say once again that this man showed no intent of desertion and should be found guilty of nothing other than absence without leave.

"D A Pearce" Capt.

CLOSING ADDRESS OF PROSECUTOR

Mr President, Maj Bull and members of the court:

There has been evidence presented by several witness before you on both sides of the case. Much of it is straightforward but I would like to point out that the last person recorded before this as having seen Pte Evans was CSM Wilson at approx 2000 hrs 4 Mar 45 in the Hochwald Forest Germany. Since then he was not seen until he gave himself up at Boain 0700 hrs 11 June 45. Also remember that Pte Robb now absent was not seen by Pte Peddersen from the time he aided him in getting his truck into the convoy until the next day at approx 1700 hrs.

Finally there has not been any account in any way shape or form for the time between 2200 hrs 4 March 1945 to 0700 hrs 11 June 1945.

"W D Tipper" Capt.

PLEA IN MITIGATION

Mr president and members of the court,

I would like to draw to your attention at this time the fact that Pte Evans landed with his unit on D Day and remained with it throughout the entire campaign without a previous offence against him. And according to the evidence has shewn himself to be a good soldier.

I was a platoon commander in 13 Coy during a good portion of this time and knew the accused very well. To the best of my knowledge he always proved himself to be a good and willing soldier. And I feel that any private soldier sticking it out faithfully during this period certainly has a lot in his favor.

I ask of you to weigh the evidence carefully and be as lenient as possible in all fairness to him.

"D A Pearce" Capt.

SUMMING UP BY JA

1. Function of JA
2 Function of Ct
3 Any opinion expressed by JA as to facts to be disregarded.
4 Charge - Desertion - reads - necessary ingredients of proof.
5 2 types of desertion explained to ct.
6 "Important particular service or duty" explained.
7 Law of this type of desertion given.
8 Necessary ingredients of such a charge "AWL" plus "intention"
9 AWL explained - prima facie case of AWL before Court
10 Manner of proof of intention - circumstances etc
11 Possible findings - Not Guilty, Guilty, or Guilty of awl only (AA 56)
12 Evidence reviewed: Court must be satisfied beyond reasonable doubt that acc knew his duty req him to go to a more forward battle area and that he absented himself with the intent to avoid such duty and not to go forward.
13 Credibility of witnesses - right of court to believe or disbelieve - descrepancies set out.
14 "Golden thread" Onus on prosecution to prove guilt beyond reasonable doubt - acc innocent until proven guilty - meaning of "reasonable doubt" "Business man test". If Ct convinced of innocence of acc. - that he had no intent or did not know under circumstances that he and his coy were to go fwd, or if reasonable doubt - ct must acquit.
15 Mr President, are there any further matters upon which you wish me to advise the Ct - Ans "NO"
16 Mr Prosecutor - same question - Ans "No sir"
17 Mr Def Offr same question - Ans "No sir"

Appendix "A" Exhibit "A" "BMT"

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 28 day of march 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A50360 Pte Evans E E

DECLARATION

The Court declare that No. A50360 Pte Evans E E

The Highland Light Infantry of Canada

illegally absented himself without leave In the field

at 2000 hrs on the 4 day of March 45

that he is still so absent, and that on the 28 March 45 he was deficient, and

that he is still deficient of the following articles:—

ARTICLES		VALUE	ARTICLES	VALUE
Battle dress blouse	1	1.7.8		
Battle dress trousers	1	1.7.11		
Boots leather high prs	1	1.12.11		
Jersey pullover	1	6.9		
Badge cap	1	9½		
Holdall	1	3.2		
Knife,fork,spoon	1	1.7		
Housewife	1	2.3		
Knife,clasp	1	5.2½		
Carrier water bottle	1	19.10		
Cape anti gas	1	10.9		
Sheet ground	1	2.8		
Balmoral	1	9.1		
Shirts angola drab	2	9.1		
Rifle	1	10.3. 6		
Socks	1	1. 8		
	£	17.17.9		

Capt C H Craig President

Lieut J J Mathews Member

Signed at in the field

Lieut F A Zager Member

this 28 day of March 19 45

Signature of Commanding Officer Lt-col R D Hodgins

Certified true copy "P W Ronald" A/Capt

Signature of Officer having custody of original record

W.F.B. 275
A.F.B. 539
HQ 170-10-487

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Appendix "B"
Exhibit "B""BMT"

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
A50360	Pte	Ernest Edward EVANS	The HLI OF CAN

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For .... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* ~~The accused was transferred from~~ "FWA" ~~to the~~ ..... "FWA" ~~beginning on the~~ ....., ~~day of~~ ....."FWA"

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 25 days in military custody, making a total of 25 days of which Nil days were spent in hosp.

5. The present age of the accused is 24 years.

6. The date of his attestation is 15 Aug 40

7. ~~The service which the accused is alleged to have~~ ~~broken is~~ "FWA".....

8. The accused is in possession of #

CVSM & CLASP

9. ~~(If the accused is a Warrant Officer or NCO).~~ The "FWA" accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

State the military decorations (if any) held by accused.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4th day of July 45

"P N Arnold" A/Capt
(Officer having custody of Regimental Books)

No. A50360 Name Evans E E | Sqn, Battery, or Company "B" | Corps CIC | Date of enlistment 15Aug40 | CC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				TEMPORARY SHEET ORIGINAL NOT AVAILABLE		"EXHIBIT "C" "BMT"			

CERTIFIED TRUE COPY
"W D Tipper" Capt
Offr having custody of original.

(PTO)

Z-53

PTE EVANS E.T.

Z-53

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 28th day of January, 19 43

Whereas it appears to me, the undersigned, an officer in Command of Canadian Forestry Corps, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~*and that it is not practicable to delay the trial for reference to a superior qualified officer;~~ JBW

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

~~*I am unable to appoint—~~
~~*(1 Three Officers to form the Court;~~
~~*(2 A Field Officer as President;~~ JBW
~~for the following reasons, namely:—~~

16 Mar 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or by number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	O.V. Maude-Roxby, M.C.	No.19 Coy, C.F.C.

Members.

Rank.	Name.	Regiment.
Captain	H.J.L. Pearce, M.C.	No.10 Coy, C.F.C.
Lieutenant	H.R. Christie, M.C.	No.18 Coy, C.F.C.
	WAITING MEMBER	
Major	C.L. Kennedy,	H.Q. #5 District, CFC.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.B. White) Brig-General,
Commanding Canadian Forestry Corps.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K-98654, Private Edward John EVANS, No.6 Company, C.F.C.	First Charge: Sec.12(1)(a), Army Act.	NOT GUILTY	NOT GUILTY A desertion	
			GUILTY A absence without leave	
	Second Charge: Sec.24(2), Army Act.	NOT GUILTY	GUILTY Except that he did not lose the Sweater Pullover and Cap Comforter. Sentence To undergo detention for 120 days and to be placed under stoppages of pay in the amount of £3-2-1 and $17.12	Confirmed J.B.White
			9 Feb. 1943 Amadee Roxby Major	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.B.White Brig-General, (J.B. White) *Commanding*, Cdn Forestry Corps. *Convening Officer (c)*

(Signed) Amadee Roxby Major, 19 Coy, Cdn Forestry Corps. *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the ninth day of February, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) None.
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 9th day of February 1943.

Amadee Roxby Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 702 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 20th day of February 1943.

J.B.White Brigadier-General,
Confirming Officer
Commander, Canadian Forestry Corps.

K.98654 Pte. Edward John EVANS
No. 6 Coy. C.F.C.

Promulgated and extracts taken in the case of

(a) (Dated) 24 Feb 43 (Signed) A.M. Miller Lt & Adjt. 6 Coy C.F.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(Ser. No. 38402/1388) 750m 1/43 W. & Co., Ltd. Gp. 748-2

CHARGE SHEET

Maunde Roxby Maj D President

The accused, No.K-98654 Private Edward John Evans, No.6 Company, Canadian Forestry Corps, a soldier of the Canadian Army, is charged with-

First charge
Sec.12(1)(a)
Army Act

W.O.A.S. Deserting His Majesty's service

in that he, at Bog of Shannon, Ross-shire, Scotland, at 1400 hours on the 13th October, 1942, absented himself from No.6 Company, Canadian Forestry Corps, until apprehended at Southampton at 1000 hours on the 14th December, 1942 by the C.M.Police and thereby causing expense to the public of £-3-2-1 for his apprehension and return to his unit.

Second charge
Sec.24(2)
Army Act

W.O.A.S. Losing by neglect his equipments, clothing and regimental necessaries

in that he, at Bog of Shannon, Ross-shire, Scotland, on the 18th December 1942, was deficient of the following articles-

Article			Article		11.56
Coats, rubber	1	£2.63	Socks, prs	1	.43
Straps, web supporting	1	.24	Shirts, under, cotton	2	1.04
Straps, shoulder	2	1.49	Drawers, under cotton	2	.96
Bottle, water carrier	1	.73	Housewife	1	.50
Drawers, wool	1	1.73	Respirator, complete	1	4.66
Sweaters, pullover	1	1.73	Gloves, woolen, prs.	1	.48
Caps, F.S.	1	.54	Knife	1	.18
Badges, cap	1	.10	Fork	1	.11
Bags, kit	1	1.17	Spoon	1	.09
Razor, safety	1	.42	Cap, comforter	1	.34
Brush, polishing	1	.30	Combs	1	.04
Brush, blacking	1	.16	Blouses, fatigue, denim		12.85
Braces, prs.	1	.32	Vests, woolen	1	1.62
sub-total		11.56	Bags, ration	1	.03
			Total		24.89
			Depreciation-25%		6.22
			Net value		£18.67

Place-Bog of Shannon, Ross-shire, Scotland
Date-- 16 December 1942

A. Gordon .....Captain
A/Officer Commanding
No.6 Company, C.F.C. CA(C)

Remanded for Field General Court Martial

Place-Bog of Shannon, Ross-shire, Scotland
Date--14 January 1943

M. C. Ferguson .....Lt.-Col.
Commander No.5 District
Canadian Forestry Corps

To be tried by Field General Court Martial

H.Q. Can. Forestry Corps
28 January 1943.

J. B. White Brig. General
(J.B. White)
Commander
Canadian Forestry Corps.

MEDICAL CERTIFICATE
(K.R.(Can) 557)

I

I certify that I have this morning examined No. K-98654 Private Edward John EVANS, of No. 6 Company Canadian Forestry Corps, and in my opinion he is fit to undergo trial by Court Martial.

Station ... Beauly

Medical Officer...

Date...9...2...43...

MEDICAL OFFICER'S CERTIFICATE

(M.M.L. P. 794)

I certify that No. K-98654 Private Edward John EVANS, of No. 6 Coy. Canadian Forestry Corps, is FIT to undergo trial by Court Martial.

.....
Medical Officer
R.C.A.M.C.

9-2-43

Evidence taken down at the trial by Field General Court-Martial of K-98654, Private Edward John EVANS, No.6 Company Canadian Forestry Corps, held at No.5 District Headquarters, Canadian Forestry Corps, on Tuesday, 9th February 1943.

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At 1000 hours the Court opens.

The accused and all persons, including the witnesses are brought in.

The Order Convening the Court, the Charge Sheet and Summary of Evidence are laid before the Court. The Court complies with R.P. 22 and 23.

Prosecutor: Lieut. F.S. Perry, No.18 Coy, C.F.C.

Defending Officer: Lieut. A.E.Akenhead, No.21 Coy, C.F.C.

The Convening Order is read by the President to the accused.

The President and Members of the Court answer to their names.

Medical Certificate is laid before the Court by the Prosecutor and signed by the President.

By the President to the accused:

Q.1. Do you object to being tried by me as President or by any of the officers whose names you have heard readK

A.1. No sir.

The President and Members are duly sworn.
The Officers under instruction are duly sworn. Major C.L.Kennedy, Waiting Member, requested to remain in Court Room during the proceedings and is sworn with officers under instruction.

Q.2. Do you object to P-38251, Sgt. Gray, P.F. acting as shorthand writer?

A.2. No sir.

The court stenographer is duly sworn.

The Charge Sheet is signed by the President and annexed to the Proceedings.

The accused is arraigned upon the charges in the above mentioned Charge Sheet.

Q.3. Are you guilty, or not guilty, of the first charge?

A.3. Not guilty.

Q.4. Are you guilty, or not guilty, of the second charge you have just heard read?

A.4. Not guilty.

Q.5. Does the accused wish to claim that any of the rules relating to procedure before trial have not been complied with?

A.5. No sir.

The witnesses withdraw from Court Room.

Q.6. Mr, Akenhead, do you wish to enter a plea in bar?

A.6. No sir.

Q.7. Do you wish to claim a separate trial on each of the two charges?

A.7. Yes sir.

The Prosecutor makes the following opening address:

The accused is confronted with two charges: first, while on Active Service, Deserting his Majesty's Service, in that he was absent without leave from 1400 hours, 13th October 1942, until apprehended by the Corps of Military Police in Southampton at 1000 hours, on 14th December 1942, thereby causing expense to the public of £3:2:1, for his apprehension and return to his unit. And secondly: while on Active Service, losing by neglect his clothing, equipment, and regimental necessaries to the value of $17.78.

The Prosecution submit that the accused is guilty of both charges against him.

Briefly with regard to the facts, evidence will be introduced to prove that the accused failed to return from leave of absence on the 13th October and was, in fact, absent from his unit, in a place where no orders could reach him, until he was apprehended by the Corps of Military Police in the Port of Southampton, England on 14th December 1942.

The accused must satisfy the Court that he was not in fact absent, and that he did not wilfully intend to fail in his duty, which was, to be present with his unit.

As regards the second charge, it will be shown that the accused had been issued with a full set of clothing and equipment, and that due to his own neglect, he did not have certain of these articles when it was his duty to have them. The accused must satisfy the Court that he did not lose his equipment as charged and that the loss was not occasioned by any fault on his part.

It will be the intention of the prosecution to show that the accused is guilty as charged. However, the prosecution would say to the Court and to the accused, in fairness to him that if there is any question of fact that can be brought out in the examination by the Prosecution to assist the cause of the accused, such facts will be drawn to the attention of the court.

First witness for Prosecution: Lieut. A.M.Miller having been duly sworn is examined by the Prosecutor.

Q.8. What is your name, rank and unit?

A.8. Lieut. Miller, A.M., No.6 Company, Canadian Forestry Corps.

Q.9. What were your duties at that Company between 13th October 1942 and 14th December 1942?

A.9. I was Adjutant of No.6 Company, C.F.C.

Q.10. I show you an Army document; will you look at it and tell the Court what it is?

A.10. It is No.6 Company C.F.C's. Part II Order No.79, dated 14th October 1942. Para.8(b) reads: A.W.O.L. from 1400 hours, 13 October 1942, K-98654, Pte. Evans, E.J.

This document is handed to the President, marked Exhibit "A" and annexed to the Proceedings.

Q.11. Do you recognise the accused?

A.11. Yes sir.

Q.12. Is he the person mentioned in Exhibit "A"?

A.12. Yes sir.

Q.13. I show you this document, will you tell the Court what it is?

A.13. It reads as follows: "I certify that K-98654, Pte. Evans, E.J., No.6 Company, Canadian Forestry Corps was arrested at Southampton by the Corps of Military Police at 1000 hours, on 14th December 1942 and handed over to the Canadian Provost Corps at 1400 hours, on 15th December 1942, and that at the time of his arrest he was wearing a military uniform.

Signed: Lieut.
Officer i/c Detention Room,
No.6 Cdn Provost Coy.

Q.14. Is the accused the person mentioned in this statement?

A.14. Yes sir.

This document handed to the President, marked Exhibit "B" and annexed to the Proceedings.

Q.15. I show you two Canadian Army Forms, will you tell the Court what they are?

A.15. These are vouchers covering expenses incurred by the apprehension of the accused, and covering fare for the accused and escort, and also incidental expenses incurred by the accused and escort, a total amount of £3:2:1.

Q.16. And these are certified by you as being correct?

A.16. Yes sir, they are true copies of originals.

These documents are handed to the President, marked Exhibits "C" and "D" and annexed to the Proceedings.

Q.17. As Adjutant of No.6 Company, what action did you take after the accused had been reported absent without leave?

A.17. He was marked down as being absent without leave by the Orderly Sergeant, and this information was published in Part II Orders as such.

Q.18. Did you report his absence to any other authorities?

A.18. To the Canadian Provost Corps.

Q.19. When was that done?

A.19. After the accused had been absent 21 days, because our regulations require that when a man has been absent 21 days, it is necessary to inform the Canadian Provost Corps.

Q.20. Was there any likelihood that the accused would probably have transferred to another unit of the Canadian Army should he have returned from his leave on time?

A.20. No sir.

Q.21. There was no likelihood of his being transferred at all?

A.21. No sir, not before the 13 Oct 42, there had been no indication that the accused would be transferred.

Q.22. When was the accused due to return from his pass?

A.22. On 13th October 1942.

The Defending Officer declines to cross-examine this witness.

R.P. 83(b) has been complied with.

Second witness for Prosecution. K-98147, Sgt. Duncan, H.E., No.6 Company, Canadian Forestry Corps having been duly sworn is examined by the Prosecutor.

Q.23. What are your name, rank and unit?

A.23. K-98147, Sergeant DUNCAN, H.E., No.6 Company, Canadian Forestry Corps.

Q.24. Do you remember the 13th October 1942, and would you tell the Court what your duties were at your Company?

A.24. Yes sir, I was Platoon Sergeant and my duties are to call the roll every day.

Q.25. Do you keep a record of all Rool Calls of the Platoon each day?

A.25. Yes sir.

Q.26. Did you check your Platoon after 14th October 1942?

A.26. Yes sir.

Q.27. Do you recognise the accused?

A.27. Yes sir.

Q.28. Was the accused present at your Roll Call on 13th or 14 October 1942?

A.28. No sir.

Q.29. Has the accused been present at any time since then, and until 14th December 1942?

A.29. No sir.

Q.30. Have you been away at all between 13th October 1942 and 14th December 1942?

A.30. No sir.

Q.31. Your duties were those of Platoon Sergeant all that time?

A.31.- Yes sir.

Q.32. What were the accused's duties at your Company?

A.32. He had various duties. Most of the time he was in the mail.

Q.20. Was there any likelihood that the accused would probably have transferred to another unit of the Canadian Army should he have returned from his leave on time?

A.20. No sir.

Q.21. There was no likelihood of his being transferred at all?

A.21. No sir, not before the 13 Oct 42, there had been no indication that the accused would be transferred.

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A.25. Yes sir.

Q.26. Did you check your Platoon after 14th October 1942?

A.26. Yes sir.

Q.27. Do you recognise the accused?

A.27. Yes sir.

Q.28. Was the accused present at your Roll Call on 13th or 14 October 1942?

A.28. No sir.

Q.29. Has the accused been present at any time since then, and until 14th December 1942?

A.29. No sir.

Q.30. Have you been away at all between 13th October 1942 and 14th December 1942?

A.30. No sir.

Q.31. Your duties were those of Platoon Sergeant all that time?

A.31.- Yes sir.

Q.32. What were the accused's duties at your Company?

A.32. He had various duties, Most of the time he was in the mail.

Q.33. Were his duties very important?

A.33. I would not say that, but somsbody had to do them.

Q.34. Was he a good worker?

A.34. Not bad sir.

Q.35. Did he work without complaining too much?

A.35. That's right sir.

The Defence declines to cross-examine this witness.

R.P. 83(b) has been complied with.

Third witness for Prosecution. No.4856616, L/Cpl. Hobb, G. having been duly sworn is examined by the Prosecutor.

Q.36. What are your name, rank and unit?

A.36. No.4856616, Lance-Corporal Hobb, G., No.104 Provost Company, Detachment at Southampton, England.

Q.37. Tell the court what were your duties on 14th December 1942, at 1000 hours?

A.37. At 1000 hours, 14 Dec 42 I was on patrol in the town of Southampton, I noticed the accused, and owing to the condition of his shoes which were rather badly worn, I went over with the intention to check him. I noticed that the accused threw a glance towards us which told there was something wrong. I approached him and asked him if he was on pass. He replied he was. When asked tp produce the pass, he said he had left it at a village called Maybush, about 2½ miles outside the city. When asked to produce railway ticket he also said he had left it at that address. I examined his pay book and found he had had a leave about two months previously. I ordered the accused to accompany me to that address so that he could produce his pass and railway ticket. Under way to the address he told me that he was late, and when asked how late, he replied two months. I accompanied him to the address where he stayed about five minutes. I then conducted him to by Section billets to give the particulars of the arrest to my Section Sergeant. From there he was conducted to the Civil Police Station of Southampton and then he was escorted to the Guard Room of 11th Battalion, Royal Fusiliers where he was handed over to the N.C.O. i/c of the Guard to be detained.

Q.38. When you went to the house at the village of Maybush, was there anybody there?

A.38. No sir.

Q.39. Did you go inside the house?

A.39. I did not sir.

Q.40. Are you familiar with the Port of Southampton?

A.40. I have been stationed there since last September. But I have been in Southampton pretty near every year.

Q.41. Do your patrols go to this village which is about 2½ miles from this port?

A.41. No sir.

Q.42. Was this house by itself, or in a street with other houses?

A.42. In a street with other houses.

Q.43. Normally you would never have seen the accused if he had stayed in that area?

A.43. No sir.

Q.44.- Have you ever seen the accused in Southampton before?

A.44. No sir.

Q.45. Was there any evidence to suggest to you that the accused had planned that absence?

A.45. No sir, except when we took him to the village, he did not have any fare, but beyond that he gave no evidence of any intention to stay.

Q.46. How was he dressed?

A.46. He was wearing a blue and yellow cap, civilian shoes and army uniform.

Q.47. Are you certain it was a blue and yellow cap?

A.47. Yes sir.

Q.48. Did you say the accused had a pass?

A.48. He had no pass when we went back to the house.

By the President to the witness:

Q.49. Was the accused completely dressed in army uniform?

A.49. Yes sir, except for the civilian shoes.

Q.50. Did you accompany him to the Guard Room of the 11th Bn. Royal Fusiliers?

A.50. Yes sir, I can swear to that, I accompanied him there.

Q.51. Did you notice if he had "Canada" badges on his greatcoat?

A.51. He had none.

Q.52. Is the village of Maybush patrolled by the C.M.P. at all?

A.52. The village of Maybush is not patrolled by the C.M.P. as we are the only patrol around Southampton and we do not go there.

The Defence declines to cross-examine this witness.

R.P. 83(b) has been complied with.

Fourth witness for Prosecution. No.7692016, L/Cpl. Parker, T. having been duly sworn is examined by the Prosecutor.

Q.53. What are your name, rank and unit?

A.53. No.7692016, Lance-Corporal Parker, T. of No.104 Provost Company, C.M.P.

Q.54. Would you tell the Court what were your duties on 14th December 1942?

A.54. At Southampton, on 14th December 1942, on the Esplanade I was on duty when I saw the accused passing between two lorries. He looked at me and I saw he was slovenly dressed. That gave me cause to check him. We turned around on our motorcycles and L/Cpl. Hobb was the first to get there to check him whereby he asked him for his pass and the accused stated he had left it at an address, at No.14 Alder Road, Maybush. He was then asked for his pay book. We then conducted him to the address that he stated previously so that he could tell the young lady, Eileen Brown of the same address that he was apprehended. From there he was conducted to our billets where we handed him over to the Sergeant i/c and the necessary particulars were taken down, and from there he was taken to the Civilian Police Station of Southampton for particulars of Eileen Brown at 14 Alder Road, Maybush.

Q.55. Can you say that at 1000 hours, 14th December 1942, you apprehended the accused?

A.55. Yes sir.

Q.56. Do you recognise the accused?

A.56. Yes sir.

Q.57. How was he dressed?

A.57. He was dressed in uniform, civilian shoes, and a blue and yellow cap

Q.58. When you say the cap was blue, do you mean it could have been green?

A.58. It appeared to me it was blue.

Q.59. Did you ever see a C.P.C. walking-out cap?

A.59. No sir.

Defence refuses to cross-examine this witness.

R.P. 83(b) has been complied with.

By the President to the accused: (in accordance with R.P. 40).

Q.60. The Prosecution have closed their case, and you may now give evidence on oath as a witness, as the other witnesses have done. If you do that , you may be cross-examined by the Prosecutor and asked questions by the Court. Or you may make a statement not on oath, from where you stand. If you do that, no one can ask you any questions. Most courts pay more attention to evidence given on oath which can be tested by cross-examination, than a signed statement which cannot be questioned. Lastly you may say nothing at all?

A.60. The Defending Officer answers: No statement.

The Defending Officer addresses the Court:

I wish to refer the Court to M.M.L. Chapter 3, Section 17, page 19 which reads: "The criterion between desertion and absence without leave is intention. The offence of desertion or attempting to desert His Majesty's service implies an intention on the part of the offender either not to return to His Majesty's service at all, or to escape some particular important service as mentioned in para.20; and a soldier must not be charged with desertion or attempted desertion unless it appears that some such intention existed. Further even assuming that he is charged with desertion, the court that tries him should not find him guilty of desertion unless fully satisfied on the evidence that he has been guilty of desertion as above defined." The accused is quite willing to say that he was absent without leave from 1400 hours, 13 Oct 42 until 1000 hours 14 Dec 42.
Mr. Miller stated that there was no possibility of transfer coming up when the accused went on leave, therefore there was no question of evading extra duties, such as trying to escape an important service. The man was simply absent without leave; there was no possibility of transfer, and the C.F.C. carries on, the same duties are performed and he knew it . By not coming back, he knew that he was attempting to escape an important duty as there was no such particular duty.
Both Corporals of the Corps of Military Police declare that he was wearing army clothing, therefore proving he had no intention that he was trying to evade. Also he made no attempt to run away from the M.Ps. as they were trying to intercept him. He accompanied them of good will to where he was staying. His pass read Southampton, and he was in the Southampton area. The M.Ps. themselves gave no evidence that he made any attempt to evade them at all. Therefore I claim that the first charge has never been proved by the Prosecution and therefor he must be declared Not Guilty.

By President to the Defending Officer:

Q.61. Have you any witnesses in defence of the accused on the first charge?

A.61. I have no witnesses, sir.

The Prosecutor addresses the Court:

With regard to this charge of desertion, the evidence of Lieut. Miller clearly establishes the facts that the accused was absent without leave from 1400 hours on the 13th October 1942 and that he did not return to his unit until he was apprehended by the Corps of Military Police at 1000 hours, 14 December 1942. The expense involved in bringing the accused back under escort to his unit, has also been established by this witness. The evidence of Sgt. Duncan, the accused's Platoon Sergeant corroborates that of Lieut.Miller. Sgt. Duncan told the Court that the accused was not present at his platoon roll call at any time between the 13th October and the 14th December 1942. The termination of the absence is established by Lieut. Miller and by the two witnesses from the Corps of Military Police who have told the Court the facts of the accused's apprehension in Southampton.

There is one more point in regard to the charge of desertion that I would leave with the Court. I feel that it is the duty of the prosecution to say, in fairness to the accused, that it is readily conceded by the prosecution that the intention of a soldier charged with desertion is not readily capable of positive proof, neither in this case nor in similar cases. Therefore I would respectfully remind the Court that soldiers charged with desertion may be found guilty of absence without leave. At the same time, however, I draw the court's attention to page 109, of M.M.L., para.23 which states that "if a man bound by law to perform any duties, does an act which necessarily causes a failure in the performance of that duty he will be held in law to have intended to fail, and therefore to have wilfully failed to perform that duty."

The court is now closed for consideration of the finding.

The court re-ppens.

By the President to the Prosecutor:

Q.62. Have you any evidence to produce as to the character and particulars of service of the accused?

A.62. Call Lieut. Miller.

By the President to Lieut. A.M.Miller:
Lieut. Miller, you are under the same oath, having already been sworn in this case.

Q.63. Have you any evidence to produce as to character and particulars of service of the accused?

A.63. I have sir. I produce A.F.B. 296(war) and a certified true copy of M.F.M. 6.

These documents are handed to the President, marked Exhibit "G", and annexed to the Proceedings.

Q.64. Is the accused the person mentioned in these documents?

A.64. Yes sir.

Q.65. Have you completed these documents yourself?

A.65. I have sir, and I certify that they are true extracts of his particulars of service, and also true extracts of entries on the original M.F.M. 6, and that I have compared the Certified True Copy with the original and found it correct.

Not cross-examined by the Defence.

By President to Defending Officer:

Q.66. Does the accused wish to address the Court?

A.66. No sir.

COURT CLOSED FOR CONSIDERATION OF SENTENCE.

Court re-opens at 1200 hours.

The President reads the second charge to the accused, and questions:

Q.67. Do you wish to plead guilty, or not guilty, of that charge?

A.67. Not guilty, sir.

Fifth witness for Prosecution: K-98540, CQMS. Olsume, E. having been duly sworn is examined by the Prosecutor.

Q.68. What are your name, rank and unit?

A.68. K-98540, C.Q.M.S. Ollsume, E., No.6 Company, Canadian Forestry Corps.

Q.69. Do you recognise the accused?

A.69. I do sir.

Q.70. What were your duties in the whole of the year 1942, and up to this date?

A.70. Company Quartermaster Sergeant of No.6 Company, C.F.C.

Q.71. Did you check the clothing, equipment and arms of the accused who had been declared Absent Without Leave?

A.71. I did sir.

Q.72. And did you check his clothing and equipment and arms, on his return to unit, after apprehension?

A.72. I did sir. I show you a list of equipment of which he was deficient on his return.

Q.73. What does that represent?

A.73. These are the shortages of equipment after his return.

This document is annexed to the proceedings and marked Exhibit "H".

Q.74. Can you state that the accused was in possession of a full set of equipment prior to his going absent without leave?

A.74. Yes sir.

Q.75. I show you an Army Form can you state what it is?

A.75. It is an M.F.C. 800, certified true copy of the original.

Q.76. What is the significance of this form?

A.76. It is a record of all arms, equipment, etc. issued.

Q.77. What does it mean when a soldier receive equipment and signs for it on that form. How is that related to his responsibility?

A.77. He is supposed to have them because he signed for them.

Q.78. Is the accused the person mentioned in this form?

A.78. Yes sir.

Q.79. Did you check the kit in possession of the accused after his apprehension and compare it with his M.F.C. 800?

A.79. Yes sir.

Q.80. Was it brought to your attention that the accused was absent without leave, and what did you do?

A.80. I placed the kit in safe custody.

This document annexed to the proceedings, and marked Exhibit "I".

By the Defending Officer to the witness:

Q.81. In exhibit "I", the article "Sweaters, pullover". May we check if that has been signed for by the accused?

A.81. The President, after perusal of the exhibit "I": "It has not been signed for, as there is no such entry on M.F.C.800."

Q.82. Why was that entry made in the list of shortages of equipment?

A.82. Now "sweaters, pullover" are issued as replacements for "sweaters, cardigan".

Q.83. What is the difference in price?

A.83. Sweaters, pullover are worth £0:7:9, and sweaters, cardigan are worth £0:8:6.

Q.84. The accused has never received a "sweater, pullover" why is he charged with being deficient of it?

A.84. Because under normal circumstances, when he would report the loss of his sweater, he would be issued with a sweater, pullover and charged with the price of same.

Q.85. Has the accused reported any loss of clothing before?

A.85. Yes sir, not very often.

Q.86. What arrangements are made for clothing to be kept in safe custody while on leave?

A.86. The clothing stays in the huts.

Questions by the President:

Q.87. Are there any arrangements for the safe custody of a soldier's equipment when he goes on leave; say on a 14 day leave?

A.87. There are no provisions for that.

Q.88. C.Q.M.S., you must have been in other units before you came to No.6 Coy, C.F.C?

A.88. I have, sir.

Q.89. Was it, or was it not the custom in other units to put away kits of soldiers going on leave?

A.89. Of the units I was with, only one had such arrangements, for soldiers going on 7 days' leave or furlough, or longer.

Q.90. Don't you think it is preferable when a man goes on leave to check his equipment in at the Q.M. Stores rather than leave it in his hut?

A.90. It cannot be done at my Company. I would have no place to put their equipment; sometimes there are 15 or 16 men away on leave at the same time.

Q.91. In list of equipment which is handed to the Court, marked Exhibit "H", the value of equipment deficient in accused's kit does not agree with value found at Court of Inquiry. One is $18.67 and the other is $17.12, can you explain that?

A.91. (By the Prosecutor): That was discussed with the Convening Officer yesterday, who did not want to alter it as it was in the advantage of the accused.

Witness examined by Court:

Q.92. Before the accused went on leave, did he ask you to take care of his property charged on his M.F.C. 800?

A.92. He did not sir.

Q.93. Could he have turned it in if he had wanted to?

A.93. I presume so; but it has never been the custom at our Company.

(R.P. 83(b) has been complied with.)

By the President to the Accused:

Q.94. Do you wish to give evidence under oath as a witness, as the other witnesses have done. If you do that, you may be cross-examined by the Prosecutor and asked questions by the Court. Or you may make a statement, not on oath, from where you stand. If you do that, no one can ask you any questions. Most courts pay more attention to evidence given on oath which can be tested by cross-examination, than to a single statement which cannot be questioned. Lastly you may say nothing at all.

A.94. I will give evidence under oath.

Q.95. Do you wish to give evidence yourself as a witness?

A.95. Yes sir.

Q.96. Do you intend to call any other witnesses on your behalf?

A.96. No sir.

First witness for Defence. K-98654, Pte. Evans, E.J. having been duly sworn is examined by the Defending Officer.

Q.97. What are your rank, name and unit?

A.97. K-98654, Pte. Evans, E.J., No.6 Company, Canadian Forestry Corps.

Q.98. You went on leave on, or about, 1st October 1942. What did you take with you?

A.98. I took only what was necessary. As far as I can remember I took: a shirt, my respirator, a towel, two brushes, a change of underwear, all that was necessary for two weeks.

Q.99. What did you do with the rest of your clothing?

A.99. All the rest, to my knowledge, was left in the hut. I left everything in the corner of the hut where my bed is.

Q.100.-Did you bring all your clothing back from Southampton?

A.100. I did not, sir.

Q.101. Why not?

A.101. I was not able to, because I was apprehended.

Q.102..Did you make any attempt or ask the two M.Ps. to take you over there?

A.102. They were to arrange to take me over there the following day, but it was never done.

Q.103. Since that time did you take any other action to recover your clothing?

A.103. I wrote to that address asking them to send it up to me. I have been told there are two parcels at the Orderly Room for me, but I do not know what they contain.

Q.104. Can you remember the articles which you brought back with you, or got since your apprehension?

A.104. Two brushes, a shirt, a pair of socks, tooth brush, and odds and ends.

Q.105. Are there any of these articles you are reported to be deficient of, that you can satisfactory account for?

A.105. Drawers, woollen: one suit with me now, the other suit is in Southampton.
Caps, Field Service: I have one.
Kit Bag: in Southampton.
Safety razor: I have it here.
Blacking brush: I have it here.
Socks woollen: I have one pair.
Undershirt, cotton: in Southampton.
Underpants, cotton: in Southampton.
Undershirt, woollen: I have one with me.
Knife, Fork and Spoon: I have them, they were hidden around the cook-house and I got them when I came back.
Comb: I have one.

Q.106. Did you make any attempt to get these articles back?

A.106. I tried to get them back through the M.Ps, but I could not. And since I tried by writing: I have two parcels in the Orderly Room but I don't know what they contain.

By the Prosecutor:
Q.107. Did you ask the Quartermaster to leave your kit in the Q.M. Stores, before going on leave?

A.107. No sir.

Q.108. You have signed on form 800. Do you know as a soldier you are responsible for the equipment you signed for?

A.108. Yes sir, to a certain extent.

Q.109. What do you mean: to a certain extent?

A.109. To lose them, or anything else when I am not there cannot be helped.

Q.110. Do you realize that when you lose equipment by neglect, that you are responsible for them?

A.110. Yes sir.

Q.111. You say you did not ask the Q.M. to place your kit in safe custody, what did you do with it?

A.111. I left it in my hut, in a corner by my bed.

Q.112. Why did you not ask the Q.M. to keep your kit for you?

A.112. Because it was not customary.

Q.113. You say you have some of this equipment back. Could you produce it?

A.113. I can produce it. I have had some parcels of it, and now I have two parcels in the Orderly Room.

Q.114. The articles you say you do not possess were not contained in these parcels?

A.114. No sir.

Q.115. For instance your knife, fork and spoon, how did you get them back?

A.115. They were hidden near the cook-house and I got them back from there when I went back.

Q.116. You have had previous leaves. Where did you leave your kit then?

A.116. In the same place, in my hut. It has never been tempered with before.

(R.P. 8s(b) has been complied with.)

Court to Prosecutor:

Q.117. Do you wish to make a final address?

A.117. Yes sir, in regard to the second charge. I submit that the accused is guilty of losing equipment by neglect, and in so saying I am quite willing to concede to the accused, if he can produce the articles he says he had returned to him, they should not be charged to him. I wish to point out to the Court, H.Q. C.F.C's. Circular Letter No.17 dated 5th July 1941, which state that it is not a defence for a soldier, who has absented himself to claim that the kit was stolen because he had not placed same in safe custody, and cannot be an excuse for losing his equipment by neglect. This circular letter refers to K.R.(Can) 495. It may be said that when a man has signed for some equipment on M.F.C. 800, and due to the fact that some superior did not put it away in safe custody for him, does not alter his responsibility. I quote H.Q. C.F.C. Circular Letter No.17 that, if by any chance this has not been done, it is not a defence for losing equipment by neglect. We have the evidence of the Quartermaster that the accused had all his equipment before going on leave , and we have the M.F.C. 800 to substantiate. We have also evidence in a list of equipment that the accused was found to be deficient when returning from leave. I therefore submit to the court that the accused should be found guilty of losing by neglect his equipment.

Court to Defending Officer:

Q.118. Do you wish to call any further witnesses for the Defence?

A.118. No sir.

The Court recalls Lieut. Miller.

President to the witness:

You are still under the same oath, having already been sworn in this case.

Q.119. It has been stated by the accused in his evidence that two parcels of clothing are at the present time in your Orderly Room, and belong to the accused?

A.119. That is true.

Q.120. What do they contain?

A.120. I have not taken any inventory, but I have seen them on one or two occasions, and they seem to only contain personal clothing.

Q.121. Do you think they might contain some of his equipment?

A.121. To my knowledge there is nothing in them that is charged th the accused.

Q.122. Did the accused ever speak to you about some of his equipment he had left in Southampton?

A.122. I don't recollect any definite statement, but I think it is true he did.

Q.123. Did you take any steps to recover this equipment?

A.123. No steps have been taken. That equipment is in possession of a civilian.

Q.124. Don't you think it was your duty, or that you should have considered it your duty to get in touch with the C.M.P., or otherwise find this equipment?

A.124. It should have been done.

Q.125. And you cannot say what equipment is being held there at Southampton?

A.125. No sir.

The Court recalls: No.4856616, L/Cpl. Hobb, G., No.104 Provost Company, Detachment at Southampton, England.

By the President to the witness:
You are still under the same oath, having already been sworn in this case.

Q.126. The accused stated that after his arrest by you, he told you he had some equipment at a certain address and which he would like to collect?

A.126. He gave me the information that he had some equipment: shaving kit, respirator, etc. at another address, other than the one at Maybush. When the escort came for the accused, I was under the impression that the accused would pick up his kit before being put into the Guard Room.

Q.127. You reported that to your Sergeant?

A.127. Yes sir.

Q.128. Was the accused given the opportunity to pick up everything he had at Maybush?

A.128. He had the opportunity to do so.

Q.129. But he was not given the opportunity to call personally at the other address?

A.129. No sir, I don't think so.

Q.130. Have you got that other address?

A.130. He said he left a respirator, etc., at 3 Stanton Road, Regent Park.

The Court recalls: No.7692016, L/Cpl. Parker, T., No.104 Provost Company, C.M.P.

President to the witness:
You are still under the same oath, having already been sworn in this case.

Q.131. The accused stated that he asked you to make arrangements to pick up some kit after his arrest in Southampton?

A.131. Not to me, sir.

Q.132. Did he ask :/Cpl. Hobb?

A.132. Not in my presence.

Q.133. Did he mention anything about kit to you?

A.133. No sir.

Q.134. So you are not in a position to say anything regarding his Kit?

A.134. No sir.

By the Defending Officer:

In regard to this second charge against the accused, and stating of loss by neglect of certain equipment. He admits losing some of his equipment not by culpable neglect but due to the fact that he left them at the usual place as other soldiers who go on leave, in his hut. The accused stated in his evidence that certain articles are still in Southampton, such as respirator, undershirt and underpants, woollen, etc. He has made every attempt, while under arrest, to get them back, or requesting that they be asked for but nothing has been done about it. Also as the Quartermaster stated there have been no arrangements made for storing equipment of soldiers who go on leave. Again the accused admits losing certain articles of equipment, but not by neglect. Some of the articles he is still deficient of, will be forthcoming if we give him time. Other articles such as knife, fork spoon, comb he has now in his possession and therefor they should not be charged against him.

By the President to the Defending Officer:

Q.135. Can you produce a list of articles now in his possession , and which were reported as deficient when kit checked? A list should be available to be entered in the court proceedings as an exhibit.

A.135. No sir, I have no such list.

Q.136. This statement is unsupported by any list then?

A.136. The only list I have is the one submitted with the Summary of Evidence when Convening the Court.

By the President:

If the witness wishes to give any further evidence he can do so now.

No further evidence given.

THE COURT CLOSES TO CONSIDER FINDING.

5. Hospital (Con)

(b) Adm. to Raigmore Hospital w.e.f. 17.10.42.
K.98591. Pte. Hopkins, W.H.

(c) Cancellation:-
Pt. II.DO # 77 para. 5.(a) 7.10.42.
insofar as it concerns the a/n is
hereby cancelled.
G.4286. Pte. Beattie, E.G.

6. Confirmation of rank.

(a) Confirmed in rank w.e.f. 17.7.42.
K.98600. Cpl. Jansen, W.J.
(Auth C.O. No. [illegible] Ltr. 5NC/5-0/9.10.42)

7. Tradesman's rate of Pay.

(a) Ceases to draw tradesmen's rate of pay
as Driver I.C. (Tractor Forestry) Grp "B"
w.e.f. 13.10.42.
(Adm. to Hospital)
K.98591. Pte. Hopkins, W.H.

8. Absence without leave.

(a) Ceases to be A.W.L. on return to Unit
w.e.f. 1825 hrs. 9.10.42.
G.21419. Pte. Crawford, E.G.

(b) Absent without leave from 1400 hours
17.10.42.
K.98694. Pte. Grugg, T.F.

9. Punishments.

(a) On the 10th Oct.42 admonished for an
offence of A.W.L. from 2159 hours
6.10.42. to 1625 hours 9.10.42.
(Absent 2 days 18 hrs 26 mins)
Sec. 15(1)
Forf. of Three (3) days Pay KRAI 1149 (1)(a)
G.21419 Pte. Crawford. E.G.

10. Leave of Absence

(a) Granted 14 Days C.L. with money allowance in
lieu of rations under KRAI(O)789 (3) A(4)as
shown
G.21419. Pte. Crawford, E.G. 22.10.42 9.11.42

(b) Granted 72 hours leave with money allowance
in lieu of rations under KRAI(O) 789 (3) A(4)
as shown
K.25549 Sgt. MACDONELL, I.J. 2359 hours 1.9.42
Ret.
2359 hours 4.9.42.

(A.H. Miller) Lieut & Adjt
for W.C.L. Armstrong Major
O.C. No.6. CFC (Can)

AHM

Bond C

No.6. Company. Cdn. Forestry Corps (O.) Overseas
Daily Part II ORDERS
By
Major. C.L. ARMSTRONG
Officer Commanding.

Last D.O.#76
10.10.42

This is Order #79
14.10.42

Section "A"

1. Appointments.

(a) To be Adjutant No.5. Coy. CFC (Can) O
w.e.f. 1a. Jun. 1942.
Lieut. A.M. Miller
(Auth. Overseas Routine Order Sup.2563/2.10.42)
Corps HQ DO No. 151/5.10.42)

2. Qualifications.

(a) Having Completed C.T.C. 30 Officers Course,
Army School of Physical Training, is
Qualified "B.1"
Lieut. H.T. Crabtree.
(auth. No.C/C.R. A/86828/8(C.T.)/7.10.42)

Section "B"

1. Strength Increase

(a) T.O.S. on Posting from Reinf. Bde. CFC
w.e.f. dates as shown.
K.62906. Pte. Alexander, A.L. 10.10.42
K.99632. Pte. HILO, J. 10.10.42
(Auth. R.C. D.O. # 121/8.10.42)
K.67079. Pte. LAMBOURNE, W.H.K. 7.10.42
(Auth. R.C. D.O. 120/8.10.42)

2. Strength Decrease.

(a) T.O.S. on Posting to Reinf. Bde. CFC.
w.e.f. dates as shown.
G.4266. Pte. BEATTIE, T.C. 7.10.42
K.98591. Pte. HOPKINS, W.D. 13.10.42

(b) Attached.

(a) 23. O.R.s. No.998 Dock Operating Crew
R.E. att for R.A.O.C. for period 4.10.42
10.10.42

(b) Cancellation.
Pt. II. D.O. No.77 Sec."B" para. 2 (a)
7.10.42 insofar as it concerns the u/n
O.R. is hereby cancelled.
"G.4266. Pte. Beattie, T.C."

4. On Command.

(a) Proceeded on Command to Cartlock Emerg.
Hospital
w.e.f. (period) 10.10.42 to 13.10.42
K.98528. L/C. Bond, J.
K.98518 Pte. Gordon, J.
(Auth. Senior Medical Officer CFC)

5. Hospital.

(a) Disch. Camp H.Q.R. (No.6.) w.e.f. 10.10.42
K.99755. Pte. Lubkowski, C.

PTO.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Exhibit D

Reg. No. K 98654 Rank Pte. Name Evans, E J Unit 6 Coy C.P.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit. From London from Southampton

Date	Particulars	Amount		
16 Dec 4	Escorts return fare from LONDON To Southampton		12	1
	Prisoners single fare to LONDON From Southampton		Own ticket	
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Rest~~, Meals, Bus fares		9	0
	Total £	1	1	1

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

D J Seaman Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London

C.M.H.Q. 1000/38
40/P & S/483

Certified Original
A Mullen Lt
6 Coy C.P.C.

Reg. No. K-98654 Rank Pte. Name Evans E. J. Unit 6 Coy. C. P. C.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
	Escorts return fare from ~~LONDON~~ To Glasgow Avoch	1	10	6
	Prisoners single fare to LONDON From		own	
	Prisoners fare from London To Avoch		ticket	
	Escorts & Prisoners expenses for ~~Rest~~, Meals, Bus fares		10	6
	Total £	2	1	0

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

H W Cowling Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/38
40/P & S/483

Certified Original
A Mullen Lt
6 Coy C.P.C.

CERTIFICATE IN ACCORDANCE WITH P.C. 2787 of 10 APR 42

I CERTIFY that No [redacted] Rank Pte. Name [redacted] was arrested at Southampton (Place) by No. Corps of Military Police Unit [redacted] at 1000 hrs (Hour) on 14-12-42 (Date) and [illegible] at the time of his arrest he was wearing (Military Uniform) or ([redacted]).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable)'

.....Lieut.
Officer i/c Detention Room,
No. 8 Cdn. Provost Coy.

Certified Original
& Duplicate
6 Copies

Exhibit C

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K.98654	Private	EVANS, E.J.	No. 6 Coy. C.P.C. (CA)(O)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special mark of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Absence without leave — 3 times.

For Conduct to the Prejudice of Good Order & Military Discipline — 1 times.

For ____ — ____ times.

For ____ — ____ times.

Date of first entry in Field Conduct Sheet 20. Aug. 41

Date of last entry in Field Conduct Sheet 11. Aug. 42.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

A.H. 3. ~~XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

G. M. Wilson Lt.

Signed this 4th day of February 1943, 1943

Exhibit H.

Coats, rubber	1	$2.63	Socks, prs		$9.83
Straps, web, sup.	1	.24	Shirts, under, cotton	1	.43
Straps, shoulder	2	1.49	Drawers, under cotton	2	1.04
Bottle, water, carrier	1	.73	Housewife	2	.96
Drawers, wool	1	1.73	Respirator, complete	1	.50
Caps, F.S.	1	.54	Gloves, woollen, prs	1	4.66
Badges, cap	1	.10	Knife	1	.48
Bags, kit	1	1.17	Fork	1	.18
Razor, safety	1	.42	Spoon	1	.11
Brush, polishing	1	.30	Combs	1	.09
Brush, blacking	1.	.16	Blouses, fatigue, denim	1	.04
Braces, prs.	1	.32	Vests, woollen	1	2.85
			Bags, ration	1	1.62
sub-total		$9.83		1	.03
			TOTAL		$22.82
			Depreciation-25%		5.70
			Net value		$17.12.

McPhee, Hqrs

M.F.C. 866

H.Q. 1773-39-1532

Exhibit I

Regtl. No. 96654 Rank Pte. Name E. Evans

INDIVIDUAL'S CLOTHING AND EQUIPMENT STATEMENT

Certified True Copy
A. McMillan Lt
O.C. Q Coy CASC

Date of Attestation July 29-1940

DESCRIPTION OF ARTICLES	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials
Anklets, web, prs.	1								
Badges, arm, worsted, Canada, prs.	4								
Badges, cap	1								
" collar, prs.									
" shoulder, prs.									
Bags, Kit	1								
Battle Dress—									
Blouses, serge	1			1					
Trousers, serge, prs.	1			1					
Belts, waist, leather, brown									
Blacking, tins	1								
Buttons, Tam O'Shanter									
Buttdressing, tins	1								
Bootlaces, prs.	1								
Boots, ankle, prs.	1								
" " felt, prs.									
Boots, lumberman's, rubber, prs.	1								
Insoles, prs.	1								
Braces, prs.	1								
Brush, button	1								
Breeches, D.C., or Trousers, S.D. prs.	1								
Brushes, boot, blacking	1								
" boot, polishing	1								
" button	1								
" cloth	1								
" hair	1								
" shaving	1								
" tooth	1								
Cap, combination	1								
" field service	1								
" forage, drab									
" winter, Melton cloth									
Cloak or Greatcoat, drab	1								
Comb, hair	1								

DESCRIPTION OF ARTICLES	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials	Number	Date of Issue	Soldier's Initials
Discs, identity, with cord	3								
Drawers, cotton, short, prs.	2								
Drawers, woollen, prs.	1								
Dressings, first field	1								
Forks	1								
Gloves, woollen, khaki, prs.	1								
Helmets, sun									
Holdalls	1								
Housewifes	1								
Jackets or Doublets, S.D.									
Jackets, khaki drill									
Jacket, sweater	1								
Knife, clasp, and lanyard	1								
" table	1								
Mitts prs.									
Overalls—									
Blouses, denim	1								
Trousers, denim, prs.	1								
Overshoes or Rubbers, prs.									
Pantees or Trousers, service, prs.	1								
Puttees, prs.									
Razors	1								
Shirts, flannel, khaki	2								
" khaki, cotton, with short sleeves									
" service	1								
" under, cotton	2								
" woollen	2								
Shoes, canvas, prs.	1								
Socks, prs.	3								
Sponges, paper or									
Spoon, table	1								
Towels, hand	2								
Trousers, khaki drill, prs.									
" " serge, prs.									

Free issues only will be accounted for on this form.

Signature of Soldier E. J. Evans

Signature of Quartermaster E. Evans Capt.
Rob Bty CA

Unit No 6 Coy S.T.C. No. K98654 Rank ..... Name EVANS E.J.

From	to	Date	Transferred or Attached	
From	to	Date		
From	to	Date		
From	to	Date		
From	to	Date		

EQUIPMENT (a)	Date of Issue	Date of Issue	Date of Issue	Date of Issue	ARMS AND MISCELLANEOUS (a)	Date of Issue	Date of Issue	Date of Issue	Date of Issue
Attachments, brace	5				Bayonets and Scabbards				
Bags, ration	6 12/40				Bottles, oil				
Bandoliers					Pistol				
Belts, waist	11/12/40				Pullthroughs				
Bottles, water	5/12/40	5/12/40			Rifles				
Braces	1 17-8-40				Swords and Scabbards				
Carriers, cartridge	1 17-8-40				Respirators Anti Gas	1 5-10-40			
" waterbottle	1 17-8-40								
Cases, pistol									
Covers, mess tin	1 5-9-40				Blankets				
Frogs, bayonet	1 4-8-40				Sheets, ground	2			
Haversacks	1 17-8-40				Pants Rubber	3/11/41			
Helmets, steel	1 6-11-40				Coat Rubber	3/11/41			
Lanyards, pistol					Capes A.T.	3/11/41			
Packs	1 4-8-40				Rain Hut	3/11/41			
Pouches, ammunition									
Slings, rifle	1 4-8-40								
Spurs, jack, pr.									
Straps, shoulder	2 4-8-40								
" web, supporting	2 4-8-40								
Tins, mess	1 5-8-40								

(a) Arms and equipment will not be transferred with the soldier unless authorised by the D.O.C.

On return of any article the Q.M. will initial in the space provided opposite the article returned and line through in red ink.

Signature of Soldier E J Evans

Signature of Soldier .....

Signature of Soldier .....

Signature of Soldier .....

Signature of Soldier E J Evans

Signature of Soldier .....

Signature of Soldier .....

Signature of Soldier .....

SUMMARY OF EVIDENCE.

in the case of.

K.98654. Pte. EVANS, E.J.
No.6.Coy. Cdn. Forestry Corps (CA) Overseas.

By authority of Commanding Officer, evidence is taken under oath

1st Witness. K.98507 C.S.Major.Nelson,W. ,No.6. Company. Cdn. Forestry Corps , having been duly called and sworn states;

"Pte. Evans was due back from leave at 1400 hours., 13.October 1942. He did not report back and I did not see him until he was handed over to me by the Military Police at 1100 hours, 18. Dec. 42..

I submit certificate from the Officer i/c Detention Room.,No.6. Cdn. Provost Company, certifying that K.98645 Pte. Evans, E.J. was apprehended by the Corps Military Police at 1000 hours, 14. Dec. 42.

Q." Who first reported Pte. Evans Absent?."
A." Sgt. Duncan, N.C.O. i/c Platoon,sir"

W. Nelson
..... (W. ,Nelson) CSM.

2nd Witness. K.98602. Sgt. Jansen, W.E.No.6.Company. Cdn. Forestry Corps, having been duly called and sworn states:-

"I am the Orderly Sergeant, and I have been since 3rd November, 42 until the present date. When I took over the duties, I checked over the ranks still on leave, and found that Pte. Evans had been absent from 1400 hrs. 13. October 1942 up to that day. Since that time he had not made an appearance in the Camp, until he arrived at 1100 hours 18. December, 1942 escorted by the Cdn. Provost Police.

Q."Was Pte. Evans absent each day from the day you took over the Orderly Sergeants duties on 3 Nov. 42 until he returned under escort?".

A."Yes,sir."

W.E. Jansen
..... (W.E. Jansen) Sgt. K.98602.

3rd Witness. K.98147.Sgt. DUNCAN, H.E.,Platoon Sergeant, No.6. Coy. Cdn. Forestry Corps,,having been duly called and sworn states ;-

" Pte. Evans is a member of my platoon. He did not report on parade Oct. 14th or any other parade since."

Q. "Do you have a platoon roll call each day ?".
A. "Yes,sir."
Q. "Was Pte. Evans absent from roll call on the roll call of October 14th?".
A. "Yes,sir."
Q. "Has he been present on any platoon roll call at any time since then?"

3rd Witness (con)

A."No.Sir."
Q."When,according to your recollections, did Pte. Evans go on leave?".
A."Around 1st October,Sir".
Q."When did you last see Pte. Evans ?".
A."I did not see him since he went on leave,Sir".

H.E. Duncan Sgt.
(H.E. Duncan) Sgt. K.98147.

4th Witness,

K.98540. CQMS Ollsume, E. No.6.Company.Cdn. Forestry Corps,Having been duly called and sworn states:-

"At Bog of Shannon on the 3rd of Nov.42.I checked the articles of Clothing and Equipment,Arms Etc. the property of K.98654 Pte. Evans,E.J. who had been declared absent without leave,which were turned into my stores by L/C. Raven. Such articles now in my possession I checked against this soldier's M.F.C. 800 and the list which I now have records the articles which I found him to be deficient of.

Q."The articles which you have listed as deficient can you state that for a reasonable perod prior to this soldier's absence, that he was in possession of them?".

A."Yes,sir. Pte. Evans proceeded to hospital on the 16th June 1942 at which time I checked his full Equipment which he turned into me and found him to be in possession of all articles which are now listed as being defeicient."

E. Ollsume
(E. Ollsume) K.98540. CQMS.

Q.to accused.

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so,but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

"A". "I have nothing to say at the present time."

Taken down by me in the presence of the accused, at Bog of Shannon, Avoch, Ross-shire /6 day of Dec 1942

R.P. 4 (C)(D)(E) complied with.

H.R. Currie
(H.R. Currie) Capt.
No. 5. District H.Q.

Lieut.A.M.Miller,Adjutant No.6 Company,Canadian Forestry Corps,having been duly sworn,states:

"I submit the following documents having to do with charge against K-98654 Pte.Evans,E.J."

(a) Expense accounts covering expenses occurred in apprehending and returning soldier to his Unit-2.

(b) Handing Over Certificate.

(c) Certificate in accordance with P.C.2797 of 10 Apr.42.

(d) Certified True Copy of Record of Declaration of Court of Inquiry.

(e) Certified true copy of Pass stub.

(f) Certified true copy of Absentee Report.

(g) Platoon Sgts.Nominal Roll for Oct.and Nov.1942.

(h) Part II Daily Orders.5

(i) N.P.C.800 of K-98654 Pte.Evans,E.J.

(j) Statements by L/C.Hobb,C.M.Police.
L/C.Parker C.M.Police.

A. M. Miller Lt

Supplementary to summary.

Taken down by me in the presence of the accused at Bog of Shannon, Avoch,Ross-shire,22nd day of January,1943.

R.P.4 (C)(D)(E)(F) complied with.

H R Currie

(H.R.Currie)Captain
No.5 District H.Q.

LIST OF KIT DEFICIENCIES OF K-98654 PTE. EVANS, E.J.

Coats, rubber	1.
Straps, web supporting	1.
Straps, shoulder	2.
Bottles, water, carrier	1.
Drawers, wool	1.
Sweaters, pullover	1.
Cap, F.S.	1.
Badges, Cap	1.
Bags, kit	1.
Razor, safety	1.
Brush, polishing	1.
Brush, blacking	1.
Braces, prs.	1.
Hooks, prs.	1.
Shirts, under cotton	2.
Drawers, under cotton	2.
Housewife	1.
Respirator, complete	1.
Gloves, woollen, prs.	1.
Knife	1.
Fork	1.
Spoon	1.
Cap, comforter	1.
Combs	1
Blouses, fatigue, denim	1.
Vests, woollen	1.
Bags, ration	1.

Sheet One destroyed 6 months service 29/1/41

No. K98654 Name EVANS, E.J. Unit or Company No.6. Corps Cdn. Forestry Corps Date of enlistment 29.7.40 C.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (215-29) W.O. 1272-39-1652

Date of last entry in Company Conduct Sheet — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine — N/A Sheet No. 2 — Signature O.C. Company, etc. "C.L.Armstrong" Major.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Scotland.	17.8.41	Pte	-	WOAS AWL. from 2359 hours 17. Aug 41 to 0900 hours 18. Aug.41 (Absent 9 hrs. 31. mins) A.A.Sec. 15 (1)	A/CSM Nelson Sgt. Rosen.	7 days C.B. Forf.1 days Pay FR&I art 149 (1)(a)	DO #114 20.8.41	"Major. C.L. Armstrong"	
Scotland	12.10.41	Pte		WOAS AWL from 0830 hours 12.Oct 41 to 1800 hours 12. Oct.41 (absent 9½ hours) A.A.Sec. 15 (1)	A/CSM Nelson	14. days CB. Forf. 1.days Pay FR&I art 149 (1)(a)	Do.138 24. Oct 1941	"Major. C.L. Armstrong"	
Scotland.	27.6.42	Pte		WOAS AWL. from 2359 hours 27.6.42 to 1200 hours. 1.7.42. (Absent 3 days 12 hrs. 1. min) A.A.Sec. 15 (1)	C.34048 Sgt. LaFramborse J.E.H.	3. Days F.P. Forf. 3 days Pay FR&I 149 (2) 4.days Pay Fr&I 149 (1)(a)	DO #83 3.7.42.	Camp Commandant "Capt.RE Beamish"	

(P.T.O.)

Place	Date of offence	Rank	Cause of detention	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Scotland	Nov.41	Pte.		Con duct to the prejudice of Good Order and Military Discipline :- In that he was in improper possession of public property namely one Swede saw" A.A. Sec. 40	K.98602 Sgt. Jansen W.E. Mr.J. Sinclair P.C. Campbell Ross &Cromarty Constabulary	10. Days F.P. Forf. 10. Days Pay under P.R&I 149 (2)	DO #61 11.8.42 awarded 7.8.42.	"Major. C.I. Armstrong"	

Certified True Copy.

A. Gordon

(A. Gordon) Capt.
A/Officer Commanding.
No.6. Coy. C.P.C. (G) C.

LIST OF EXHIBITS.

(a) Expense accounts covering expenses occurred in apprehending and returning soldier to his Unit. 2.

(b) Handing Over Certificates. 4.

(c) Certificate in accordance with P.C 2797 of 10. Apr.42.

(d) Certified True Copy of Record of Declaration of Ct. of Inquiry.

(e) Certified true Copy of Pass Stub.

(f) Certified true copy of Absentee Report.

(g) Pl. Sgts. Nominal Roll for Oct and Nov. 1942.

(h) Pt. 11. Daily Orders. 5.

(i) M.F.C. 800. of Pte, Evans, E.J.

(j) Statements by L/C. Hobb C.M. Police.
L/C. Parker, C.M. Police.

C L Armstrong

(C.L. Armstrong) Major.
O.C. No.6. Coy. C.F.C. (CA) Overseas.

WWW-123
PTE EVANS GL

RECORDED AT CMHQ IN AB 160 NNN-123

Correspondence to be PINNED here

19 MAY 1944 G.H.Q. 2nd

Army Form A.3

RECEIVED 12 JUN 1944 JAG BRANCH C.M.H.Q.

Form for Assembly and Proceedings of Field General Court Martial on Active Service

PROCEEDINGS

On Active Service, this Tenth day of April, 1944

A Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial: *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

PROCEEDINGS REVIEWED 13 June 44

[illegible] Lieut.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

74

Rank	Name	Regiment
	President	
Major	F.G.G. Darton	R.C.R.
	Members	
Captain	D.B. Deeks	48 Highrs
Lt.	A.H. Taber	Hast & PER
Waiting Member Lt.	J. Hornby	Hast & PER

* Must be signed personally by the Officer actually in command at the time, and all alterations to the composition of the Court to be initialled by him.

*Signed D.C. Spry

(D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde.
Convening Officer.

HL

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A 11292 PRIVATE EVANS, Gordon Leonard, The Royal Canadian Regiment	FIRST CHARGE A.A. Sec 15 (1) SECOND CHARGE A.A. Sec 24 (2)	Guilty Guilty	Guilty Guilty. To be imprisoned with hard labour for a period of 2 years, and to be put under stoppages of pay until he has made good the sum of $22.14.9½ in respect of loss of kit & equipment etc. to that value Darton Maj	I propose confirmation of the finding and sentence for superior authority D.C. Spry Brig Approved NS I confirm the finding and sentence of the Court but commute the sentence to eighteen (18) months imprisonment with hard labour. D.C. Spry 21 Apr 44

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) —
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer *(to be recorded on separate sheet if necessary)* —

(Signed) D.C. Spry — (Signed) Darton
(D.C. Spry) Brigadier — (P.C.C. Darton) Major R.C.R.
Commanding 1 Cdn Inf Bde — *Convening Officer (e)* — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here

I certify that the above Court assembled on the 14th day of April 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B** Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. The witnesses
*~~3. The interpreter~~
*~~4. The officers under instruction~~)
were duly sworn.

* Omit if not applicable

Signed this 25th day of April 1944
Darton Maj.
President of the Court Martial.

* See footnote to M.M.L. 1939 — ~~I certify that the terms of A.O.I. 370 of 1918 have been complied with.~~ **C** Certificate in case of death sentence.

~~Signed this — day of — 19—~~
~~*President of the Court Martial.*~~

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D** Confirmation.

* To be omitted unless general servicemen or non-commissioned having been awarded, the Confirming Officer either has no authority or cannot be present, or having such authority recommends elsewhere.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~) MS

Signed this Twenty-first day of April 1944
D.C. Spry
Confirming Officer.
(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

Promulgated and extracts taken in the case of A11292 Pte Evans G.L. RCR
(a) (Dated) 2nd May 1944 (Signed) Darton Maj. RCR

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F.G. Court-Martial held at Battlefield
on the 14th day of April 1944 by order of
Brig. R. C. Spry.
Commanding 1 Cdn. Inf. Bde.
dated the 10th day of April 1944

President
Major F.G.C. Walton RCR

Members.
Capt. W. B. Weeks 48th Highrs.
Lieut. C. H. Taber Hast. N.S.R.

Trial of* A11242 Pte. Goddon Leonard Edward
The Royal Canadian Regt.

~~Judge Advocate.~~

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that _____ is not available to serve owing to~~

~~_____, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut E.H. Slater RCR

~~Counsel or~~ defending officer† Lieut. W.D. Lawrence RCR.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] Form A9(a).

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (B) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Guilty. *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ *Question.*

Answer.

The accused having pleaded Guilty to all charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CHARGE SHEET

The accused, No.A11292, Private Gordon Leonard EVANS, "B" Coy., The Royal Canadian Regiment, a soldier of the Canadian Army Overseas, Central Mediterranean Forces, when on Active Service, is charged with -

First Charge
A.A.Sec 19(6)

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, on 13 Jan 44, absented himself without Leave from 1800 hrs., 13 Jan 44 until apprehended by American Military Police at BENEVENTO, ITALY, at 1200 hrs. 22 Mar 44.
(Absent - 68 days, 18 hrs)

Second Charge
A.A.Sec 24(2)

WHEN ON ACTIVE SERVICE,
LOSING BY NEGLECT HIS EQUIPMENTS,
CLOTHING AND REGIMENTAL NECESSARIES,

in that he,

in the field, on 13 Jan 44, was deficient equipment, clothing and Regimental necessaries to the value of £22/14/9½, (Twenty-two pounds, fourteen shillings and nine pence half-penny) as under -

Article	No.	Full value £	s	d	Value £	s	d
Anklets, web, prs.	1		5	5½		4	1
Blouses, Battle-dress	1	1	7	6	1	0	9
Boots, ankle, prs	1	1	1	6		16	1½
Drawers, woollen, prs	2		10	6		7	10½
Gloves, knitted, prs	1		2	7½		1	11½
Greatcoat, Drab	1	3	17	0½	2	17	9
Jersey, pullover	1		6	9		5	1
Shirts, angola	1		9	2		6	10½
Trousers, battle-dress	1	1	7	11	1	0	11½
Vests, woollen	2		10	2		7	7½
Socks, prs	3		5	0		3	9
Braces, prs	1		1	3½			11½
Bruses, button, brass	1			6			6
" clothes	1		1	1			10
" hair	1		1	1			10
" shaving	1		1	4		1	0
" shoe, blackening	1			8			6
" shoe, polishing	1			9			7
Cap , comforter	1		1	1½			10
Combs, hair	1			2			1½
Dressing, first field	1		1	1			10
Fork, M.S. table	1			5			4
Holdall	1			9			
Housewife, complete	1		2	3		1	
Knives, clasp	1		5	5½		3	10½
Knives, table	1			9½			
Razor, safety	1		1	10½		1	
Spoons, M.S. dessert	1			4½			
Towels, hand	2		1	11		1	
Belts, waist	1		4	4		3	
Water bottle	1		2	10		2	
Braces, W.E., left	1		2	2½		1	
Braces, W.E., right	1		2	0½		1	
Carrier, water-bottle	1		2	0		1	
Frogs, bayonet	1			11½			
Haversack	1		9	7		7	
Helmets, steel	1		10	6½		8	
Pouches, basic	2		13	4		10	

/Continued, Sheet 2.

SHEET TWO.

Article.	No.	Full value £ - s - d	£ - s - d
			10
Sling, rifle	1	1 - 1	3 - 0
Straps, shoulder supp.	2	4 - 0	1 - 11
Tins, mess	1	2 - 6½	9 - 4½
Capes, anti-gas	1	12 - 6	6 - 4½
Bayonet	1	8 - 6	2
Bottle, oil, bakelite	1		3 - 6
Rifle, MK.IV (Full value)	1	10 - 3 - 6	10- 2 - 10
Scabbard, bayonet	1	3 - 9	8 - 1
Sheet, ground	1	10 - 9	9 - 9
Blanket	1	13 - 0	3 - 1
Drawers, cellular, short	2	4 - 1	
TOTAL DEFICIENCIES			22 -14 - 9½

Dated, in the field, this
10th day of April, 1944

J.W. Ritchie
Lt.-Colonel,
(J.W. RITCHIE)
A/Comd., The Royal Canadian Regiment.

To be tried by Field General Court Martial.

D.C. Spry

(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

In the Field
10 Apr 44

By
Alexander Maj

Evans J. L. A-11292-

to Ft Sill
17. 4. 44.

Plasma

Hamilton Mus.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:]~~

The accused A11292 Pte. Gordon Leonard Evans of the Royal Canadian Regt. is found guilty of {A.H. Sec. 15 (1)} {A.H. Sec. 24 (2)} the charges

†The summary (or abstract) of evidence is read, marked 91 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. ~~The accused in mitigation of punishment says:~~ (pending Officer asks Court to read Descriptive Sheet) Sheet attached, and except that in mitigation of punishment ~~or intends in a written statement, which is read, marked , signed by the President, and attached to the proceedings:~~

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer. No.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*~~The Court being re-opened, the accused is again brought before it.~~

H. E. H. Hunter, is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked G. signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes.

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

[Instruction.—If in reply to the answer of the witness to a subsequent question, or otherwise, the finding of the Court requires to be altered in any exceptive particular, or any addition is made to be recorded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must thereupon take the evidence and statement of the additional proceedings.]

Cross-examined by the accused. None.

Question to the accused. Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

IN THE CASE OF: A-71298
Pte. EVANS G.L.
EVIDENCE (R.C.R.) 2 Bn. 1 C.B.R.D.

Exhibit "A".

Statement of

At approximately 2000 hours, 22 Mar 44, while on patrol in the town of Avellino, accompanied by L/Cpl. Reid, I received a call and proceeded to R.C. C.M.T.C. Guard Room, BENEVENTO, to escort back two Cdn. soldiers who were A.W.L., one of whom was the a/m.

The a/m soldier was apprehended by the American Military Police, at 1200 hours, 22 Mar 44. I escorted the a/m soldier to 2 Bn. 1 C.B.R.D. Guard Room where he was turned over and a body receipt obtained.

W.C. Smith
(W.C. SMITH) Cpl.

I have read over and corroborate the above statement.

W.R. Reid
(W.R. REID) L/Cpl.

REMARKS

Stanton

668

CHARGE

23 MAR 1944

Army Form B252
(See King's Regulations)

(R.C.R.) 2 Bn. 1 C.B.R.D. Regiment

Battery / Squadron / Troop or Company

CHARGE against No. A-7129E Rank Pte.

Name EVANS G.L.

Place AVELLINO Date of Offence 22 Mar 44.

OFFENCE W.C.A.S.

(1) Absent without leave from..... until apprehended by the American Military Police at approximately 1200 hours, 22 Mar 44.

No. 1 C.M.P. & C Provost Coy
FILE
ORDERLY ROOM

Names of Witnesses:—

F-77107 Cpl. Smith W.C.

C-34177 L/Cpl. Reid W.R.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

2127/PMEC/600,000—4/43.

Exhibit "B"

CERTIFICATE OF APPREHENSION
~~SURRENDER~~

IN ACCORDANCE WITH ARMY ACT SEC. 165 (1) (ii)

I, Capt. H.F. Law, Officer Commanding

No. 1 Cdn L of C Provost Coy., certify that Regt No.

A-71898.....Rank..Pte...Name...EVANS..G.L.....

Unit..R.C.A.S.C. R.C.O.C.R.E.....

was apprehended by American Military Police
~~No. 1 Cdn L of C Provost Coy.~~,
~~surrendered to~~

at..BENEVENTO.....Italy, at approximately

..1800.....hours...22 Mar....1944

At the time of his apprehension he was
~~surrender~~

wearing Military Uniform.....

(H.F. Law) Captain,
Officer Commanding
No. 1 Cdn. L of C
Provost Company.

Exhibit "C" Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the field on the 14 day of February, 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A11292, Pte. EVANS, G.L., 2B2 Coy., The Royal Canadian Regt.

DECLARATION.

The Court declare, A-11292, Pte. G.L. EVANS, The Royal Canadian Regiment, has been illegally absent from 1800 hrs. 13 Jan 44, and that at 1800 hrs., 4 Feb 44 was still absent and is still so absent, and that on 13 Jan 44 he was deficient and is still deficient equipment and Regimental necessaries to the value of £22/14/9½. (Twnety-two pounds, fourteen shilling and nine pence half-penny).

Names of President and Members

President Major R.G. LIDDELL, R.C.R.

Member Capt. J. PRAYSNER, R.C.R.

Member Lieut W.D. LAWRENCE, R.C.R.

Signature of Commanding Officer

CERTIFIED TRUE COPY (A.E. MATHERS) Comd., R.C.R.

Signature of Officer having custody of the Original Record. (A.W. ROY) Capt., Adjt., R.C.R.

(160569) WL3890/1365 130,000 1/41 A.& E.W.Ltd. Gp.466 Form/B115/4
(17804) WL11504/172 200,000 5/41 " "

COPY.

EXHIBIT "D"

List of Deficiencies ..... A-11292, Pte. G.L. EVANS.

Article.	No.	Full Value £ - s - D	¾ Value. £ - s - d.
Anklets, web, prs.	1	5 - 5½	4 - 1
Blouses, Battle-dress	1	1 - 7 - 8½	1 - 0 - 9
Boots, ankle, prs.	1	1 - 1 - 6	16 - 11
Drawers, woollen, prs.	2	10 - 6	7 - 10½
Gloves, knitted, prs.	1	2 - 7½	1 - 11½
Greatcoat	1	3 - 17 - 0½	2 - 17 - 9
Jersey, pullover	1	6 - 9	5 - 1
Shirts, angola	1	9 - 2	6 - 10½
Trousers, Battle-dress, prs	1	1 - 7 - 11	1 - 0 - 11½
Vests, woollen	2	10 - 2	7 - 7½
Socks, prs	3	5 - 0	3 - 9
Braces, prs	1	1 - 3½	11½
Brushes, button brass	1	8½	6
" clothes	1	1 - 1	10
" hair	1	1 - 1	10
" shaving	1	1 - 4	1 - 0
" shoe, blacking	1	8	6
" shoe, polishing	1	9	7
Cap, comforter	1	1 - 1½	10
Comb, hair	1	2	1½
Dressing, first field	1	1 - 1	10½
Fork, M.E., table	1	5	4
Holdall	1	9	7
Housewife, complete	1	2 - 3	1 - 8
Knives, clasp	1	5 - 5½	3 - 10½
Knives, table	1	9½	7
Razor, safety	1	1 - 10½	1 - 5
Spoon, M.E. dessert	1	4½	3
Towels, hand	2	1 - 11	1 - 5
Belts, waist	1	4 - 4	3
Water bottle	1	2 - 10	2 - 1½
Braces, W.E., left	1	2 - 2½	1 - 8
" " right	1	2 - 0½	1 - 6½
Carrier, water bottle	1	2 - 0	1 - 6
Frog, bayonet	1	11½	8½
Haversack	1	9 - 7	7 - 2
Helmet, steel	1	10 - 8½	8 - 0
Pouches, basic	2	13 - 4	10 - 0
Sling, rifle	1	1 - 1	10
Straps, shoulder, haversack	2	4 - 0	3 - 0
Tins, mess	1	2 - 6½	1 - 11
Capes, anti-gas	1	12 - 6	9 - 4½
Bayonet	1	8 - 6	6 - 4½
Bottle, oil, bakelite	1	3	2
Rifle, Mk.IV	1	10 - 3 - 6	10 - 3 - 6
Scabbard, bayonet	1	5 - 9	2 - 10
Sheet, ground	1	10 - 9	8 - 1
Blanket	1	13 - 0	9 - 9
Drawers, cellular, short	2	4 - 1	3 - 1
TOTAL DEFICIENCIES		22 - 14 - 9½	

I certify that this is a true copy of the list of deficiencies from A.B. 161 in my custody.

A.W. Roy Capt
Adjt. R.C.R.

M.O. R.C.R.

Neuropsychiatric Report

Re: A11292 Pte Evans, G.L. R.C.R. Age 29. Married/37. Cat "A"

Enlisted 18 Sept 39. Eng Dec 41. Italy Sept/43.
With R.C.R. since Dec/43.

Complaints: Nervousness all his life, worse while in front line.

History: Father delivers bread for bakery in Woodstock, Ont. Mother was a mental patient in Ontario Hospital, London, for 16 years. Patient was only four years of age when mother was comitted to Hosp. He was sent to England and brought up by paternal grandparents until he was 18. Patient completed 6th standard at school when he was 14. After leaving school worked in a canny factory for 1½years, then as a delivery boy for a baker shop eight months, with a fruit market for one year. Went to Canada at 18 years and worked with his father at a dairy for two years, then at a fruit packing plant for about three years. Was married at 22 and claims domestic relations were fairly good until he came Overseas. Wife wrote to him only occasionally. In January 1943 wife wrote stating that she had an illegitimate child and the government cut off her allowance in Feb / 43. He has not heard from wife since. He hears from his mother quite regularly.

Denies civilian crimes. Was A.W.L. five days in England for which he served 14 days detention. He came out to N/Africa in Sept/43 as a reinforcement for R.C.R. About 15 Sept 43 contracted jaundice and was evacuated to 15th General where he was a patient until 28 Nov 43. Claims he was seriously ill with the jaundice. Was in convalescent camp one week then was discharged to C.B.R.D. Arrived at unit on Dec 24th. Was transferred from regular infantry duty to cooking on 3 Jan 44. Went A.W.L. 67 days before he was picked up by R.Ps. and was returned to unit guard house one week ago.

Suffered from enuresis to age of 17 or 18 and occasionally since. Has only wet the bed a couple of times in the army. Was very fearful of the dark as a child but grew out of that. Has always been easily startled, excited, and unduly irritable. Avoided quarrels and fights as much as he could. States that shelling made him jittery as soon as he went up to unit but that he improved after being transferred to cook-house. States he liked his job but was so shaky he could not stay with the unit, leaving with intention of trying to get a job at C.B.R.D. as cook.

Examination:

Finger nails bitten, nurse rate 108-sitting. Reflexes normal. Is of low average intelligence and exercises grossly defective judgement. He does not appear to have full appreciation of the seriousness of present charges against him. No delusions or hallucinations can be elicited at present but he gives a history of had-so having had some visual hypnagogic hallucinations about seven years ago.

Diagnosis:- Psychopathic Personality. (Inadequate Type)

Opinion: Patient has shown some past schizoid trends, his family history is bad, and as mentioned above his judgment is definitely abnormal. At present, however, he is mentally fit to stand court-martial and serve sentence. If mental symptoms are observed while undergoing sentence he should be referred again for psychiatric examination. At termination of sentence should be re-assessed regarding recategorization.

Disposal:- Return to Unit.

4 Apr 44
In the field.

A.E. McKercher
A.E. McKercher, Major, RCAMC.
Neuropsychiatrist, 1 Cdn Div.

LIST OF WITNESSES.

FOR PROSECUTION

027300,	Private G.A. GRAVES,	"B" Coy., R.C.R., Canadian Army Overseas, Central Med. Forces.
F77107,	Corporal W.G. SMITH,	No.1 Cdn L of C Prov Coy. (No further details known)
	Captain H.F. LAW,	No.1 Cdn L of C Prov Coy. (No further details known)
	Major A.S.A. GALLOWAY,	Bn HQ., R.C.R., Canadian Army Overseas, Central Med. Forces.

FOR DEFENCE.

------- NIL -------

In the Field.
31 Mar 44.

J.W. Ritchie

(J.W. RITCHIE) Lt.-Colonel,
A/Comd., The Royal Canadian Regiment.

DEFENDING OFFICER.

If available, I would like to have the services of Lieutenant W.D. LAWRENCE, The Royal Canadian Regiment, to defend me at my forth-coming trial by Field General Courts-Martial.

G. L. Evans Pte.
(G.L. EVANS)

Summary of Evidence in the case of A11292 Pte Gordon Leonard Evans, The Royal Canadian Regiment. A soldier of the Canadian Army Overseas, placed on Active Service.

By direction of the Commanding Officer the evidence is taken on Oath.

1st Witness for the Prosecution — C 27300 Pte G.A. Graves, The Royal Canadian Regiment. having been duly sworn states:

On 13 Jan 44 I was Sec Comd of No 7 Sec 82 Bl B Coy RCR. The accused, Pte Evans, whom I recognize was a member of my section. On the move from the Reserve ~~positions~~ area to the forward positions at approximately 1700 hrs awk Evans left the section while on the move. As soon as I noticed him missing I reported to the Pl Comd. I have not seen the accused since then until this date.

G Graves Pte

The accused declines to cross examine the witness.

2nd Witness for the Prosecution — Cpl N G Smith, No 1 Sdn 2 of C Provost Coy.

A written statement purported to be signed by this witness is read to the accused. (marked Exhibit 'A' and attached to the summary)

I certify that due to the exigencies of the service and loss of time involved the attendance of this witness is not readily procurable.

A W Roy Capt.
Officer taking the Summary.

The accused does not demand the attendance of this witness for cross examination

3rd Witness for the Prosecution — Capt H. F. Law O.C. No 1 Edn 2 of C Provost Coy.

A certificate of apprehension signed by the officer is read to the accused. (marked Exhibit 'B' and attached to the Summary)

I certify that due to the exigencies of the service and loss of time involved the attendance of this witness is not readily procurable.

A W Roy Capt
Officer taking the Summary.

The accused does not demand the attendance of this witness for cross examination

3

The accused having been duly cautioned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give any evidence unless you wish to do so but anything you say or any evidence you give will be taken down in writing and may be given in evidence"

in accordance with Rule of Procedure 4 (e) declines to make a statement or to give Evidence upon oath.

Certified that Rules of Procedure 4 (c)(d)(e)(f) and (g) have been complied with.

Taken down by me in the presence of the accused this 29th day of March 1944

On the field

A W Roy Capt
Officer taking the Summary.

Additional summary of evidence in the case of A 11292 Pte Gordon Leonard Evans. The Royal Canadian Regiment, a soldier of the Canadian Army Overseas, placed on Active Service.

By direction of the Commanding Officer the evidence is taken on Oath.

4th Witness for the Prosecution — Major A. S. A. Galloway The Royal Canadian Regiment.

A. Record of the Declaration of a Court of Inquiry on the illegal absence of the accused was read to the accused. (Marked Exhibit "C" and attached to the summary). A certified true copy of the list of deficiencies declared by the aforesaid Court is read to the accused (marked Exhibit "D" and attached to the summary)

The accused declines to call this witness for cross-examination.

The accused having been duly cautioned as follows.

"Do you wish to make any statement or to give evidence upon Oath?

You are not obliged to say anything or to give Evidence unless you wish to do so but anything you say or any evidence you give will be taken down in writing and may be given in evidence."

according to Rule of Procedure H (e) declines to make a statement or to give Evidence upon Oath.

Certified that Rules of Procedure H (c) (d) (e) (f) and (g). have been complied with.

Taken down by me in the presence of the accused this 30th day of March 1944.

In the field.

N W Roy Capt.
Officer taking the Summary

M.F.M. 6
(A.F. B.1775)
40/P & S/5136 (2965)

Sheet No. 2 destroyed 20 May 43.

No. A11292 Name EVANS C.L. Sqn., Battery, or Company — Corps C.I.C. — Date of enlistment 18 Sep 39 — G.C. Badges Nil — Service or Proficiency Pay Nil — Character

Date of last entry in Company Conduct Sheet: nil — No. and Date of last drunk: nil — Period not reckoning towards freedom from extra fine: nil — Sheet No. 1 — Signature O.C. Company, etc. ??????Lieut

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Stratford Can	Mar 12/40	Pte	40	AA Sec 40 Cond to the prejd etc ie Moving stores without perm.	Kerr JA Pte	14 days Detn	13 Mar 40	SH McComb Lt.Col	
" "	Apr 15	"	40	AA Sec 15 (1) AWL 0030/0600 15 Apr 40 (3 hrs) (2) AA40 Cond to the predj etc ie breaking Barracks.	E Le Conte Sgt	7 days CB	15 Apr 40	DM Ross Major	
Camp Borden Can	Aug 9	"	40	AA 15 (1) AWL 0100/1300/8 Aug 40 (12 hrs)	EM Hutchinson CSM	10 days CB	9 Aug 40	HQ Clark Maj.	Forf. 1 day pay
" "	Sep 16 41	"	40	AWL 0100/15 Sep 40 to 0100/16 Sep 40 (1 day)	WA Spears Sgt.	Admonished	16 Sep 40	HQ Clark Maj	Forf 1 days pay
Hamilton Ont.	Jan 8 41	"	40	AA 15 (1) AWL 0200/1 Jan 41 to 2300/7 Jan 41 (6 days 21 hrs)	V.C. Salt L/Cpl	14 days C.B.	8 Jan 41	EC Shelley Maj	forf 7 day pay
" "	Jan 30 41	"	40	AA 15 (2) AWL 0745/0810/30 Jan 41 (25 mins)	TH Soper RSM	3 day CB	31 Jan 41	HQ Clark Maj	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	Jul 12	Pte	15	AA15 (1) AWL 0100/2 Jul 41 to 0600/8 Jul 41 (6 days 5 hrs)	SJM Halliday L/Cpl	10 days Detn	8 Jul 41	GF Little Lt.Col	Forf. 7 days pay.
Camp Borden	2 Aug 41	Pte	15	AA 15 (1) AWL 0100 hrs/7 Aug 41 to 0830/12 Aug 41 (5 days 7 hrs 30 mins)	GA Wallace Cpl	10 days Detn	12 Aug 41	GF Little Lt.Col.	forf. 6 days pay
"	Oct 1 41	Pte	4	AA 40 Cond to theprej. etc ie negl. to obey Regtl orders	SR Mantle L/Sgt	7 days CB	20 Oct 41	RA McDougall Capt.	
Field	28 Dec 1942	Pte	14	AA 15 (1) AWL 2359/28 Dec 41 to 0300/29 Dec 41 (3 hrs 1 min)	EA Hobson CSM	5 days CB	30 Dec 41	RA McDougall Capt	
"	May 20	Pte	14	(a) AA 40 Cond to the prej. etc ie insuberdination to an NCO (b) AA 15 (2) AWL 1400/20 May 42 to 1415/20 May 42 (15 mins)	SR Mantle Sgt	7 days CB	21 May 42	TJ Reith Lieut.	
Field	Jun 1 42	Pte	14	AA 15 (1) AWL 2400/31 May 42 to 0930/1 Jun 42 (9 hrs 30 mons)	OC Matthews Cpl	14 days FP	2 Jun 42	RL Tindall Maj.	Forf 1 days pay
Field	29 May 43	Pte	14	AA Sec 15 (1) WOAS AWL from 2200 hrs 29 May 43 to 0630 hrs 30 May 43 (Time 8 hrs 30 mins)	A133333 L/Cpl Chevier G	5 days CB	31 May 43	Major CH Campbell	1 days forf of pay PRI 149 (1)(n

M.F.M. 6
(A.F. B.176)
40-/P & /5138 (2965)

No. A11292 Name EVANS, G.L. Sqn., Battery, or Company E Corps Cdn Infantry Date of enlistment 16 Sep 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	14 Jun 43	Pte	(3) (4)	(1) AA Sec 15 (1) WOAS AWL from 2300 hrs 14 Jun 43 to 2355 hrs 14 Jun 43 (Abs 55 mins) (2) AA Sec 10 (4) WOAS Breaking Bks in that he was found out of camp at 0330 hrs 15 Jun 43. (3) AA Sec 40 WOAS Conduct to the prej. etc in that he was found out of camp area with Goverment Property (ie) his blankets and ground sheet	A82169 Cpl Casey VH Documentery	1o days Detn	15 Jun 43	Major CH Campbell	1o day forf of pay. (12)
Field	10 Aug 43	Pte	(3)	AA Sec 40 WOAS Cond to the prej etc. ie plug in bore of rifle.	A71011 Sgt Loan, F.H.	2 days C.B.	1o Aug 43	CaptCW Christianson	I.A.W.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Dec 43	Pte	4	AA Sec 40 WOAS Conduct etc., in that he had his kit untidy and improperly laid out	A6037 Sgt Whalley, G.W. (COS)	4 days C.B.	6 Dec 43	Capt OW Christiansen.	

Certified that this is a true copy
of the original document held in my care.

A.W. Roy

(A.W. Roy) Captain,
A.P.C., The Royal Canadian Regiment.

M.F.S. 355
(12M—5-44) (372-3)
H.Q. 1772-39-620
A.F.S. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A11292	Private	G.L. EVANS.	The Royal Canadian Regt.

1. The following is a fair and true summary of the entries in the Service and General Regimental Conduct Sheets Ledger

Field Conduct sheets
~~or Company Conduct Sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. Sec 40,	two times	A.A. Sec 40	six times
For	A.W.L.	two times	A.W.L.	twelve times
For	Breaking Bks.	one times	Breaking Bks	one times
For		times		times

Number of instances of gallantry or distinguished conduct nil

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately. None

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court~~ summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 22 days in military custody, making a total of 22 days in custody, of which Nil days were spent in hospital. As of 14 April 44

5. The present age of the accused according to his ~~record of service~~ attestation paper is 29 yrs., 40 days as of 14 April 44

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper 18 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 4 yrs., 210 days

8. The accused is entitled to reckon 4 yrs., 21[0] days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to ~~wear the following decoration or reward~~ military ~~civil~~ possession of or entitled to. State any decoration or reward. Canadian Volunteer Service Medal and Clasp.

~~If the accused is a warrant officer~~ The accused before he was made a warrant officer held the following the regimental rank of

G. Stanton Maj.

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit

~~..... dated ....., and in his regiment (or corps), the rank of~~

~~..... dated .....~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

~~..... Date of promotion.~~

~~In the rank of ..... years.~~

~~In the rank of ..... years.~~

~~In the rank of ..... years.~~

~~NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.~~

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A/41292 Rank Pte Name G.L. EVANS of The Royal Canadian Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31st day of March, 1944.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked 9 signed by the president, and annexed to the proceedings.

(J.S. RITCHIE) Lt.-Colonel,
A/Comd., The Royal Canadian Regiment.

CERTIFIED TRUE COPY
RECORDER I CMHQ IN AS 168

(R. CORMIER) Captain

NMN-123

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Tenth day of April, 19 44

Order convening the Court: "F.Darton" Major

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~ "DCE"

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~
~~(1) Three Officers to form the Court;~~ "DCE"
~~(2) A Field Officer as President~~
~~(or) for following reasons, namely:~~ "DCE"

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be inserted. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F.G.C. Darton	R.C.E.

Members.

Rank.	Name.	Regiment.
Captain	D.B. Deeks	46 Highrs
It.	A.N.Taber	Hast & PER
It.	J. Hornby	Hast & PER

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "D.C. Spry"
(D.C. Spry) Brigadier
Commanding 1 Cdn Inf Bde.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.11292 PRIVATE EVANS, Gordon Leonard, The Royal Canadian Regiment	FIRST CHARGE A.A. Sec 15(1) SECOND CHARGE A.A. Sec 24(2)	Guilty Guilty	Guilty Guilty To be imprisoned with hard labour for a period of 2 years, and to be put under stoppages of pay until he has made good the sum of $22.14.9 in respect of loss of Clothing Equipment etc to that value "F. Darton" Maj	I confirm the finding and sentence of the Court but commute the sentence to eighteen (18) months imprisonment with hard labour. "D.C. Spry" 21 Apr 44.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer: *(to be recorded on separate sheet if necessary)*:—

(Signed) "D.C. Spry" (Signed) "F. Darton"
(D.C. Spry) Brigadier (F.G.C.Derton) Major
Commanding 1 Cdn Inf Bde R.C.R.
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of April, 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

*Omit if not applicable.

Signed this 15th day of April 19 44.

"F. Derton" Maj.
President of the Court Martial.

*See footnote (d) on page 782 M.M.L. 1929.

C. Certificate in case of death sentences.

~~I certify that the terms of A.C.I. 679 of 1919 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not ~~further~~ kept in prison or detention barrack beyond ~~further order~~.) "DCR"

Signed this Twenty-first day of April 19 44.

"D.C. Spry"
Confirming Officer.
(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

Promulgated and extracts taken in the case of A.11292 Pte Evans, G.L. RCR

(a) (Dated) 2nd May 1944 (Signed) "F. Darton" Maj RCR

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

MEDICAL CERTIFICATE (MR (CAN) 557)

I certify that I have this morning examined No. A-11292 EVANS, J.L. of The Royal Canadian Regiment, and in my opinion he is fit to undergo trial by Court Martial.

Station - In the Field

Date - 14.4.44.

"Undeciphered" Capt.
R.C.A.M.C. Att R.C.R.

"F. Darton" Maj.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F.G. Court-Martial held at In the Field

on the 14th day of April 19 44 by order of

Brig. D.C. Spry

Commanding 1 Cdn Inf. Bde.

dated the 10th day of April 19 44

President.

Major F.G.C. Darton R.C.R.

Members.

Capt. D.B. Deeks 48th Highrs.

Lieut. A.E. Taber East & NER

Judge Advocate.

Trial of* A11292 Pte. Gordon Leonard EVANS
The Royal Canadian Regt.

The order convening the Court, the charge-sheet and the summary (~~of evidence~~) of evidence are laid before the Court.

~~The Court satisfy themselves that the accused is not available~~

~~, acting member takes the place of President of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor.† Lieut. E.F. Shuter RCR

~~accused~~ defending officer† Lieut. W.D. Lawrence RCR

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

(2766) W.V.(2766)/1(1) 40,000 pads 6/43 S. & S. Ltd. (46617) Forms A 9 &

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to All charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty" until after the finding on that other charge. *Instruction.*

CHARGE SHEET

The accused, No.A11292, Private Gordon Leonard EVANS, "B" Coy., The Royal Canadian Regiment, a soldier of the Canadian Army Overseas, Central Mediterranean Forces, when on Active Service, is charged with -

First Charge
A.A.Sec 15(1)

WHEN ON ACTIVE SERVICE,
ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, on 13 Jan 44, absented himself without leave from 1800 hrs., 13 Jan 44 until apprehended by American Military Police at BENEVENTO, ITALY, at 1200 hrs. 22 Mar 44.
(Absent - 68 days, 18 hrs)

Second Charge
A.A.Sec 24(2)

WHEN ON ACTIVE SERVICE,
LOSING BY NEGLECT HIS EQUIPMENTS,
CLOTHING AND REGIMENTAL NECESSARIES,

in that he,

in the field, on 14 Jan 44, was deficient equipment, clothing and Regimental necessaries to the value of £22,14/9, (Twenty-two pounds, fourteen shillings and nine pence half-penny) as under -

Article	No.	Full Value £	s	d	£ value £	s	d
Anklets, web, prs.	1		5	5½		4	1
Blouses, Battle dress	1	1	7	8	1	0	9
Boots, ankle, prs	1	1	1	6		16	1½
Drawers, woollen, prs	2		10	6		7	10½
Gloves, knitted, prs	1		2	7½		1	11½
Greatcoat, Drab	1	3	17	0½	2	17	9
Jersey, pullover	1		6	9		5	1
Shirts, angola	1		9	2		6	10½
Trousers, battle-dress	1	1	7	11	1	0	11½
Vests, woollen	2		10	2		7	7½
Socks, prs	3		5	0		3	9
Braces, prs	1		1	3½			11½
Brushes, button, brass	1			8			6
" clothes	1		1	1			10
" hair	1		1	1			10
" shaving	1		1	4		1	0
" shoe, blackening	1			8			6
" shoe, polishing	1			9			7
Cards, comforter	1		1	1½			10
Combs, hair	1			2			1½
Dressing, first field	1		1	1			10
Fork, M.S. table	1			5			4
Holdall	1			9			7
Housewife, complete	1		2	3		1	8
Knives, clasp	1		5	2½		3	10½
Knives, table	1			9½			7
Razor safety	1		1	10½		1	5
Spoons, M.S. dessert	1			4½			3
Towels, hand	2		1	11		1	5
Belts, waist	1		4	4		3	3
Water bottle	1		2	10		2	1½
Braces, W.E., left	1		2	2½		1	8
Braces, W.E., right	1		2	0½		1	6½
Carrier, water-bottle	1		2	0		1	6
Frogs, bayonet	1			11½			8½
Haversack	1		9	7		7	2
Helmets, steel	1		10	8½		8	0
Pouches, basic	2		13	4		10	0

/Continued, Sheet 2.

RS
"J. Barton" Maj.

SHEET TWO.

Articles	No.	Full value £	s	d	£	s	d
Sling, rifle	1		1	1			10
Straps, shoulder supp.	2		4	0		3	0
Tins, mess	1		2	6½		1	11
Capes, anti-gas	1		12	6		9	4½
Bayonet	1		8	6		6	4½
Bottle, oil, bakelite	1			3			2
Rifle, Mk.IV(Full value)	1	10	3	6	10	3	6
Scabbard, bayonet	1		3	9		2	10
Sheet, ground	1		10	9		8	1
Blanket	1		13	0		9	9
Drawers, cellular, short	2		4	1		3	1
TOTAL DEFICIENCIES					22	14	9½

Dated, in the field, this

10th day of April, 1944

"J.W. Ritchie"

(J.W. RITCHIE) Lt.Colonel,
A/Comd., The Royal Canadian Regiment.

To be tried by Field General Court Martial.

"D.C. Spry"

In the Field
10 Apr 44

(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

"B2

"F. Darton" Maj.

CC

Proceedings on Plea of Guilty.

* To be struck out if a plea of "Not Guilty" has been pleaded with.

*The Court having been reopened, the accused is again brought before it, and the charge to which he has pleaded Guilty is read to him again.

The accused A11292 Pte. Gordon Leonard EVANS
is found guilty of The Royal Canadian Regt.
(A.A. Sec. 15(1))
(A.A. Sec 24(2)) the charges

†The summary of evidence is read, marked C1 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:
Defending Officer asks Court to read Neuropsychiatric Report attached, and except that in mitigation of punishment, [illegible] signed by the President, and attached to the proceedings.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

The Court being reopened, the accused is again brought before it.

Lt. E.H. Chuter is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked C signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Instructions.—If in virtue of the nature of the service of the accused as a departmental corps, or otherwise, the custody of the Court requires that until a non-commissioned punishment is awarded he shall be in it awarded by the Court He (the accused) must call the attention of the Court to the fact, and the Court must require from the Major and senior of that additional punishment.

Cross-examined by the accused.

None

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE in the case of A.11292 Pte Gordon Leonard EVANS, The Royal Canadian Regiment, a soldier of the Canadian Army Overseas, placed on Active Service.

By direction of the Commanding Officer the evidence is taken on Oath.

1st Witness for the Prosecution — C.27300 Pte. G.A. Graves. The Royal Canadian Regiment, having been duly sworn states:

On 18 Jan 44 I was Sec. Comd of No 7 Sec As Pl B Coy RCR. The accused, Pte Evans, whom I recognize was a member of my section. On the move from the Reserve area to the forward positions at approximately 1800 hrs Pte Evans left the Section while on the move. As soon as I noticed him missing I reported to the Pl Comd. I have not seen the accused since then until this date.

"G. Graves" Pte

The accused declines to cross examine the witness.

2nd Witness for the Prosecution — Cpl. W G Smith, No. 1 Cdn I of C Provost Coy

---

2

A written statement purported to be signed by this witness is read to the accused. (Marked Exhibit "A" and attached to the summary)

I certify that due to the exigencies of the service and loss of time involved the attendance of this witness is not readily procurable.

"A.W. Roy" Capt
Officer taking the Summary.

The accused does not demand the attendance of this witness for cross examination.

2nd Witness for the Prosecution — Capt. R.F. Law O.C. No. 1 Cdn I of C Provost Coy.

A certificate of apprehension signed by this officer is read to the accused. (Marked Exhibit "B" and attached to the Summary)

I certify that due to the exigencies of the service and loss of time involved the attendance of this witness is not readily procurable.

"A.W.Roy" Capt
Officer taking the Summary.

The accused does not demand the attendance of this witness for cross examination.

The accused having been duly cautioned as follows:

"Do you wish to make any statement or to give evidence upon Oath? You are not obliged to say anything or give any evidence unless you wish to do so but anything you say or any evidence you give will be taken down in writing and may be given in evidence".

In accordance with Rule of Proceedure 4(e) declines to make a statement or to give evidence upon Oath.

Certified that Rules of Proceedure 4(c)(d)(e)(f) and (g) have been complied with.

Taken down by me in the presence of the accused this 29th day of March, 1944.

In the Field

"A.W. Roy" Capt
Officer taking the Summary

ADDITIONAL SUMMARY OF EVIDENCE in the case of A11292 Pte Gordon Leonard EVANS. The Royal Canadian Regiment, a soldier of the Canadian Army Overseas, placed on Active Service.

By direction of the Commanding Officer the evidence is taken on oath.

4th Witness for the Prosecution — Major A.S.A. Galloway, The Royal Canadian Regiment.

A Record of the Declaration of a Court of Inquiry on the illegal absence of the accused signed by this officer is read to the accused (Marked Exhibit "C" and attached to the summary). A certified true copy of the list of deficiencies declared by the aforesaid Court is read to the accused (Marked Exhibit "D" and attached to the summary).

The accused declines to call this witness for cross-examination.

The accused having been duly cautioned as follows:

"Do you wish to make any statement or to give evidence upon Oath?

2

You are not obliged to say anything or to give Evidence unless you wish to do so but anything you say or any evidence you give will be taken down in writing and may be given in Evidence".

According to Rule of Procedure 4(e) declines to make a statement or to give Evidence upon Oath.

Certified that rules of procedure 4(c)(d)(e)(f) and (g) have been complied with.

Taken down by me in the presence of the accused this 30th day of March, 1944.

In the Field

"A.W.Roy" Capt.

Officer taking the Summary.

Neuropsychiatric Report

Re: Alf292 Pte Evans, G.L. R.C.R. Age 29. Married/37. Cat "A"

Enlisted 18 Sept 39. Eng Dec 41. Italy Sept/43.
With R.C.R. since Dec/43.

Complaints: Nervousness all his life, worse while in front line.

History: Father delivers bread for bakery in Woodstock, Ont. Mother was a mental patient in Ontario Hospital, London, for 16 years. Patient was only four years of age when mother was committed to Hosp. He was sent to England and brought up by paternal grandparents until he was 18. Patient completd 6th standard at school when he was 14. After leaving school worked in a candy factory for 1½ years, then as a delivery boy for a baker shop eight months, with a fruit market for one year. Went to Canada at 18 years and worked with his father at a dairy for two years, then at a fruit packing plant for about three years. Was married at 22 and claims domestic relations were fairly good until he came Overseas. Wife wrote to him only occasionally. In January 1943 wife wrote stating that she had an illegitimate child and the government cut off her allowance in Feb/43. He has not heard from wife since. He hears from his mother quite regularly.

Denies civilian crimes. Was A.W.L. five days in England for which he served 14 days detention. He came out to N/Africa in Sept/43 as a reinforcement for R.C.R. About 15 Sept 43 contracted jaundice and was evacuated to 15th General where he was a patient until 26 Nov 43. Claims he was seriously ill with the jaundice. Was in convalescent camp one week then was discharged to C.B.R.D. Arrived at unit on Dec 24th. Was transferred from regular infantry duty to cooking on 3 Jan 44. Went A.W.L. 67 days before he was picked up by M.Ps. and was returned to unit guard house one week ago.

Suffered from eneuresis to age of 17 or 18 and occasionally since. Has only wet the bed a couple of times in the army. Was very fearful of the dark as a child but grew out of that. Has always been easily startled, excited, and unduly irritable. Avoided quarrels and fights as much as he could. States that shelling made him jittery as soon as he went up to unit but that he improved after being transferred to cook-house. States he liked his job but was so shaky he could not stay with the unit, leaving with intention of trying to get a job at C.B.R.D. as cook.

Examination:

Finger nails bitten, pulse rate 108-sitting. Reflexes normal. Is of low average intelligence and exercises grossly defective judgement. He does not appear to have full appreciation of the seriousness of present charges against him. No delusions or hallucinations can be elicited at present but he gives a history of having had some visual hypnagogic hallucinations about seven years ago.

Diagnosis: - Psychopathic Personality. (Inadequate Type)

Opinion: Patient has shown some mild schizoid trends, his family history is bad, and as mentioned above his judgment is definitely abnormal. At present, however, he is mentally fit to stand court-martial and serve sentence. If mental symptoms are observed while undergoing sentence he should be referred again for psychiatric examination. At termination of sentence should be re-assessed regarding recategorization.
Disposal:- Return to Unit.

4 Apr 44
In the field.

"A.E. McKercher"
A.E. McKercher, Major, RCAMC
Neuropsychiatrist, 1 Cdn Div.

Sheet No. 2 destroyed 20 May 43.

No. A11292 Name EVANS, G.L. | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 18 Sep 39 | G.C. Badges Nil | Service or Proficiency Pay | Character Lie Char.

Date of last entry in Company Conduct Sheet: nil | No. and date of last drunk: nil | Period not reckoning towards freedom from extra fine: nil | Sheet No. 3 | Signature O.C. Company, etc.

M.F.M. 6 (A.F. B.122) 40/P&A/8136 (2965)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Stratford Can	8 Mar 12/40	Pte		AA Sec 40 Cond to the prejd etc ie Moving stores with at perm.	Kerr JA Pte	14 days Detn	13 Mar 40	SH McComb Lt.Col	
"	Apr 15	"		AA Sec 15(1) AWL 0030/0600 15 Apr 40 (3 hrs) (2)AA40 Cond to the predj etc ie breaking barracks.	E LeConte Sgt	7 days CB	15 Apr 40	EM Ross Major	
Camp Borden Can	Aug 9	"		AA15(1) AWL 0100/1300/8 Aug 40 (12 hrs)	EM Hutchinson CSM	10 days CB	9 Aug 40	HQ Clark Maj	Forf. 1 day pay
" "	Sep 16	"		AWL 0100/15 Sep 40 to 0100/16 Sep 40 (1 days)	WA Spears Sgt.	Admonished	16 Sep 40	HG Clark Maj	Forf. 1 days pay
Hamilton	Jan 8 41	"		AA 15(1) AWL 0200/1 Jan 41 to 2300/7 Jan 41 (6 days 21 hrs)	V.O. Salt I/Cpl.	14 days C.B.	8 Jan 41	EC Shelley Maj	Forf 7 day pay
"	Jan 30 41	"		AA 15(2) AWL 0745/0810/30 Jan 41 (25 mins)	WH Soper RSM	3 days CB	31 Jan 41	HG Clark Maj	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	Jul 12	Pte		AA 15(1) AWL 0100/2 Jul 41 to 0600/8 Jul 41 (6 days 5 hrs)	SJM Halliday L/Cpl	10 days Detn.	8 Jul 41	LGW Little Lt.Col.	Forf. 7 days pay
Camp Borden	12 Aug	Pte		AA 15(1) AWL 0100 hrs /7 Aug 41 to 0830 /12 Aug 41 (5 days 7 hrs 30 mins)	GA Wallace Cpl.	10 days Detn.	12 Aug 41	LGW Little Lt.Col.	forf. 6 days pay
"	Oct 1 41	Pte		AA 40 Cond to the prej. etc. ie negl. to obey Rest1 orders.	GR Mantle L/Sgt	7 days CB	20 Oct 41	RA McDougall Capt	
Field	28 Dec 1942	Pte		AA 15(1) AWL 2359/28 Dec 41 to 0300/29 Dec 41 (3 hrs 1 min)	EA Hobson CSM	5 days CB	30 Dec 41	RA McDougall Capt	
"	May 20	Pte		(a) AA 40 Cond to the prej.etc. ie insubordination to an NCO (b) AA 15 (2) AWL 1400/20 May 42 to 1415/20 May 42 (15 mins)	GR Mantle Sgt	7 days CB	21 May 42	TJ Reith Lieut.	
Field	Jun 1 42	Pte		AA 15(1) AWL 2400/31 May 42 to 0930/1 Jun 42 (9 hrs 30 mins)	GO Matthews Cpl.	14 days FP	2 Jun 42	RI Tindall Maj.	Forf 1 days apy
Field	29 May 43	Pte		AA Sec 15(1) WCAS AWL from 2200 hrs 29 May 43 to 0600 hrs 30 May 43 (Time 8 hrs 30 mins)	A133333 Chevier C	5 days CB	31 May 43	Maj CH Campbell	1 days forf of pay KR 149(1)(a)

MFM 6
(AFB 122)
8D/PAM/150 (5438)

No A11292 Name EVANS, G.L. | Sqn, Battery, or Company E | Corps Cdn Infantry | Date of enlistment 16 Sept 39 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14 Jun 43	Pte		(1) AA Sec 15(1) WOAS AWL from 2300 hrs 14 Jun 43 to 0355 hrs 14 Jun 43 (Abs 5½ mins) (2) AA Sec 10(4) WOAS Breaking Bks in that he was found out of camp at 0330 hrs 15 Jun 43. (3) AA Sec 40 WOAS Conduct to the prej. etc in that he was found out of camp area with Government Property (ie) his blankets and ground sheet.	A82169 Cpl Casey VH Documentary	10 days Detn	15 Jun 43	Major CH Campbell	10 days forf of pay (IB)
Field	10 Aug 43	Pte		AA Sec 40 WOAS Cond to the prej etc. is plug in bore of rifle.	A71011 Sgt Loan, F.E.	2 days CB	10 Aug 43	Capt. CW Christianson	I.A.S.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Suspending with trial)	By whom awarded	Remarks
Field	6 Dec 43	Pte		AA Sec 40 WOAS Conduct etc., in that he had his kit untidy and improperly laid out.	4037 Sgt Whalley, G.W.(CMS)	4 days C.B.	6 Dec 43	Capt Christiansen.	

Certified that this is a true copy of the original document held in my care.

"A.W.Roy"

(A.W. Roy) Captain,
Adjt., The Royal Canadian Regiment.

52-79 Pla. Evans Ltd. P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-71249 Pte. George Patrick EVANS, (X-4 11st RCASC)

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15 (1)	Guilty	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ~~Beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which No days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of sixty (60) days.

(Sgd) ..... Judge-Advocate, if any. 3 Apr 46 Date awarded. (Sgd) E C Peckham Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-58, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) AAH

(1. AA 57A. Delete if not used.)

(Sgd) J.F. Matthews Lieut-Col Dep Comd 6 FN

Date 5 April 46 Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K-71249 Pte Evans GP	6 Apr 46	Hon Lieut Major Legal Offr 3 Cdn Transit Camp CFN
X4 11st. RCASC		
3 Cdn Transit Camp CFN		

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AG 180.5Z-79

CPA96 (To ties of AFA81 40/P As B; Cons 10/41) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of (H.F. Baker) Lt-Col. Comd 1 C. Demob Dep Dated 3 April 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, n/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-71249	Pte.	George Patrick	EVANS,	(X-4 List RCASC) 3 Cdn Transit Camp CFN.

PROCEEDINGS REVIEWED

10 Apr 46 C.H. Tritton Maj

PROCEEDINGS OF TRIAL.

Held at the Fd in (country) in Holland on (date(s)) 3 April 1946

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Sequence referred to throughout is on p 4. Captions do NOT include all relevant fmns RDs. For guidance on procedure when a variation in this form arises, see fmns for CofM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See book of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (were) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 23-63, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1415 hours trial commences.(1)

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily (as the CO)~~ GP

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to be interpreted? Ans~~ ~~The Interpreter is sworn.(1) Do you object to be sworn? Ans~~ ~~The shorthand writer is sworn.~~ GP

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nor Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, (E. MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.C. PECKHAM	CIC 3 Cdn Transit Camp
Member	Capt.	F.M. PRITCHARD	RCAPC 3 Cdn Transit Camp
Member	Capt.	J.C.P. HARDY	CIC 3 Cdn Transit Camp
Judge-Advocate			
Prosecutor	Capt.	Y. VEZINA	CIC 3 Cdn Transit Camp
Defending Offr	Lieut.	W.D. CALLAGHAN	CIC 3 Cdn Transit Camp

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused K-71249 - Pte EVANS, GP before arraignment make(s) (no) (~~at~~ plea). GP (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(1), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to this para. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. GP

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Not Gp.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their)~~ plea(s) of Guilty to Not Guilty on ONE charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charge on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) [illegible] to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 744 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*))

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2 and 3.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Hear last further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No and.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 353 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. On mitigation of punishment then addressing officer.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to swear on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(2)
(1. *AA 54(6), RP 123(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas AO 309, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1-6), 68(7), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

(WR(C.n) Form 55a)
(USCG CG 173)

I certify that I have this day examined K 712449 (No.)

Pfc (Rank) EVANS (Name) G P and in my opinion he is

fit / unfit to undergo trial by Court-Martial.

Station In the Field

Date 3 April 44

(Signature), Medical Officer.

(Unit)

68P

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 41, and as to separate trial on charges in the same charge sheet see RP 106. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-71249	Pte.	George Patrick	EVANS,	(X-4 list RCASC) 3 Cdn Transit Camp, CFN.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on 3 Apr. 46 (date) endorsed by me "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; ~~AND THAT IT IS NOT PRACTICABLE THAT THE TRIAL BE POSTPONED TO A SUPERIOR QUALIFIED OFFR.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint (a) three Offrs to form the Court, (b) a Yd Offr as President, for the reason I have stated hereon.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I also appoint a Judge-Advocate to perform the duties mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E.C. PECKHAM	CIC 3 Cdn Transit Camp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	F.M. PRITCHARD	RCAPC 3 Cdn Transit Camp
Capt.	J.C.P. HARDY	CIC 3 Cdn Transit Camp

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut.	E. R. WOOD	CIC 3 Cdn Transit Camp

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Yd

in the Field (Country.)

Date 3 April 1946

H F Baker (Signed personally. RP 105 fn 2.) Lt-Col. (Rank.)

(H.F. Baker) Lt-Col.

Commanding 1 Cdn Demob Depot.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Form 1 to Dirs of AFAS) *(See overleaf for oaths and notes for use on trial.)*

BR 61

C H A R G E S H E E T

The accused, K-71249 Pte. George Patrick EVANS, X-4 list Royal Canadian Army Service Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas, is charged with:-

Sec 15(1) Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 0830 hrs 29 January 1946 absented himself without leave until he was arrested at DEN HAAG, Holland, at 0130 hrs 20 Ma rch 1946. (Absent 49 days 17 hrs)

IN THE FIELD
2 April 1946

(H.A.C. Rose)Major
T/Officer Commanding
3 Cdn Transit Camp, CFN.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

IN THE FIELD
3 April 1946

(H.F. Baker)Lt-Col.
Commander
1 Cdn Demob Depot

Plea in mitigation of Punishment

A71249 Evans C.P.

This man sir has a good record of service he joined in Dec 1941 Came overseas in April 1942 Went to Italy Oct 1943 served through this campaign until he came to France & Germany in May 1945 and has served in this theatre ever since

The reason sir that this soldier went on the loose is as follows He was working as a cook and in this form of employment he was allowed only every second day off and no other leave He was engaged to a girl in Den Bosch but he could not get to see her He applied for permission to get married but after a great deal of delay he was advised by the Padre to forget the whole thing. This gentleman as a kind thing to tell a man when he is in love He realized that he could get no where through the army so he decided to go on the loose & marry the girl he loved Is it a crime gentlemen for a man to want to marry the girl of his choice Technicaly he is guilty of a crime but when you consider the circumstances I am sure gentlemen you will be moved to give as light a sentence as possible

Exhibit "A" B.C. Peckham Major

SUMMARY OF EVIDENCE

In the case of K-71249 Pte. George Patrick EVANS, X-4 list Royal Canadian Army Service Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas.

By direction of the commanding officer this Summary of Evidence is taken on oath.

The following documents were laid before the Officer detailed to take the Summary of Evidence and marked as Exhibits "A" and "B" respectively, pertaining to the accused, and initialled by him for the purpose of identification.

"A" A certified true extract of X-4 list CFN Pt. II Order # 18 dated 2 April 46, showing the accused Absent from 0830 hrs 29 January 1946.

"B" A certificate of arrest of the accused, at DEN HAAG, Holland, at 0130 hrs 20 March 1946.

The accused does not question the documents.

D R Saunderson
(D.R. Saunderson)Lieut.
Officer detailed to take
Summary of Evidence.

The accused was cautioned as follows:-

Do you wish to make a statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

Certified that all the provisions of R.P. 4 (c)(d)(e) and (f) have been complied with. Taken down by me in the presence and hearing of the accused this 2 day of April 1946, in the Field.

D R Saunderson
(D.R. Saunderson)Lieut.
Officer detailed to take
Summary of Evidence.

PART II ORDER EXTRACT FORM

TO Legal Office

2 Ech CFN

1 Apr 19 46

EXTRACTS FROM UNIT X-4 CFN

Part II Order No. 18 dated 2 Apr 46

ABSENCE WITHOUT LEAVE

(a) AWL from 0830 hrs 29 Jan 46
K-71249 Pte EVANS G P RCASC

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same. Certified to be a true extract from the regimental records and documents in my custody.

Officer IC Records
Can. Sec. 2 Ech. HQA 21 Army Gp CAN

Originating Clerk's Initials cak

for Officer in Charge
Canadian Section, GHQ, [illegible]

"E"

DRI

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECT. 28 163(1) (ii)

I certify that No. X 71249 Rank Pte. Name EVANS G.F.

at (Unit) RCASC X-4 Lnd. Bde Tpt Coy. was arrested at DEN HAAG, Holland

at 0130 hrs. XX on 20 Mar 46 (date). He was arrested in XXXXXX civilian clothes.

Date 20 Mar 46

Signature of Provost Marshall, A.P.M. or other officer into whose custody the above named person was taken on arrest.

(A.E. Brock) LANK Lieut.
Officer Commanding
11 Con Provost Coy.,
CAOF

NOTE

1. This certificate MUST be signed personally by the officer concerned.

2. In no circumstances may it be signed by one officer "for" another, or by anyone who does not hold commissioned rank.

3. In no case should the place of apprehension be described as "in the field". The actual place of apprehension should be stated, or if difficulty is experienced in describing the place, the map reference should be given.

LIST OF WITNESSES

In the case of K-71249 Pte. George Patrick EVANS.

(For the Prosecution)

NONE

(For the Defence)

NONE

LIST OF EXHIBITS

In the case of K-71249 Pte. George Patrick EVANS.

(For the Prosecution)

"A" A certified true extract of X-4 list CFN Pt.II Order # 16 dated 2 April 46, showing the accused Absent from 0830 hrs 29 January 1946.

"B" A certificate of arrest of the accused, at DEN HAAG, Holland, at 0130 hrs 20 March 1946.

(For the Defence)

NONE

CERTIFICATE OF ACCUSED

I, K-71249 Pte. EVANS, G.P., hereby acknowledge that I have received, free of charge, one copy of the Summary of Evidence and one copy of the Charge Sheet therein.

I also request that an officer be appointed to act as my Defending Officer at my forthcoming Court-Martial.

G.P. Evans
(G.P. EVANS)

In lieu of Army Form B.296(War).

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-martial only)

NUMBER	RANK	NAME	REGIMENT (or as the case may be)
E-71249	Pte.	EVANS, G.P.	3 Coy. Transit Camp, CMA.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a Court Martial or a civil court:-

For AA Sec 15(1) ..... 3 ..... Times

For .... Times

For .... Times

For .... Times

Date of first entry in Field Conduct Sheet ..... 28 Jul 43 .....

Date of last entry in Field Conduct Sheet ..... 12 Dec 45 .....

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the first serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

2. [redacted]

3. [redacted]

4. The accused has been awaiting trial on the present charge for ..... 14 ..... days in civil custody; and for ..... 14 ..... days in military custody, i.e. ..... days in open arrest, ... days in close arrest; of which ..... days were spent in hospital.

5. The present age of the accused is ..... 28 yrs. .....

The date of his attestation is ..... 5 Dec. 1941 .....

6. [redacted] 1939-45 star, Italy Star, Frederm

7. The accused is in possession of-star, Def.Medal, CVSM & Clasp.

8. (State the military decorations (if any) held by the accused.)

9. [redacted]

[redacted]

[redacted]

[

Exhibit "B" to Rochelau Major

In Lieu of Army Form B.296(War).

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

NUMBER	RANK	NAME	REGIMENT (or as the case may be)
E-71249	Pte.	EVANS, G.P.	3 Gds. Transit Coun. CPA.

1. The following is a fair and true summary of the entries in the Field Conduct sheet of the accused, exclusive of convictions by a Court Martial or a civil court:-

For AA Sec 15(1) ..... 3 ..... Times

For .... Times

For .... Times

For .... Times

Date of first entry in Field Conduct Sheet ..... 28 Jul 43 .....

Date of last entry in Field Conduct Sheet ..... 12 Dec 45 .....

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

2. [redacted]

3. [redacted]

4. The accused has been awaiting trial on the present charge for 14 days in military custody; and for ..... days in civil custody; and for 14 days in military custody, i.e. ..... days in open arrest, ... days in close arrest; of which ..... days were spent in hospital.

5. The present age of the accused is 28 yrs.

6. The date of his attestation [redacted] is 5 Dec 1941.

7. [redacted]

8. The accused is in possession of:- 1939-45 star, Italy Star, Fr&Germ star, Def.Medal, CVSM & Clasp.

(State the military decorations (if any) held by the accused.)

9. [redacted]

INSTRUCTION.— If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial	Charge upon which convicted.	Sentence of the Court	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this .....day of .....April.1946.....

.....J.H. Watson Lieut.....
(J.H. Watson)Lieut.
Admin Officer
3 Cdn Transit Camp, CFN.

K-71249 EVANS, G.P.
No Name

Sqn, Battery, or Company | Corps RCASC | Date of enlistment 5 Dec 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/138 (1413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr.		AA Sec 15(1) AWL 5 days	Documentary	14 days FP and 14 days pay	26 Jul43	CO	Forf 14 days pay FR&I 149-2
CMF		Pte.		AA Sec 15(1) AWL 3 hrs 15 mins	Documentary	2 days pay	3 Feb 45	CO	Forf 2 days pay FR&I 149(2)
Field		"		AA Sec 15(1) A WL 2 days 8 hrs 31 Mins.	Documentary	7 days CB	12 Dec45	CO	Forf 3 days pay FR&I 149(1)(a)

CERTIFIED TRUE COPY OF THE ORIGINAL IN MY POSSESSION

(J.H. Watson) Lieut.
Officer having custody
of the original.

Certified to be a true extract from the regimental Books and Documents in my custody.
(Signed) G.A. Armstrong, Capt.
Officer IC Records
Cdn Sec 2 Reh HQ CFN.

(PTO)

NAN 129

CPL EGANS GM

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B25410 Cpl George McIntosh Evans – 2 Cdn Road Const Coy RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Not guilty	Not guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (Blank)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial – a total of 8 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be severely reprimanded and to forfeit all ordinary pay for a period of seven (7) days.

(Sgd) [signature] Capt — 1 June 44 — (Sgd) [signature] Maj — President. (RP 45, 50.)
Judge-Advocate, if any. — Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) [signature] Brigadier

Date 5 Jun. 44. Commanding Cdn C.E. Wks. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
Cpl G. McI Evans B25410	11 June 44 1115 hrs 2 Cdn. Rd. Const Coy RCE	[signature] Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160 NNW-129

RECEIVED 14 JUN 1944 C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 10/P.R.S./1696 (3864)

Convened by Order of Brig. J.N. Storrs Comd Cdn C.E. Works dated 27 May 44

PROCEEDINGS REVIEWED Date 12 Jun 44 Sig [signature] Capt Rank D.J.A. Unit Odds Sec G.H.Q. 2 Echn. Army Gp

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.
B25410	Cpl.	George McIntosh	Evans

PROCEEDINGS REVIEWED 14 June 44 [signature] Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. on (date(s)) 31 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 7/89

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance as procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~was~~ amenable to military law, and each charge discloses an offence.(2)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~was~~ brought before the Court. At 2115 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~was~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans: .....~~

~~The Interpreter is sworn.~~(1) Do you object to #19556 PTE H.S.K. as shorthand writer? Ans No. The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 58(E). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	J.F.J. Morgan	3 Bn. R.C.E.
Member	Lt.	F.E. Barr.	2 Bn. R.C.E.
Member	Lt.	R.B. Ray	3 Bn. R.C.E. R.C.A. - Cdn Sec G.H.Q. 1 Ech - 21 A.Gp
Judge-Advocate	Capt.	B.W. Howard	
Prosecutor	Lt.	R.D. Honan	2 Cdn Rd Const Coy R.C.E.
Defending Offr	Capt	J.W. Blatchford	2 Eng. Const. Wksp R.E.M.E. (B)

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea.(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB4 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-assembles and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B C D E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated* :

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No .(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (those) changes his (their) plea(s) on the charge(s). Part I of the Schedule is (are) amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "B", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No .(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~upheld and on the~~ disallowed on the 2nd charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the ~~latter~~ charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans No ... Do you intend to call witnesses on your behalf ?
Ans No ... Are they witnesses as to character only ? Ans No
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and so (or the relevant further charges) are accordingly terminated. Part I of the Schedule is dated and signed.(2) and that the proceedings are accordingly terminated.~~
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No call witnesses as to character
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy ~~of~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFB 355 or MFB 294. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 7.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes through my Defending Officer .(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or urge anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(B).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 2(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and 70 proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 368, 230, 563-565. Observers AO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 98(7), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Re FGCM

CHARGE SHEET

The accused, B-25410, Cpl. George McIntosh EVANS, 2 Canadian Road Construction Company, Royal Canadian Engineers, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 15(1) A.A.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 20 May 44, absented himself without leave from his company, 2 Canadian Road Construction Company, Royal Canadian Engineers, from 0730 hours on said 20 May 44 until apprehended by Capt. G.L. Kyle, 2 Canadian Road Construction Company, Royal Canadian Engineers, at 2200 hours on said 20 May 44. (Total absence 14 hours, 30 minutes.)

Second Charge
Sec 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field at approximately 2150 hours 20 May 44 created a disturbance by fighting in a public place, namely Fulham Palace Road, W.6 in the presence of civilians, thereby tending to bring the Canadian Army into disrepute.

(G.M. CLARK) Major RCE
Officer Commanding
2 Cdn Road Const Coy RCE

In the Field
23 May 44

To be tried by FGCM

(D.H. STORMS) Brig
Cdn CE Works (RCE)

In the field
27 May 44

FIELD GENERAL COURT-MARTIAL

CFA56 (In lieu of AFA33)
46/PA33/1607 (3063)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be n separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, Ins. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B23410	Cpl	Cpl	George McEatosh	Evans.	
			2 Cdn Road Constr. Coy.		

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 May 44 endorsed by me, (~~or by an offr of any staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J. F. J. Marazain (Must be named. RP 106.)	3 Bn RCE (Unit.)

MEMBERS.

Capt / Lt.	To be detailed by C.O.	3 Bn RCE
Capt / Lt. (Rank.)	To be detailed by C.O. (Named or detailed. RP 106.)	2 Bn RCE (Unit.)

WAITING MEMBER.

Capt / Lt. (Rank.)	To be detailed by C.O. (Named or detailed, if any. RP 106.)	2 Bn RCE (Unit.)

JUDGE-ADVOCATE.

Capt (Rank.)	B. W. Howard. RCA (Must be named, if any. RP 106.)	A/J.A. Cdn Sec HQ 1 Cdn Corps (Unit.)

On Active Service in the Fd

in England (Country.)

Date 27 May 44.

(Signed personally. RP 106 (c.2.)) (Rank.)

Commanding Brig.

Convening Officer
Chief C.E. Works, First Cdn Army

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557

A
Prosecm.

I certify that I have this morning examined B25410, Cpl. Evans, G.M. of 2 Cdn Road Construction Company, R.C.E. and in my opinion he is fit to undergo trial by Court Martial.

Station Field

Date May 31/44.

Medical Officer

D3 Witness for the Prosecution

The witness duly sworn in states: Sir, I am Capt Kyle, G.L. of 2 Cdn Rd Constr Coy, RCE.

(Q)1 Capt Kyle do you identify Cpl Evans as being in Fulham Palace Road approximately 2150 hours.
(A)1 I do.

(Q)2 Was there a disturbance in Fulham Palace Road at approximately 2150 hours 20 May.
(A)2 Yes.

(Q)3 Do you know definitely whether Cpl Evans had any active part in the fighting that took place in Fulham Road on the 20 May.
(A)3 No I cannot say, he was either mixing it with civilians or keeping civilians from interfering with other N.C.O.s from getting into or getting out of the truck.

(Q)4 In saying that he was mixing it what do you mean.
(A)4 He was either keeping the civilians from interfering, or assisting the N.C.O.s into the truck.

(Q)5 Then you cannot say definitely that he was fighting.
(A)5 No I cannot.

The prosecution rest.

No questions by the defence.
No questions by the court.

In the opinion of the court and the J.A. it is not considered necessary to comply with R.P. 83 (B)

E1 Witness as to Character

The witness duly sworn in states: Sir I am Capt Blatchford, J.W. 2 Cdn Engr Eqpt Wkshps (B), RCE.

I have known Cpl Evans for some three years. He is rather inclined to get into minor difficulties because he likes to be with the boys. However as an N.C.O. and man he makes a very good soldier.

E3 Plea of Mitigation of Punishment

This is another case of a Cpl who has allowed all enthusiasm to run away with his better judgment. After 15 months of a clear crime sheet he slips up and takes a day off. He has been in detention now for 8 days awaiting trial. I think that he fully realizes the extent of the defence and also the trouble he is causing to the people and I feel sure that the court should take an easy outlook on this defence. Cpl Evans still leans backwards to declare the right to prove that a court is right.

In the opinion of the Court and the J.A. it is not considered necessary to comply with R.P. 83 (B)

Exhibit "B"

Evidence

Summary of Evidence in the case of B-25410 Cpl. Evans, George McIntosh, on strength of No 2. Cdn. Road Construction Coy R.C.E. a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath

First Witness for the prosecution

B-24053 C.S.M. Herron, William Alvin Michael of No 2 Canadian Road Construction Coy RCE having been duly sworn states:

I am B 24053 C.S.M. Herron W.A.M of No 2 Cdn Road Const Coy. R.C.E. I was C.S.M in charge of the morning parade for No 2 Cdn Road Const. Coy. detachment on the 20th of May 1944. On checking the M.T. Section at 0720 hours I found Cpl. Evans whom I recognize here as the accused absent. Cpl Evans should have been on duty from 0730 hours until 1700 hours as M.T. Corporal He did not appear on the job during these hours

W.A.M. Herron C.S.M

The accused declines to cross-examine this witness.

Evans 2.

2nd witness
for the prosecution

Capt G. L Kyle of NB 2 Cdn Road Const Coy
having been duly sworn states:

I am Capt. G L Kyle of No. 2 Cdn Road Const.
Coy. On 28th May 1944 I received certain
information and instructions from the O.C
2 Cdn Road Const. Coy. in consequence of
which at about 1930 hours I proceeded to
Kingston and Hammersmith. At aproximately
2130 hours I noticed some of the unit
N.C.Os on Dalkeith Palace road in front of a
public house; in discussion with the civil
police, I recognized Sgt. Hayes, Sgt Morissette
Cpl Ransom, Cpl. Evans, Cpl Bakemeyer, L/Cpl
Noland and L/Cpl. Pratt. Cpl Evans was obviously
under the influence of drink. I ordered them to
get into the truck. While doing so a fight
broke out amongst all these N.C.Os who
involved Cpl. Evans. It attracted a large crowd,
civilians and other military personnel became
involved, A police van came up and they
assisted in getting all the N.C.Os including
Cpl ~~[redacted]~~ Evans into my vehicle, except Sgt Hayes
whom they took in custody in their own. I
drove around until I went to the Hammersmith
police station to pick up Sgt. Hayes at
approx. 2400 hours. He O.A.P.M. London
released him in my care. I returned with
the N.C.Os to Coy HQ at about 0200 hours.

HR

The accused declines to cross-examine this witness.

G L Kyle
Capt

Evans 3.

the accused was cautioned as follows, in accordance with Rules of Procedure 4 E). Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath.

The accused reserves his defence

I certify that the foregoing summary of evidence consisting of Three (3) pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C)(D)(E) and (F) have been complied with.

In the Field
26 May 1944

K Cleaves Capt
2. Bn R C E -
Officer detailed to take the Summary.

LIST OF WITNESSES

For the Prosecution

A/Capt. G.L. Kyle - 2 Cdn Road Construction Coy. R.C.E.

B29053, CSM, Herron, W.A.M. - 2 Cdn Road Construction Coy. R.C.E.

For the Defense

N I L

25 May 44

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

I desire the services of 1. Capt. Edmonson, Abel Harvey 226
2. Capt. D. Nelson, 1st Lt. H. L. [illegible] if he is available.
3rd Budjing Bay
226/6

Signed. [illegible]

Exhibit "C"

M.F.B. 355
(25M—5-41 (572-8)
H.Q. 1772-30-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.25410	Cpl.	Evans, G.M.	2 Cdn Road Const Coy R.C.E.

1. The following is a fair and true summary of the entries in the [redacted] Regimental and Squadron, Battery [redacted] or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(10 A.W.L.	Nil times	Two	times
For	A.A. 40 Cont to Predj etc	Nil times	One	times
For	A.A. 10 Breaking Barracks	Nil times	One	times
For		times		times

For [redacted]

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

[redacted]

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and EIGHT days in military custody, making a total of EIGHT days in custody, of which NIL. days were spent in hospital.

5. The present age of the accused according to his record of service is 24 years

6. The date of his [redacted] specified in his record of service is 7 Sep 39
attestation

7. [redacted]

8. [redacted]

9. The accused is in possession of [redacted] and is entitled to wear [redacted] decoration or reward. Cdn Voluntary Service Medal and Clasp
military

10. [redacted]

11. [redacted]

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of Lance Corporal 4 ~~years~~ Months Date of promotion 1 Aug 43

In the rank of Corporal 5 ~~years~~ Months

In the rank of ..... years

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank ..... Air Force

Name ..... of ..... Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31st day of May 44 [signature] Capt

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Revised in accordance with C.A.R.O. 2084 2 Dec 43 (C.B. HADLEY)Lt.

No. B25410 Name Evans, G.M. Sqn., Battery, or Company Corps Date of enlistment 7 Sep 39 Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 40/P.& S./136 (2637)

Date of last entry in Company Conduct Sheet NIL No. and date of last drunk NIL Period not reckoning towards freedom from extra fine N.A. Sheet No. 1 Signature O.C. Company, etc. E.J. YOUNG Major Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									E.J.Y.
Old sheet destroyed on completion of six months service 7 March 40									Forfiets one days pay
Field	12-5-41	Cpl	-	W.O.A.S. Absenting himself without leave from 2230 hrs 12-5-41 to 1315 hrs 13-5-41	Sgt Colyer L cpl McCart	[illegible]	13-5-41	Maj E.J. Young	
Field	25-6-41	Spr	-	W.O.A.S. Breaking out of barracks in that he was not in his billets at 2300 hrs 25-6-41	Cpl Vanier	Deprived of one days pay as punishment	26-6-41	Maj E.J. Young	
Field	26-6-41	Spr	-	W.O.A.S. Conduct to the prejudice of good order & Military discipline in that he failed to take proper precautions while driving	Documentary	Deprived of five days pay as a punishment	26-6-41	Maj E.J. Young	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Mar 43	Spr	-	A.W.L. from 1630 hrs 18 Mar 43 to 1445 hrs 22 Mar 43 (Absent 4 days 6 hrs 15 mins)	Documentary	168 hrs Det	23 Mar 43	Lt. Col Mitchell	Forf 5 days pay FR&I 149 1 (a)

"CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY"

(J.D. HARNETT) Lt.
A/Adjutant
2 Cdn Road Construction Coy RCE

DATED 31 MAY 44

4H-38.

te. Evans. H.M.

RECORDED AT CMHQ IN AB 180 44-38

RECEIVED 18 DEC 1944 C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CF 1266 (In lieu of AFAA) 40/F & R/1698 (8144) 4/38B

Convened at Chelsea (Eng) by Brig A.B. Connelly Comd "B" Gp CRU dated 27 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 300, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-86631	Pte	Harry Maurice	EVANS	1 CCRU

PROCEEDINGS REVIEWED 19 Dec 44

F.C. Pinch Capt

REVIEWING OFFICER, JA.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 7 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1320 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter ? Ans

~~The Interpreter is sworn.~~(1) Do you object to Mjr Evans as shorthand writer ? Ans No Sir

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. Redman, VD	HQ CRU
Member	Capt.	A.A.M. Stewart	1 CCRU
Member	Lieut.	J.V. Ghikas	1 CCRU
~~Judge Advocate~~			
Prosecutor	Major	E.L. MacKay	1 CCRU
Defending Offr	Major ~~Mr N.C. Fellows~~	Mjr A.M. Wilding-White	CMHQ

Questions by President: Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See fn p 3.)

A8. The accused before arraignment make(s) (no ~~s~~) plea

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GE), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AF6 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-86631 Pte Harry Maurice EVANS 1 CCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.18(2)	GUILTY	GUILTY	
2nd A.A.18(4)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence~~ for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 62 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo 4 strokes per a period of one Hundred and twenty (120) days and to be put under stoppages of pay equivalent to the sum of £10-0-0) ten pounds sterling in favour of His Majesty's Government

(Sgd) President. (RP 45, 50)

Judge Advocate, if any. Date awarded. 27 Nov 44

(1. Where Confirming Officer is to ~~confirm and promulgate~~ forward record of trial to ~~and promulgate~~ Chief Judge Advocate, delete ~~confirm and promulgate~~ and insert "forward record of trial to Chief Judge Advocate". Delete Confirming Order in ~~confirm and promulgate~~ forward record of trial to Chief Judge Advocate. Delete Confirming Order in Part II and Part III. Delete Part IV. Delete Part V and insert "Nil". Delete Part VI and insert "Nil". Delete Part VII and insert "Nil". Delete Part VIII and insert "Nil". Delete Part IX and insert "Nil". Delete Part X and insert "Nil". Delete Part XI and insert "Nil". Delete Part XII and insert "Nil". Delete Part XIII and insert "Nil". Delete Part XIV and insert "Nil". Delete Part XV and insert "Nil". Delete Part XVI and insert "Nil". Delete Part XVII and insert "Nil". Delete Part XVIII and insert "Nil". Delete Part XIX and insert "Nil". Delete Part XX and insert "Nil". Delete Part XXI and insert "Nil". 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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of J A see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 80, 82 ; *questioning of witnesses see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 15-16, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - SIR (5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change h is (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*i*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, *117(A). See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*d*), *RP* 45, *120(A). 2. AA* 54(3), *RP* 45, *117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans TO Your Honour I will have WITNESS NOTE ATT.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB* 355 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Con* 358. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans BY DEFENDING OFFR NOTE ATT. (2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to adduce on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and* 45 *proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas NO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 98(1), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ CDN RET UNITS

7 Dec 44

Comd, "B" Group,
C.R.U.

F.G.C.M. - 1 DEc 44
B 86631 Pte EVANS, H.M. - 1 CGRU

1 Neither the Defending Officer, the Prosecutor, nor the accused, nor anyone else could give any reason why this accused was held 62 days awaiting trial.

2 It is respectfully suggested that this matter be investigated. The Court took this fact into consideration when awarding punishment.

(D.L. Redman) Lt Col
President, F.G.C.M.

COPY TO:

Col IC Adm

CHARGE SHEET

The accused, B.86631, Private Harry Maurice EVANS, Royal Canadian Army Service Corps, on strength No.1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

On the Field, at 0800 hours 5 Sep 44 did absent himself without leave until apprehended at Broomhill Cottage, near Stratton by Civil Police at approximately 1930 hours 30 Sep 44.
Cost of apprehension and return to unit £2-18-5.

Absent 25 days, 11 hours, 30 minutes.

SECOND CHARGE
SECTION 18 (4)
ARMY ACT

WHEN ON ACTIVE SERVICE, STEALING PUBLIC PROPERTY

in that he

At Canadian Records, Canadian Military Headquarters, Acton on or about 5 Sep 44 stole one typewriter, Remington 11 inch No.J-534629, valued at $122.55 and one typewriter, Woodstock 14 inch No.N-617416, valued at $116.00, both public property.

Field
17 Nov 44

(B.R. Ker) Colonel.
Comd. No.1 Cdn Gen Rft Unit.
Canadian Army Overseas.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

27 Nov 44

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FAR/1697 (2968)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-86651,	Pte	Harry Maurice	EVANS	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 Nov 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO	1 CGRU
Lieutenant (Agvn)	to be detailed by CO	1 CGRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signed personally. RP 105 fn 2.) (Rank.)

Date 27 Nov 44

Commanding
(A.B. Connelly) Brig Convening Officer.
Comd "B" Gp Cdn Eft Units.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. B-86631 Pte. Evans, H.M.

of 7th RHA is in a fit (Rest) state of health,

and could to undergo Trial by Court martial.

H Goodman Captain
Medical Officer

Station Field

Date 10 Dec 44

M. F. B. 246

F.G.C.M. IN THE CASE OF

B-86631 Pte. EVANS, H.M. 1 CGRU

1 Dec. 44.

The Defending Officer examines the M.F.M. 6 and states that there is no offence on the 6 of this accused between the dates of 23 July 1941 and the 5 August 44, consequently his sheet should be clear except for the offence on the 5 Aug.44. The accused has received, and still has a good conduct stripe.

STATMENT B THE ACCUSED (ON OATH) NOTE E-1

Sir.

My first employment was in Detriot Mich. for a Credit house Co, as a Clerk, and I was receiving $150.00 per month here. I had taken a commercial course at Roginson Business College in Ontario. I worked there until I got married and my wife came to live with me in Detroit, but she did not like it here so she went back to her place. I finally went home and got my home to-gether in Brantford. I was given a job in the Paint Shop in Brantford ontario., but with very low wages. I was offered a job to play ball and Hockey with the American Can Club at Simcoe. My wife came to live in Simcoe for a short time, but decided not to stay, but to go back to her home at Brantford. I tried several other jobs in several other places, but my wife would not live any place but Brantford, Ontario. I went to work in Montreal for a short period and finally went back to the American Can club at Simcoe and worked there up to the time of my enlistment in April 19th, 1940. My mother is very much interested church affairs and belongs to the Rebecca Lodge. She does a lot of work in the different organizations, like the Red Shield, etc. My one uncle is a Moderator of the United church and my other uncle was a Minister at Hamilton. I used to sing in the choir of the church at home. I belong to the Simcoe Mens Club in Ontario. I was one of the organizers of this club. Its purpose was, sports activities, reading rooms etc. I belong to the Tucus Club in England . I play mostly all sports, but specialize in Hocky and Baseball. I have played Junior Hardball with the Ontario Hard ball teams. I played Basket Ball at Highschool. I have played softball with the American Can Co which is sponsored by the American Softball assosiation. I played ball with CMHQ Records and also Hockey., but I had a lot of trouble with my feet so had to quit. I landed in England on the 4 Sept.40 I went to London, Records Office on approximately April 42. I left there on 25 August this year. I have had approximately 2½ years there. Last year I went home in the month of June because of domestic troubles. They had investigated from Ottawa, but could not get any definite proof as to my wifes activities. I tried for a divorce but did not have any evidence. I am Category "C2". I paraded to the O.C. M.D.2 Toronto to try and proceed back overseas but he said he could not help me there. I was told I could go by to higher authorities. A discharge was offered to me while I was home and I turned it down to come back overseas. I was told by the army to look for a job and was finally offered one by the Cockshutt Plough Co, but I preferred to come back here and di so on the 3 or 4 of Sep.43. Major Appleford at Records, CMHQ put in a claim for me. I had a girl in London and I have known her for a little more than a year . We both decided that if my divorce came through, we would be married. This girl comes from a very good family and her father is a Minister at St.Lukes, C of E Church. I got this girl in trouble. I started borrowing money and giving it to her to try and held her to get rid of the child and eventually she did. I sent her to Butte Cornwall as her nerves were quite bad. She came to London to see me. It was my long week-end off, but the S.M. asked me if I would work instead. I worked on ~~the~~ Saturday and on Sunday the girlfriend came to the office so I quit work on sunday at 4 instead of 5 oclock. On the following morning when I came into work the S.M. gave me a bawling out. I got sore and tore off my L/Cpls strips and put them on his desk and told him to keep them. He naturally put me on charge for insubordination. I was stripped and sent to No.1 C.G.R.U.

Letter from Cockshutt Plough Co. marked Ex.1 by the Court.

I arranged to have an interview with the SPO there and tried to explain to him my troubles. He called the Clerks Training and stressed that I should have a 9 day leave to straighten things out, if possible. He also asked that I be put in his employment when I returned from leave. I got a week-end and went to Butte Cornwall to see the girlfriend and came back. Then I tried to get this 9 day leave. This was turned down by my Coy. I then wrote to Major Lawrence as he is the O.C. of my Coy. I told him the state of mind I was in and that I simply had to get away, and then I went AWL. Wrote home for money as the girlfriend was still in need of some. This was before I went AWL. This money I did not receive until after I was apprehended and it was all turned over the the girlfriend to help buy her, food, clothing and other things she needed. Then I went to London and stole the typewriters after trying to borrow money in several places. This money was also given to the girl-friend. I worked in Butte Cornwall and drew 3-10-0 per day on a farm. This was used also the keep the girl-friend and myself. Then I was arrested and brought back and I have been 62 days awaiting trial. I have no idea why I should have had to wait so long before trial.

Q. Is that the letter you wrote to Major Lawrence?

THE ACCUSED EXAMINES THE LETTER AND STATES:
A. Yes sir.

DEFENDING OFFICER READS LETTER TO THE COURT

PRESIDENT EXAMINES LETTER AND IT IS MARKED EXHIBIT 1.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

EVIDENCE AS TO CHARACTER.

FIRST WITNESS:
C-28502 A/Sgt. HOGAN, F.M. Cdn Records, C.M.H.Q. having been duly sworn states:

I am working in the Stationery Section and Office Records at RECORDS, C.M.H.Q. I have been there since 1942 and I have known the accused for atleast 2 years. I can't say a word against him. I had quite a little bit to do with when he was there and I found him a hard worker, honest and conscentious. I dont know whta he was like out of the office as I was never out with him, but he was well liked in the office.

In the opinion of the court it is unnecessary to comply with RP 83(B)

SECOND WITNESS
K-73315 Sgt. LANNING, R.P. Special Investigation Section, Canadian Provost Corps, having been duly sworn states:

The accused has been a very great help and assistance and did everything possible to make the case easy. He pointed out some people he said who took the typewriters but of course they denied it.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

THIRD WITNESS
D-82205 A/L/Cpl. MacDONNELL, J.H. Cdn Records Office, CMHQ, having been duly sworn states:

I am employed at Records, Acton and have known the accused since I went there. He was always a very good worker and a very decent chap as far as I know. He was always honest and conscentious.

FOURTH WITNESS:
A-37781 L/Cpl. SCHNEUCKER, W.H. on strength No.1 C.G.R.U. having been duly sworn states:

I first knew the accused in 1933. I was playing Hockey at the time in Paris, Ontario. The following year I played for the Simcoe team, and the accused was playing for the American Can Co. He belonged to the Simcoe Young mans club. He was very well liked and I never heard anything bad about him.

It was difficult to become a member of the Simcoe Young Mans Club, as you had to have letters of references etc. The next time I saw the accused was when he was brought to No.1 C.G.R.U. 2 months ago. I am one of the R.P. at No.1 C.G.R.U. and his conduct has been very good during the 2 months that he has been in the Guard Room.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

PLEA IN MITIGATION NOTE E-3

Sir:

We have here sir, and man who previous to this offence had a good record but because of a great deal of worry and trouble he did things for which he is now sorry. He came over here in the early months of the war to serve his country with his marriage back in Canada on the verge of breaking up. With these worries on his mind, he went out to try and forget them, and unfortunately met a girl and got her in trouble. Now we ask ourselves which is the worse., a man who gets a girl in trouble and leaves, or a man who tries to get her out of trouble, but by doing so, involves himself. I think the latter is to be commended. He got into trouble with the S.M. at Acton and lost his job there, and he was badly in need of money to help his girl-friend, so with all these worries, when he arrived at No.1 CGRU, he wanted to get leave to try and straighten out these matters. He applied for leave and was ~~off~~ refused, so he went AWL. He left a letter which shows the state of mind he was in. This letter(Ex.2) was addressed to his O.C. He got a week-end pass to go to Butte Cornwall but ~~whi-~~ with such a distance to travel he couldn't make it back in timeso he sent a wire to his O.C. which I will read.

WIRE READ BY DEF. OFFR AND MARKED EX.3 BY THE COURT.

He went to London when going AWL and started drinking with some of his friends, and after trying to borrow money from various places happened to mention to two typewriters in his old office. Two civilians happened to overhear the conversation and were willing to buy the machines, and take advantage of the accuseds state of mind. I would like at this time to present to the court a few certificates of character for the accused. The first is a letter from an Officer for whom the accused has worked.

LETTER READ BY DEF OFFR AND MARKED EX.4 BY THE COURT.

After the accused was in trouble and his friends heard about ~~by-~~ back in Canada, he obtained some telegrams from them. The first is from the American Can Coy.

READ TO THE COURT AND MARKED EX. 5

The second comes the town clerk, at Waterford, Ontario.

READ AND MARKED EX.6

And the third one is from his Mother who can't understand how her boy could become involved in any trouble.

ALSO READ AND MARKED EX.7.

I would like to point out that the only offence listed on the MFM 6 of the accused is a short AWL of 3 days on the 5 Aug.44 and I would like also to state that this AWL on the 5 Aug. was connected with the same matter and would not have occurred after three years without a crime, but ~~th~~ for this state of affairs.
Just in conclussion I would like to mention that the four character witness are not witness that I have had to look for and everyone spoke highly of the character of the accused and without limitation. May I therefore ask for leniency of the court for this man.

THE COURT WILL BE CLOSED TO CONSIDER THE SENTENCE

COCKSHUTT PLOW COMPANY LIMITED

MANUFACTURERS OF FARM EQUIPMENT

CABLE ADDRESS
"COCKSHUTT BRANTFORD"
CODES
A.B.C. 4TH AND 5TH EDITIONS
WESTERN UNION 5 LETTER
MARCONI 5 LETTER
LIEBERS BENTLEY'S

HARVESTER DIVISION
THE FROST & WOOD CO.
LIMITED
SMITHS FALLS
ONTARIO

BRANTFORD, CANADA

July 21st, 1943

Officer Commanding,
#2 District Depot,
Toronto, Ontario

Re: Pte H. M. Evans, #B-86631

Dear Sir:

The above man advises us that provided he can obtain suitable employment, he will be able to procure his discharge from the Canadian army. After discussing the matter with Pte Evans, we feel that we can use him in our Aircraft division, on assembling and fitting work for the Lancaster undercarriage. Pte Evans will be starting at fifty-five cents an hour, plus the current cost of living bonus of four dollars and twenty-five cents ($4.25) per week. He will be paid at time and a half for all work over forty-eight hours per week. At the present time, in this department they are working approximately fifty-five hours a week. It is also to be understood that the rate of fifty-five cents per hour is only a starting rate, until Pte Evans proves his ability. At that time it will be increased.

Dear Major Lawrence, Ex 2/ My

I can't stand it any longer. I've tried to do things the right way but people don't seem to want to let me. I wanted to do the decent thing by my family I was engaged & now the Army won't let me play ball with this girl in England so I'm just doing the next best thing before my mind cracks.

I know the Army will finally catch up with me but they will never put me in detention as I will kill myself first, so tell them to leave me alone as I'm no good to them anyway.

I don't hold the Canadian Gov. responsible for any

aid of anything kind so why can't they leave me alone to try & make a fresh start in life. The war is nearly over anyway & they certainly don't need me.

I will close with begging you once more to please leave me alone.

Yours Truly
B-86631
Pte. H. M. Evans



Charges to pay
s. d.
RECEIVED

POST OFFICE

TELEGRAM

No.

OFFICE STAMP



Prefix. Time handed in. Office of Origin and Service instructions. Words.

PY 33 42 1142 6.3 PY/T 22

m

From

To

m

MAJOR LAWRENCE OFFICER IN CHARGE CLERKS COY 1
C&RU ALDERSHOT =

E 7 3
1 WY

IN TROUBLE ARRIVING SOON WILL EXPLAIN B 86631
PTE EVANS H M +
1 C&RU B 86631 PY/T + No charge on this.

For repetition of doubtful words telephone "TELEGRAMS ENQUIRY" or call, with this form at office of delivery. Other enquiries should be accompanied by this form, and, if possible, the envelope.

B or C

(R)

Memorandum 30 Oct 44

To President of F.G.C.M. E&E

Re. case of Pte. Evans, H.M. MY

In view of the fact that I am about to start on a War Office Intelligence Course and may not be available for the sitting of the Court, I am taking the liberty of writing a statement as to character and general information.

The accused or his defending officer has permission to read or file this statement in court.

Statement

Up to August 1943 I was employed at Casualty Wing, Records Office, Canadian Military Headquarters, Acton, London, W.3.

During a large part of that period accused was also employed there.

At that time he was a Private and I was his senior N.C.O.

I always found the accused to be a man of exemplary character. He was willing, honest and had

a very likeable personality.

No matter what duties I ever asked the accused to perform he always obeyed in a soldierly manner.

F. C. Gertson Lt.

F. C. GERTSON LT.

(INTELLIGENCE COY., I.C.G.R.U.

Form No. 69.

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CABLEGRAM

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RECEIVED AT 22 GREAT WINCHESTER STREET, LONDON, E.C.2. (Tel. LONdon Wall 1234) 1944 NOV 2 PM 6 44

MO181 SIMCOE ONT FIL 47/46 2

(S)

NLT PTE HM EVANS B86631

NO 1-1 CGRU CARE H CAPT G

READMAN PADRE P CANRECORDS LDN=

6302

Etc
my

BY
A.L.
No.
2457

:TO WHOM IT MAY CONCERN PLEASED TO RECOMMEND HM EVANS CHARACTER STOP EMPLOYED TWO THOUSAND SEVEN SIXTY EIGHT HOURS AMERICAN CAN COMPANY TO ENLISTMENT DATE=

=H F SMITH SUPERINTENDENT.

Please send your Reply "Via WESTERN UNION" You may telephone us for a messenger

Printed in England Sept 1943

CABLE (C AND W) WIRELESS

LIMITED

"Via Imperial"

BY

The first line of this Telegram contains the following particulars in the order named:
Prefix Letters and Number of Message, Office of Origin, Number of Words, Date, Time Forwarded in Transit, Official Instructions—If Any.

(T)

Origin | Clerk's Name | Time Received

9946

C FCGL150/L BRANTFORD ONT 28/27 7 FIL

NLT B6663 PTE H M EVANS 1 CGRU CTN

CANRECS LN =

EXD

HAVE KNOWN H M EVANS YEARS HONEST AND

GOOD REPUTATION =

DA HILL TOWN CLERK WATERFORD ONTARIO *

ANY ENQUIRY RESPECTING THIS TELEGRAM SHOULD BE MADE AT ANY OF THE COMP

D663A A *

OFFICE OF ISSUE
12 NOV 44
CENTRAL STA
TEL ADDRESS ON ENV

P.O. T 68

FORM No. 68.

A 130
S 130
W

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CABLEGRAM

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RECEIVED AT 22 GREAT WINCHESTER STREET, LONDON, E.C.2. (Tel. London Wall 1234.)

1944 NOV 8 AM 2 48

MO192 BRANTFORD ONT 22/26 GLT 7

(U)

B66631 PTE H M EVANS 1 CGRU

CTW CANRECORDS LDN= 1130

HARRY NEVER BROKE LAW IN CANADA SOME THING WRONG PLEASE PARDON=

A E EVANS MOTHER.

PARD

Please send your Reply "Via WESTERN UNION" You may telephone us for a messenger

A LIST OF ADDITIONAL WITNESSES TO GIVE EVIDENCE

IN THE CASE OF CHARGES AGAINST B.86631 PTE EVANS H.M.

B.86631 Pte Harry Maurice Evans, the accused, was advised under Rules of Procedure 76 that additional witnesses were being called to give evidence for the prosecution of the trial, by Major E.L. MacKay, investigating officer, on Monday, 13 Nov 44, at 0930 hrs.

FIRST WITNESS

D-82205 A/L/CPL MacDONNELL, J.H., Cdn Records Office, C.M.H.Q. A/L/Cpl MacDonnell having been duly sworn gives evidence as follows:

"On arriving in the office on morning of 6 Sep 44, I went to carry out work I had left on my machine and discovered my typewriter was missing, and work I had left in the machine had been removed. I then turned to the table behind me to use the spare machine, a Woodstock, and discovered it was also missing. I immediately reported the absence of these two typewriters to CSM. Colbran. He advised that I check the various wings to see if someone had borrowed them. This I did and found no trace of them. From that point the loss was followed up by CSM. Colbran. "

.....J.H. MacDonell.....
(D-82205 A/L/Cpl MacDonnell J.H.)

SECOND WITNESS

Capt. L.A.C.O. Hunt, Cdn Records, C.M.H.Q., having been duly sworn, gives evidence as follows:

"On the night of 5/6 Sep 44, I was duty officer at Records, CMHQ. During my tour of duty I patrolled through the building but at no time were my suspicions aroused regarding unauthorized persons on the premises. The Casualty Wing, Room 217B, and Enquiries Wing, Room 211, Verification Room, R.2, and Orderly Room, No.212, were occupied by night staffs and lights were burning. Lights were out in all other wings and halls were in complete darkness.
"On the morning of 6 Sep 44 at 0900 hrs, CSM Colbran of the CAOIB, reported to me that two typewriters were missing from his wing, Room No.213. As it was assumed that the typewriters were taken by some person during the night I instructed the Qr.Mr. to have all typewriters in the building checked and numbers checked off against those on ledger charge. This duty was carried out by Sgt. Hogen, the Stores Sergeant, who discovered that all typewriters, with the exception of the two missing ones, were accounted for. The matter was then reported to the Camp Commandant so that all other branches of CMHQ in this building could be advised of the loss. An extensive search was then carried out under the direction of RSM Gaiger of all air raid shelters in the grounds of this building, but without avail.
"By permission of the O.i/c Records, I proceeded with RSM Gaiger and Cpl Grossley to the Shepherds Bush Police Station and laid the whole matter before Det.Sgt.Little, of the C.I.D. We then interviewed Mr. Carroll at the fish and chip establishment and it was stated by Mr. Carroll that Pte Evans had tried to sell him two typewriters. As it was considered possible that Evans may have been in that neighborhood we made several visits to various establishments in order to contact him. We met with no success. I later instructed Cpl Grossley to proceed with Det.Sgt.Little in civilian clothes, to Shepherds Bush that evening and visit the various public houses for the purpose of obtaining more information

SUMMARY OF EVIDENCE
in the case of

B-86631, Private Harry Maurice EVANS, Clerks' Company, No. 1 Canadian General Reinforcement Unit, a soldier of the Canadian Army Overseas.

THE COMMANDING OFFICER DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS FOR THE PROSECUTION

Captain W.E. McNaughton, Adjutant, No. 1 Canadian General Reinforcement Unit, having been duly sworn, states:

"I am Captain W.E. McNaughton, Adjutant, No. 1 Canadian General Reinforcement Unit, having custody of documents. I offer in evidence the following documents pertaining to the accused:

(1) Army Form B.115, Certified True Copy of Records of the Declaration of a Court of Inquiry, as Exhibit "A".

(2) Expense Voucher for £2/18/5 as Exhibit "B".

(3) Certificate of apprehension of the accused by the civil police as Exhibit "C"."

(4) Value of Typewriters submitted by SCQ R.C. Merryweather

The accused declines to cross-examine the witness.

.....Captain,
No. 1 Cdn Gen Rft Unit.

SECOND WITNESS FOR THE PROSECUTION

K-73315, Sgt LANNING, R.P., Special Investigation Section, Canadian Provost Corps, having duly been sworn, states:

"I am K-73315, Sgt Lanning, R.P., Special Investigation Section, Canadian Provost Corps. On 28 SEP 44, on instruction received from Officer in charge Special Investigation Section, C.M.H.Q., I proceeded to investigate the loss of two typewriters from Room 213, Canadian Records, Acton. On 4 OCT 44, I visited the accused, Pte Evans, whom I recognize, who was detained at Canadian Detention Room, 30 Henrietta St., London. I cautioned him and he voluntarily made and signed a statement which I produce as Exhibit "D"."

The accused declines to cross-examine the witness.

K-73315.....Sergeant,
Canadian Provost Corps.

QUESTION TO THE ACCUSED

"Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

After the above caution, the accused does not wish to make any statement or give evidence on oath.
The accused does not call any witnesses.

I certify that the above Summary of Evidence consisting of one page was taken down by me in the hearing and presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

E & A

.....Lieutenant,
No. 1 Canadian General Reinforcement Unit
Officer detailed to take Summary

In the FIELD
23rd October 1944

SECOND WITNESS (Cont'd)

obtaining more information/
and, if possible, to pick up Pte Evans. At this time our HQ was advised by No.1 CGRU that Evans was A.W.L. from that unit. This information was reported to the S.I.S. of the D.P.M's office. The loss of the typewriters together with numbers and name of manufacturers was also given to the S.I.S. by me."

Q. "Is the C.I.D. conducting an investigation of the loss of the two typewriters in question?"
A. "Yes, an official investigation is being made."
Q. "Is the S.I.S. also investigating the case?"
A. "Yes, as it involves loss of Canadian Government property; and no doubt they are proceeding with the investigation in conjunction with the C.I.D."
Q. "Up to the present time have the two missing typewriters been located?"
A. "No reports have been received up to this date."
Q. "Why was Pte Evans returned to 1 C.G.R.U.?"
A. "Because of disciplinary action being taken against him for being AWL."
Q. "When did Pte Evans leave the employ of Cdn Records?"
A. "Pte Evans was S.O.S. Cdn Records w.e.f. 22 Aug 44."
Q. "Do you know if Pte Evans had been seen around Cdn Records prior to or after 5 Sep 44?"
A. "I was informed by Major Appleford, Officer i/c R.5 Wing, on 6 Sep 44, that Pte Evans had been in his wing talking to members of that staff the previous day."

.....
(Capt. L.A.C.C. Hunt.)

THIRD WITNESS

C-28502 A/Sgt HOGAN, F.M. Cdn Records, C.M.H.Q., having been duly sworn, gives evidence as follows:

"Two typewriters, one Woodstock and one Remington, were reported to me as being missing on 6 Sep 44. Both Lieut. Turner and Cpl McDonnell, J.H. reported the loss to me. I then reported the matter to Capt. Hunt and SSM. Macdonald. On instructions from SSM. Macdonald I made an audit of all typewriters on charge to Records and found that two typewriters were missing when the audit was completed, No. J.534629, an 11" Remington and No. N.617416, a 14" Woodstock. The findings were reported by me to the Adjutant."

Q. "Are you sure all typewriters in the various wings of Cdn Records were checked?"
A. "Yes sir, a very thorough check was made and two machines of those numbers were found missing."
Q. "Do you know anything of a proposition Pte Evans tried to make with a Mr. Carroll with regard to selling two typewriters?"
A. "No sir."

.....
(C.28502 A/Sgt Hogan, F.M.)

CERTIFIED THAT THE FOREGOING EVIDENCE SUBMITTED TO THE UNDERSIGNED WAS TAKEN ON OATH ON 24 NOV 44, AT CANADIAN RECORDS, C.M.H.Q., ACTON

.....
(E. L. MacKay) Major
Investigating Officer.

Exhibit "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Field on the 28th day of SEPTEMBER 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-86631, Pte Evans, H.M.

DECLARATION.

The Court declare that B-86631, Pte Evans, H.M. was illegally absent from his unit from 0800 hours 5 Sep 44; that he is still so absent and that he is deficient in his kit to the value of £4-12-11, being 75% of vocabulary price.

Names of President and Members

PRESIDENT: Major J.V. Millican (Gen List)
MEMBER : Capt C.B. Lafond (Gen List)
MEMBER : Lieut A.C. Brooks (Gen List)

Signature of Commanding Officer Colonel S.H. Ker

CERTIFIED TRUE COPY.

Capt. Adjt.

Signature of Officer having custody of the Original Record

No 1 Can Gen Hft Unit

Printed W.L.24124/3622 75,000 10/39 A.A.E.W.Ltd. Gp.698 Forms/Printing

Exhibit "B"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B-86631 Rank Pte Name Evans, H.M. Unit 1 C C R U

The following expenses were incurred in apprehending and returning the M/S Soldier to ~~his Unit From~~ London from Bude

Date	Particulars		Amount
30.1.44	Escorts return fare from LONDON To	Bude	1 15 0
	Prisoners single fare to LONDON From	Bude	own ticket
	Prisoners fare from	To	
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		1 3 5
	Total £		2 18 5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R. E. Birch Capt.

R. E. BIRCH
CAPT. OFF. I/C C.P.M's B.R.

Officer Issuing Railway Warrant and Expense Money
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & R/485(3287)

Exhibit "C"

Certificate under Regulation 10A of the Defence (Armed Forces) Regulations.

I certify that Harry Maurice EVANS. Rank or Rating. Private. R.C.A.S.C. No. B.56131, attached No.1 G.C.H.U. Aldershot. was apprehended by P.C.210 Grigg, a Police Officer at Stratton, Cornwall, on 30th. September, 1944, at 19.30 hrs and on his apprehension was taken into custody at Stratton Police Station and that at the time of his apprehension he was wearing the uniform of His Majesty's Royal Canadian Army.

(Signed) Charles Orent
Sergeant.

Police Officer in charge of Stratton Police Station.

APPENDIX "A" to List of Additional Witnesses giving Evidence on charges against Pte Evans, HM

Additional evidence being given in the case of charges against B-86631, Pte Evans, H.M.:-

The value of the two typewriters in question is as follows:-

REMINGTON - 11" --- No J-534629
New value $122.55--- Present value $98.55

WOODSTOCK - 14" --- No M-617416
New value $116.00--- Present value $93.00

R.C. Merryweather

(R. C. MERRYWEATHER) Capt,
SCC (2)
Can Rft Units.

RCM:MB

APPENDIX "A"

Additional evidence being given in the case of charges against B-86631, Pte Evans, H.M.:-

The value of the two typewriters in question is as follows:-

REMINGTON - 11" --- No J-534629
New value $122.55--- Present value $98.55

WOODSTOCK - 14" --- No N-617416
New value $116.00--- Present value $93.00

(R. C. MERRYWEATHER) Capt,
SCQ (2)
Cdn Rft Units.

RCM:MB

Exhibit "D"

4 Oct 1944.

Statement of D-86631. Pte Evans H. m.
No 1 C.G. R.A.

I have been warned by K70315 Sgt R.P. Canning. S.I.S. Gds Prov Corps. London, that I need not say anything unless I wish to but anything I say will be taken down in writing and used in evidence, wish to make the following statement.

To show that I understand this warning I sign my name.

On the 5th of Sept 1944 I went A.W.L. from my unit No 1 C.G. R.A., the reason for my doing so was because I could not get leave from my C.O. and it had been recommended by the C.M.O. also because I was rather despondent and in need of money. I went direct to London & tried to borrow money, without any success, afterwards I went to the Eagles Public House in Hammersmith and after having a few drinks I thought of the typewriters at the building (Records) where I was previously employed and voiced same to companion at table, in doing so I was overheard by two other men sitting near, these men approached me & claimed they could dispose of the typewriters, so I told them I would meet them at closing time and get them for them. At about 2200 hrs that night (5th Sept 1944 Tuesday) on coming out of the pub, with the men, we went down Ashen Rd & got in their car, which must have been parked within three blocks of the pub on Ashen Rd. They had left me on the corner while they went for the car, which they said was in a garage at home, they were only gone about five minutes. We then proceeded to the Ministry of Pensions block at Acton, I left them outside while I went in to the building, I went to the second floor, I do not know what room it is, and picked up the two typewriters & walked out of the building or I should say I climbed out of

the ground floor window. I then gave the typewriter to the two men and they gave me about £12-0-0, I am not sure of the exact amount as I was slightly under the influence of liquor and did not know exactly what I was doing.

They left me then in the car and I went to Waterloo Station and caught the midnight train to Bude Cornwall where I was arrested.

These two men I had never seen spoken to before, but had seen them around, Shepherds Bush and can describe them as follows:- 1. Slim & dark with small moustache, 35 yrs, 140 lbs, 5'9". wearing dark suit with top coat & hat No 2. a little taller, 5'10½", fair complexion no hat, 155 lbs. 24 yrs. I dont remember what he was wearing. they both frequent all the pubs in the Shepherds Bush & Hammersmith area and seem to be well known around there, especially in the Swanley & Eagle Public Houses

The reason I am admitting all this is because it is the first time I have ever stolen anything and it has been preying on my mind ever since, I am perfectly willing to assist the police in any way possible to recover the typewriters.

K. H. Ewart

Witness
K79315 RP Lawrie Sgt.
S.I.S. Edn Provost Corps.
London.
4 Oct 1944.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-86631	PTE	EVANS, Harry Maurice	No. 1 Cdn Gen Rft Unit

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary must be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement and not inserted in the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or award in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.		*Since Enlistment.	
For Sec 15 (1) A.A.	1	times	6	times.
For Sec 40 A.A.	NIL	times	1	times.
For Sec 46 (2) (d)		times	1	times.
For		times		times.
For		times		times.

[redacted]

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, [redacted] by Civil Court or F.G.C.M.

[redacted]

3. The accused is not under sentence at the present time, [redacted]

[redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for 1 days in civil custody, and 62 - 60 days in military custody, making a total of 63 days, of which ——— days were spent in hospital.

5. The present age of the accused according to his [redacted] M.F.M. 4 is 32

6. The date of his [redacted] attestation specified in his [redacted] M.F.M. 4 is 19 APR 40

7. [redacted]

8. [redacted]

9. [redacted]

10. The accused is in possession of, or entitled to, [redacted] (or is in possession of or entitled to (*state any military decoration or reward*)). CVSM & CLASP.

11. [redacted]

12. [redacted]

(Signed) [redacted]

(Rank) [redacted]

(Date) [redacted]

E7 M
MM

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-86631 Rank Pte Name EVANS, H.M. of No. 1 OCRU Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of November 1944.

(W.E. McNaughton) Capt. & Adjt.

43. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion
In the rank of	
In the rank of	years.
In the rank of	years.
	years.

(INSTRUCTION.—If any soldier in any of the above five complete years for which the regimental books must be cited, the particulars required under this question must be given by full periods, and the calculation made by calendar months, not by days.)

No. B 86631 Name EVANS IM Sqn., Battery, or Company 2 Div Supply Column Corps RCASC(CASF) Date of enlistment 19-4-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 A.F.B. 121 17334—7-41 (3259-26) H.Q. 1772-59-1152

Date of last entry in Company Conduct Sheet HA No. and date of last d, unk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of detention	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	1-8-40	Pte		When on Active Service AWOL- from 0100 hrs 1-8-40 to 0246 hrs 5-8-40.	Sjt Swarbrick R Sjt Walker C(Sjt of SB Guard) Cpl Anderson IM	7 days CB with forf of 12 days pay	18-8-40	Major Montague	Forf 5 days pay. Total 17 (seventeen) days pay
Camp Borden	17-8-40	Pte		When on active service was AWL from 0100 hrs 17-8-40 till 0900 hrs 19-8-40.	Sjt Swarbrick R Cpl Allcock	Forfeits 8 days pay	4/40	Major Montague	Forfeits total 11 days pay
Previous sheet destroyed and above entries transferred on completion of 6 months service on 19-10-40									
Tournay Barracks	22-2-41	Pte		When on active service charged with Conduct to the prejudice of good order and military discipline i.e. at Fernborough LCpl Grant AJ was improperly dressed i.e. wearing collar and tie, and having neck of tunic unbuttoned.	Cpl Meyer JT	5 days CB off 24-2-41	24-2-41	Capt L.H. Smith	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6-7-41	Pte		(1) AWL Sec 15(1)AA i.e. he absented himself without leave from 1330 hrs 6-7-41 till 0830 hrs 7-7-41.	Cpl Woods Cpl McKellar	JR 28 days field PtII punishment. Forfts 28 days pay FR&I 149(1)B)	Order No43/41	Major Montague	
				(2) AWL Sec 15(1)AA i.e. he absented himself without leave from 1230 hrs 7-7-41 till 2345 hrs 16-7-41 while under open arrest		Forfts 11 days pay FR&I 149(1)(A) Forfts 6 days pay FR&I 149(1)(c)(11)			
				Entries complete 13-8-43 #2 DD Toronto					

No. B 8663 Name Evans H.M. Sqn., Battery, or Company Records O.C.O/S Corps RCASC Date of enlistment 19-9-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6
(A.F.B. 122)
27258—7-41 (1515-30)
H.Q. 1772-10-1012

Date of last entry in Company Conduct Sheet — No. and date of last drunk NIL — Period not reckoning towards freedom from extra fine NIL — Sheet No. — Signature O.C. Company, etc. — Character GOOD

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	11-9-40	Pte		W0A5 was charged under AA Sec 40(2)(g)		11 days pay	21-9-40		
Field	23-7-41	Pte		W0A5 was absent without leave from 1200 hrs 7 Jul 41 to 2345 Hrs 16 Jul 41 AA Sec 15(1)		28 days F.F. Tot Forf 45 days pay			

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Acton	5-8-44	A L Cpl		AWL from 0815 hrs 5 Aug 44 until 0815 hrs 8 Aug 44 (Absent 3 days) Maddock AA Sec 15(1)	C96169 A Sjt TR	Reprimanded	9 Aug 44	Col A.M. Brown CHE	Forf 3 days pay RAI 149(1)(a)

CERTIFIED TRUE COPY OF THE ORIGINAL IN MY POSSESSION

(W.E. McNaughton), Capt & Adjt
No. 1 Cdn Gen Hft Unit
Canadian Army Overseas.

1 Dec 44

29 Nov 44

TRIAL OF

B-86631, Private Harry Maurice EVANS
Clerks Company
No. 1 Canadian General Reinforcement Unit

LIST OF WITNESSES

FOR THE PROSECUTION:

1. Captain W.E. McNaughton, Adjutant,
   No. 1 Canadian General Reinforcement Unit

2. K-73315 Sergeant R.P. LANNING
   Special Investigation Section,
   Canadian Provost Corps

3. D-82305 A/L/Cpl J.H. MacDONNELL
   Canadian Records Office
   Canadian Military Headquarters

4. Captain L.A.C.O. HUNT,
   Canadian Records Office
   Canadian Military Headquarters

5. C-86502 A/Sgt F.M. HOGAN
   Canadian Records Office
   Canadian Military Headquarters

TRIAL OF

B-86631, Private Harry Maurice EVANS
Clerks Company
No. 1 Canadian General Reinforcement Unit

LIST OF EXHIBITS

"A" Certified true copy of record of the declaration of a Court of Inquiry.

"B" Expense Voucher for £2-18-5.

"C" Certificate of Apprehension by Civil Police.

"D" Statement by the accused.

"E" Value of Typewriters submitted by SGT R.C. MERRYWEATHER

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Field and a copy of the Abstract of Evidence taken by Major E.L. MacKAY at Records, Canadian Military Headquarters, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

H.M. Evans Private

SIGNED AT FIELD
THIS 17 DAY OF Nov 1944.

I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of.....if he is available.

H.M. Evans Private

77b. St. Etna. La.
B-7603b.

B76036 Pte Evans. RA.
MG HQ.

Correspondence to be PRINTED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 14th day of June, 19 41

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

* [redacted]

*(1. [redacted])

*(2. [redacted])

*(3. [redacted])

[redacted])

[redacted]

President.

Rank.	Name.	Regiment.
Major	G. Sinclair	No.1 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	J. Coles	No.2 Cdn Inf Hldg Unit
Lieutenant	R. Dupuis	No.2 Cdn Inf Hldg Unit
Lieutenant	N.F.N. Digby	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed L. [illegible] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-76036 PTE. EVANS, L.A. No.1 Cdn.(MG) C. Hldg Unit.	First Charge A.A. Sec 15(1) as per charge sheet	Guilty	Guilty on 1st Charge. Ten court sentence the accused B 76036 Pte Evans L.A. No.1 Cdn(MG) HU To undergo detention	I confirm the finding & sentence of the Court but submit that the punishment to 92 days detention B
	Second Charge A.A. Sec 15(1) as per charge sheet	Guilty	for six months	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) L. F. Pope, Brigadier (Signed) Graham Sinclair, Major
Commanding Cdn Base Units, Cdn Army *Convening Officer* (*e*) R.M.S.C. No: C.H.Q. *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 16th day of June, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. The witnesses
~~3. The interpreter~~
(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 16th day of June 1941.

Graham Sinclair, Major
President of the Court Martial.

* See footnote (*b*) on page 762 M.M.L. 1939.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ **C.** Certificate in case of death sentences.

Signed this day of 19

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ P

Signed this 23rd day of June 1941.

L. F. Pope, Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of B 76036 Pte Evans L.A.

(*a*) (Dated) 27 6 41 (Signed) R.T. Endicott Lieut. for Lt.-Col. A.D.J.A.G. No. 1 Cdn. Corps

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2

CHARGE SHEET

The accused, No. B-76036, Pte. Evans, L.A., of the Toronto Scottish Regiment, (MG), on the strength of the No. 1 Canadian Machine Gun Holding Unit, an active unit of the Canadian Army, (Overseas), as a reinforcement for his regiment, as a soldier of the Canadian Army (Overseas), is charged with:

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, absenting himself without leave, in that he
at Bordon, Hants, absented himself without leave from 0630 hours 16th April, 1941 until 1130 hours 30th April, 1941, an absence of 12 days, and 5 hours.

SECOND CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, absenting himself without leave, in that he
at Bordon Hants, when in arrest, absented himself without leave from 0630 hours 1st May 1941 until 2005 hours 2nd June 1941, an absence of 32 days, 13 hours and 35 minutes.

(F.I. Carpenter) Lieut-Col.
Commanding, 1 Cdn. (M.G.) Holding Unit,
C.A.(O.)

BORDON HANTS
6 JUN 41

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 14th day of June 41.

Graham Sinclair
President Major

Andrew Sinclair Major Commanding

MEDICAL OFFICER'S CERTIFICATE. F.

I CERTIFY that No. B-76036 Pte. Evans, L.A. 1 Engrs Regiment

is FIT to undergo trial by Court-Martial.

16 June 1941 Signature of the Medical Officer H.R.L. Davis Capt.

NCANG, Schofield Barracks, T.H.

* Insert "fit" or "unfit."

Form of Proceedings for General and District Courts/Martial - M.F.B.271

Proceedings of a Field General Court-Martial held at Bordon, Hants, on the 16th day of June 1941, by order of Brigadier L.F. Page, Commanding Canadian Base Units, Canadian Army (Overseas), dated the 14th day of June 1941.

President	Major G. Sinclair	No.1 Cdn Inf Hldg Unit
Members	Capt. J. Coles	No.2 Cdn Inf Hldg Unit
	Lieut. R. Dupuis	No.2 Cdn Inf Hldg Unit
	Lieut. N.F.N. Digby	No.3 Cdn Inf Hldg Unit

Trial of:- B-76036 Pte. EVANS, L.A., Toronto Scottish Regiment, No. 1 Canadian Machine Gun Holding Unit, Cdn Army (Os).

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor Lieut. R.R. Macgillivray No.1 C.M.G. H.U.

Defending Officer

At 1100 hours the Trial commences.

The order convening the Court is read, and is marked "A-1", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused No, sir.

The President and members are duly sworn.

The officers under instruction are duly sworn.

The shorthand-writer is duly sworn.

Charge-Sheet

The charge-sheet is signed by the President, marked "B-2" and annexed to the proceedings.

The accused is arrainged upon each charge in the above-mentioned charge-sheet.

Question to the accused Are you guilty or not guilty of the first charge against you, which you have heard read?

Answer Guilty, sir.

Question to the accused Are you guilty or not guilty of the second charge against you, which you have heard read?

Answer Guilty, sir.

The accused having pleaded Guilty to the first and second charges, the provisions of Rule of Procedure 35 (B) are here complied with.

CC

Proceedings on Plea of Guilty

The accused, B-76036 Pte. EVANS, L.A., is found guilty of the first and second charges.

The summary of evidence is read, marked "C-1", signed by the President, and attached to the proceedings.

The Prosecutor, having been duly sworn, states:

I am Lieut. R.R. Macgillivray of No. 1 Canadian Machine Gun Holding Unit, Canadian Army (Overseas). I here produce A.F.B. 296, Statement of Character and Particulars of Service, in respect to the accused, B-76036 Pte. Evans, L.A., on the strength of No. 1 Canadian Machine Gun Holding Unit.

This document shows him to be charged once since enlistment under Army Act Sec. 19, once since enlistment under Army Act Sec. 40, and two times both under Sec. 15(1) both within the last 12 months.

The accused has spent 14 days in custody awaiting trial and has no previous civil or court-martial convictions.

This document is signed by Lieut. R.E. Fullerton, Officer in charge of Records, whose signature I now recognize. I have compared it with the original documents and find it true.

I also produce two copies of the M.F.M. 6 which I have compared with the documents in our Records Office. These are certified by Lieut. R.E. Fullerton, Officer in charge of Records. The original M.F.M. 6 was not located, but the new one was made out and the entries taken from the M.F.M. 4.

Question to the accused — Have you any character evidence you wish to produce?

Answer (Defending Officer) — Yes, I have, sir. The accused would like to make a statement; then I would like to call some witnesses as to character.

The accused states:

I was in the Permanent Force. I joined the Permanent Force in 1936 or 1937 and was in the R.C.Ds., "A" Squadron, St. Jeans, Quebec. I was discharged from the Permanent Force in May 1939 and was discharged medically unfit for military service.

In September I enlisted in the Toronto Scottish and came over here, and while in the P.F. I had only one crime against me.

When I came down here, I went to hospital and came back out. The girl I was going with was in the family way and I promised her whatever happened I would marry her. I asked for permission to marry her at the regiment and was refused. I asked for a weekend pass to go and tell her why I couldn't marry her and it was turned down; so I went up and told her I had to get money to marry and my deferred pay I have assigned to my brother. I have no recollection of coming back here at all. I have been in the army long enought to know that coming back here was crazy. It was damn silliness on my part. I don't remember coming back at all. I just came down from hospital. I have been hysterical. I don't even know how long I was absent. I got married and I didn't even stay with my wife. I just turned around stayed away.

B-75949 Cpl. Brown, R.W., having been duly sworn, is examined by the Defending Officer as follows:

Q-1 What position are you in?
A. I am acting orderly sergeant, "A" Company, in the No. 1 Machine Gun Holding Unit.

Q-2 As such you had something to do with the accused?
A. The accused was stationed in my quarters and I had occasion to check the roll on the 18th April. I found the accused absent at 0630 hours. On the 30th April when I was waiting for the C.O.S. orders, the accused reported to me to give himself up. I told him he was under open arrest. The following morning he was absent from 0630 hours. The next I heard of him he was under arrest.

Q-3 What do you know of the state of mind of the accused?
A. The accused appeared to be very depressed from time to time. That's the reason I put him on fatigues instead of on the parade square. I have handled men since I was twenty and know men and that's the reason.

Q-4 Do you remember when he came back when he was A.W.L.?
A. He approached me when I was standing in line on the C.O.S. parade and seemed quite agitated over something. I had to place him under open arrest.

B-76091 Sgt. Buchanan, D.C., having been duly sworn, is examined by the Defending Officer as follows:

Q-1 Sgt. Buchanan, how long have you known the accused?
A. Since 1936.

Q-2 When and under what circumstances did you know him then.
A. I was employed by the International Nickel Company as police and he worked in the carrier. He and I both enlisted at the same time and were both in the same company and regiment. That was in September 1939.

Q-3 And you came overseas together?
A. Yes, sir.

Q-4 What is your opinion of the accused's conduct?
A. During that earlier period, it was very good, and his conduct while I knew him in civilian life was very good. He left the Nickel Company, I think, around the latter part of 1936 to join the Permanent Force and came back in 1939, I believe. Well he must have been dependable at his work; otherwise they would not have hired him again. I think that's as good a recommend as anybody can get. His conduct in the army, he was in my company and always seemed very good to me.

Q-5 Did you have anything to do with the accused around April of this year when he went A.W.L.?
A. No, I left the regiment in December and he was still at the regiment.

Q-6 Were you at the holding unit?
A. I was at Corps.

The Defending Officer then made the following statement:

In view of the fact that I think that the accused this time when he went A.W.L. was suffering from a great deal of mental agitation - he had trouble with a girl and had wanted to go and marry her, which he did, and he got into a mess of misunderstanding about the whole thing - and in view of the fact that his mental attitude I think at the time he went A.W.L. and the second time was pretty confused and worried, which we have heard him say and Cpl. Brown can give evidence as to and in view of the fact that he has a fairly good conduct sheet - there is

(Cont'd)

an offence of drunkenness and one under Sec. 40 and twice A.W.L., not for long times in either case - and the evidence of Sgt. Buchanan that to the best of his knowledge he was a good soldier at "C" Company in the regiment, I would like to ask the Court to take this into consideration in awarding sentence on the accused. I do not think he is the sort of man who habitually goes A.W.L. and gets into trouble. He was in trouble in the spring, but on the whole there is nothing to show that he would not become a good soldier again.

The Court is closed for the consideration of the sentence.

Buchanan Sinclair Major
President

SUMMARY OF EVIDENCE in the case of B-76036, Pte. Evans, L.A., No. 1 Canadian Machine Gun Holding Unit, C.A.(O.), (TSR(MG).).

On instructions from the Commanding Officer the following evidence is taken on oath.

FIRST WITNESS FOR the PROSECUTION.. Capt. R.E. Lockhart, Adjutant, No. 1 Cdn. (MG) Holding Unit, C.A.(O.) being duly sworn, states:

I am Capt. R.E. Lockhart, Adj., No. 1 C.M.G.H.U. C.A.(O.) I here produce a certified true copy of a Declaration of a Court of Inquiry held at Guadaloupe Barracks, Bordon Hants, 27th May 41 in which it has been found that B-76036, Pte. Evans, L.A., No. 1 C.M.G.H.U., C.A.(O.) illegally absented himself without leave from his duties at 0630 hours 1st May 1941, and that on the 27th May 41 he was still so absent. (Marked Exhibit "A"), and a certificate of surrender certified by the D.A.P.M., London certifying that Pte. Evans surrendered himself to the C.P.C. in London at 2005 hours, 2nd June 1941 (Marked Exhibit "B".)

R.E. Lockhart, Capt.
No. 1 Cdn. (M.G.) Holding Unit.

The accused declined to question the above witness and did not object to the contents of the documents introduced.

SECOND WITNESS FOR THE PROSECUTION... B-75949 Cpl. Browne, R.W. (TSR(MG).) No. 1 C.M.G.H.U. C.A.(O.) being sworn, states:

I am B-75949, Cpl. Browne, R.W., (TST(MG).) 1 C.M.G.H.U.. On 18th April, 1941, I was Coy. Orderly Sergeant of the TSR Coy. At 0630 hours that day, I personally called the roll at #19S Meynell Quarters, Guadaloupe Barracks, where Pte. Evans was quartered. He did not answer to his name and I marked him A.W.L. I did not see Pte. Evans again until he reported in to me at 1130 hours, 30th April, 1941. I placed Pte. Evans under open arrest. At 0630 hours 1st May 1941, he was again AWL when I called the roll. He was still in open arrest when he went A.W.L.

R.W. Browne, Cpl.
No. 1 C.M.G.H.U.

The accused declined to question the above witness.

The accused, being duly cautioned persuant to R.P. 4 (e) declined to make a statement or give evidence.

Certified that R.P. 4 (c) (d) & (e) have been complied with and that the above evidence was taken down by me in the presence and hearing of the accused at Bordon Hants this 7th day of June, 1941.

R.R. Macgillivray, Lieut.
No. 1 C.M.G.H.U.

President

Exhibit "B"

Statement of **EVIDENCE** in the case of

B-76038 Pte Evans L.A.
No1 M.D. Holding Unit.

Sir,

At London on the 2-Jun-41 at about 2005 Hrs and in company with Dvr Legault I was on Trafalgar Sq. when the a/m soldier came up to to me and surrendered hi-self to me as being A.W.O.L. I placed him under arrest and escorted h his to Cdn Provost Corps H.Q. where I handed him over to the N.C.O. i/c of Cells to be detained.

London.
2-Jun-41.

J. Blackadore ...L/Cpl.
(C-40650 L/Cpl Blackadore J.)

Sir,

I have read over and corroborate the above statement.

London.
2-Jun-41.

...Dvr.
(C-47230 Dvr Legault J.L.)

REMARKS

President Major

E/35

CHARGE

Army Form B 252
(See King's Regulations)

No.1 M.D. Holding Unit. Regiment

..... Battery / Squadron / Troop or / Company

CHARGE against No. R-78056 Rank Pte

Name Evans L.A.

Place London. Date of Offence 2-Jun-41.

OFFENCE S.O.A.S.Absent without leave from

.....until he surrendered himself to

the Adm Provost Corps in Trafalgar at about

2005 hrs on the 5-Jun-41.

D.A.P.M.

CANADIAN MILITARY POLICE
LONDON AREA.

Names of Witnesses L/Cpl Blackadore, Canadian Provost Corps.

Dvr Lozoult C.M.A.S. Service.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Exhibit "A"

PROCEEDINGS of a Court of Inquiry assembled at Guadaloupe Barracks, Bordon, Hants, on the Twenty-Seventh day of May 1941, by order of Lieut-Colonel P.I.Carpenter, V.D. Officer Commanding No.1 Cdn. M.G. Holding Unit, C.A.(G)., for the purpose of investigating and recording the absence without leave from his duties and deficiencies, if any, in the arms, ammunition, equipment, instruments, regimental necessaries of S-76030 Pte. Evans, L. A. (T.S.M. Coy.) of No.1 Cdn. M.G. Holding Unit, C.A.(G).

D E C L A R A T I O N

The Court declares that S-76030 Pte. Evans, L.A. (T.S.M. Coy.) of No.1 Cdn. M.G. Holding Unit, C.A.(G). illegally absented himself without leave from his duties at 0630 hours on the first day of May 1941 and is still so absent, and that on the Twenty-Seventh day of May 1941 he is deficient of the articles as shown in the list underneath to the value of Eighteen Pounds, Fourteen shillings and half-pence, (£ 18 - 14 - 0½).

D E F I C I E N C I E S

ARTICLES	£	s	d	ARTICLES	£	s	d
Anklets, web.	-	4	4	Blouse, B.D.	1	2	6
Trousers, B.D.	1	0	6	Boots, ankle, prs.	1	2	6
Brass, button.	-	-	2	Brushes, boot blacking.	-	-	2½
Brushes, button	-	1	2	" " polishing.	-	2	1
" cloth.	-	2	3	" shaving.	-	1	2
" tooth.	-	-	8	Bonnet Tam O'Shanter.	-	2	11
Greatcoat.	2	8	6	Comb.	-	-	2
Dressing, F.S.	-	1	1	Fork, table.	-	-	4½
Gloves, woollen.	-	1	11	Holdhall.	-	-	9
Housewife.	-	-	7	Jacket, sweater.	-	8	6
Knife, table.	-	-	10	Razor.	-	-	5½
Shirt, flannel.	-	10	-	Shoes, canvas.	-	3	6
Socks, (2 pairs)	-	3	10	Spoon, table.	-	-	4½
Towel, hand.	-	1	6	Cover, mess tin.	-	-	3
Haversack.	-	7	-	Helmet, steel.	-	7	-
Sling, rifle.	-	1	5	Straps, shoulder B.A.E.	-	3	6
Tin, mess.	-	2	3	Bottle, oil.	-	-	9½
Pullthrough.	-	-	4½	Rifle.	7	8	-
Sheet, ground.	-	10	-	Respirator, A/G.	-	10	6½
Mycamfields.	-	2	2	Cape, A/G.	-	11	9

TOTAL:- £ 18 - 14 - 0½.

Signed at Bordon, Hants
This 27th day of May 1941.

PRESIDENT:-

Capt. T.S.A. Sutherland.
1 Cdn. M.G. Holding Unit, C.A.(G).

Members:-

Lieut.J.H. Robinson.
Saskatoon Light Infantry
1 Cdn. M.G. Holding Unit, C.A.(G).

Lieut.R.R. Macmillivray.
Saskatoon Light Infantry
1 Cdn. M.G. Holding Unit, C.A.(G).

Signature of Officer Commanding:- P.I. Carpenter

(P.I. Carpenter) Lieut-Colonel.
O.C. 1 Cdn. M.G. Holding Unit, C.A.(G).

Certified true copy:- R.G. Fullerton Lt

(R.G. Fullerton) Lieut.

LIST OF WITNESSES FOR THE PROSECUTION

Capt. R.E. Lockhart, Adjutant, No. 1 Cdn. (M.G.) Holding Unit, C.A.(O.)

B-75949, Cpl. Browne, R.W. No. 1 Cdn. (M.G.) Holding Unit, C.A.(O.)

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

"A" Certified true copy of a Declaration of a Court of Inquiry, held at Gudaloupe Barracks, Bordon Hants, 27th May 1941.

"B" Certificate of surrender certified by the D.A.P.M., London,

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P. 14 (B)

I, No. B-76036, Pte. Evans, L.A. desire to have an officer appointed by the Convening Officer to represent me at my teial by Court-Martial.

I desire the services of Lieut. Evans, of the Artillery Holding Unit, if he is available.

L. Evans.....
(B-76036)
Pte. Evans, L.A. (1 CMGHU)C.A.(O.)

Description of Court by which Tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial or summary award, or of Order disposing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this TENTH day of JUNE 1941.

A/G. Duncan Smith Major
Officer i/c Records
1 Cdn. M.G. Holding Unit, C.A.(O).

Brodie Smith Major
President

5.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B-76036 Pte. EVANS, L.A. of the TORONTO SCOTTISH REGIMENT, 1 CDN. M.G. HOLDING UNIT, C.A.(O).

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced to Court with this statement but are not to be inserted in the proceedings.

Sec. Para. 665, K.R. 1926.

*The number of times stated should correspond with the number of Entries in the Conduct sheets, punishment being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.		*Since Enlistment.	
For A.A. Sec. 19.		times	One	times.
For A.A. Sec. 40.		times	One	times.
For A.A. Sec. 15 (1).	Two	times	Two.	times.
For		times		times.

[redacted]

[redacted]

[redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

[illegible]

209

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for
beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges
for days in Civil Custody,
and 14 days in Military Custody.
Total days.
Of which days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24

6. The date of his attestation specified in his attestation paper is 8th Sept, 1939.

[redacted]

[redacted]

[redacted]

Certified Copy.

No B76036 Name EVANS, L.A. Sqn., Battery, or Company — Corps T.S.R. MG — Date of enlistment 8-9-39. G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc.

MFM 6 (A.F.B. 122) 5000m.—8.39.(1933) H.Q. 1772-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot.	2-3-40.	Pte.	1	A.A. Sec. 19 Drunkenness		8 days detn.		D.O. 62	
Bulford.	3-5-40.	"		A.A. Sec. 40. Conduct to the prejudice of good ofder & Military discipline.		14 days detn.		D.O.114	
	3-9-40.	"		A.A. Sec. 15 (1) A.W.L.		7 days C.B.		D.O. 18.	Forf. 1 day's pay
	18-9-40.	"		A.A. Sec. 15 (1). A.W.L.		21 days detn.		D.O. 20.	Forf. 9 days pay. FR&I 149.

Original MFM6 not traced. Certified copy taken from entries as appearing in MFM4

Certified true Copy
K Fullarton Lt
for Cdr. M.G. Holding Unit C.A.F.

(P10)

Drunkenness Pamphlet

STATEMENT BY B-76036 PTE. EVANS, L.A.

elaborating on statement made by him at F.G.C.M. 10 JUN 41.

At my trial by F.G.C.M., June 10th, 1941, I made a statement in the course of which I said that I had asked permission to marry, and it had not been granted. I was paraded for interview before Lieut-Col. J.H. Christie, Commanding the T.S.R. (M.G.) at Chipstead shortly after Christmas, 1940. I merely stated that I wnated to get married and I mentioned the girl's name. Lieut-Col. Christie said that he thought it would be the best thing for me. As far as I know he did not write down the particulars of the case. I did not make a written application for permission to marry, as I did not know this was necessary. I made no further attempt to have my request granted, and when nothing happened, I assumed that permission had been refused and on May 30th, 1941, I was married without permission.

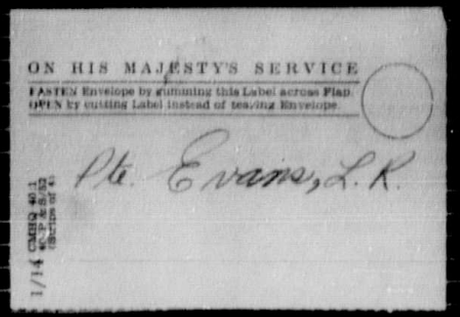
At my trial I stated that I had applied for leave once and that no leave was granted. I asked for week-end leave at Easter, but I was told that no leave was being granted for the Easter week-end. This was the only occasion on which I applied for leave since February 6th, 1941, when I had seven days privilege leave. I also had seven days leave on 26th November, 1940.

Sam L. Evans
.....
B-76036, Pte. Evans, L.A.- 1CMGHU

Certified that the above statement was made voluntarily in my presence at Aldershot North, this 26th day of June 1941.

(R.R. Macgillivray) Lieut. & C.M.O.
No. 1 Cdn. M.G. Holding Unit, C.A.(O.)

2 X-70


ON HIS MAJESTY'S SERVICE
FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.
Pte. Evans, L. K.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: P-57560 Pte EVANS, L.R. - 1 Cdn Sub Wksp

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 18(4)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

As present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 114 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of one hundred and twenty (120) days.

(Sgd) ..... Judge-Advocate, if any. 2 JAN/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(1), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks, until further orders.(1) NIL
(1. AA 57A. Delete if not used.)

Date 3 Jan 46 (Sgd) [signature] Commanding 13 Corps CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F57560 Pte. Evans L.R.	5 Jan 46	[signature] Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AB 104 1 JAN 46

5X-70

RECEIVED JAG BRANCH

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA33, 40/P & B/1600 18144) 4/388

Convened by Order of BRIG A.S. CONNELLY CBE Comd "B" GP CRU dated 28 Dec 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F-57560	Pte	Lloyd Richard	EVANS	1 Cdn Sub Wksp

PROCEEDINGS REVIEWED

[signature] Capt 11 Jan 46

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) ~~31 Dec 45~~ 2 JAN 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see fins 1st GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number bearing reference to abbreviate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to ~~Mr/Mlle/Mrs~~ ALMACAR RCA as shorthand writer? Ans NO SIR The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr~~, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. REDMAN VD	HQ CRU
Member	Captain	W.S. TRAVIS CIC	2 Cdn Special Inf Bn
Member	Lieutenant	H. EDWARDS CIC	2 Cdn Repat Dep
~~Judge-Advocate~~			
Prosecutor	MAJOR	A.L. MACLEOD	1 CDN SUB WKSP
Defending Offr	CAPT	A.E. LAKE	1 CDN SUB WKSP

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and.

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)*

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO - SIR (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his ~~(their) plea(s) of Guilty to Not Guilty on~~ charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on~~ charge(s). ~~Part 1 of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 (ns 2, 9.)*

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(2).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 44, 117(A). See Notes in Part I of Schedule.* 2. *RP 44, 45.*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(J), (6), RP 45, 120(A).* 2. *AA 54(J), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Give evidence NOT-AIT
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy (copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(2) (g) (h), and (ii) they purport so to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 155 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes, I do - NOT-AIT (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is read and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 109, 2123, MML p 67, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 98(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of inmates after trial see instrs at back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, F-57560, Private Lloyd Richard EVANS, 1 Cdn Sub-Workshop, RCEME, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

Sec. 18 (4) AA

in that he

at Aldershot, Hants, on the night of 17 Dec 45, did steal a kit bag, and contents, the property of H-94469, Pte. Matson, O., of R & D Coy., 1 Cdn Gen Reinforcement Unit, a soldier of the Cdn Army Overseas, a person subject to military law.

(B.J.Highfield) Lt-Col.,
Officer Commanding,
1 Cdn Sub-Workshop, RCEME.

Crookham, Hants,
19 December 1945.

Approved on behalf of the J.A.G. pursuant to K.R.(Can) 540 and ORO 4756.

27 Dec 45 Capt.
for AJAG, HQ, CRU.

To be tried by Field General Court-Martial.

(A.B. Connelly) Brigadier,
Commander,
"B" Group, C.R.U.

In the Field
28 Dec 45

FIELD GENERAL COURT-MARTIAL.

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-57560	Pte		Lloyd Richard	EVANS	1 Cdn Sub Wksp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 28 Dec 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. REDMAN VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	W.S. TRAVIS CIC	2 Cdn Special Inf Bn
Lieutenant	H. EDWARDS CIC	2 Cdn Repat Dep
	~~WAITING MEMBER~~	
	~~JUDGE ADVOCATE~~	

(Must be named, if any. RP 106.)

On Active Service in the Fd

in ENGLAND (Country.)

Dat 28 Dec 45

(A.B. CONNELLY) (Signed personally. RP 105 fn 2.)

BRIG (Rank.)

Commanding "B" GP, CDN REPAT UNITS

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 90 (1st Revn of AFA 2) 30-9-A-E/1897 (E143)) (*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE.
K.R.(Can) para.557

I certify that I have, this morning, examined
No. F57560 (Rank) Cpl. (Name) Evans R.L. on the ... day of
1 Dub - Workshop, R.C.O.C. and in my opinion he is F.J.D.
trial by Court Martial.

STATION Brockham
DATE. 24 June 44

Sgd. J.D. Day Capt.
Medical Officer
R.C.A.M.C.

CASE OF

F.57560 Pte EVANS LR----- 1 CDN SUB WKSP

MITIGATION

The accused sworn, states:-

Q. On the night in question at what time did you first go to the pub?
A. About 1900 hrs.

Q. What did you drink that night?
A. I was drinking bitters, I drank in one pub for about an hour and had five glasses and then I went to another pub and I stayed there for three quarters of an hour or an hour and then to another pub. After that I remember leaving the pub but my mind was blurred for a while and the next thing I remember was the provost picking me up.

Q. Tell the court about your going down to 1 CCRU to see some friends of yours back from the continent?
A. I don't remember much about going there. I had been there a week or so before to see a friend of mine while on a 48 hour leave. I am not sure whether on the night in question I went to see him or not. I am not married, my civil occupation is farmer, my category is A.1. I served on the continent from 18 Jul 44, after "D" day with the N.F.U.H. I stayed there with them until the war ended. I got to grade 10 in school.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(2).

PLEA OF MITIGATION BY DEF OFFR (ATTACHED)

CASE OF

F.57560 Pte EVANS LR----- 1 CDN SUB WKSP

MITIGATION

The accused sworn, states:-

Q. On the night in question at what time did you first go to the pub?
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Q. Tell the court about your going down to 1 CDNU to see some friends of yours back from the continent?
A. I don't remember much about going there. I had been there a week or so before to see a friend of mine while on a 48 hour leave. I am not sure whether on the night in question I went to see him or not. I am not married, my civil occupation is farmer, my category is A.1. I served on the continent from 12 Jul 44, after "D" day with the N.W.E.H. I stayed there with them until the war ended. I got to grade 10 in school.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH KR 83(2).

PLEA OF MITIGATION BY DEF OFFR (ATTACHED)

PLEA OF MITIGATION

2 Jan 46.

The accused F.57560, Pte. Evans, L.E. on the night of 18 Dec.45 when he was apprehended, had been drinking to excess. He had been drinking for three hours at a rapid rate. After leaving the Pub, he had been into several of them, in a hazy and confused manner he decided to go to C.G.R.U. Barracks to see if one of his former associates from the continent was there. He cannot remember what happened and claims that due to his drunken condition he was unaware of what he was doing. He has twenty seven months service with only one crime of being A.W.O.L. listed against him. From his record it would appear that this man undoubtedly would not have committed this crime had he been in his normal senses. Consideration is therefore asked on his behalf in that he was not responsible for his actions that night, while in a state of intoxication. In account it is requested that forfeiture of pay would be adequate in the case.

E-3

Summary of Evidence in the case of F-57560, Pte. Evans, R. L. H. Q. Coy., 1 Cdn. Sub-Workshop, R.C.E.M.E., C.A.O., charged with stealing property belonging to a person subject to military law (A.A. Sec. 18 (4)).

By direction of the Commanding Officer, the evidence was taken on oath.

FIRST WITNESS : B-130616, Cpl. Phillips, J. A., 14 Provost Coy., Cdn. Provost Corps., C.A.O., sworn, states:-

"I was returning from duty with L/Cpl. Doutre about 0015 Hrs., 18 December 45 when I saw a soldier looking through a kit bag at the corner of Farnham and Pennefather Road on the outskirts of Aldershot. I went over to the soldier and asked him what he was doing. At first he said that he was checking to see what he had in his kit bag. I checked his documents and noticed that the kit bag had another name on it. I was suspicious of this and took him to the Police Station, Aldershot Civilian Police Station. At the police station the accused said words to the effect that he had stolen the kit bag and if he was treated decently he'd show me where he had got the bag. I took him to a barrack room, of 1 CGRU and he showed me the bed where he had taken the bag from. H-94461, Pte. Matson, O. was asleep in the bed. I wakened Pte. Matson and asked him if he had lost anything, to which he replied, 'Not that he knew of.' L/Cpl. Doutre, who was with me, asked Pte. Matson if he recognized the bag and he replied, 'Yes'. I asked Pte. Matson to tell me what was in the bag and he named several items and I concluded that it was his bag. I gave Pte. Matson a receipt for the bag and contents, and took the accused to the Guard Room of 1 Cdn. Sub-Workshop, RCEME and turned him over to Tpr. Dick, H. P. and I took the kit bag to 14 Provost Coy. Orderly Room."

The accused declines to cross examine the witness.

Question 1 - Was Pte. Evans with you while you were talking to Pte. Matson?

Answer 1 - Yes Sir.

Question 2 - Do you recognize Pte. Evans as the man who had the kit bag?

Answer 2 - Yes Sir. (The witness points out the accused)

(Sgd) Cpl. Phillips, J. A.

SECOND WITNESS: D-146089, L/Cpl. Doutre, A. of 14 Provost Coy., Cdn. Provost Corps, C. A. O., sworn, states:-

"I was returning from duty with Cpl. Phillips about 0015 Hrs. 18 Dec. 45 when I noticed a soldier, whom I now recognize as Pte. Evans, with a kit bag, the contents of which were strewn over the ground. Upon being questioned, Pte. Evans could not supply us with a satisfactory answer as to what he was doing. We put the contents back in the bag and escorted Pte. Evans to the Aldershot Civilian Police station. Upon further questioning, Pte. Evans admitted the theft of the bag, and signed a list of the articles that were found in the bag. He then led us to a barrack room in 1 CGRU, where Pte. Matson identified the bag as his property. We gave Pte. Matson a receipt for the bag, and escorted Pte. Evans to the Guard Room of 1 Cdn. Sub-Workshop, RCEME. Cpl. Phillips received a body receipt from Tpr. Dick, H. P. and warned the accused that a charge would be forwarded to his O.C."

The accused declines to cross examine the witness.

(Sgd) A. Doutre

THIRD WITNESS: H-94461, Pte. Matson, O., R and D Coy. 1 CGRU, CAD, sworn, states:

"On the night of 17 Dec. 45, I went to bed about 2300 Hrs. I was awakened about 0100 Hrs. 18 Dec. 45 by a cpl of the Provost Corps. He had a kit bag which I recognized to be mine. He asked me to name some of the things which were in it. This I did. The Provost Cpl. gave me a receipt and took the bag, away. I recognize the kit bag, tagged Exhibit "A" to be mine. I recognize Pte. Evans as the soldier who was with the Provost."

The accused declines to cross examine the witness.

(Sgd) Oliver Matson

The accused was cautioned as follows:

Question 1 - Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer 1 - I do not wish to make a statement.

(Sgd) R. L. Evans

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence of the accused and that R.P. 4(c), (d), (e), (f) and (g) have been complied with.

United Kingdom

19 Dec. 45

(A. L. MacLean) Major
1 Cdn. Sub-Workshop, RCEME
C.A.D.

EXA

M.F.B. 255

(QM—5-41 (572-8)
H.Q. 1773-99-626
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F-57560	Pte.	EVANS, L.R.	1 Cdn Sub-Workshop, RCEME.

1. The following is a fair and true summary of the entries in the [redacted] Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec 15 (1)	Nil	times	One	times
[redacted]				

[redacted]

2. The accused has not been previously convicted [redacted]

3. The accused is not under sentence at the present time [redacted]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 31 years, 9 months

6. The date of his attestation specified in his record of service is 18 September, 1945

7. The service which the accused is allowed to reckon towards discharge is 27 months, 2 days

8. The accused is entitled to reckon 27 mos 2 days service for the purpose of determining his pension, etc.

9. The accused [redacted] is in possession of or entitled to). State any military decoration or reward. CVSM & Clasp
1939-45 Star
France Germany Star

10. [redacted]

Ex B

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this second day of January 1946

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

A Meaher Maj
A/Adj 1 C.W.R.

M.F.M. 6
(A.F.B. 122)
155M—7-41 (1216-20)
H.Q. 1772-89-1652

F-57560 No. | Name EVANS, Lloyd Richard | Sqn., Battery, or Company | Corps CIC | Date of enlistment 18 Sep 1943 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk NIL | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	Nov 1944	Pte	--	AWL 1 day 8 hrs 15 mins		2 days pay FR&I 149(2)	7 Nov		Forf 8 days pay FR&I 149 (1) (a), Total forf 10 days pay
				CERTIFIED TRUE COPY OF POSTING ON MFM 4.					
				L Pepino Capt + adj. 1 CSU					

(P.T.O.)

STATEMENT OF THE ACCUSED

I Do not know any officer whom I wish to defend me and want the Commanding Officer of 1 Cdn. Sub-Workshop, RCEME to appoint a defending officer for me.

L. R. Evans

F-57560, Pte. EVANS, L. R.

- - - - - - - - - - - - -

The Commanding Officer, 1 Cdn. Sub-Workshop, RCEME, hereby appoints Capt. A. E. Lake, of 1 Cdn. Sub-Workshop, RCEME, to defend: F-57560, Pte. EVANS, L. R.

LIST OF WITNESSES

In the case of F-57560, Pte. EVANS, Lloyd Richard, on the strength of 1 Cdn. Sub-Workshop, RCEME.

- - - - - - - - -

(FOR THE PROSECUTION)

FIRST WITNESS - B-130616, Cpl. PHILLIPS, J. A., 14 Coy., Cdn. Provost Corps., a soldier of the Cdn. Army Overseas.

SECOND WITNESS - D-146089, L/Cpl. DOUTHE, A., 14 Coy., Cdn. Provost Corps., a soldier of the Cdn. Army Overseas.

THIRD WITNESS - H-94461, Pte. MATSON, O., R. & D. Coy., 1 Cdn. Gen. Reinforcement Unit, a soldier of the Can. Army Overseas.

- - - - - - - - -

(FOR THE DEFENCE)

NONE

LIST OF EXHIBITS

In the case of F-57560, Pte. EVANS, Lloyd Richard, on the strength of 1 Cdn. Sub-Workshop, RCEME.

- - - - - - - - -

EXHIBIT "A" - Kit bag containing the following articles:

1 - Battle Dress Blouse
1 - Battle Dress Trousers
1 - Jersey Pullover
1 - Jersey Pullover (Grey civilian)
1 - Towel
2 - Drawers Woollen
1 - Vest Woollen
2 - Shirts
4 - Prs. Socks
1 - Pr. Leather Gloves
3 - Hair Brushes
3 - Handkerchiefs
1 - German leather belt
1 - mess tin holder containing: Button stock, etc.

- - - - - - - - - -

1 - Saucer (souvenir)
1 - leather purse; containing - foreign coins
1 - box containing: 5 packs of lifesavers
1 alarm clock
1 - box containing: 3 handkerchiefs
3 bottles of perfume
2 tubes of lipstick
2 pocket watches
1 leather billfold, empty
1 flower ornament
1 prs. of woollen mits
1 pack of envelopes
1 tulip bulb

LL-36 (Case #2)
PTE EVANS T.
See CC-16 for 1st case

LL-32

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 14th day of August, 1943.

Whereas it appears to me, the undersigned, an officer in Command of H.Q. Comd. 2 Cdn Corps Tpt Coln RCASC, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a competent qualified officer.]~~ WHL

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~[I am unable to appoint~~ WHL

*~~[1---Three Officers to form the Court.]~~ WHL

*~~[2---A Field Officer as President.]~~ WHL

~~for the following reasons, namely:---]~~ WHL

*Strike out if not applicable.

Capt

Major

12 Sept 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W.A.Lucas	HQ Comd 2 Cdn Corps Tpt Coln RCASC

Members.

Rank.	Name.	Regiment.
Capt	L.W.Garen	42 Cdn Gen Tpt Coy RCASC
Capt	T.J.L.Wilkinson	33 Cdn Corps Tps Coy RCASC

J.A.

Capt G.H.Jermyn
HQ 2 Cdn Corps

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed W.H.Colling
(W.H.Colling) Lt.Col.
Commanding HQ Comd 2 Cdn Corps Tpt Coln RCASC
Convening Officer

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-91917 Pte Thomas Evans, No.1 Mobile Laundry & Bath Unit, RCOC.	First Charge Absence without leave. Army Act Sec. 15(1) SEE CHARGE SHEET ATTACHED	Guilty	Guilty To undergo detention for a period of eighteen months and to be put under stoppages of pay until he has made good the sum of eighteen shillings in respect of the cost of appreheension 16 Aug 43 W. A. Young Lt-Col President Seven days Capt J. A.	Confirmed I confirm the findings of the Court but remit 6 months of the sentence W H Colling Lt Col

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) W H Colling (Signed) W. A. Young Lt-Col. President.
(W.H.Colling) Lt-Col. Seven days Capt J. A.
A/Comd 2 Cdn Corps Tpt Coln RCASC
Commanding Officer (e) Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

W.A. Lowe Major President

Glenn Capt J.A.

CHARGE SHEET

The accused No. D91917, Pte. Thomas EVANS, No. 1 Mobile Laundry & Bath Unit, RCOC, a soldier of the Canadian Army Overseas, is charged with, while on Active Service:

First Charge
Sec.15(1)
Army Act

Absenting himself without leave in that he, while with a party of reinforcements proceeding from Aldershot to his unit, did leave the party while changing trains at Redhill, Surrey, at 1500 hrs. 23 July 43, and did absent himself from that time until apprehended by the Civil Police at Little Hampton, Sussex, at approximately 2150 hrs 4 Aug 43. (Total time absent, 12 days, 6 hrs, 50 mins.)

Cost of apprehending the accused:

Escorts' return fare from London to Arundel	- 8s,10d.
Prisoner's single fare to London from Arundel	- 4s, 8d.
Escorts' return fare from London to Kingswood	- 1s. 7d.
Prisoner's fare from London to Kingswood	- 1s. 2d.
Total	£0-16-0

Field
9 Aug. 43

O.C. Mellus Capt.
O C No. 1 Mobile Laundry & Bath Unit, R.C.O.C.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL
In the Field 14 Aug 43 (W.H.Colling) Lt-Col. W H Colling HQ Comd 2 CdnCorps Tpt Coy RCASC

MEDICAL CERTIFICATE (K.R.(CAN.)557)

I CERTIFY THAT I HAVE THIS MORNING EXAMINED NO. D 91917 Pte. EVANS, T. of No.1 Mobile Laundry & B. Unit, RCOC and, in my opinion he is fit ~~unfit~~ to undergo trial by court-Martial.

STATION IN THE FIELD

DATE 16/8/43

J. E. Nichols Capt
MEDICAL OFFICER

16.8.43 Maj. President

PAGE I

Record of Proceedings of a Field General Court Martial

Held in the Field in England (Country) on 16 Aug 43 (Date) to try

Accused D-91917 Pte Thomas Evans (Number) (Rank) (Christian Names) (Surname) No 1 Mobile Laundry & Bath Unit RCOC (Unit)

	Rank	Name	Unit
President	Maj	W A Lucas	HQ Comd 2 Cdn Corps Tpt Coy RCASC
Member	Capt	L W Green	42 Cdn Gen Tpt Coy RCASC
Member	Capt	T I L Williamson	33 Cdn Corps Tpt Coy RCASC
Judge Advocate (if any)	Capt	G H Jessup	HQ 2 Cdn Corps
Officers Under Instruction (if any)			
Prosecuting Officer	Lt	W R Bates	No 1 Bath Laundry & D U RCOC
Lawyer? Ans No			
Defending Officer	Maj	J A Power	HQ 2 Cdn Corps Def Pl RCOC
Lawyer? Ans No			

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(V) and Summary of Evidence. (Rs.P.17(8), 22(A)).

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22, fn 1) reads the Convening Order and the Charge Sheet(V) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted (A.A.49: Rs.P.106, 107), that the accused is (are) (V) amenable to Military Law, and that each charge discloses an offence (Rs.P.23,108).

3. The accused is (are) (V) brought before the Court and at 1855 hours the trial commences.

4. The Prosecuting Officer produces a Medical Certificate under R.M.(Can) 557 (See CMHQ Circular Letter 173) that the accused has (V) this day been examined and is (are) (V) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

(Over)

~~President to accused:~~

Q - Do you object to _____ as interpreter?
A - _____

The interpreter is duly sworn. (Form of oath on Page "D").

Q - Do you object to _____ as shorthand writer?
A - _____

~~The shorthand writer is duly sworn. (Form of oath on Page "D").~~

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

A - NO SIR.

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto. (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate and ~~Officer under Instruction~~ are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

9. The Charge Sheet(s) is (are) signed by the President.

10. The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), such pleas and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge:	GUILTY.	Fifth Charge:	
Second Charge:		Sixth Charge:	
Third Charge:		Seventh Charge:	
Fourth Charge:		Eighth Charge:	

(For procedure on alternative charges, see R.P. 57(A) and fn. 2). (For form of record see M.M.L. p. 744 Instructions).

Further proceedings are recorded on pages hereto attached.

[illegible] Major
President.

[2 Can Corps 15-6-45]

(For use when accused pleads "Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The President complies with R.P.35(B) by ascertaining that the accused understands the nature of the charge(s) (fn. 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) & fn. 3) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. The finding(s) of the Court is (are) recorded on p. 2 of A.F.A.3.

3. President to accused:

Q - Do you desire to make any statement of the circumstances in reference to the charge(s)? (R.P.37(B)).

A - No SIR.

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

4. The Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

(If no such Summary, sufficient evidence for determination of the sentence is taken and recorded on separate sheets, initialled by the President and attached hereto). (R.P.37(B)).

5. President to accused:

Q - Do you wish to make any statement in mitigation of punishment? (R.P.37(C)).

A - No SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(If from paras. 3, 4 or 5 it appears to the Court that the accused did not understand the effect of his plea see Ra.P. 37(B) fn. 3; 37(C); 37(D) fns. 5 & 6: M.M.L. p. 747 Variations).

6. President to accused:

Q - Do you wish to give evidence yourself or to call any witnesses as to character? (R.P.37(C)).

A - No SIR.

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

7. Statement of Character and Service (A.F.B.296 or W.F.B.355) and Field Conduct Sheet (W.F.B.6), signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked " X ", and " Y ", signed by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131).

8. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)).

A - No SIR.

(Address (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(Over)

9. The President announces:

" The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

10. The Court is closed to consider the sentence.

11. The sentence is recorded, dated and signed by the President (R.P.50) on p. 2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; K.R.(Can)563-566; Overseas R.Os.309, 2523).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L. p.756-759).

12.

D. A. Lawson Major
(Signature of President)

D Lawson Major
J.A.

[2 Can Corps 13-6-43]

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I CERTIFY that No. D[illegible] 1917 . Rank Pte . . . Name [illegible] T. . . . . .

Unit [illegible] Mobile Laundry, RCOC . . was arrested at [illegible] .(place)

at 2150 .(hour) on 4 Aug 43 .(date) and that at the time of his arrest he was wearing (Military Uniform) ~~or (Civilian clothes)~~ Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
7 Aug 43.

R. D. Grayson Capt
. . . . . Capt.
(W. Fern) D. A. P. M.,
London Area

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. 0 91912 Rank Pte. Name Evans, T. Unit M.P. Lndry A.D. Unit R.C.O.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars ½ Portion	Amount		
9 Aug 43	Escorts return fare from LONDON To Ringwood		1	7
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Ringwood		1	2
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		2	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Capt.

Officer Issuing Railway Warrant and Expense Monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S/480

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. [illegible]9917 Rank Pte Name Evans T Unit 1 M.O.L. RCOC

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Arundel

Date	Particulars	Amount		
May 13.	Escorts return fare from LONDON To Arundel		8	10
	Prisoners single fare to LONDON From Arundel		4	5
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		13	3

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W.A. Lee Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-53
40/7 & S/483

CERTIFICATE OF APPREHENSION OF ABSENTEE

Certified that D.91917 Pte. EVANS, T. was apprehended by Civil Police in LITTLEHAMPTON at approx 2150 hrs, 2 Aug 43 and at the time of arrest was wearing MILITARY UNIFORM.

H.C. Forbes

H.C. FORBES) Lieut.,
Officer i/c Records,
2 Provost Coy, 2 Can Div.

Field,
6 Aug 43.

Summary of Evidence in the case of No. D9197 Private Evans T. of No 1 Mobile Laundry and Bath Unit.

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st Witness for prosecution

D 166697 Pte Trotter A.M. No 1 Mobile Laundry and Bath Unit having been duly sworn states:

Duty t. No 1. CCRU on the 22 July 43 in charge of a Reinforcements for No 1 Mobile Laundry and Bath Unit We were taken by truck to No 3 C.I.R.U. where the unit was undergoing training. The unit in the mean time had moved. The next day I learned that two prisoners were to accompany us, one under open arrest. C 4728 Pte Stoughton G. & the other under close arrest D 9197 Pte Evans T. The party including two prisoners were taken to the station by a corporal from Records office No 3 C.I.R.U. who presented the travel warrant for the tickets. At the station the corporal handed me the documents for Pte Stoughton & Pte Evans T. and said, "I'll put you in charge of the party to try and keep them together." I did not sign for the prisoners. At Redhill, in the confusion while changing trains Pte Evans T disappeared. I informed the guard that one of the party was missing, but could not hold the train long enough to look for him. I proceeded with the rest of the party to the unit

The accused declines to cross-examine the witness

A.M. Trotter

2nd Witness for prosecution

H 37027 Sgt. Hayes H. No 1 Mobile Laundry and Bath Unit having been duly sworn states:

On Friday the 28 July 43 I was Orderly sergeant and on that day I was informed that there was a party of reinforcements coming to the unit & when the party arrived D 9197 Pte Evans T was absent. I reported same to the Orderly Room at 1600 hours.

The accused declines to cross-examine the witness.

W. A. Lomas Major President

H. Hayes

1st Witness for defense. The accused resumes his defense.

Pte. Stevens.

Certified that Rules of Procedure 11 (c)(d)(e)(f) have been complied with.

Taken down by me in the presence and hearing of the accused this 4th day of August, 1943 — at the Field.

H.L. Bates Lieut
Officer taking summary.

W.A. Kemp Maj.
President

Exhibit 'Y'

No. D91917 Name EVANS T. Sqn., Battery, or Company — Corps R C O C — Date of enlistment 30 Mar 40 — G.C. Badges — Service or Proficiency Pay N/A

M.F.M. 6 (A.F.B. 172) 17336—7-41 (1215-20) H.Q. 1772-50-1652

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 1 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1941			Old sheet destroyed 30 Sep 40.					
Field	14 Jun	Pte.		Sec 15 A.A. a.w.l. 2 hrs 30 mins.	Lt. Sutherland Pte. Vidal	14 days Det	16 Jun 41	Capt J.A. Bennell	
Field	3 Jul	Pte		Sec15(1) A.A. a.w.l. 13 hrs	Cpl Temple	To forfeit 7 days pay under A.A.46	5 Jul 41	Capt. J.A. Bennell Forfts 1 days pay	149(FR&I)
Field	26 Jul	Pte.		A.W.L. failed to report to Sgt. Cobb for duty as ordered	Cpl. Bell Sgt. Cobb	7 days F.P.	26 Jul 41	by A/Orderly Sgt., Cpl. Bell. Capt. J.A. Bennell	

(P.T.O.)

Piece	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	1941								
Field	31 Jul	Pte.		A.W.L. in that he at 0615 hrs. 31 Aug 41 absent from morning roll call until 0950 hrs 31 Aug 41. Absent 4 hrs 35 mins.	Cpl. Bell Sgt.O'Reilly	14 days F.P.	1 Aug 41	Capt. J.A.Bennell	
Field	26 Sep	Pte.		A.W.L. 5 hrs 30 mins. Sec. 15(1) A.A.	Cpl. Gaybba Sgt.Hastings	Stoppage of 2 days pay	26 Sep 41	Capt.J.A.Bennell	
Field	14 Oct	Pte.		Sec 15(1)A.A. a.w.l. from duty in that he at 0030 hrs 15 Oct 41. Absent 9 hrs.	Cpl. Gaybba Sgt. Nelson Sgt. Cobb	8 days F.P.	1530 hrs 14 Oct 41	15 Oct 41	Capt. J.A.Bennell
Field	16 Dec 41	Pte.		Sec.15(1)A.A. a.w.l. 2 hrs. 30 mins.	Sgt. Gaybba Sgt. Cobb	4 days F.P.	17 Dec 41	Forfeits 1 days pay FR&I	Capt. J.A.Bennell
Field	23 Dec	Pte		(1) Sec. 15(1)A.A. a.w.l. from 2359 hrs 23 Dec 41 having been previously warned for regular duty until 0815 hrs 24 Dec 41. Absent 8 hrs 16 mins. (2) Sec. 40 A.A.c.t.t.p. c.g.o.and m.d.in that he at 2359 hrs. 23 Dec 41 became unfit for duty by reason of prev. indulgence in alcoholic stimulants.S/QMS Swinburne Sgt. Hastings, Sgt. Keelan		8 days F.P.	31 Dec 41	Capt. J.A.Bennell.	

M.F.M. 6
(A.F.B. 172)
17134—7-41 (1219-20)
H.Q. 1772-99-1602

No. D91917 Name EVANS T. | Sqn., Battery, or Company | Corps R C O C | Date of enlistment | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2. | Signature G.C. Company, etc.

Place	Date of 1942	Rank	Cause of drunkenness	OFFENCE (1)	(2)	Punishment awarded	Date of award or of order dissolving F.P.	By whom awarded	Remarks
Field	~~14 Jan~~	Pte.		AA15 (1)a.w.l. 6 hrs.;	a.w.l.9 hrs 30 mins	Sgt. ~~Hastings~~ S/QMS Swinburne 14 days F.P.	17 Jan	Capt. J.A.Bennell	
Field	11 Mar	Pte		(1) Sec. 15(1)A.A.a.w.l. 5 hrs.		Sgt. Nelson 8 days F.P.	13 Mar 42		
				(2) Sec. 15(1)A.A.a.w.l. 12 hrs.		Cpl. Allaby Forfts 9 days pay		Capt. J.A.Bennell	
Field	27 Mar	Pte		Sec 15(1)A.A.a.w.l. absent 2 hrs 10 mins.		Sgt.Gaybba	28 days Detn.	30 Mar 24	Lt.-Col 1 Cdn Div. RCOC
Field	28 Mar	Pte		Sec 15(1)A.A.a.w.l. " 1 hrs		S/QMS Swinburne on Sgt. Nelson both Cpl.Allaby charges			
Field	19 May	Pte	(2)	Sec 19A.A. Drunkenness		Cpt. Bennell Fined $5 for S/QMS Swinburne 2nd offence R.R.(Can)402	25 May 42	Capt.J.A.Bennell	

(P.T.O.)

Place	Date of offence 1942	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Appearing with trial	By whom awarded	Remarks
Field	1 Sep	Pte.		Sec.15(1)A.A. a.w.l. absent 15 hrs, 19 mins.	L/Cpl. Haselden Sgt.Gaybba	14 days F.P.	2 Sep 42	Capt. J.A.Bennell	
Field	18 Sep	Pte		Sec 15(1)A.A. a.w.l. absent 1 day 21 hrs 31 mins.	Sgt.Keelan	7 days F.P.	22 Sep 42	Capt.J.A.Bennell	For 2 days pay,FR&I 149(1)(a)
Field	22 Nov	Pte		Sec 15(1)A.A. a.w.l. absent 1 day, 4 hrs	Cpl.Harbison Cpl. Allaby L/C.Noble	Fined 7 days pay	23 Nov 42	Capt J.A.Bennell	Forf. 2 days pay FR&I
1COBD	13 Dec	Pte		Sec 15(1)A.A.a.w.l. 15 hrs 41 mins	Sgt.Truman	3 days pay	15 Dec 42	Capt.R.W.McBride	Forfts 1 days pay FR&I 149(1)(a)
Field	29 Dec	Pte		Sec 15(1)A.A.a.w.l. 4 days 14 hrs. 30 mins.	Cpl.Patterson	Admonished	4 Jan 43	Lt.Col H.M.Bailey	Forfts 5 days pay FR&I 149 (1)(a).

M.F.M. 6
A F B 177
175M.—7-41 (1215-30)
H.Q. 1777-39-1655

No. D91917 Name EVANS T. Sqn., Battery, or Company Corps Date of enlistment G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3. | Signature O.C. Company, etc.

Place	Date of offence 1943	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	10 Jan	Pte.		Sec 15(1)A.A. a.w.l. absent 2 days 18 hrs 56 mins.	Documents L/C Wark	For 6 days pay.A.A.46(2) FR&I149(2)	15 Jan 43	Lt.Col. H.M.Bailey	Forfts 3 days pay FR&I 149 (1)(a)
Bordon	17 Jan	Pte		AASec 15(1)a.w.l. WOAS from 2200 hrs 17 to 1600 hrs 19 Jan 43 (Absent 1 day, 18 hrs.) L/C.Wark Cpl.Baker For 8 days pay.AA 46(2) and FR&I 149(2) Forfeits 2xdays pay FR&I 149(1)(a) Total 10 days pay.			21 Jan	LT.Col.Bailey	
Bordon	21 Jan 43	Pte		AA Sec 15(1)a.w.l.WOAS from 1600 hrs 21 to 1700 hrs 26 Jan 43. Absent 5 days 1 hrs} Sgt. Sass, Pte.Kestner 28 days F.P. Forfeits 28 days pay FR&I 149 Total, 34 days pay.			27 Jan	Lt.Col Bailey	For 6 days pay FR&I 149(1)(a)

(P.T.O.)

Place	Date of Offence 1943	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	30 Jan	Pte.		(1)A.A.Sec 15(1) a.w.l. WOAS from 1000 hrs 30 Jan 43 to 1500 hrs 4 Feb 43. Absent 5 days 5 hrs.(2) A.A.Sec. 10(4) Breaking out of barracks while undergoing F.P.	Sgt. Sass Pte. Kestner Documentary	(1)28 days Detn. Forf 28 days pay FR&I 149(1)(b)	6 Feb 43	Lt.-Col H.M.Bailey Total 34 days pay.	For 6 days Pay FR&I 149(1)(a)
				Released from the Detention Barracks H.Down, Mar 1 1943 Sentence having expired. Remission earned under rules for Detention Barracks and Military Prisons 4 days. Commandants Initials ?					
Bordon	2 Mar	Pte		A.A.Sec 15(1) a.w.l. Guilty.	Documentary	To undergo detention for a period of 90 days Forfts 90 days pay FR&I 149(1)(b) and 10 days pay FR&I 149(1)(c)	20 Mar 43	FGCM Total forfeiture	Forf 8 days pay FR&I 149(1)(a) 100 days pay.
									Released from Detention Barracks Headley Down on May 18 43 Sentence having expired. Remission earned under Rules for Detention Bks = M.Ps. 30 days. ?

M.F.M. 6
(A.F.B. 117)
1938—7-41 (3215-20)
H.Q. 3775-38-1652

No. D91917 Name EVANS T. | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra line | Sheet No. 3. | Signature O.C. Company, etc.

Place	Date of 1943	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	10 Jan	Pte		Sec 15(1)A.A. a.w.l. absent 2 days 18 hrs 56 mins.	Documents L/C Wark	For 6 days pay.A.A.46(2) FR&I149(2)	15 Jan 43	Lt.Col. H.M.Bailey	Forfts 3 days pay FR&I 149 (1)(a)
Bordon	17 Jan	Pte		AASec 15(1)a.w.l. WOAS from 2200 hrs 17 to 1600 hrs 19 Jan 43 (Absent 1 day, 18 hrs.) L/C.Wark Cpl.Baker		For 8 days pay.AA 46(2) and FR&I 149(2)	Rx 21 Jan	Lt.Col.Bailey	
Bordon	21 Jan 43	Pte		Forfeits 2xdays pay FR&I 149(1)(a) Total 10 days pay. AA Sec 15(1)a.w.l.WOAS from 1600 hrs 21 to 1700 hrs 26 Jan 43. Absent 5 days 1 hrs) Sgt. Sass, Pte.Kestner		28 days F.P.	27 Jan	Lt.Col Bailey	For 6 days pay FR&I 149(1)(a)
				Forfeits 28 days pay FR&I 149		Total, 34 days pay.			

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	1943 30 Jan	Pte.		(1)A.A.Sec 15(1) a.w.l. WOAS from 1000 hrs 30 Jan 43 to 1500 hrs 4 Feb 43. Absent 5 days 5 hrs. (2) A.A.Sec. 10(4) Breaking out of barracks whi e undergoing F.P.	Sgt. Sass Pte. Kestner Documentary	(1)28 days Detn. Forf 28 days pay FR&I 149(1)(b)	6 Feb 43	Lt.-Col H.M.Bailey	For 6 days Pay FR&I 149(1)(a) Total 34 days pay.
				Released from the Detention Barracks H.Down, Mar 1 1943 Sentence having expired. Re mission earned under rules for Detention Barracks and Military Prisns. 4 days. Commandants Initials ?					
Bordon	2 Mar	Pte		A.A.Sec 15(1) a.w.l. Guilty.	Documentary	To undergo detention for a period of 90 days Forfts 90 days pay FR&I 149 (1)(b) and 10 days pay FR&I 149(1)(c)	20 Mar 43	FGCM	Forf 8 days pay FR&I 149 (1)(a) Total forfeiture 108 days pay. Released from Detention Barracks Headley Down on May 18 43 Sentence having expired. Remission earned under Rules for Detention Bks & M.Ps. 30 days. ?

M.F.M. 6
A.F.B. 122
(HBM—7-41 (1210-20))
H.Q. 1772-39-1662

No. D91917 Name EVANS T Sqn., Battery, or Company — Corps — Date of enlistment — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 4 — Signature O.C. Company, etc.

Place	Date of offence 1943	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 May	Pte.		A.A.Sec.15(1) WOAS a.w.l. from 0800 hrs. 21 May 43 until 0830 hrs 24 May (Absent 3 days 30 mins.)	Cpl. Campsall		24 May 43.	?	Forf 4 days pay FR&I 149(1)(a)
Field	16 Jun	Pte		A.A.Sec.15(1)WOAS a.w.l.from 2300 hrs 16 to 0850 hrs 21 Jun 43(Absent 4 days,9 hrs and 30 mins.)	Pte. Page and Pte.O'Brien	7 days F.P. 149(2)(c)(ii).	21 Jun 43	T.A.Miller Capt.	
				5 days pay FR&I 149(1)(a);7 days pay FR&I					
Field	1 Jul 43	Pte.		A.A.15(1) WOAS, a.w.l. from 2359 hrs 1 Jul 43 until 1500 hrs 9 Jul 43. Total absence 8 days 15 hrs, 1 min.)	L/C Boorman	28 days F.P.	10 Jul 43	LT.Col. D.Fletcher	
				Forfeits 28 days pay FR&I 149(1)(c); 9 days pay FR&I 149(1)(a).					

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified a true copy of the original record in my custody T.A.Miller, Captain Officer Commanding, No. 1 M.L.& B.Unit, RCOC.					

NO. 1 M. L. & B. UNIT
RCOC
10 AUG 1943
ORDERLY ROOM

M.F.B. 355
40/F de S./673

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D 91917	Private	EVANS. T.	No.1 M.L. & B. Unit, RCOC

1. The following is a fair and true summary of the entries in the Field ~~Service and Current~~ ~~Regimental Conduct~~ sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	ABSENT WITHOUT LEAVE 12	times	A.WL. twenty-four	times
For	Drunkenness nil	times	Drunkenness once	times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct none

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

—

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charge for Nil days in civil custody, and twelve days in military custody, making a total of twelve days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 31 yrs
attestation paper is

6. The date of his commission specified in his record of service is N/A
attestation paper

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 5 months

8. The accused is entitled to reckon service for the purpose of determining his pension, etc. N/A

9. ~~The accused is in possession of or entitled to wear the following air force reward~~ (or is ~~in possession of or entitled to~~) ~~State any air force decoration or reward~~ N/A
military military N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, and in his regiment (or corps), the rank of

N/A dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— N/A Date of promotion.

~~In the rank of~~ years.

In the rank of N/A years.

~~In the rank of~~ years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D 91917 Rank Pte Air Force

Name EVANS, T. of No.1 M.L. 4B Unit, RCOC Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which tried	Sentence of the Court	Punishment Remitted
Field General Court Martial	20 Mar. 43 in field	A.W.L.	90 days detention	30 days remission of sentence earned under Rules for Detention and M.Ps.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this sixteenth day of August 1943 [illegible] Capt.
O.C. No. 1 Mobile Laundry & Bath Unit, R.C.O.C.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked X signed by the president, and annexed to the proceedings.

[illegible] Major President

The accused, D91917, Pte. Evans, T., desires to have an officer assigned by the convening officer to represent him at the trial.

J. A. Miller Capt.
O.C. No. 1 Mobile Laundry
& Bath Unit, R.C.O.C.

LIST OF EXHIBITS in case of D 91917 Pte. Evans, T.

1. Cert. in accordance with R.O. 2797 of 10 Apr. 42
2. Cert. of Apprehension of ABSENTEE
3. Expense voucher - fare

List of Witnesses

H 37027 Cpl. Hayes
D 166697 Pte. Trotter, A.M. } - No.1 M.L. & D. Unit, RCOC

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

I certify that the above Court assembled on the 16 day of Aug. 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. Certificate of President as to the case proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses Judge Advocate.
3. ~~The Interpreter~~
4. ~~The officers under instruction~~

*Omit if not applicable.

were duly sworn.

Signed this 16 day of Aug 1943.

W. A. Lovings.

President of the Court Martial.

G. Jennings Capt. J.A.

C.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. Certificate in case of death sentences.

*See footnote (b) on page 760 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. Confirmation.

~~*I direct that the soldier named in the margin be undergo~~ ~~mitted to prison or detention barracks until further orders.~~ DR

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or having such authority, recommends suspension.

Signed this 16th day of Aug 1943.

W. H. Calling Lt. Col

Confirming Officer.

Promulgated and extracts taken in the case of D.91417 Pte Evans T. J.G. Miller Capt.

(a) (Dated) 18 Aug. 43 (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W1.47333/242 30,000 5/42 A.A.F.W.3.A. Gp.4/10
W1.34606/3259 30,000 7/42

CC-16
PTE EVANS T.

F/5-4-7
D-91917 Pte Evans, Thomas
1 C.O.R.U.

CC-16

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this NINETEENTH day of MARCH, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "F" GROUP, CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[redacted]

* Omit if not applicable.

for the following reasons, namely :—]

Proceedings of a Court Martial held at Canadian Military Headquarters, London, England on the 23rd day of March, 1943.

Notes.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
LT-COLONEL	D.L. REDMAN, V.D.	H.Q., C.B.U.

Members.

Rank.	Name.	Regiment.
CAPTAIN	N.D. KING,	1 C.B.C.M.
CAPTAIN	L.J. IRWIN	C.T.S.
LIEUTENANT	WAITING MEMBER N.P. PENHARDEN,	1 C.B.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Louis Keene
(LOUIS KEENE) Colonel,
Commanding "F" Group, C.B.U.
Convening Officer.

Date 24/4/43
Members present

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-91917 Pte Thomas Evans. I C.O.R.U.	FIRST CHARGE Sec 15 (1) Army Act (See charge sheet attached)	Guilty	Guilty Sentence To undergo Detention for a period of Ninety (90) Days. 20th Mar/43	Confirmed Louis Keene CR.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Louis Keene (Signed) [illegible]
(LOUIS KEENE) Colonel, [illegible] Group, C.R.U.
Commanding *Confirming Officer (e)* *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 20th day of March 1943.

[illegible]
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 .

~~*President of the Court Martial.~~

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what Confirmation. I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ AK

Signed this 22 day of Mar 1943.

Louis Keene CR
Confirming Officer.

Promulgated and extracts taken in the case of D-91917 Pte. EVANS, T.

(*a*) (Dated) 23 Mar 43 (Signed) [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

Section 15(1) Army Act.

The accused, D91917, Private Thomas EVANS, a soldier in the Canadian Army, on Active Service, is charged with:-

ABSENT WITHOUT LEAVE

In that he did, at 2215 hours 2 Mar 43, absent himself without leave, and remain absent until he reported to the Regimental Police at No. 1 Canadian Ordnace Reinforcement Unit, at 1300 hours 10 Mar 43.
Absent - 7 days, 14 hours, 45 mins.

(Harold M. Bailey) Lt. Col.
O.C. No. 1 Cdn Ord Rein Unit.
Cdn Army Overseas.

13 Mar 43.

To be tried by F.G.C.M.

Commanding Officer
Cdn. Reinforcement Unit

NO.1 CANADIAN ORDNANCE REINFORCEMENT UNIT 1CORU/5-2

MEDICAL CERTIFICATE

I certify that..D.91917...Pte. EVANS.....has been examined by me this morning and is fit to undergo trial by Court Martial.

Date. 2nd March 43

.....Capt.....
Medical Officer,
No.1 Cdn. Ordnance Reinf.Unit.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT NEW MARTINIQUE BARRACKS, BORDON, HANTS
ON THE 20TH DAY OF MARCH 1943

The accused..P/9[illegible] PTE EVANS T.....Unit...I.C.R.C.....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President LT. Col. P.L. REPMAN R.D. Unit, H.Q. C.R.C.

Members CAPT. N.P. KING Unit, I.C.R.C.

CAPT. L.I.T. RUSIN Unit, C.T.S.

The officers under instruction are duly sworn:-
CAPT. W.P. MOSHER H.Q.R. DEPOT I.C.R.C.
CAPT. M.I. PRATT Unit,

..... Unit,

Prosecutor CAPT. I.A.T. TAIT Unit, I.C.R.C.

Defending officer MAJOR E.M. MILLS Unit, I.C.R.C.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor ~~is sworn~~ and produces MFB 355 and MFM 6.
The Court complies with R.P. 46(B) AFB 296

Pursuant to R.P. 37 THE ACCUSED:-

(a) makes a statement in mitigation of punishment.
(b) ~~calls witnesses as to character.~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation of punishment by the Defending Officer attached hereto.

[signature]

Pte. Evans. STATEMENT OF DEFENDING OFFICER.

It is respectfully submitted that this charge of 7 days AWL, where the accused returned himself to the unit, should or at least could have been disposed of without Court Martial. I think it probably would but for the reorganization of companies and wings, and new officers, and in any event the Court will not impose any higher punishment than the C.O. would have.

The record of the accused will show that occasionally this man has gone AWL for short periods after pay day, but has always returned himself. When here he is a good worker and soldier. He is not one the "bad" men whom is usually found before Courts Martial. He unfortunately has on occasions come under the influence of liquor, although he never gets objectionable or in trouble, other than staying away. He has managed to go long periods without a lapse, and he asks me to say that he realizes the folly of liquor, and when he serves his sentence, he will endeavour that there will be no further lapses. If I may suggest, the ends of justice will be well met by a short sentence, taking into consideration the automatic forfeitures which he will suffer, and that he has been in the guard room under close arrest for ten days.

LIST OF WITNESSES

For the Prosecution: (1) D117005 Cpl. Wellstood, R.C.
No. 1 C.O.R.U.

(2) U1776 Sgt. Singer, H.D.
No. 1 C.O.R.U.

(3) L13268 Cpl. Reid, T.H.A.
No. 1 C.O.R.U.

For the Defence: NIL

Bordon, Hants.,
13 Mar 43.

(Harold M. Bailey) Lt.-Col.,
Commanding Officer,
No. 1 Can. Ordnance Reinf. Unit

Martinique Barracks,
Bordon,
12 March 1943.

Summary of Evidence in the case of D - 91917 Pte. EVANS T. of No. 1 Can. Ord. Reinf. Unit: a soldier of the Canadian Army Overseas, by direction of Lieut. Colonel Harold M. Bailey, M.B.E., V.D. officer commanding No. 1 Canadian Ordnance Reinforcing Unit, R.C.O.C.
The summary of evidence is taken on oath.

First Witness for the prosecution
D - 117005 Cpl. WELLSTOOD, R.C. after being duly sworn, states, "I called the roll at Tattoo at 2215 hours on March 2nd and the accused was not present. I reported the absence of the accused to the Company Orderly Room of No. 1 Company, to which the accused belongs

(Signed) D-117005 Cpl.Wellstood

The accused declines to cross examine the witness.

Second Witness for the prosecution
U - 1776 Sgt. SINGER H.D. of No. 1 C.O.R.U. after being duly sworn, states, "On the 10th March 43 the Regt'l Police informed me that Pte. EVANS, had reported to the guard room, at 1300 hours on the 10 March 1943 from A.W.L. Accordingly, I made up Charge Sheet's (M.F.H. 248) charging the accused with being A.W.L. under Sec. 15 para (1) of the A.A.

(Signed) U-1776 Harry D.Singer Sgt.

The accused declines to cross examine the witness.

Third Witness for the prosecution.
L - 13288 Cpl. REID, T.H.A. of No. 1 C.O.R.U. after being duly sworn, states, "Pte. EVANS reported to me voluntarily at the Guard Room of No. 1 C.O.R.U., at 1300 hours, on 10th March 1943, stating that he was A.W.L. He was properly dressed and sober when he reported to me. I reported the circumstance to No. 1 Coy. to which the accused belongs, and placed the accused under close arrest.

(Signed) L-13288 Cpl. T.H.A. Reid

The accused declines to cross examine the witness.

The accused was cautioned as follows:- "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused does not wish to make a statement.

I certify that the foregoing "Summary of Evidence" was taken down by me in the presence and hearing of the accused and that rules of procedure 4, (c) (d) (e) (f) and (g) have been complied with.

(Signed) H.Hamer Major,
No. 1 C.O.R.U.
R.C.O.C.

Martinique Barracks,
Bordon, Hants,
12 March 43.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-91917	Pte.	Evans Thomas	1. C.O.R.U. R.C.O.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheets mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permissible being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.W.L.	13 times	22 times
For Drunkenness 23 Dec 41	1 times	23 Dec 41 times
For Drunkenness	times	19 May 42 2 times
For Breaking out of detention	times	1 times
For	times	times

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ ——— beginning on the ——— day of ———

4. The accused has been in confinement awaiting trial on the present charges, for ~~Nil~~ 2nd days in civil custody, and Three 10 days in military custody, making a total of 10. Three days of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 30 years born 21/11/12

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 30/3/40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Two years and eleven months

8. The accused is entitled to deferred pay or gratuity in respect of two years and eleven months

9. The accused is entitled to reckon 2 yrs & 11 months service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). Nil

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated ———

and in his regiment (*or corps or department*) the rank of ——— dated ———

(*70148) W1.X21848/1662 75,000 12/40 S.S.R.W. Ltd. Gp.698.
(17665) W1.X8620/1662 10,000 4/41 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. Rank Name of Regiment (or as the case may be).

(*INSTRUCTION*—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be entered*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of March '43

A/A Clerk Cl 5

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date;

In the rank of , Date of Promotion

In the rank of years,

In the rank of years

(*Insert rank*—*If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck out, except that in the case of a N.C.O. by R.S.M. proved completion of the qualification may be certified from unit records or are available*)

Strike, except that in the case of a N.C.O. by R.S.M. proved completion of the qualification may be certified from unit records or are available and the paragraphs numbered consecutively.)

Total years.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	10 Jan 43	Pte		Sec 15 (1) A.A. A.W.L. Absent 2 days 18 hrs 56 mins	L/Cpl Wark Documentary	Forf 6 days pay AA 46(2) FR&I 149(2)	15 Jan 43	Lt-Col H.M.Bailey	Forf 3 days pay FR&I 149(1)a.
Bordon	21 Jan 43	Pte		A.A.Sec 15(1) AWL:WOAS from 1600 hrs 21 Jan 43 to 1700 hrs 26 Jan 43 (Absent 5 days 1 hr)	Sgt Sass Pte Kestner	28 days F.P. Forf 28 days pay FR&I 149 (1) b	27 Jan 43	Lt-Col H.M.Bailey	Forf 6 days pay FR&I 149(1)A. Total 34 days pay
Bordon	17 Jan	pte		AA Sec 15(1) AWL - WOAS from 2200 hrs 17 Jan 43 to 1600 hrs 19 Jan 43 (Absent 1 day 18 hrs)	L/C Wark Cpl Baker	Forf 8 days pay AA 46(2) FR&I 149(2)	21 Jan 43	Lt-Col H.M.Bailey	Forf 2 days pay FR&I 149(1)A Total 10 Days pay
Bordon	30 Jan 43	Pte		(1) AA Sec 15(1) AWL/WOAS from 1000 hrs 30 Jan 43 to 1500 hrs 4 Feb 43 (Absent 5 days 5 hrs) (2) AA Sec 10(4) Breaking out of Barracks while undergoing F.P.	Sgt Sass Pte Kestner Documentary	28 Days Detn. Forf 28 days pay FR&I 149 (1)b.	6 Feb 43	Lt-Col H.M.Bailey	Forf 6 days pay FR&I 149(1)A. Total 34 days pay

CERTIFIED TRUE COPY OF ORGINAL IN MY CUSTODY 13 Mar 43. [illegible] Capt[illegible] O.C. No. 1 Coy., [illegible] No. 1 CEK. ORDN. Reinf. Unit

M.F.M. 6
A.F.B. 179
17151—7-41 (1210-20)
H.Q. 1772-20-1652

D 91917 No. Name EVANS, T. Sqn., Battery, or Company 2nd Corps R.C.O.C. Date of enlistment 30 Mar 40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet No. and date of last drunk 19 May 42 Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	16Sep 42	Pte		Sec 15(1) A.A. A.W.L. Absent 1 day 21 hrs 31 mins	Sgt Keelan Cpl Harbison	7 days F.P.	22 Sep 42	Capt J.A. Bennell	Forf 2 days pay FR&I 149 (1) A.
Field	22Nov 42	Pte		Sec 15(1) A.A. A.W.L. Absent 1 day 4 hrs	Cpl Allaby L/C Noble	Fined 7 days pay	23 Nov 42	Capt J.A. Bennell	Forf 2 days pay FR&I
1 CBOD	13 Dec 42	Pte		Sec 15 (1) A.A. A.W.L. Absent 15 hrs 41 mins	Sgt Truman	3 days pay FR&I 149(2)	15 Dec 42	Capt R.W. McBride	Forf 1 days pay FR&I 149 (1) A.
Field	29Dec 42	Pte		Sec 15(1) A.A. A.W.L. 4 days 14 hrs 30 mins	Cpl Patterson	admonished	4 Jan 43	Lt-Col H.M.Bailey	Forf 5 days pay FR&I 149 (1) A.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Mar 42	Pte		(1) Sec 15 (1) A.A. - A.W.L. Absent 5 hrs	Sgt Nelson	8 days F.P.	13 Mar 42	Capt J.A. Bennell	
Field	27 Mar 42	Pte		Sec 15 (1) A.A. A.WL. Absent 2 hrs 10 mins.	Sgt Gaybba SQMS Swinburne	28 days detention on both charges	30 Mar 43	Lt-Col 1st Cdn. Div RCOC	
Field	28 Mar 42	Pte		Sec 15(1) A.A. A.W.L. Absent 1 hr.	Sgt Nelson SQMS Swinburne Cpl Allaby				
Field	19 May 42	Pte	2nd	Sec. 19 A.A. "Drunkenness"	Capt Bennell SQMS Swinburne	Fined £5.00 ofr 2nd offence K.R.Can Para 492	25 May 42	Capt J.A. Bennell	
Field	1 Sep 42	Pte		Sec 15 (1) A.A. A.W.L. Absent 15 hrs 19 mins	L/Cpl Haselden Sgt Gaybba	14 days F.P.	2 Sep 42	Capt J.A. Bennell	

No. D-9191 Name EVANS T. Sqn., Battery, or Company — Corps R.C.C.C. Date of enlistment 30 Mar 40 C.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Dec 41	Pte		(1) Sec 15 (1) A.A. A.W.L. from 2359 hrs 23 Dec 41 having been previously warned for regular duty, until 0815 hrs 24 Dec 41. Absent 8 hrs 16 mins	SQMS Swinburne	6 days Field Punishment	31 Dec 41	Capt J.A. Bennell	
				(2) Sec 40 A.A.	SQMS Swinburne	Admonished	31 Dec 41	Capt J.A. Bennell	
			1st	Conduct to the prejudice - in that he at 2359 hrs 23 Dec 41 became unfit for duty by reason of previous indulgence in Alcholic stimulants.	Sgt Hastings Sgt Keelen				
Field	14 Jan 42	Pte		(1) Sec 15 (1) A.A. A.W.L. 6 hrs 30 mins (2) Sec 15(1) A.A. A.W.L. 9 hrs 30 mins	Sgt Hastings SQMS Swinburne	14 days F.P.	17 Jan 42	Capt J.A. Bennell	

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Jul 41	Pte.		A.W.L. in that he at 0615 hrs. 31 Aug 41 absent from morning roll call until 0950 hrs 31 Aug 41. Absent 4 hrs 35 min.	Cpl. Bell Sgt. O'Reilly	14 days No 1 Fld Punishment	1 Aug 41	Capt J.A. Bennell	
Field	26 Sep 41	Pte		A.W.L. 5 hrs 30 min. Sec 15(1) A.A.	Cpl. Gaybba Sgt Hastings	Stoppage of 2 days pay	26 Sept 41	Capt J.A. Bennell	
Field	14 Oct 41	Pte		Sec 15 (1) A.A. A.W.L. from duty in that he at 1530 hrs 14 Oct 41 absented himself until 0030 hrs 15 Oct 41 Absent 9 hrs.	Cpl Gaybba Sgt Nelson Sgt Cobb	2 days Field Punishment	15 Oct 41	Capt J.A. Bennell	
Field	16 Dec 41	Pte		Sec 15 (1) A.A. A.W.L. 2 hrs 30 mins	Sgt Gaybba Sgt Cobb	4 days Field punishment	17 Dec 41	Capt J.A. Bennell	Forf 4 days pay under F.A.I

D-91917

No. Name EVANS T. Sqn., Battery, or Company Corps R.C.O.C. Date of enlistment #) Mar 40 R.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41—(2515-30) H.Q. 1772-25-1653

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed 30 Sept 40					
Field	14 Jun 41			Sec. 15 (1) A.A. A.W.L. 2 hrs 30 min.	Lt.Sutherland Pte.Vidal	14 days detention	16 Jun 41	Capt.J.A. Bennell	
Field	3 Jul 41	Pte		Sec. 15 (1) A.A. A.W.L. 13 hrs.	Cpl.Temple	forfeit 7 days pay under A.A.SEC. 46	5 July 41	Capt J.A.	Forfs. 1 day pay under Art.149 FR&I
Field	26 Jul 41	Pte		A.W.L, failed t o report to Sgt Cobb for duty as order by A-Orderly Sgt. Cpl. Bell.	Cpl. Bell Sgt. Cobb	7 days No. 1 Fld.Punishment	26 Jul 41	Capt. J.A. Bennell	

(F.T.O.)

БК-6 б.

Корн. Сивцев, 5.Е.

RECORDED AT CMHQ IN AB 150 + SK-63

RECEIVED 7 JUN 1945 by CMHQ

FIELD GENERAL COURT-MARTIAL

Convened by Brig E.H. Blaxfair Commanding DDMS 2 Cdn Corps dated 14 May 45.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183. fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M60910		TUDOR ELDERFIELD	EVANS	2 CH Con Armd Ord Sub Dpt RCOC

PROCEEDINGS RECEIVED

REVIEWING OFFICER, JAG BRANCH, CMHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 16 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 321 47-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the OCdo.~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ALMARD HELLEMAND as interpreter? Ans MR JACQUES WILLEM LEUS DUTCH TO ENGLISH NO

The Interpreter is sworn.(1) Do you object to A/Sgt Sgt HILDENBRAND as shorthand writer? Ans NO
F.C.A. FROM GT. MAG. B.D.
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT. COL	J.W.G. THOMPSON MM. E.D.	RCA PERMANENT OFF 1ST MARINE BDE
Member	MAJ.	M.L. TROY E.D	CIC ARMAMENTS OFF 1ST MARINE BDE
Member	CAPT.	K.F. CARLIN	CAC PERMANENT OFF 1ST MARINE BDE
~~Judge Advocate~~			
Prosecutor	LT.	H.T. FINDLAY	RCOC 2CdnCorps Sig Pl
Defending Offr	LT.	B.A. BECKWORTH	RCOC 4 Cdn Armd Bde

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment where RP 89 (2) and fn 2 were not followed. See D1 p 3.)

A8. ~~The accused~~ (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references on fns to this RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. ~~The Court is closed and considers the Notes on Procedure after Arraignment at top of p 6.~~ The proceedings are continued on Record Form 3

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M60910 CPL. TUDOR ELDERFIELD EVANS.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA SEC 41.	NOT GUILTY	GUILTY	EXCEPT ~~THERE IS NO EVIDENCE TO SUPPORT~~ THE THEFT OF MONEY AMT TO NF 98 GUILDERS.
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of days, of which days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
TO BE REDUCED TO THE RANKS AND TO UNDERGO DETENTION FOR A PERIOD OF ONE HUNDRED AND TWENTY (120) DAYS.

(Sgd) Judge-Advocate, if any. 16 May 45 Date awarded. (Sgd) President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 746.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn b 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn f.)

My decision on the finding(s) and sentence set forth in Part I is:
I confirm the findings and sentence of the Court.

~~I direct that the accused be released from custody (prison or detention barracks) and further ordered~~
(1. AA 57A. Delete if not used.)

(Sgd) E.H. Blaxfair Brig
Date 24 May 45 Commanding DDMS 2 Cdn Corps.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
M 60910 EVANS T E	26 May 1945	DDS

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-7a, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete wrong or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea of Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of* [illegible] *paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is allowed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans NO
Do you intend to call witnesses on your behalf ?
Ans YES . Are they witnesses as to character only ? Ans NO .
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces ~~the finding(s), if any, of Not Guilty, and states~~ to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed (2).~~
(1. *AA 54(3) (4), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans YES.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to [a] soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 255 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES .(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the SA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 48(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insirs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, M 60910 CPL. TUDOR ELDERFIELD EVANS, 204 Cdn Armd Ord Sub Park RCOC, a soldier of the Canadian Army Overseas is charged with

First Charge
AA 41

When on Active Service committing a civil offence, that is to say, Stealing,
In that he, at Almelo, Holland, between 2000 hrs and 2130 hours 26th April 1945 stole three (3) white raincoats, one (1) pair of trousers, one (1) tailcoat and the sum of forty seven gulders ninety eight cents, the property of Johannes Pezie.

O S Findlater
.....
(A S FINDLATER) - MAJOR
O.C. 204 CDN ARMD ORD SUB PARK RCOC.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
14 May 45

C H Clapham Brig
(C.H. CLAPHAM) Brigadier
DDOS 2 Cdn Corps

I have this day examined ,No. M60910 Rank. Cpl.

Name. EVANS. T.E. and find him fit to undergo trial.

16 May 45 Aldershot Capt.

6 Cdn. C.C.S. R.C.A.M.C.

I have this day examined ,No. M.609.10.....Rank..Cpl.....

Name.EVANS..TE. and find him fit to undergo trial.

16 May 45

.....
6 Cdn. C.C.S. R.C.A.M.C.

FIELD GENERAL COURT-MARTIAL

CFA95 (Ex Sec of AFAB) 40/CFAB/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.60910	Cpl		Tudor Elderfield	EVANS	204 Cdn Armd Ord Sub Pk RCOC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 May 65 endorsed by me, (or by ~~the~~ an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	J.M.G.Thompson MC ED	HQA Permanent Cdn Court Martial Bd

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	M. A. TROY ED	CIC Personnel Cdn Court Martial Bd
Capt	P. A. Caron	2nd Personnel Cdn Court Martial Bd

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

C.H. Dauphinee Brig (Signed personally. RP 105 fn 2.) (C.H. Dauphinee) Commander (Rank.)

Date 14 May 65

Commanding H.Q. 1 Can Inf Bde Gp 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use at trial.)

A4 The defending officer has no objection to the wording of the medical certificate which did not show, "fit to undergo trial by FGCM".

D3 First witness for the prosecution, Mr. Johannes Pezie, merchant of Almelo Holland, sworn states:

Q1 On Thursday, April 26th at about 2040 hours, what happened in your shop?
A1 At that time I heard noises downstairs in my shop at 83A Groote St, Almelo Holland.

Q2 Is that also, 1 Market Place?
A2 That is the number of the house in which I live.

Q3 Are they connected?
A3 Yes.

Q4 Tell us the whole story of what happened after the noises?
A4 When I heard the noises I went downstairs and saw nothing. I went through the shop, looked everywhere, and the only thing I saw was the cash register forced and the money had been taken away. After that I left the shop at the back to see if there was anyone there and saw nobody. As a result of information received I understood that there had been two military men in my shop. After a quarter of an hour I went again to the back of my house to speak to the neighbor. When I was talking to the neighbor after about a quarter of an hour two military men came to my house. These military men passed me, went into the corridor and into my shop. I followed them and closed the door by a key in my pocket and went upstairs to telephone and warn the town police in Almelo. The police arrived at the front where I was waiting for them. After having left my house through the private entrance the police went with me into the shop through the front door and the only thing I could do that moment was to follow the military men who had left the shop. The military men had left the shop through the office door. The police followed them when they were escaping via the Market Square in the direction of the Hagengracht. They went to the right into a blind alley and could not get away from there. At the report of the gun of the detective the Military Police arrived. When they had caught the military men they brought them to the back of the shop. After that a list was made of what I was missing. To see how much money was missing I had to make up the cash.

Q5 Will you explain the back door entrance to your shop?
A5 There is a private entrance via the storehouse into the shop at the backside and ~~there~~ is also a possibility to come directly inside and into the office, by another door.

Q6 What doors are there to the house?
A6 My own family uses the first entrance through the storehouse and upstairs.

Q7 Is that the same entrance mentioned before?
A7 Yes, sir.

Q8 Did you see anyone in the shop the first time you went down?
A8 No, sir.

Q9 Did you see anybody when you went into the shop with the police?
A9 I saw two persons going ~~away~~ through the office. After that I was not able to see them, because they had turned to the left. They had white coats on.

.....Page 2 follows

Q10 When did you next see these people?
A10 When they left the garden via the gate.

Q11 Did you follow them after they left the garden.
A11 Yes, to the Market Square.

Q12 Did you follow them up the blind alley?
A12 No, sir.

Q13 Can you recognize these men, if you saw them again?
A13 Yes, I think so.

Q14 Were these men brought back to the shop?
A14 Yes they were, by the Military Police.

Q15 How do you know they were the same men?
A15 They were the same men who passed me and entered my shop when I was talking to my neighbor.

Q16 Can you recognize anyone in this room, who passed you going into the shop?
A16 No, he is not present.

Q17 When you got back to your shop, after these men were caught was there anything missing.
A17 Not yet, because I had not yet looked into the matter. There was many clothes on the ~~ground~~ floor of the shop. STOCK.

Q18 Later on was there anything found to be missing?
A18 Yes, but I could not state exactly, because during the German occupation we made no lists of our ~~clothes~~ STOCK.

Q19 Was there anything brought back to the store after the men were caught?
A19 The Military Police brought back the articles I brought here today.

Q20 Did you see the soldiers with them?
A20 The only thing I can say was that they had rain-coats on.

Q21 Do you recognize this tail-coat?
A21 Yes I do. I recognize it because of the name of the firm is on it and it is my private property. (#1)

Q22 Do you recognize these striped trousers?
A22 Yes, they are my own trousers, part of the same suit. (#2)

Q23 What is the price of this suit?
A23 75 guilders.

Q24 Do you recognize this rain-coat?
A24 Yes, by the writing on the price label. (#3)

Q25 Do you recognize this white ladies rain-coat?
A25 Yes. This is a sample coat, and the collar is dirty from so many people tring it on. (#4)

Q26 Is that the only one you have?
A26 There is another one of a larger size.

Q27 Do you recognize this mans rain-coat?
A27 Yes. This also is a sample coat and I recognize it by the lining. (#5)

Q28 Is there anything special in the lining that you recognize?
A28 Yes, it is the only half-back coat in my shop. I have worked with these coats for 3 years.

Q29 Is there anyone else in town handling similar styled coats?
A29 I am not quite sure.

.....Page 3 follows.

Q30 How do you know these coats were the ones brought in by the Civilian detective?
A30 Because I put them in a corner together on the advice of the Military Police.

Q31 Where have they been since then?
A31 In a far corner in my shop, I brought them myself this morning.

Q32 What is the value of the 3 rain-coats?
A32 The first rain coat - 37 guilders 50 cents, the ladies coat - 22 guilders 50 cents and the third one 57 guilders 50 cents. These are the selling prices of the coats.

The witness is cross-examined by the defencing officer.

Q33 On your first visit to the shop whom did you see?
A33 I saw no one.

Q34 All you saw was the till open?
A34 Yes, it was open and on a strange number.

Q35 You did not see anyone at all?
A35 No.

Q36 You went out through the store into the Market Place, spoke to the neighbor, back into the store and upstairs. Why did you lock the store?
A36 The same reason I had left it open before.

Q37 Why did you not call the police right away?
A37 I talked it over with my wife and I just wanted to hear what my next door neighbor said. The door is only closed at night.

Q38 You heard noises in the shop?
A38 Yes.

Q39 How did you get out into the street the second time?
A39 After I had telephones the police I went outside to wait for them.

Q40 Where were you before you telephones the police?
A40 Nowhere, I followed them through the corridor when they went in.

Q41 You locked the door from the inside?
A41 Yes

Q42 How did you get into your shop?
A42 I could come through the corridor and upstairs.

Q43 Did you see anyone in the shop?
A43 No sir.

Q44 You cannot identify anyone this afternoon who was in the shop?
A44 I cannot identify anyone present in the court-room as being one of the soldiers.

Q45 Are there any other articles missing?
A45 I cannot say for certain.

The court examines the witness.

Q46 How much money was missing from the till?
A46 47 guilders and 98 cents.

Q47 Who had access to the till?
A47 No one. At 7 o'clock I made up the cash and removed the big money.

.....Page 4 follows

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A47 No one. At 7 o'clock I made up the cash and removed the big money.

.....Page 4 follows

Q48 Was the amount you mentioned the balance left in the till?
A48 Yes, it was.

Q49 You have been asked whether you recognize anyone whom you saw in the shop at the time the police arrived. Do you recognize anyone in this court-room?
A49 No, not with a certainty.

Q50 In the place where the till is, is the door always left open.
A50 No.

Q51 Was the door forced or left open.
A51 Open, because the door was left open.

R.P. 83(c) complied with.

(#1) - A black morning coat, bearing a label from a merchant, Jan Pezie, Almelo and bearing the name of the person for whom this coat was tailored and that is Jan Pezie. This article is produced, accepted, marked and initialed as Exhibit "A".

(#2) - One pair of striped morning trousers, used. One black vest. This article is produced, accepted, marked and initialed as Exhibit "B".

(#3) - One mens light coloured trench coat bearing the stock tag showing the numbers of 57.50, size 46 - 35 coupons and a stock article number not distinguishable. This article is produced, accepted, marked and initialed as Exhibit "C".

(#4) - A ladies light weight, light coloured rain coat, slightly soiled. This articles is produced, accepted, marked and initialed as Exhibit "D".

(#5) - One child's size rain coat with belt, quarter cut pockets, bearing the firms name Jan Pezie. This article is produced, accepted, marked and initialed as Exhibit "E".

Second witness for the prosecution, Jan Nicolaas STUNNENBERG, of Almelo, police detective in Almelo, sworn states:

Q1 Relate to the court all the happenings on the night of 26 Apr 45.
A1 I received a telephone call that there two thieves in Pezie's shop. I went there with a uniformed policemen Teunig van der Veer. When we arrived at the shop of Pezie's, he was outside in the front of the shop. We entered the shop by the front side. When we came into the shop we heard sounds in the backside. We went that way and came via the shop to a yard in which a bike was standing at the back of the house. From there we passed the back of another house standing at the front of the Market Square. We passed through the garden and in the garden of that house we saw two men running with white rain-coats and clothes under their arms. The black one had clothes under his arm. I ran after them and when I was running I fetched out my pistol. The persons ran on the Market Square in the direction of the Hagengracht, and as I could not see they were military men I shot two times. After that the two persons ran into the blind alley beside the Steamship Coy and after that into the garden at the back of Van Neerd bakery and there they could not get away and they took off the white coats. Then I noticed they were military men. The Military Police arrived at the report of my gun.

.....Page 5 follows.

Q2 Where are you employed?
A2 The town police of Almelo as a policeman detective.

Q3 How far away from the shop are you?
A3 About 50 metres.

Q4 How long after the telephone call from Pezie did you arrive at his shop?
A4 5 minutes at the most.

Q5 How many peopls left by the back way when you came in?
A5 I did not notice anyone else but the two men who ran through the garden.

Q6 Did you see them take these two coats off?
A6 Yes, I certainly saw that because I was standing at the back in the garden of Weerd's bakery.

Q7 Were you able to see who these men were? Can you identify them.
A7 I have not seen them for a very long time, so it will be difficult for me.

Q8 Can you identify anyone in the court-room here, that was there on the 26th?
A8 No, he is not present.

Q9 What happened to these garments?
A9 The two coats they had on and the clothing they had over their arms, I took to Pezie's shop.

Q10 Can you identify these garments?
A10 There were 3 white coats and a dress coat.

Q11 Can you identify this article marked Exhibit "A"?
A11 It is a similar coat.

Q12 Can you identify this article marked Exhibit "B"?
A12 It is a similar pair of trousers.

Q13 Can you identify this article marked Exhibit "C"?
A13 It is also similar.

Q14 Can you identify this article marked Exhibit "D"?
A14 It is also similar.

Q15 Can you identify this article marked Exhibit "E"?
A15 It is also similar.

Q16 Was it light at the time you caught these men?
A16 Yes.

Q17 You say they were soldiers. What nationality?
A17 I did not know there were any other soldiers here, but Canadians.

Q18 Do you know the difference between a Canadian and British soldier?
A18 Yes, they wear on their arms a red, blue and red patch.

The witness is cross-examined by the defending officer.

Q19 At what time did you arrive at the shop?
A19 About 2100 hours.

Q20 When you went up the lane at back of the bakery, where were the items of clothing.
A20 One fellow had thrown the dress coat over the wall and the others were laying around. Then the Military Police were present.

.....Page 6 follows.

Q21 Are these all the garments that were present?
A21 Yes sir, the Military Police also found two wind-breakers and put them in his coat.

Q22 The only garments you found were these?
A22 Yes.

The court examines the witness.

Q23 How far is from Mr. Pezie's shop in the Market Square to where the soldiers were apprehended by you?
A23 60 to 70 metres.

Q24 How close were they to the shop when you first saw them?
A24 15 to 20 metres.

Q25 Were they in your sight from that time on or did you lose sight of them?
A25 No, they were in sight of me.

Q26 The Exhibits referred to in your evidence. Who were they given to?
A26 To Pezie at his shop.

Q27 Were the men you ran after wearing any head-dress?
A27 No, bare-headed, that is why I could not see they were military men.

Q28 Who was the black one referred to in your previous evidence?
A28 The small dark man.

Third witness for the prosecution, G 42594 L/Cpl GALBRAITH, W.S. E Sec No. 7 Provost Coy, Canadian Provost Coy, sworn states:

At approximately 2240 hours I was on duty in Almelo. I was walking down the street and I heard a shot fired and I saw the civilian police running up the street and a plain clothes man whom I later identified as a civilian detective. I went to their assistance at 15 Market Place Almelo. and found him to be M 60910 Cpl. EVANS, T.E. whom I now recognize as the accused.

Q1 Did you appear at the scene before or after the civilian police had apprehended these people.
A1 They were there before me.

Q2 Who actually was there?
A2 The accused and S/Sgt Scott and a civilian and a civilian policeman and a Dutch policeman.

Q3 What did you do?
A3 I examined the accuseds' pay-book and found everything to be in good order and in the presence of the accused was informed by the police that they had broken into Pezie's store.

Q4 Did they say when it was?
A4 No. When I returned to the store they said there had been two soldiers there previously. When I entered the alley the accused had something under his tunic and he said he had some liquor. He said he had nothing else and upon investigation I found he had two civilian jackets. I took them to the store afterwards and I found that Mr. Pezie said they had been taken from the store. I asked him how he could identify them and he told me, because there was only one Coy that puts these labels on. Our conversation took place in the presence of the accused.

.....Page 7 follows.

Q5 What happened to these jackets?
A5 I have them in my possession. I produce them as an Exhibit. (#6)(#7)

Q6 Can you say whose jackets these are?
A6 No, but from what I saw in the store, there were similar ones in Pezie's store.

The witness is cross-examines by the defence.

Q7 What time did you hear these shots?
A7 Approximately 2040 hours.

Q8 As soon as you heard the shots you followed the police up the alley. How far were you behind?
A8 About 50 feet.

Q9 How long before you arrived with them?
A9 40 to 50 seconds.

Q10 Was there any clothing on the ground?
A10 No, sir.

Q11 When you found the clothing, where was it?
A11 On the other side of the fence which was about 5 or 6 feet high.

Q12 When you went back to the shop was Pezie there?
A12 Yes.

Q13 Did you search the accused?
A13 Yes sir.

Q14 Where did you search him?
A14 At his headquarters, where I took the jackets away from him.

Q15 When did you first see the jackets?
A15 In the alley.

The witness is re-examined by the prosecution.

Q16 When you left the store were you with the accused and where did you go?
A16 I was with the accused and went to his headquarters.

Q17 Was the accused out of your sight after you left the store?
A17 No, sir.

The court examines the witness.

Q18 What was the accuseds' condition?
A18 He seemed quite normal.

Q19 Was he sober, drunk or what?
A19 I smelled liquor but I could not say he was drunk.

Q20 Apart from that, did he appear to understand what he was doing.
A20 Yes sir, he followed my instructions of his own free will.

Q21 Did you confiscate anything else?
A21 He had some liquor, a quart bottle.

Q22 How much was in it?
A22 About a third full. It was a drink commonly used by women.

Q23 What was the name of the liquor?
A23 MAPERO ANIZE QUALITY SUBINE and a label with 3 stars on it.

.....Page 8 follows.

Q24 Do you recall what type of garments there were there, when the accused was apprehended?
A24 The two I took from him, and the bottle of liquor.

Q25 What did the civilian police take?
A25 They took some clothes from the other side of the fence.

Q26 The civilian police said that there was some clothes on this side of the fence. What do you know about that?
A26 I saw nothing and the police jumped over the fence and threw it over.

Q27 How much money did you take from the accused?
A27 62 guilders.

R.P. 83 (c) complied with.

(#6) - One light coloured, light weight zipper front with two zippered breast pockets, wind-breaker. This article is produced, accepted, marked and initialed as Exhibit "P".

(#7) - One tan coloured light weight zipper front, two zipper breast pockets wind-breaker. This article is produced, accepted, marked and initialed as Exhibit "Q".

D6 First witness for the defence, C-98442 A/Cpl FITZPATRICK, J.A. 204 Cdn Armd Ord Sub Park, sworn states:

Q1 Where were you at approximately 2230 hours on the 26th April?
A1 In my quarters.

Q2 Did the accused enter your quarters?
A2 Yes, sir.

Q3 In what condition would you claim the accused was in?
A3 In my opinion the accused was drunk.

Q4 You have seen the accused when we has been drunk before?
A4 Yes, sir, I have.

Q5 In your opinion he was drunk?
A5 Yes sir.

The prosecution declines to cross-examine.

The witness is examined by the Court.

Q6 How long have you known the accused?
A6 About four months.

Q7 Have you been working with him?
A7 Yes, sir.

Q8 Who was with him when he entered your quarters?
A8 He was alone.

Q9 Was he carrying anything to drink on his person?
A9 No, sir.

Q10 Had you seen him earlier in the evening?
A10 I saw the accused and S/Sgt Scott leaving camp at betweee 1730 and 1800 hours.

Q11 The accused was sober at that time?
A11 Yes, sir.

.....Page 9 follows.

Q12 Was that the last you saw of the accused until 2230 hours?
A12 Yes, sir.

Q13 You do not know what he was doing in the meantime?
A13 No, sir.

Q14 What light is there in your quarters?
A14 Electric lighting.

Q15 What were you doing?
A15 Getting ready to go to bed.

Q16 What did the accused do when he entered the room?
A16 He was talking incoherently and staggering and I could not make out what he was talking about.

Q17 Did you have any direct conversation with him?
A17 No.

Q18 Did he go to bed shortly after coming in?
A18 He was in for about 10 or 15 minutes and then was taken to the guard room.

Q19 Did he walk out all right?
A19 He was staggering when he went out.

Q20 Is there anything else about his condition that you can tell us.
A20 No, sir.

R.P. 83(c) complied with.

Summing up by the defence.

The first witness, the shop-keeper could not identify the accused as being one of the men in his shop. He also claims the shop door was left open which I think leaves the possibility that anyone could have entered the shop. Also no positive identification can be made of the number of items of clothing missing. The accused was is possession of two civilian garments - wind-breakers. There has been no mention of these in the list of articles stolen. The shop-keeper has not identified these articles as his and he could not make a positive identification of the other items found. His hazy ideas of the time make it impossible to take any of his evidence seriously. Even the policeman could not identify the accused and there is also a difference in time between in the police and Pezie's evidence. It is not possible to suppose these two men entered the shop and took the money and then left and returned later for the garments. If they had gone in there in the first place, it is not likely they would have gone back for the second time. One witness claims the accused was drunk. He was celebrating his early return to Canada. It is quite possible he was. I think it is very evident that the evidence given by these witnesses leaves reasonable doubt as to there accuracy.

Summing up by the prosecution.

I would like to submit that there is a possibility of doubt insofar as identification of the accused by the civilian witnesses, both detective and the store-keeper, but whether or not he was in the store, which is up to the court to decide, he was actually found outside with the garments, therefore leaves himself open as an accomplice to the fact. As he was found with the goods with another soldier at the same time and place, whether or not he was waiting outside for a third person to turn up is hardly a question. He was shown in evidence as having consumed some liquor. He was identified by the Canadian Military Police and there

.....Page 10 follows.

rests no doubt as to the fact that he was a man present at that time. Therefore the decision rests with the court as to what connection he had with the crime.

E1 The defence counsel submits to the court a statment of character of the accused from the Adjutant of his Unit. The Adjutant being unable to attend the court.

The statement is accepted by the President of the court as character evidence.

The accused M 60910 Cpl EVANS, T.E. RCASC, attached to 204 Cdn Armd Ord Sub Park RCOC, sworn states:

Sir, the reason for my going out and celebrating the evening of the 26th was, having received word of my return home to Canada. Since New Years I have received many letters from my wife wanting to know why I had not received my leave. Others had been returned on rotation leave who had less service than I have. I have a child four years old whom I have never seen and I would like to go home very much. I have an assignment of pay to my wife and have no brothers in the service. I enlisted on 10 Sep 40 with the RCA at MD 13 Calgary. I came overseas with the 17th Battery, 3rd field Regiment. I came to France on July 6th. I am a confirmed Corporal, being confirmed in April 1944.

E3 Plea in mitigation.

As the Corporal has told you he was due to go home in May and he was celebrating his good fortune. He also told you he has been in the army since September 1940 and came overseas with the 2nd Div. He has been away a long time, has never seen his child so you can realize his feelings. I have known the accused since he came to our unit in August or September, as I was the Quartermaster at the time. As the Corporal was directly under me, I know he has carried out his duties always in a satisfactory manner. He is trustworthy and well liked by all men in the unit. I hope that these points will be taken into consideration and the Corporal will be given the best possible show.

Taken down by me in shorthand and transcribed in the field 17th May 45.

M H Hildenbrand

(A 86767 Sgt Hildenbrand MH)

(JWG THOMPSON) Lt-col, MM ED
President Permanent Court Martial Board.

CERTIFICATE

Exhibits "A", "B", "C", "D", "E", "F" and "G" being articles of civilian wear and in the opinion of the Court the property of Jan Pezie a clothier in the town of Almelo Holland, were returned to the witness Jan Pezie on the 16 May 45.

(JWG THOMPSON) LT-col, MM ED
President RCA Perm Court Martial Bd

204 CDN ARMD ORD SUB PARK ROOC

E1

15 MAY 45

TO WHOM IT MAY CONCERN

M 60910 CPL EVANS T B

The m/n soldier has been known to me for the past three months during which time he has performed the duties of Cpl cook for this unit. At all times I have found him to be most willing and conscientious in carrying out his duties.

This NCO has been anticipating returning to Canada on rotation leave for the last two months and was allotted a vacancy on the last draft. Prior to being allotted a vacancy Cpl Evans approached me on several occasions regarding same. It is my opinion that the uncertainty of his return affected him considerably.

W H Chase

(W H CHASE) LIEUT.

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
M 60910	CPL	EVANS TUDOR ELDERFIELD	204 CDN ARMD CRD SUB PARK RCOC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months		* Since Enlistment	
For	SECTION 40 A.A.	times	ONE	times
For		times		times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct, NIL

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or* N/A

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N/A beginning on the day of N/A

4. The accused has been in confinement, awaiting trial on the present charges, for N/A days in civil custody, and N/A days in military custody, making a total of N/A days, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 27 yrs 3 mons 2 days

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 10 Sep 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 yrs 6 mons 22 days.

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 6 mons 22 days service.

9. The accused is entitled to reckon 4 yrs 6 mons 22 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or award)*). C.V.S.M.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (*or corps or department*) the rank of N/A dated N/A

W1/3932/1038 20M. 9/40. P. Lds. Y31-3.

Schedule of Convictions by a Court Martial or Civil Court; of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. W609 50 Rank CPL Name EVANS T B of 204 CDN ARMD ORD SUB PARK RCOC Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7 day of May 1945

P.S. Evans Maj

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date

In the rank of Acting Corporal with effect from 18 AUG 44

In the rank of Corporal with effect from 20 AUG 44

In the rank of with effect from

(INSTRUCTION—If any matter in any of the above paragraphs cannot be verified from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be inserted from such extract as are available and the paragraph retained amended accordingly.)

MFM 6
(AFB 122)
SC/P&S/136 (3458)

No M60910 Name EVANS T E | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 10 Sep [illegible] | Service or Proficiency Pay | Badges

Date of last entry in Company Conduct Sheet: Nil | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 1 | Signature OC Company, etc: J.H.R. Tomson, Major | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on 10 Sep 42 on completion of 2 yrs Service without Regt. Entry CANO 2084									
The Field	21 Aug 43	Gnr		WOAS, AWL from 1800 hrs 19 Aug 43 to 1055 hrs. 21 Aug 43. Time absent: 1 day, 16 hrs, 44 mins. A.A. Sect 15(1)	Sgt Taylor RD	10 days CB Forf 2 days pay FR&I 149(1)(b) Forf 10 days pay FR&I 149(2)	27 Aug 43	J.F Plow Lt-Col., RCA	Total forf of 12 days pay.
Field	5 Apr 45	Cpl.		SECTION 40 AA, WOAS-Conduct to the prejudice of good order and Military Discipline in that he was at 0100 hrs 5 Apr 45, unfit for duty by reason of previous indulgence in alcoholic stimulants.	Lieut. Chase.	Severe Reprimand	14 Apr 45	Major J.A. Tinds	

This is to certify that original Regimental books are held in my possession. [signature]

(PTO)

SUMMARY OF EVIDENCE
in the case of

M 60910 Cpl. Evans T E, 204 Cdn Armd Ord Sub Park, RCOC, Cdn Army Overseas, charged with breaking and entering (A.A.Sec.6(2))

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS

Jan Nicolaas Stunnenburg, head Sergeant Detective of police, Almelo, Holland.

I certify that in my opinion, the attendance of this witness is, owing to the involvement of an interpreter, not readily procurable; a statement under oath of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "A"

W H Chase
Lieut. W.H. Chase

I do not require the attendance of Jan Nicolaas Stunnenburg for the purpose of cross-examination.

M 60910 Cpl. Evans T E

SECOND WITNESS

Johannes Pezie, Merchant, Market Square No. 1 Almelo, Holland.

I certify that in my opinion, the attendance of this witness is, owing to the involvement of an interpreter, not readily procurable; a statement under oath of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "B"

W H Chase
Lieut. W.H. Chase

I do not require the attendance of Johannes Pezie for the purpose of cross-examination.

M 60910 Cpl. Evans T E

THIRD WITNESS

G 42594 L/Cpl. Galbraith, W.S. E Sec. No. 7 Coy Cdn Provost Corps having been duly sworn states:-

At approximately 2040 hrs 26 Apr 45, I was on duty in Almelo, when I heard a shot fired and saw a civilian and a Dutch policeman in uniform running up the street towards the S.S. Coy. I then went to the assistance of the police, and in the alley of 15 Market Place I saw the accused and P 35319 S/Sgt. Scott, F.J. I then examined his pay book and found it to be in good order. I then with the two civilian police and L/Cpl Henderson went to the premises of Johannes Pezie, where I examined the store and found a few garments on the floor. I then took the accused and S/Sgt Scott to their unit 204 Cdn Armd Ord Sub Park where I searched the accused and found two civilian garments and one quarter of a bottle of MAPERO ANISE QUALITY SUPERIE. I then placed the accused under close arrest, I found f 62.00 on the accused. I then obtained a body receipt from Lieut. W.H. Chase. I then returned to the premises of Johannes Pezie where I found that one garment was alleged to be missing from his stores. I then proceeded to my H.Q. and returned on the following day to the unit of the accused where I received a statement from him.

THIRD WITNESS (Contd)

"Q"1--Would you consider I was drunk?

"A"1--No.

C 42594 L/Cpl. W.S. Galbraith

The accused was cautioned as follows:-

"Q" Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

"A" Yes, Sir, I wish to make a statement

Having asked for counsel and been told that I could not have same, at this time. I accept the statements under oath of witnesses Jan Nicolaas Stunnenburg and Johannes Pezie.

W 60910 Cpl. Evans T E

First witness called by the Defence C 98442 Cpl. Fitzpatrick, J.A. 204 Cdn Armd Ord Sub Park, having been duly sworn states:- At approximately 2230 hrs 26 Apr 45, I was in my quarters when the accused entered. He had the appearance of having been drinking excessively and was, in my opinion, drunk.

"Q"1 Have you ever seen me drunk before?

"A"1 Yes

"Q"2 Was I, in your opinion, on this occasion as drunk as you had seen me previously?

"A"2 Yes.

C 98442 Cpl. Fitzpatrick JA

Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with. I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in writing in the presence and hearing of the accused this 2 May 45.

Officer taking Summary

EXHIBIT "A"

MUNICIPAL POLICE
ALMELO

Statement under Oath

On Thursday April 26th 1945 at about 9.15 in the evening, J. PEZIE, living Market Square No. 1 in Almelo informed us by telephone, that he had thieves in his shop.

I, Jan Nicolaas Stunnenberg, head-sergeant-detective of the police went to the above-mentioned address with Teunig van der Veer, head-sergeant of the police.

When we entered the front-door of the shop we heard persons going to the backside. We also went to the backside and left the house at the backside, arrived by means of corridor in the garden of the premise No. 15 on the Market Square, where we saw running away two persons in white mackintoshes and bareheaded. These persons went up the Market Square in the direction of the Hagengraeht. When I, Stunnenberg, arrived at the Market Square, I fired my gun two times, then the 2 persons entered a corridor besides the building of the S.S. Company of Weenink and thus they arrived at theback of Van Weerd - Bakery. On that spot they could not get away and when we reached them they were just taking off the white raincoats and they proved to be two Canadian soldiers. Thrown away in the garden they had: one white raincoat, one pair of trousers, one tailcoat and one dagger. At the report of the gun the Military Police arrived, so that we had assistance at once. They arrested both persons. The clothes were seized by us, and given back to Pezy.

Later on it appeared that they had also forced the cash-standing in the shop and had stolen the money present.

Jno Stunnenberg

"This is Exhibit "A" referred to in the Summary of Evidence in the case of M60910 Cpl. Evans T.E. taken before me this 2nd day of May 1945.

W.T. Cross Lt

.....

Signature of Officer taking Summary"

~~MEMORANDUM~~

MUNICIPAL POLICE
~~ALGIERS~~

Statement on der Oath

On Thursday, April 26th 1945 at about 8.4" I heard noises in the shop below. I went down to look but saw nobody. I did notice, that the cash-register on the shop-counter had been forced and that the money had disappeared out of it. I left my house at the backside, passed a corridor and the garden of the No. 15 premise, lying on the Market-Square and went to the square and while I was talking there, I saw that about 9.15 in the evening 2 persons went the same way. I had just come. They were dressed in Canadian Uniforms. I followed them and looked the doors of my premise. They were in the shop then. After that I. asked for assistance of the police by telephone. They took with them out of the shop: 3 white raincoats, 1 pair of trousers and 1 tailcoat. Out of the cash-register they took away F.47.90 chiefly consisting of Banknotes of F. 2.50 and F. 1.00.

I allowed nobody to take away the money and these goods from my shop.

"this is Exhibit "B" referred to in the Summary of Evidence in the case of M60910 Cpl. Evans T.E. taken before me this 2nd day of May 1945.

.....

Signature of Officer taking Summary"

ADDITIONAL
SUMMARY OF EVIDENCE
in the case of

M 60910 Cpl. Evans T E, 204 Cdn Armd Ord Sub Park, RCOC, Cdn Army Overseas, charged with breaking and entering (A.A. Sec.6(2))

By direction of the Commanding Officer, the evidence is taken on oath.

FIRST WITNESS

G 42594 L/Cpl Galbraith, W.S., E Sec. No. 7 Coy Cdn Provost Corps having been duly sworn states:-

At approximately 1000 hrs 27 Apr 45 I proceeded to the unit of the accused, where I cautioned him and received a voluntary statement from him which I now present as Exhibit "A". The two garments which I previously stated having found on the accused, were, civilian windbreakers.

The accused declines to cross-examine the witness.

W.S. Galbraith
G 42594 L/Cpl.(W.S. Galbraith)

The accused was cautioned as follows:-

"Q" Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

"A" No, Sir.

T E Evans
M 60910 Cpl.(Evans T E)

Rules of Procedure 4(c),(d),(e) and (f) have been complied with. I certify that the foregoing Additional Summary of Evidence consisting of one page was taken down by me in writing in the presence and hearing of the accused this 4 May 45.

W A Richard Lt
Officer taking Summary

EXHIBIT "A"

STATEMENT BY CPL EVANS, T.E. No. M-60910

I, M 60910 Cpl. T.E. EVANS, having been duly warned that anything I may say may be taken down and used as evidence, do hereby make the voluntary statement.

At approx 1800 hrs accompanied with S/Sgt SCOTT I proceeded down town. On arriving we purchased a bottle of liquor - and indulged in same.

As for what took place later on I know nothing.

Signed - Cpl T.E. Evans
att 204 Cdn Armd Ord Sub Pk

Certified true copy

(SGD)..... Sgt
(5831000 R.B.V. Smith)
74 Company C.M.P. (TC)

"This is Exhibit 'A' referred to in the Additional Summary of Evidence in the case of P 35319, S/Sgt Scott, F.J. taken before me this 4 May 45

W.A. Chase Lt

Signature of Officer taking Summary

COUNTER NUMBER 567671

HOUR 1490

OPERATOR'S INITIALS K.L.

RELIEVING OPERATOR C.R.

WWW-92 Case #3.

Ote Evans IH.

See CC-16 for 1st case.
" 24-36 " 2nd "

RECORDED AT CMHQ IN AB 160

FIELD GENERAL COURT-MARTIAL

(PASS (to lieu of AFA) 45/P & S/1698 (14/10))
4/38B

RECEIVED 25 SEP 1944 JAG BRANCH C.M.H.Q.

Order of Brigadier J.E. Sager Cond "W" Gp. CRU dated 9 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-91917	Pte	Thomas Henry	Evans	HQ CCOD

PROCEEDINGS REVIEWED 29 Sep 44 JAG Canadian rep

REVIEWING OFFICER, JAG BRANCH C.M.H.Q. England

Held in the Fd in (country) on (date) 12 Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet / attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~here~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11, 13, 22, 24.)

A3. The Court is opened. The accused is ~~here~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ as interpreter ? Ans ~~The Interpreter is sworn.~~ C-91324 Sgt GM DUNFIELD has shorthand writer ? Ans NO

~~The shorthand writer is sworn.~~(1) Do you object to

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO S/P (1. RP 112. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.) ~~Judge-Advocate~~ are sworn.(1) The following are the

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L.	REDMAN	HQ CRU.
Member	CAPT	J.W.	MONAHAN	ICARU
Member	LT	R.W.	STOREY	ICHRU
~~Judge-Advocate~~				
Prosecutor	CAPT	V.K.	HARSHAW	ICCOD
Defending Offr	LT	K.J.	McQUARRIE	ICCOD

Questions by President: Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned not-to-scale with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See D1 p 3.)

A8. The accused ~~stands mute~~ ~~pleads to the jurisdiction~~ ~~applies for trial separately~~ before arraignment makes(s) (no) ~~pleads~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 42(B), 108), or as to the jurisdiction of the Court (RP 34, 106(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or opposite, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~before the Court~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused elects ~~does not~~ object to any change.(2) There is no amendment to be made to the Charge Sheet (3) The President records the plea in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried ~~separately~~ see RP 71(C), and use separate copies of CJ A66 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-assembles~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D.91917 PTE EVANS, T.H., 1 CCOD.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	GUILTY	Guilty	
2nd AA 15(1)	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of Kit see RP 44 fn 6.)

~~At present under sentence for~~ (1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which NIL days were spent in hospital.(1) beginning on (date)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention per a period of six(6) months

12 Sep 44 [illegible] President. (RP 45, 50.)
Date Awarded.

(Sgd) Judge-Advocate, if any. (See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I ~~direct that the accused be not committed to prison or detention barracks until further order~~ (1. In AA 57A, Delete if not used.)

(Sgd) J.E. Sager Brigadier
F Group CRU
Confirming Officer.

Date 12 Sep 44 Commanding

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D91917, Pte. Evans, T.H.	14 Sep 44.	T.M. Taylor....Lieut. (T.M. Taylor)

1 CCOD Pt. II D.O. 134, d/19 Sep 44.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of witnesses by Court see RP* 84; *oath of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans NO, SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 25(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~were~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here: Leffe Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 44(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes re Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(7), RP 46, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (k), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 205 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ? Ans Yes, By Counsel - NOTE ATT (1)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 43, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RQ 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences in the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D.91917, Pte. Thomas Henry Evans, of H.Q., No. 1 Cdn.C.C.D., R.C.O.C., a soldier of the Cdn. Army Overseas is charged with

When on Active Service

ABSENTING HIMSELF WITHOUT LEAVE

FIRST CHARGE
ARMY ACT
Sec 15 (1).

in that he

at Peper Harow absented himself without leave from 2230 hrs 14 Aug 44 till surrendering himself to L.100661, L/Cpl. Mutlow, S.J., of H.Q., No. 1 C.C.O.D., R.C.O.C. at 0900 hrs., 19 Aug 44. (Total time absent - 4 days, 10 hrs, 30 mins.)

When on Active Service

ABSENTING HIMSELF WITHOUT LEAVE

SECOND CHARGE
ARMY ACT
Sec 15 (1).

in that he

at Peper Harow absented himself without leave from 2230 hrs., 21 Aug 44 till surrendering himself to Provost Corps in Guildford at 2140 hrs., 30 Aug 44. (Total time absent - 8 days, 23 hrs. and 10 mins.)

R C Kelly

(R. C. Kelly) Major,
C.C., Depot Battalion,
Headquarters, 1 CCOD.

Peper Harow

7 Sep 44

To be tried by Field General Court Martial.

(J. H. CARTER) Brigadier
Comd "F" Gp, CRU

Bordon, Hants
9 Sep 44

W7

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, -0, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptnt, A/R or A/Apptnt	Full Christian Names.	Surname.	Unit.
D-91917	Pte	Thomas Henry	Evans	HQ CCCD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Sep 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(E), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 104(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col.	D. L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Capt	from and to be detailed by OC	1 CARU
A Lieut	from and to be detailed by OC	1 CARU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd.

in England (Country.) (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

Date 9 Sep 44 Commanding "PP" Gp, CRU (J. S. SAGER) Brigadier Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAAS 170 (1st DIV. OF AFA)) (See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
KR(Can) para 557

I certify that I have this morning examined No.....
Rank D91917 Name Pte Evans T. of 1 C.C.C.D. (Unit)
and in my opinion he is fit* ~~unfit~~ to undergo trial by Court Martial.

W.G. Mathieu Capt (Rank)
Unit
Medical Offr, RCAMC

Station Field
Date 12 Sep 44
(of Court Martial)

* Cross out one N/A and initial.

Summary of Evidence
in the case of
D 91917 Pte Evans T. on strength of
H.Q. 1 Can C.O.D. R.C.O.C. a soldier of
the Can Army overseas:

The commanding Officer directs
that the evidence be taken on oath

Sworn Witness for the Prosecution

Lieut W.J.M. Clark of H.Q. 1 Can C.O.D. R.C.O.C. an officer of the Canadian Army Overseas having been duly sworn states:-

I present a certified true copy of extracts taken from No 1 Can C.O.D. R.C.O.C. Part II Orders No 113, 117 and 115 dated 18 Aug 24 Aug and 21 Aug respectively, in connection with the accused which are marked exhibit "A" and "B".

The accused declines to cross examine this witness.

W.J.M. Clark Lieut

Sworn Witness for the Prosecution

C 15508 A/CSM Jamieson L.G. on strength of H.Q. 1 Can C.O.D. R.C.O.C. a soldier of the Can Army Overseas having been duly sworn states:-

I am

Sworn Witness for the Prosecution

L-100661 L/Cpl Mutton, S.S. on strength of H.Q. 1 Can C.O.D R.C.O.C. a soldier of the Can Army overseas having been duly sworn states:-

I am orderly in charge of the orderly room of H.Q. 1 Can C.O.D. at 0900 hrs 19 Aug 44; when the accused whom I now recognize as Pte Evans T. reported from A.W.L.; he was properly dressed and sober.

The accused declines to cross examine this witness.

S.S. Mutton
S. Mutton L/Cpl L 100661

This Witness for the prosecution.

C. 15508 R/C&M Jamieson L.A. on
attempts of H.B. 1 Can C.O.D. R.C.O.C.
a member of the Can Army
Dental Corps having been duly
sworn states:-

I produce a certificate purporting to be
signed by 2/c of M.O.I Can Provost
Corps and N.F.B. 252 relating to
the manner when I am
recognised. The certificate and
N.F.B. 252 are marked Exhibit "D"

L. D. Jamieson
R/C&M C.15508

EXA
MY

SUMMARY OF EVIDENCE.

In the case of

C91917 Pte Evans T, on strength of H.Q. 1 Cdn C.O.D. R.C.C.C., a soldier of the Canadian Army Overseas:-

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution. Lieut. N.J. McLeod of H.Q. 1 Cdn C.O.D., R.C.C.C., and officer of the Cdn Army Overseas, having been duly sworn states:-

I present a certified true copy of an extract taken from No. 1 Cdn. C.O.D., R.C.C.C., Part II Orders Nos 113 and 117 and 119 dated 10 Aug 44, and 24 Aug 44, and 31 Aug 44 respectively in connection with the accused which are marked exhibit "A", "B" and "C".

The accused declines to cross-examine this witness.

(N.J. McLeod) Lieut.

SECOND WITNESS for the Prosecution. L.100661 L/Cpl Mutlow, S.J., on strength of H.Q. 1 Cdn C.O.D., R.C.C.C., a soldier of the Canadian Army Overseas, having been duly sworn states:-

I am the Corporal in charge of the orderly room of H.Q. 1 Cdn C.O.D., at 0900 hrs 19 Aug 44; when the accused whom I now recognise as Pte Evans, T., reported from A.W.L., he was properly dressed and sober.

The accused declines to cross-examine this witness.

(S.J. Mutlow) L/Cpl. L.100661.

THIRD WITNESS for the Prosecution. C.15508 A/CSM Jamison L.G., on strength of H.Q., 1 Cdn C.O.D., R.C.C.C., a soldier of the Cdn Army Overseas, having been duly sworn, states:-

I produce a certificate pursuant to A.A. 163-1(J) purporting to be signed by 2 i/c of No 9 Cdn Provost Coy and A.F.B.252, relating to the accused whom I now recognise. The Certificate and A.F.B.252 are marked Exhibit "D".

(L.G. Jamison) A/CSM C15508.

The accused was cautioned as follows:-

"Do you wish to make any statement, or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

After the above caution, the accused declines to make a statement and reserves his defence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of 2 pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(a), (d), (e) and (f) have been complied with.

T. B. Hanbury Capt.
(Officer detailed to take the Summary of Evidence.)

5 Sep 44.
Peper Harow.

EXA
MY

F.G.C.M. In the Case of

D.91917 PTE EVANS, T.H. 1CCOD

NOTE E-3

Statement by Accused in Mitigation

The accused said he was a checker in a packing house in Canada. He says he has no complaint against the Army, but he finds the constant ordering hard to stand and he gets nervous.

NOTE E-3

Plea in Mitigation by Defending Officer

The Defending officer said he had nothing to say but he handed in copy of an S.P.O. report which is attached. He also said that the accused had now been boarded S-S, although confirmation was not yet in.

E-3

COPY

CONFIDENTIAL

SELECTION OF PERSONEL REPORT
Canadian Detention Barracks

Regtl No. D91917 SUS No.8569 | Sentenced on 11 Jul '44 to 28 days Detn. For 2 days 20 hrs. AWL

Name EVANS, T. | Admitted to C.D.B. 13 Jul 44. Due for Release 3 Aug '44

Date of Birth 21 Nov '12 Age 31 | Date of Enlistment 3/3/40
Corps H.Q. 1 C.C.O.D. R.C.O.C. | Date Overseas 1 Nov '41
Medical Category A | Prev.time in Detn. 10/848 days
"M" Score 34/120 | Date Intv'd 20 Jul 44 by F.H.Potts, Capt.

Marital Status M. | Psych Assess: 25 Jul 44 by E.S.Goddard,Major

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FAMILY: Evans was born on 21 Nov '12 in Montreal,Que. where he has lived all his life. Speaks French fairly proficiently and also reads and writes it but was educated in Eng. Father is a locomotive engineer. Has always worked steadily. "Fine" to get along with. Gets along well with his wife. One brother: a shipper. Four sisters all married.

Lived at home until he married in '36. Had a good home. He is 2nd. youngest.

EDUCATION: Grade VIII at school from 7 to 15 yrs. His educational progress was one year behind the average. Thinks he was all right as a student attended regularly.

OCCUPATION: Checker in packing house from the time he left school to enlistment.

MILITARY TRAINING: Enlisted 3/3/40 11th Fld.Ambul. R.C.A.S.C. Transf. Vol. to R.C.O.C. to get on an o/s draft. O/S 1 Mar '41. Qual. (Eng) Mil. Has never been with Mobile laundries since he came O/S when sentenced he was with H.Q. 1 C.C.O.D. Has held L/Cpls rank for 4 mos.

CONDUCT: Never in civilian court. There 31 charges on his M.F.M.6.

REASON FOR CONDUCT: He is indifferent to his conduct. Just takes some time when he needs it. To far behind to want to catch up.

HABITS: Drinks plenty. Has never had V.D. Once he starts drinking he does not care if he ever sees the army again. Never gambles.

DOMESTIC RELATIONS: Married in '36. Has no children - wife is fine. His wife keeps him on the water wagon at home. In the army he has "no boss" so he does what he likes.

RECREATION: Goes to a pub - Likes music. Plays no sports. Does not like shows. Can dance if he has had a few. He is bashful when sober but not otherwise.

HEALTH: Has had no serious illness. Operated on twice in arm for Piles - Cat. A.

ATTITUDE TOWARD FUTURE SERVICE: Is going to carry on as before.

AMBITION: Has not made post war plans. Does not want trade trg. He qualified himself as a cook and butcher the last time he was in detn. and was promised that type of work on release. When he got to his R.U. however, he was told his record was too bad to consider a transfer to such work.

SUMMARY: Evans has low average ability (M:I) admits alcohol gets the best of him and when he has an urge to do a thing just goes ahead. He is indifferent about his conduct and adapts a carefree irresponsible manner. He gives his wife credit for keeping him in line in civilian life. In view of his conduct in the past and the hold liquor has on him it is likely that his conduct will continue to be as poor as it has been and for this reason it is felt he will be of little further use in the Army.

RECOMMENDATION: Psychiatric Check.

20 Jul 44

Signed by: Frank Potts, Capt.
F.H.Potts, SPO 2,
Cdn.Detn.Brs.

FHP/mek

Distribution: C.O. (Pers)
H.Q. C.R.U.
M.O.
D.M.S. (Cons.Psych)
S.P.O. (File)
R.U. (On Release)

(TUMBLE FOR PSYCH REPORT)

PSYCHIATRIC ASSESSMENT: This man was seen by Major B.H.McNeel, Psych. in April 44 when serving his last period of detention. This is his fourth term in this Detention Barracks, but has had detention on numerous other occasions. He was put on a cook's course which he completed on his last sentence but was not used in this work.

He is a chronic alcoholic who has been drinking heavily since he was 19. He drinks so that he can be sociable. Ordinarily he is very shy and has difficulty in making friends, but he claims that alcohol helps to put down the social barrier. All of his delinquencies in the army are as a result of his alcoholism.

Diagnosis - Psychopathic Personality - Chronic alcoholism.

Recommendation - Fit to continue in detention.
Pulhems M1 S5.

25 Jul 44

Signed by: E.S.Goddard, Major
E.S.Goddard, Reg.Psych.,
Cdn.Detn.Bks.

INTERIM RECOMMENDATION: Refer to M.O. for reboard as per recategorization by Psychiatrist.

25 Jul 44

Signed by: Frank Potts, Capt.
F.H.Potts, SPO 2,
Cdn.Detn. Bks.

SUGGESTION FOR DISPOSAL ON RELEASE: To be released 3 Aug 44. to H.Q., 1 C.C.C.D. Man has complete understanding of his weakness but does not think it possible for him to control his craving for drink. Although he wants to be posted to action it is doubtful if he could proceed without further offence. Army usefulness at an end due to alcoholism. Refer to M.O. at unit for reboard as per categorization by Psych (S-5).

Signed by: W.E.Hitchins, S.P.O.(1).

Exhibit "A"

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Issued by Brigadier R J Henderson, Commandant, 1 Cdn C O D

Last Order No. 112 d/16 Aug 44	This Order No. 113 d/18 Aug 44

"B" OTHER RANKS

7. ABSENT WITHOUT LEAVE

D 91917 (4)	Pte Evans T HQ	Absent without leave wef 2230 hrs 14 Aug 44. Still absent without leave 2230 hrs 13 Aug 44 (1st day)

(Signed) J. Clarke McGlashan,
(J C McGlashan) Capt & Adjt,
for Commandant, 1 Cdn Central Ord Depot.

Exhibit "B"

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Issued by Brigadier R J Henderson, Commandant, 1 Cdn C O D

Last Order No. 116
d/22 Aug 44

This Order No. 117
d/24 Aug 44

"B" OTHER RANKS

9. ABSENT WITHOUT LEAVE

D 91917 (3)	Pte Evans T HQ	Absent without leave wef 2230 hrs 21 Aug 44. Still absent without leave 2230 hrs 22 Aug 44 (1st day)

(Signed) J. Clarke McGlashan,
(J C McGlashan) Capt & Adjutant,
for Commandant, 1 Cdn Central Ord Depot.

CERTIFIED TRUE COPY

~~Exhibit "F"~~
Exhibit "C"

1 CANADIAN CENTRAL ORDNANCE DEPOT, R.C.O.C.

PART II ORDERS

Issued by Brigadier R J Henderson, Commandant, 1 Cdn C O D

Last Order No. 114 d/19 Aug 44	RESTRICTED CIRCULATION	This Order No. 115 d/21 Aug 44

"B" OTHER RANKS

8. ABSENT WITHOUT LEAVE

(Amend) D91917 (6)	Pte Evans T HQ	Part II DO 113 para 7(4) d/18 Aug 44 insofar as it refers to this soldier is hereby am'd to read for "still absent without leave 2230 hrs 13 Aug 44" read "still absent without leave 2230 hrs 15 Aug 44"

(Signed) J. Clarke McGlashan,
(J C McGlashan) Capt & Adjt,
for Commandant, 1 Cdn Central Ord Depot.

CERTIFIED TRUE COPY

Exhibit "D"

A13

SECRET "F"

Certificate in Accordance with P.C. 2797 of 10 Apr 42

I CERTIFY that No. D91917 Rank Pte. Name EVENS T.

Unit H.C.I. C.C.O.P. surrendered at Guildford, Surrey (place)

at .....hours on ..... (date) and that at the time of his arrest he was wearing (military uniform) or (~~civilian clothes~~)

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's forces to which the Officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Can [illegible] under subsection (2) of section [illegible] of the said Act.

ORDERLY ROOM AUG 31 1944 No. 9 PROVOST COY.

H.J. McKeag Lieut.

(H.J. McKEAG) LIEUT.

No. 9 Can. Provost Coy.

8.817

Exhibit "E"

CHARGE

Army Form B 252
(See King's Regulations)

H.Q. 1 C.C.O.D. R.C.C.C. Regiment

Battery / Squadron / Troop or / Company

CHARGE against No. D91917 Rank Pte.

Name EVENS T.

Place Guildford, Surrey Date of Offence 30/8/44

OFFENCE W.O.A.S. A.W.L.

ORDERLY ROOM
AUG 31 1944
H.Q. 1 C.C.O.D.
& PROVOST

Names of Witnesses:—

F5324 Cpl. Smith D.W.

D110203 L/Cpl. Chartrand G.E.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of

D91917 Pte. EVENS T.
H.Q. 1 C.C.O.D.
R.C.O.C.

While on patrol in Guildford at about 2140hrs. 30 Aug 44 accompanied by L/Cpl. Chartrand G.E. No.9 Cdn.Provost Coy. the m/n soldier surrendered himself to us as being an absentee. His particulars were taken and he was placed under close arrest and escorted to the Guard Room at his own unit.

D5324 Cpl.Smith D.W.
No.9 Cdn.Provost Coy.

I have read over the above evidence and corroborate same.

D110203 L/Cpl.Chartrand G.E.
No.9 Cdn.Provost Coy.

REMARKS

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D91917	Pte.	Evans, T.H.	H.Q. No. 1 Cdn. C.O.D., RCOC.

1. The following is a fair and true summary of the entries in the [redacted] conduct sheet† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—If a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet† mentioned should be produced to court with the statement of but not annexed to the proceedings.

† See para. 427, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Interpretation.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. 15 (1)	4 times	29 times.
For A.A. 15 (2)	-- times	1 times.
For A.A. 10 (4)	-- times	1 times.
For A.A. 19	-- times	2 times.
For	times	times.

[redacted]

2. [redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 7 13 days in military custody, making a total of 7 13 days, of which NIL days were spent in hospital. as of 6 Sep 44

5. The present age of the accused according to his record of service is 31 yrs. 9 mos. 16 days.

6. The date of his attestation specified in his record of service is 30 Mar 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

[redacted]

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused [redacted] is in possession of or entitled to (*state any military decoration or reward*) C.V.S.M. & Clasp, 15 Jan 44, C.O.R.U. Pt. II D.O. 112, d/8 May 44

[redacted]

EXB

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D91917 Rank Pte Name Evans, T.H. of HQ 1 CCOD RCOC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be entered.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	20 Mar 1943	A.A. Sec. 15(1)	90 days Detention	30 days
F.G.C.M.	16 Aug 43	A.A. Sec. 15(1)	18 Months with 6 Months Remit.	116 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 7th day of Sept. 1944

Assistant Adjutant
H.Q. 1 C.C.O.D.

LIST OF WITNESSES FOR THE PROSECUTION.

Lieut. R.J. McLeod. H.Q. 1 Cdn. C.O.D., R.C.O.C.,
L100661 L/Cpl. Mutlow, S.J. H.Q. 1 Cdn. C.O.D., R.C.O.C.,
C15508 A/CSM Jamison L.C. H.Q. 1 Cdn. C.O.D., R.C.O.C.,

LIST OF WITNESSES FOR THE DEFENCE.

NIL.

LIST OF EXHIBITS

"A" Extract from Part II, No. 1 C.C.O.D. Orders.
"B" Extract from Part II No. 1 C.C.O.D. Orders.
"C" A.F.B. 292 Certificate under A.A. 163, 1(4).
"D" Extract from Part II Orders No. 1 C.C.O.D.

I, D91917, Pte. Evans T. of H.Q. No. 1 Cdn C.O.D., R.C.O.C., wish to have an officer appointed to represent me at my trial.

.....
(D91917 Pte. Evans, T.)

Certified that I have received the following documents:

Summary of Evidence.
Copy of Charge Sheet.
List of Witnesses for Prosecution
List of Witnesses for Defence.

Pte. Evans T.
.....
(D91917 Pte. Evans, T)

PFH.

C.M.H.Q. 1000-726
40-7 & 8(6)

MESSAGE FORM

Serial No. 2

CALL AND INSTRUCTIONS	IN	No. of Groups GR.	OFFICE DATE STAMP
	OUT		

(ABOVE THIS LINE IS FOR SIGNALS USE ONLY.)

TO

FROM CANMILITRY	Originator's Number	Date	In Reply to Number

D91917 Pte Evans, Thomas Henry.

30. 3-40 - Enlistment

21. Nov. 1912. d/Birth

TIME OF ORIGIN | THI | TOR (OFFICE) | TOR (MESSAGE)

THIS MESSAGE MAY BE SENT AS WRITTEN BY ANY MEANS | THIS MESSAGE MUST BE SENT IN CIPHER BY CABLE AS INSTRUCTED OR BY ALL SPEEDY MEANS | ORIGINATOR'S INSTRUCTIONS

(BELOW THIS LINE IS FOR SIGNALS USE ONLY.)

SERVICE	TYPE	REMARKS	REFERENCE	STATION DATE	TIME DATE	REMARKS	REFERENCE	STATION DATE	TIME DATE	REMARKS	REFERENCE

No D91917 Name EVANS, T. | Sqn, Battery, or Company | Corps R.C.O.C. | Date of enlistment 30 Mar 40 | Badges | Service or Proficiency Pay 1.30 | 3/17 MFM 6 (AFB 122) 40/F&S/156 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed 30 Sep 40					
Field	14 Jun 41	Pte		Sec. 15 (1) A.A. A.W.L. 2 hrs 30 min.	Lt. Sutherland Pte. Vidal	14 days Detention	16 Jun 41	Capt. J.A. Bennell	
Field	3 Jul 41	Pte		Sec. 15 (1) A.A. A.W.L. 13 hrs	Cpl. Temple	To forfeit 7 days pay under AA Sec. 46	5 Jul 41	Capt. J.A. Bennell	Forfeits 1 days pay under Art. 149 FR&I
Field	26 Jul 41	Pte		A.W.L. failed to report to Sgt. Cobb for duty as order by A/ Orderly Sgt., Cpl. Bell.	Cpl. Bell Sgt. Cobb	7 days No. 1 Fld. Punishment	26 Jul 41	Capt. J.A Bennell	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Jul 41	Pte		A.W.L. in that he at 0615 hrs 31 Aug 41 absent from morning roll call until 0950 hrs 31 Aug 41. Absent 4 hrs 35 min.	Cpl. Bell Sgt. O'Reilly	14 Days No.1 Field Punishment	1 Aug 41	Capt. J.A. Bennell	
Field	26 Sep 41	Pte		A.W.L. 5 hrs 30 mins. Sec. 15 (1) A.A.	Cpl. Gaybba Sgt. Hastings	Stoppage of 2 days pay	26 Sep 41	Capt. J.A. Bennell	
Field	14 Oct 41	Pte		Sec. 15 (1) A.A. A.W.L. from duty in that he at 1530 hrs 14 Oct 41 absented himself until 0030 hrs 15 Oct 41 Absent 9 hrs.	Cpl. Gaybba Sgt. Nelson Sgt. Cobb	8 days Field Punishment	15 Oct 41	Capt. J.A. Bennell	
Field	16 Dec 41	Pte		Sec. 15 (1) A.A. A.W.L. 2 hrs. 30 mins	Sgt. Gaybba Sgt. Cobb	4 days Field Punishment	17 Dec 41	Capt. J.A. Bennell	Forfeits 1 days Pay under FR.& I.

No. D91917 Name EVANS, T. | Sqn, Battery, or Company | Corps R.C.O.C. | Date of enlistment 30 Mar 40 | Badges | Service or Proficiency Pay 1.30 | 3/17 MFM 6 (AFB 122) 40/VAB/126 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Dec 41	Pte.		(1) Sec. 15 (1) A.A. A.W.L. from 2359 hrs 23 Dec 41 having been previously warned for regular duty, until 0815 hrs 24 Dec 41. Absent 8 hrs 16 mins	SQMS Swinburne	8 days Field Punishment	31 Dec 41	Capt. J.A. Bennell	
			1st	(2) Sec. 40 A.A. Conduct to the prejudice - in that he at 2359 hrs 23 Dec 41 became unfit for duty by reason of previous indulgence in alcholic stimulants.	SQMS Swinburne Sgt Hastings Sgt Keelan	Admonished	31 Dec 41	Capt. J.A. Bennell	
Field	14 Jan	Pte		(1) Sec. 15 (1) A.A. AWL 6 hrs 30 mins (2) Sec 15 (1) AA - AWL 9 hrs 30 mins.	Sgt Hastings SQMS Swinburne	14 days F.P.	17 Jan 42	Capt. J.A. Bennell	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Mar 42	Pte		(1) Sec. 15 (1) AA - AWL Absent 5 hrs (2) Sec. 15 (1) AA - AWL Absent 12 hrs	Sgt. Nelson Sgt. Nelson Cpl. Allaby	8 days F.P. Forf. 9 days pay	13 Mar 42	Capt. J.A. Bennell	
Field	27 Mar 42	Pte		Sec. 15 (1)AA AWL Absent 2 hrs 10 mins	Sgt Gaybba SQMS Swinburne)	28 days detn on both Charges	30 Mar 42	Lt.-Col. 1st. Cdn. Div. RCOC	
Field	28 Mar 42	Pte		Sec. 15 (1)AA AWL Absent 1 hr.	Sgt Nelson SQMS Swinburne Cpl. Allaby				
Field	19 May 42	Pte	2nd	Sec. 19 A.A. "Drunkenness	Capt Bennell SQMS Swinburne	Fined $5.00 for 2nd offence KR Can Para 492	25 May 42	Capt J.A. Bennell	
Field	1 Sep 42	Pte		Sec. 15(1) AA AWL Absent 15 hrs 19 mins.	L/Cpl Haselden Sgt. Gaybba	14 days FP	2 Sep 42	Capt. J.A. Bennell	

No. D91917 Name EVANS, T. Sqn, Battery, or Company Corps R.C.O.C. Date of enlistment 30 Mar 40 Badges Service or Proficiency Pay 1.30 3/17 MFM 6 (AFB 122) 40(F&S)/156 (5412)

Date of last entry in Company Conduct Sheet No. and date of last drunk 19 May 42 Period not reckoning towards freedom from extra fine Sheet No 3 Signature OC Company, etc Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Sep 42	Pte		Sec. 15 (1) AA AWL Absent 1 day 21 hrs 31 mins	Sgt. Keelan Cpl Harbison	7 days F.P.	22 Sep 42	Capt. J.A Bennell	Forf 2 days pay FR&I 149 (1)A.
Field	22 Nov 42	Pte		Sec. 15 (1) AA AWL Absent 1 day 4 hrs	Cpl Allaby L/Cpl Noble	Fined 7 days pay	23 Nov 42	Capt J.A Bennell	Forf 2 days pay FR&I
1 CBOD	13 Dec 42	Pte		Sec. 15 (1) AA AWL Absent 15 hrs 41 mins	Sgt. Truman	3 days pay FR&I 149(2)	15 Dec 42	Capt R.W. McBride	Forf 1 days pay FR&I 149 (1)a
Field	29 Dec 42	Pte		Sec. 15 (1) AA AWL 4 days 14 hrs 30 mins	Cpl. Patterson	Admonished	4 Jan 43	Lt.Col. H.M. Bailey	Forf 5 days pay FR&I 149 (1) a.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	10 Jan 43	Pte		Sec.15(1)AA AWL Absent 2 days 18 hrs 56 mins	L/Cpl Wark Documentary	Forf. 6 days pay AA 46(2) FR&I 149(2)	15 Jan 43	Lt.Col. H.M.Bailey	Forf 3 days pay FR&I 149(1)a
Bordon	17 Jan 43	Pte		AA Sec.15(1) AWL-WOAS from 2200 hrs 17 Jan 43 to 1600 hrs 19 Jan 43 (Absent 1 day 18 hrs)	L/Cpl Wark Cpl. Baker	Forf.8 days pay AA 46(2) FR&I 149(2)	21 Jan 43	Lt.Col. H.M.Bailey	Forf. 2 days pay FR&I 149(1)a Total 10 days pay
Bordon	21 Jan 43	Pte		AA Sec.15(1) AWL-WOAS from 1600 hrs 21 Jan 43 to 1700 hrs 26 Jan 43 (Absent 5 days 1 hr.)	Sgt. Sass Pte. Kestner	28 days F.P. Forf. 28 days pay FR&I 149(1)	27 Jan 43	Lt.Col. H.M.Bailey	Forf.6 days pay FR&I 149(1)a Total 34 days pay
Bordon	30 Jan 43	Pte		(1) AA Sec.15(1) AWL-WOAS from 1000 hrs 30 Jan 43 to 1500 hrs 4 Feb 43. (absent 5 days 5 hrs) (2) AA Sec.10(4) Breaking Out of Barracks while undergoing F.P.	Sgt. Sass Pte Kestner Documentary	28 days Detn. Forf 28 days pay FR&I 149(1)b Released from Detn Mar 1 1943. 4 days Remission.	6 Feb 44	Lt.Col. H.M.Bailey	Forf. 6 days pay FR&I 149(1)a Total 34 days pay

~~CERTIFIED TRUE COPY OF ORIGINAL IN MY CUSTODY (Sgd for)(H.M.Bailey)Lt.Col.~~
No. 1 Can. Crd. Reinf. Unit.

No. D91917 Name EVANS, T. | Sqn, Battery, or Company | Corps RCOC | Date of enlistment 30 Mar 40 | Trade Badges | Service or Proficiency Pay 1.30 | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	2 Mar 43	Pte		A.A. Sec.15(1) AWL-Guilty	Documentary	To undergo Detn for a period of 90 days. Forf 90 days pay FR&I 149(1)b. & 10 days pay FR&I 149 (1)c.	20 Mar 43	F.G.C.M.	Forf 8 days pay FR&I 149 (1)a. Total forf. 108 days pay.

~~CERTIFIED TRUE COPY OF ORIGINAL IN MY CUSTODY~~

~~(Harold H. Bailey) Lt.-Col.~~
~~Commanding Officer,~~
~~No. 1 Cdn. Rft. Unit.~~

Released from Detn Bks, Headley Down, May 18,1943
Sentence having expired.
Remission earned under "Rules for Detn Bks & Mil. Prisons.
30 days.
J.A.H.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	21 May 43	Pte		A.A.Sec.15(1) WOAS-A.W.L. from 0800 hrs 21 May 43 till 0830 hrs 24 May 43 (Absent 3 days 30 mins)	Cpl.Campsall		24 May 43	????	Auto Forf 4 days pay FR&I 149(1)a
Field	16 Jun 43	Pte		A.A. Sec15(1) WOAS A.W.L. from 2300 hrs 16 Jun 43 to 0850 hrs 21 Jun 43 (absent 4 days 9 hrs 30 minutes)	Pte. Page Pte.O'Brien	7 days F.P.	21 Jun 43	T.A. Miller Capt.	5 days pay 149 (1)a 7 days pay 149(2)(c)(ii)
Field	1 Jul 43	Pte		W.O.A.S. A.W.L. from 2359 hrs 1 Jul 43 until 1500 hrs. 9 Jul 43. Total absence 8 days 15 hrs. 1 min. A.A. Sec.15 (1)	L/Cpl Boorman	28 days F.P. 28 days Pay FR&I 149(1) (b)	10 Jul 43	Lt.Col. D.Fletcher	Forf 9 days pay FR&I 149(1)a (1)a.
Field	23 Jul 43	Pte		A.A. 15(1) AWL from 1500 hrs 23 Jul 43 to 2150 hrs 4 Aug 43 (Absent 12 days 6 hrs 50 mins)		18 mos with 6 mos. remit.	Released (16 Aug 43) 116 days remittance of sentence.	from Detn. 19 Apr44	375 days pay Stop.16/- FRI 172(8)

No. D91917 Name EVANS, T. | Sqn., Battery, or Company | Corps RCOC | Date of enlistment 30 Mar 40 | Trade or Badges | Service or Proficiency Pay 1.30 | M.F.M. 6 (A.F. B.122) 40/P & /8136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 5 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of other disposal along with trial	By whom awarded	Remarks
Field	20 Apr 44	Pte		Sec 15(1) AA-W0AS-AWL from 2230 hrs 20 Apr 44 until apprehended at 1900 hrs 25 Apr 44. Absent 4 days 20 hrs 30 mins.	Documentary Cpl Mahoney	Awarded 14 days C.B.	27 Apr 44	T.J.Warner Major	Auto forf 5 days pay
Field	14 May 44	Pte		Sec 15(1) AA-AWL from 2230 hrs 14 May 44 to 1515 hrs 15 May 44	Cpl.Jeffery Sgt Flaws	5 days FP & 5 days pay FR&I 149(1)(b)	16 May 44	Major L.W Burton	Forf 3 days Pay FR&I 149(1)(a)
Field	15 Jun 44 h	Pte		Sec.15(1)AA-W0AS-AWLfrom 1030 hrs 15 Jun 44 until surrendering to the Cdn Mil Police at Horsham at 1545 hrs 19 Jun 44, thereby incurring a cost of apprehension of £0-5-8 (Total time absent 4 days 5 hrs and 15 mins)	AFB 252 Cpl E. Cook	5 days forf of pay	26-6-44	Major R.C Kelly	forfs 5 days pay, FR&I 149(2) and 5 days Auto forf of pay FR&I 149(1)a

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	4 Jul 44	Pte		A.A. Sec. 15(1) WOAS - AWL from 1300 hrs 4 Jul 44 until apprehended by the CMP at Portsmouth at 1200 hrs 7 Jul 44 Total time absent 2 days and 23 hrs. Thereby incurring a cost of apprehension of 13/5	CSM McAdam	28 days Detn	11 Jul 44	Major R.C Kelly	Forf. 28 days pay FR&I 149(1)b 3 days pay FR&I 149(1)a. Total Forf. of 31 days pay. Placed under a stoppage of pay to the extent of 13/5 FR&I 172(8) to cover cost of Apprehension.
					Released from the Dtn Bk Headley Down on 3 Aug 44, Sentence having expired. Remission earned under "Rules for Detention Barracks and Military prisons" for 4 days R.O.M.				

CERTIFIED TRUE COPY

Officer having custody of Regt'l Books.

7 Sept 44

KK-110
PTE EVENO J.

KK-110

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this twenty-first day of JULY, 43

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for selection to a superior qualified officer~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ detailed or appointed hereunder.

~~If no suitable officer is available:~~

~~"a. Three Officers to form the Court.~~

~~"b. A Field Officer as President.~~

~~"c. Three Officers having more than five years' service.~~

~~for the following reasons, namely:—~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

136

President.

Rank.	Name.	Regiment.
Major	E. Partington	HQ Comd 1 Cdn Corps Tpt Coln RCASC.

Members.

Rank.	Name.	Regiment.
Captain	B.T. Tronsorth.	12 Cdn A Fd Coy R.C.E
A Captain to be detailed by HQ RCE 1 Cdn Corps Tps		
Lieutenant	D.T. Black.	31 Cdn Corps Tps Coy RCASC
A Lieutenant to be detailed by OC 31 Cdn Corps Tps Coy RCASC.		

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E.A. McCusker.
(E.A. McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
M-42037 Private John ZVENO 47 Cdn Gen Tpt Coy RCASC.	First Charge Section 15 (1) Army Act. Second Charge Section 24 (2) Army Act. (For particulars of the above charges see charge sheet attached).	Guilty Guilty	Guilty Guilty To undergo detention for a period of nine months and to be put under stoppages of pay until he has made good the sum of £12/6 costs of apprehension and the sum of £9-18-4 value compensated defrayed. Earlington major President 22 Jul 43	Confirmed 3 1 Jul 43 Earlington major President.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) E. A. McCusker Brigadier
Commanding D.D.M.S. 1 Cdn Corps.
Confirming Officer (d)

(Signed) Earlington major
HQ Coy 1 Cdn Corps Hq Pl Coy
RCASC.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the 22nd day of July, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings

I also certify that :—

* Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officer under instruction)

were duly sworn.

Signed this 22nd day of July 1943.

Earlington major
President of the Court Martial.

* See footnote (i) on page 562 M.M.L. 1939.

I certify that the terms of *A.C. 570 of 1918 have been complied with. **C.** Certificate in case of death sentence

Signed this day of 19

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

*(I ~~direct that the soldier named in the margin be not committed to prison until further order~~.)

Signed this 23 1 day of July 1943.

21 Pln
Confirming Officer H.Q.

Promulgated and extracts taken in the case of
M-42037 Pte Zveno J.
(a) (Dated) 26 Jul. 43 (Signed) A/ Cdn. Corps. H.Q. Pl. Coy. R.C.A.S.C.
Major.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2.

CHARGE SHEET

The accused M42037 Pte. John EVENO, of 47 Cdn.Gen.Tpt.Coy.,(Inf.Div.)R.C.A.S.C. a soldier of the Canadian Army Overseas, While On Active Service, is charged with:-

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

While on Active Service, Absenting himself without leave,

in that he,

In the Field did, absent himself without leave from 0630 hrs. 15 Mar.43 until surrendering himself to Civil Police at Caterham at 10.00 hrs. 16 Jul 43, thereby, incurring cost of return to Unit in the amount of Twelve shillings and Six Pence (£0-12-6. Total Time absent 123 days 3 hrs. 30 mins.

SECOND CHARGE
SECTION 24(2)

Losing by Neglect, his Clothing, Equipment and Regimental nec necessaries.

in that he,

on the 17 Jul. 43 was deficient of the following articles of kit valued at £3-18-4 (75% of Vocabulary Price)

	£	s	d	75% £	s	d
Anklets Web 1 pr.	0	3	5½	0	2	7
Capts Comforter 1	0	1	1½	0	0	10
Greatcoats Drab 1	3	17	6	2	18	0
Discs Identity 2	0	0	0	0	0	0
Fork 1	0	0	5	0	0	4
Gloves Knitted Drab 1 pr	0	2	7½	0	2	0
Shirt Angola Drab 1	0	9	2	0	6	10
Spoon 1	0	0	4½	0	0	3
Helmets, Steel 1	0	10	8	0	7	6
	5	4	8	3	18	4

Field

(G. Gibb) Major
Officer Commanding
47 Cdn.Gen.Tpt.Coy.,
(Inf.Div.)R.C.A.S.C.

To be tried by Field General Court Martial.

(E.A. McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

In the Field
21 July 1943.

Hastings & Prince Edward

MEDICAL CERTIFICATE (K.R. (Can) 557)

I certify that I have this prning examined No. M42037

Pte. Eveno, J. of 47 Cdn. Gen. Tpt. Coy., and, in my opinion,
(1st Div.) R.C.A.S.C.

he is ~~fit~~ unfit to undergo trial by Court-Martial

Station In the Field

Date 22 Jul. 43

J. A. Lavergne Capt
Medical Officer

Army Form A.9.

A ...of Proceedings for General and District Courts-Martial.

on the 22nd day of ... Court-Martial held at Field 19 43 by order of

Brigadier E. ... Commanding D.D.M.S. 1 Cdn ... dated the 21st day of July 1943

President.

Major E Partington H.Q. Coml 1 Cdn Corps Tpt Coln RCASC

Captain B.T. Tremouth 12 Cdn Army Field Coy RCE

Lieutenant D.J. Black 31 Cdn Corps Troops Coy RCASC

Members.

~~Judge Advocate~~.

Trial of* M 42037 Private John Ervino 47 Cdn Gen Tpt Coy, (Inf Div.) R.C.A.S.C.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~

~~to serve owing to~~

~~, writing member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieutenant R.K. Sullivan RCASC

Counsel‡ or defending officer† Lieutenant T.J. Hartigan RCASC

At 1445 o'clock the Trial commences.

The order convening the Court is read, and is marked ... signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).

†Here state Rank and Name, and Regiment (if any).

‡Qualification to be stated.

GALT, ROBERTSON, ALLEN PRS. CAN. R.A.S.C. 1941. Form A.9.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 22nd day of July 1943 by order of Brigadier E. A. McCusker Commanding D.D.M.S. 1 Cdn Corps dated the 21st day of July 1943

President.

Major E Partington
H.Q. Comd 1 Cdn Corps Tpt Coln RCASC

Members.

Captain B T Tremouth
12 Cdn Army Field Coy RCE

Lieutenant D.J. Black
31 Cdn Corps Troops Coy RCASC

~~Judge Advocate~~.

Trial of* M 42037 Private John Evens
47 Cdn Gen Tpt Coy, (Inf Div.)
R.C.A.S.C.

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~is not available~~

~~The Court satisfy themselves that~~

~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieutenant R.K. Sullivan RCASC

Counsel‡ or defending officer† Lieutenant T.J. Hartigan RCASC

At 1945 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4278. Wt. W7160/P28. 25,000 pds. 6/43 E. & S. Ltd. Gp.(21). Forms A 9(2).

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieutenant J. W. White,
H. Q. Comd., Cdn Corps Tpt. Coln RCASC

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to both charges, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~]

The accused 1942057 Private John Sveno is found guilty of both charges.

†The summary (~~or abstract~~) of evidence is read, marked B 3 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

yes

Answer. The accused in mitigation of punishment ~~says~~:—

[~~or~~ hands in a written statement, which is read, marked K, signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character.

B 3.

SUMMARY OF EVIDENCE

in the case of

M42037 Pte. John EVENO, 47 Cdn Gen Tpt Coy (Inf Div) RCASC

By direction of Major G. Gibb, Officer Commanding, 47 Cdn Gen Tpt Coy, (Inf Div) R.C.A.S.C. the Summary of Evidence is taken on oath, commencing at hrs, 17 Jul 43 and completed at hrs, 17 Jul 43.

1st Witness
B88654 C.Q.M.S. Miller, T.J., 47 Cdn Gen Tpt Coy (Inf Div) RCASC

B88654 C.Q.M.S. Miller, T.J. having been duly sworn states:-

I am B88654 C.Q.M.S. Miller, T.J. I was formerly platoon Sergeant of "D" Platoon, 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C. On 15 Mar 43 I called the roll at 0900 hrs and M42037 Pte. Eveno, J. who had been granted an overnight pass, which expired at 0630 hrs 15 Mar 43, failed to answer to his name. I investigated and found the accused absent. I immediately notified C.S.M. Burland. I further state that on 17 Jul 43, I, with L7049 Cpl McCall, F.G. inspected Pte Eveno's kit and found it deficient as per the attached list marked Exhibit "A".

T J Miller
(B88654 Miller, T.J.) C.Q.M.S.

The accused declines to cross examine this witness.

2nd Witness
L7145 C.S.M. Burland, G., 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.

L7145 C.S.M. Burland, G., having been duly sworn states:-

I am L7145 C.S.M. Burland, G., 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C., At approximately 0900 hrs 15 Mar 43, C.Q.M.S. Miller reported to me that Pte. Eveno, J. had not reported in off a pass which expired at 0630 hrs on that day. His name was on the tattoo reports at 2300 hrs daily until 5 Apr 43 when he was declared a deserter. I have not seen him until about 1400 hrs, 17 Jul 43, Sir.

Geo Burland C.S.M.
(L7145 Burland, G.) C.S.M.

The accused declines to cross examine this witness.

3rd Witness
L7049 Cpl. McCall, F.G., 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.

L7049 Cpl. McCall, F.G., having been duly sworn states:-

I am L7049 Cpl. McCall, F.G., R.P. Corporal of 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C. On 17 Jul 43, I, with C.Q.M.S. Miller, inspected Pte. Eveno's kit and found deficiencies as follows:-

Anklets, web	1 pr
Cape Comforter	1
Greatcoats, drab	1
Discs, identity	2
Fork	1
Gloves, knitted, drab	1 pr
Shirt, Angola drab	1
Spoon	1
Helmets, steel	1

F G McCall
(L7049 McCall, F.G.) Cpl.

The accused declines to cross examine this witness.

4th Witness
T/Sgt. #33, Harris, T.E. of the Surrey Constabulary, stationed at Caterham.

I hereby certify that in my opinion, the attendance of the 4th Witness, owing to the expense and loss of time involved is not readily procurable. Evidence on Army Form O1617, marked Exhibit "B" and purporting to be signed by T/Sgt #33 Harris, T.E., and having been read to the accused is attached hereto.

R Keith Sullivan, Lt
(R. Keith Sullivan) Lieut.

I do not require the attendance of the 4th Witness for the purpose of cross examination.

John Eveno
(M42037 John Eveno) PTE.

5th Witness
Capt. W. Fern, D.A.P.M., London Area.

I hereby certify that owing to the expense and loss of time involved, the attendance of the 5th witness, is not, in my opinion, readily procurable. The evidence on Army Form B 252 and C.M.H.Q. 1000/55, marked Exhibit "C", "D" and "E", and purporting to be signed by him, has been read to the accused, and is attached hereto.

R Keith Sullivan, Lt
(R. Keith Sullivan) Lieut.

I do not require the attendance of the 3rd Witness for the purpose of cross examination.

John Eveno
(M42037 John Eveno) PTE.

The accused was warned in accordance with Rules of Procedure 4(e) but declined to make a statement.

I certify that the foregoing Summary of Evidence was taken down by me in writing in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

R Keith Sullivan, Lt
(R. Keith Sullivan) Lieut.
Officer Taking Summary of Evidence.

Dartington Major
President

EXHIBIT "A"

DEFICIENCIES IN KIT OF M42037 PTE. JOHN EVENO as of 17 Jul 43.

Hartington Major President.

		Vocabulary	Unexpired wear
Anklets, web	1 pr.	£0 - 3 - 5 1/2	£0 - 2 - 7
Caps, comforter	1	0 - 1 - 1½	0 - 0 - 10
Greatcoat, drab	1	3-17 - ½	2 -18 - 0
Discs, identity	2		
Fork	1	0 - 0 - 5	0 - 0 - 4
Gloves, knitted, drab	1 pr	0 - 2 - 7½	0 - 2 - 0
Shirt, angola drab	1	0 - 9 - 2	0 - 6 - 10
Spoon	1	0 - 0 - 4½	0 - 0 - 3
Helmets, steel	1	0-10 - ½	0 - 7 - 6
		£5 - 4 - 3	£3 -18 - 4

Certified correct - J J Miller (B28654 Miller, I.J.) C.S.M.S.

Exhibit "B"
Washington mayor
President

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit,* notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depôt in the case of a soldier and in the case of an airman to the O.C. R.A.F. Depôt, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

*Stations of Units and Depôts are shown in the Monthly Army and Air Force Lists.

[illegible] W[illegible] 684 P.A. Forms/O.1617/8

I CERTIFY that the man whose personal description is given below surrendered himself to* Tom E. HARRIS. T/Sergt.No.33.

at Caterham. at (hour) 10 a.m. on the 16th. day of July 1943. as being No. M.42037.

(Rank and Name) John EVENO (Private)

a deserter (or absentee without leave) from R.C.A.S.C.

and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age B.27-6-16. Height 5 Feet 7 Inches

Complexion Fresh. Hair Black. Eyes Dk. Brown.

Marks Scar under left eye.

In uniform or plain clothes Uniform.

Probable Date and Place of Attestation	Calgary, Alberta, Canada. 19th. June 1940.
Probable Date of Desertion or beginning of absence and from what place	Approximately 4 months.

Signature of Officer of Police in charge of Tom E. Harris

Caterham Station.

16th July 1943. Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of

No.

who surrendered to the Police at on

Payable to

CERTIFIED that this statement of expenses is correct.

(Superintendent or Officer in charge of Police Station at

Date of Signature.

Exhibit "C"

CHARGE

A.F.B.K. Form B 252
(See King's Regulations)

47th CANADIAN GEN TRANS COY. Regiment

(R.C.A.S.C.) Battery / Squadron / Troop or Company

CHARGE against No. M-42037 Rank PTE.

Name EVENO J.

Place CATERHAM Date of Offence

OFFENCE WOAS absent without leave from ?.....until surrendering himself to the CIVIL POLICE CATERHAM at about 1000 hrs 16th JULY 43.

CAPT.
W. FERN) D.A.P.M.
LONDON AREA

Names of Witnesses :—
T/SGT. No.33 HARRIS T.E.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

Exhibit 20

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

Reg. No. M42037 Rank Pte. Name Evens, J Unit 47 Fus. Unit Coy RCASC

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Caterham

Date	Particulars	Amount		
12 July 43	Escorts return fare from LONDON To Caterham		2	6
	Prisoners single fare to LONDON From Caterham		1	3
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		3	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London. Capt.

M.H.Q. 1000/55
W & S./482

Exhibit "E"
Examination
Prendergast

Expense Voucher Re—: Ref: K.R. & O. (Cash) 6/4

Reg. No. M42037 Rank Pte. Name Evens J. Unit 91 Gen Trans Coy. R.C.A.S.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
	Escorts return fare from LONDON To Haywards Heath		5	10
17 July 43	Prisoners single fare to LONDON From			
	Prisoners fare from London To Haywards Heath		2	11
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
40/P & S/483

RECORD of the Declaration of a Court of Inquiry assembled at Borde Hill Camp on the 8th day of April 1943 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. M.42037

DECLARATION

The Court declare. M42037 Pte. Eveno, J. of 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C. illegally absented himself without leave at Borde Hill Camp, Sussex at 0630 hrs on 15 March 43, that he is still absent, and that on 16 Mar 43 he was deficient the following articles.

		Value of unexpired wear
1 pr anklets web	0 - 3 - 5½	0 - 2 - 7
1 pr boots, ankle	1 - 1 - 6	0 -16 - 1½
1 Cap comforter	0 - 1 - 1½	0 - 0 -10
1 Cap Field Service	0 - 3 - 8	0 - 2 - 9
1 Greatcoat Drab	3 -17 - ½	2 -17 - 9½
1 Fork Table	0 - 0 - 6	0 - 0 - 3¾
1 pr Gloves Woolen	0 - 2 - 7½	0 - 2 - 0
1 Knife Clasp	0 - 5 - 2½	0 - 3 -11
2 Shirts, flannel	0 - 18 - 4	0 -13 - 9
1 Spoon, table	0 - 0 -11½	0 - 0 - 3
1 Blouse Battle Dress	1 - 7 - 8	1 - 0 - 9
1 Trousers Battle Dr.	1 - 7 -11	1 - 0 -11¾
	9 -10 - 3½	7- 2 - 9¾

Names of President and Members:

President Capt. C.M. Ellis R.C.A.S.C.

Member Lieut. F.E. Murphy R.C.A.S.C.

Signature of Commanding Officer G. Gibb Major

Certified true copy [signature] Capt.
Signature of Officer having custody of original record
(C.M. Ellis) Capt.
Officer i/c Regimental Books

M.F.S. 376
2M 10 39 (2498)
H.Q. 1772 39 257

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt R. K. Sullivan is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes Sir.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked X & Y signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes Sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes Sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes Sir.

~~Cross-examined by the accused.~~

Question.—If in cases of the nature of the service of the accused or a aggravation [illegible] of conviction, the Finding of the Court renders him liable to any additional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence

M 4 2 0 3 7 Private John Evens
to undergo detention for a period of
nine months and to be put under
stoppages of pay until he has made
good the sum of 12/6 costs of
apprehension and the sum of
£3-18-4 value of the following articles

		£ s d	£ s d	Sentence
Anklets Web	1	3 5½	£1 5 7½	
Caps comforter	1	1 1½	2 7	
Great Coat Drab	1	3 17 0½	2 18 0	
Fork	1	5	4	
Gloves knitted drab	1	2 7½	2 0	
Shirt Angola Drab	1	9 2	6 10	
Spoon	1	4½	3	
Helmets Steel	1	10 0½	7 6	3 18 4
		5 4 3	3 18 4	£4 7 10

Partington major
President
22 Jul 43

Documentary Evidence which I wish to present
In mitigation of sentence I crave
leave to present to the court a few facts
surrounding the accused's case. When he
joined the Army his wife threatened to
leave him however he thought she was
jesting and never thought anything more
of it. Then he left for overseas and
the next thing he heard of his wife
was that she had called out his home
and had gone to live with a strange man.
She wrote her several times but she
never answered except once when
he had asked her to send him some
cigarettes - She replied asking him
if he thought she was crazy by asking
for cigarettes. Then the accused met
and fell in love with an English girl.
As he wished to marry her he decided
to get a divorce. Now the accused is of
Russian extraction and not a understands
nor speaks English well - At no time
did he discuss his troubles with
any of his officers but went to see a
padre who investigated the case.
He informed the accused that by mutual
consent - he could obtain his divorce.
His wife agreed to this and the
accused has been waiting for his decree.
There is no doubt but what if he
had been properly advised he could
have obtained his divorce. All this
has occured over a period of 3 years
and in the meantime his environment
continued to his worse.

He wanted the assignment stopped but as he did not know how to go about it he was considering the advice of a friend to get A.W.L. and it would be automatically terminated and he would be no longer ~~contributing to the support of a man living with his wife~~ aid his wife to live in adultery. In fact, already by allowing her ~~support~~ contributing to support ~~and~~ during such an absence he was maintaining this parasite.

The day before the accusement A W L he received word of his brothers death and as he says he became so fed up and disgusted he just wanted to go away and forget everything, so did he did. Now there is no doubt but what the accused acted most rashly but bearing in mind his ignorance of the proper channels of having his matters rectified I ask the court to deal leniently with him, so that shortly he may be able to have by military aid have his family troubles straightened out and so that he can settle down and soldier with a clear conscience knowing that by doing so he is not contributing to the support of this parasite at home, but serving his country as he should.

Archibald V. Worthington Major President

No. 42037 Name Evelo, J. Sqn., Battery, or Company Corps R.C.A.S.C. Date of enlistment 19/6/40 G.C. Badges Service or Proficiency Pay

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On 19 Dec.40 this soldier completed six months service and the previous sheet on which there were no entries was destroyed Auth: R.O. 319 20 Dec.40									
Field	25/2/42	Pte.		Sec.18(1) A.A.A.I.from 2359 hrs 25 Feb.42 to 2350 hrs. 1 Mar.42 Absent 3 days 23½ hrs.	Cpl.Miller Cpl.C.Orrie	10 days F.P. 2-3-42		Major W.H. Colling	Forfeits 4 d.p. F.R.& I.149 (1)(a)Forfs 10 d.p.FRI 149 (2)
Field	4/12/42	Pte		Awarded forfeiture of 5 days pay F.R. & I.149(2)for an offence under A.A.Sec.18(1) A.W.L.from 2300 hrs. 15 Nov.42 to 1200 hrs. 19 Nov.42 Total absence 3 days 16 hrs. Forfeits 4 days pay under F.R.& I.149 (1)(a) Total forf. 12 days pay	H. Calder	Forfeits 8 days pay	4-12-42	Major J.R.Grey	8 days pay FRI.149(2) 4 days pay FRI.149(1)(a) Total forf. 12 days pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
Field	15/12/42	Pte.		A.A.Sec.15(1)AWL20 hrs. 26 min	Cpl.Murray Documentary	Forft.7 days pay 14 days C.B.	16/12/42	Major J.M McGowan	FRI 149 (2) Forfs. 1 days FRI.149(1)(a) Total forf. 8 D.F.
Field	23/12/42	Pte.		A.A. 15(1) A.W.L.12 days 23 hrs 30 mins	Cpl.Murray Documentary	28 days F.F.	7/1/43	(J.M. McGowan Major	Forfs. 28 d.p. FRI 149(1)(b) Forfs. 13 days pay F.R.& I. 149 (1)(a)

CERTIFIED TRUE COPY

(C.M. Ellis)Capt.
Officer i/c Regimental Books

Exhibit "X"
Charlottetown Preliminary Hearing

M.F.B. 458
22M—5-41 (572-3)
H.Q. 1775-29-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M42037	Pte.	John EVENO	47 Cdn.Gen.Tpt.Coy.,R.C.A.S.C.

1. The following is a fair and true summary of the entries in the ~~xx~~ Service and General ~~Record and Conduct~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~and of~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec.15(1) 3	times	Sec.15(1) 4	times
For		times		times
For		times		times
For		times		times

~~Record of conduct in civil employment~~

or,

~~There is no record of conduct~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~The accused was convicted by~~ Air Force Act ~~as follows~~ A.F.A.73

~~and particulars of such conviction are~~ annexed to this statement.

3. The accused is not under sentence at the present time

or,

~~The accused was under sentence~~

day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~service~~ civil custody, and six days in military custody, making a total of 7/8 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is ~~as entered on~~ 27 yrs 25 days

6. ~~The particulars of the accused's date of birth are~~ attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is Duration

8. The accused is entitled to reckon 3 yrs.1 ~~month~~ for the purpose of determining his pension, etc.

9. ~~The accused is entitled to reckon~~ military military ~~for pay purposes~~ military

10. ~~He was appointed~~ Air Force the regimental rank of

LIST OF WITNESSES

1st Witness -	B88654 C.Q.M.S. Miller, T.J.	47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.
2nd Witness -	L7145 C.S.M. Burland, G.	47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.
3rd Witness -	L7045 Cpl. McCall, F.G.	47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.
4th Witness -	T/Sgt #33, Harris, T.E.	Surrey Constabulary, Caterham.
5th Witness -	Capt. W. Fern, D.A.P.M.	London Area.

REQUEST FOR COUNSEL

I request that Lieut'l F.E. Murphy of 47 Cdn.Gen.Tpt.Coy., (Inf.Div.) R.C.A.S.C. defend me at my trial

(M42037 John Evens) Pte.

LIST OF EXHIBITS

Exhibit "A" - Deficiencies in kit of M42037 Pte. Evens, J.

Exhibit "B" - Army Form C 1617 - Certificate of surrender to the civil police of a deserter or absentee without leave.

Exhibit "C" ? - Army Form B 252 Charge sheet,

Exhibit "D" - CMRQ 1000:55, charges of 0-3-9 for cost of fare for escorts and the accused from London to Caterham and from Caterham to London.

Exhibit "E" - CMRQ:1000:55, charges of 0-8-9 for cost of fare for escorts and the accused from London to Haywards Heath and from Haywards Heath to London.

Lieutenant
President

COUNTER NUMBER 567732

HOUR 1445

OPERATOR'S INITIALS EH

RELIEVING OPERATOR _____

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, [illegible] of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated DEC. 2 19[illegible]

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

PRODUCTION DATA	DATE	HOUR
HOURS		4 1/2
IMAGES		4800

JOB NO. 66 REEL NO. 19-2

BOOK NO. 8-5

66-19-1A INDEXING DATA 66-19-19

BEGINS WITH [illegible] A. [illegible]

1. [illegible]

2. [illegible]

3. [illegible]

ENDS WITH [illegible]

J.D.

END

SECOND

SIDE


44.19.1